



July 2018

HIGHWAY AND TRANSIT PROJECTS

Better Data Needed to Assess Changes in the Duration of Environmental Reviews

Accessible Version

GAO Highlights

Highlights of [GAO-18-536](#), a report to congressional committees

Why GAO Did This Study

Since 2005, the federal government has enacted various statutes aimed at accelerating the environmental review process for highway and transit projects. In addition, the Clean Water Act and the Endangered Species Act may require three federal agencies—the Corps, FWS, and NMFS—to issue permits or perform consultations before a project can proceed.

GAO is required by statute to assess the extent to which statutory provisions have accelerated and improved environmental permitting and consulting processes for highway and transit projects. This report examines, among other things: 1) the impact of streamlining provisions on consulting and permitting time frames, and (2) additional actions used by federal resource agencies to streamline their reviews. GAO analyzed permitting and consulting data from the 3 federal agencies and interviewed officials from the 3 agencies, 16 agency field offices, and 7 state DOTs for their perspectives on the effect of streamlining provisions and other efforts. GAO selected these offices to include a range of locations and those with a greater number of permits and consultations, among other factors.

What GAO Recommends

GAO is making two recommendations, one to FWS and one to NMFS, to develop plans and time frames for improving their tracking systems and to develop internal controls to improve data reliability.

The Departments of Commerce and Interior concurred with our recommendations.

View [GAO-18-536](#). For more information, contact Susan Fleming at (202) 512-4431 or flemings@gao.gov.

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What GAO Found

Federally funded highway and transit projects must be analyzed for their potential environmental effects, as required by the National Environmental Policy Act, and may be subject to other environmental protection laws, including the Clean Water Act and the Endangered Species Act. These laws may require the U.S. Army Corps of Engineers (Corps) to issue permit decisions and the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) to conduct consultations before a project can proceed. These three agencies are referred to as “resource agencies” for this report. The three most recent transportation reauthorization acts include provisions that are intended to streamline various aspects of the environmental review process; 18 of these provisions could potentially affect time frames for the environmental permitting and consulting processes for highway and transit projects.

While officials GAO interviewed at resource agencies and state departments of transportation (state DOT) noted that some actions called for by the 18 statutory provisions have helped streamline the consultation and permitting processes for highway and transit projects, GAO found that a lack of reliable agency data regarding permitting and consulting time frames hinders a quantitative analysis of the provisions’ impact. Officials said, for example, that a provision that allows federal liaison positions at resource agencies to focus solely on processing applications for state DOT projects has helped avoid delays in permit and consultation reviews. However, none of the three resource agencies could provide enough reliable data to analyze changes in the durations of consultations and permit reviews over time for any of the provisions. Further, GAO identified limitations, such as negative or missing values, and inconsistent data entry practices for FWS and NMFS data. FWS and NMFS have limited controls, such as electronic safeguards and other data-entry procedures, to ensure the accuracy and reliability of their data on the duration of consultations. Left unaddressed, these data quality issues may impair the agencies’ ability to accurately determine whether they are meeting their 135-day statutory and regulatory deadlines to complete consultations and provide biological opinions, and could affect their ability to provide accurate data on time frames for efforts of the Office of Management and Budget to track agencies’ performance in conducting environmental reviews. While FWS and NMFS officials stated that the agencies plan to improve their tracking systems, the agencies do not have documented plans or time frames for the improvements and it is unclear whether the efforts will include internal controls to improve data reliability.

Some federal resource agency and state DOT officials GAO interviewed identified additional actions that have been used to streamline the consultation and permitting processes to avoid delays in agency reviews. For example, 16 of the 23 resource agency and state DOT officials said that field office staff provided training to state DOT staff about the information field offices required for permit or consultation applications. Resource agency and state DOT officials also identified electronic systems with environmental data and for submitting documents as streamlining actions that have been helpful.

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Abbreviations

CEQ	Council on Environmental Quality
Corps	U.S. Army Corps of Engineers
DOT	Department of Transportation

FAST Act	Fixing America's Surface Transportation Act
FHWA	Federal Highway Administration
FWS	Fish and Wildlife Service
MAP-21	Moving Ahead for Progress in the 21st Century Act
NEPA	National Environmental Policy Act of 1969
NMFS	National Marine Fisheries Service
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
state DOT	state department of transportation

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July 19, 2018

The Honorable John Barrasso
Chairman
The Honorable Tom Carper
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable Bill Shuster
Chairman
The Honorable Peter DeFazio
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

Highway and transit projects that use federal funds are subject to federal requirements, including requirements under the National Environmental Policy Act (NEPA), to analyze the potential environmental effects of proposed projects; such evaluations are called environmental impact statements or environmental assessments, which we refer to in this report as “environmental reviews”. In addition, other environmental protection laws sometimes require “federal resource agencies”—such as the U.S. Army Corps of Engineers (Corps), the U.S. Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS)—to issue permit decisions or perform consultations before a project can proceed.¹ Generally, as part of the environmental review, federal agencies are required, to the fullest extent possible, to integrate the NEPA requirements with other planning and environmental review procedures

¹The Fixing America’s Surface Transportation Act required GAO to assess how and the extent to which streamlining provisions have improved and accelerated the process for permitting under the Federal Water Pollution Control Act, the Endangered Species Act of 1973 and other applicable federal laws. While highway and transit projects are also subject to other federal resource protection laws, such as Section 106 of the National Historic Preservation Act, Pub. L. No. 89-665 § 106, 80 Stat. 915 (1966), we did not review those requirements in this report. Federal regulatory and resource agencies are agencies tasked with protecting natural, historic, or cultural resources. For the purposes of this report, we will refer to the Corps, FWS, and NMFS together as the “federal resource agencies.”

so that all run concurrently.² For transportation projects, including highway and transit projects, additional streamlining provisions have been enacted for environmental reviews.³ Nonetheless, some view the NEPA environmental review process as time-consuming, while others have praised it for, among other things, helping protect the environment and bringing public participation into the government's decision making.

The past three surface transportation reauthorization acts—the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) in 2005, the Moving Ahead for Progress in the 21st Century Act (MAP-21) in 2012, and the Fixing America's Surface Transportation Act (FAST Act) in 2015—contain a number of provisions aimed at accelerating the environmental review process for highway and transit projects.⁴ In addition, the Council on Environmental Quality (CEQ), an executive office of the White House established in NEPA, is responsible for overseeing NEPA implementation and issues regulations and guidance that, among other things, are intended to make environmental reviews more efficient.⁵

The FAST Act included provisions for us to assess, among other things, the extent to which the streamlining provisions in the three most recent transportation reauthorization acts have improved and accelerated the environmental permitting and consulting processes for highway and transit projects.⁶ This report:

- addresses the extent to which identified streamlining provisions have had an impact on the time frames for the environmental consulting and permitting processes;

²40 C.F.R. § 1500.2(c).

³23 C.F.R. § 139.

⁴Pub. L. No. 109-59, 119 Stat. 1144 (2005), Pub. L. No. 112-141, 126 Stat. 405 (2012), Pub. L. No. 114-94, 129 Stat. 1312 (2015).

⁵Pub. L. No. 91-224, title II, §§ 201-205, 84 Stat. 91, 114-115 (1970). Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, 82, Fed. Reg. 40463 (Aug. 24, 2017). Initial List of Actions to Enhance and Modernize the Federal Environmental Review and Authorization Process, 82 Fed. Reg. 43226 (Sept. 14, 2017).

⁶Pub. L. No. 114-94 § 1318, 129 Stat. 1312, 1404-1405.

- identifies actions taken by federal resource agencies to streamline their consulting and permitting reviews and identifies additional streamlining opportunities, if any; and
- describes the actions taken by CEQ to accelerate highway and transit projects.

To evaluate the extent to which the streamlining provisions had an impact on the consulting and permitting processes for highway and transit projects, we reviewed the last three surface transportation reauthorizations to identify the relevant provisions. We identified 18 provisions that are intended to streamline various aspects of the NEPA environmental review process and could potentially affect the permitting and consultation processes of the three federal resource agencies. In addition, to obtain perspectives on the use and impact of the streamlining provisions, we conducted interviews with resource agency officials in Washington, D.C. and selected field and district offices, as well as state departments of transportation (state DOT) and transit agency officials, as described below. The officials we interviewed from three local transit agencies did not offer any perspectives on the use of streamlining actions or provisions related to environmental consulting and permitting and are therefore not included in this report. To determine the time frames for completing consultations and permit reviews, we analyzed the most recently available data on the time frames of consulting and permitting processes from the resource agencies for fiscal years 2009 through 2016. We checked for missing data, errors, and other discrepancies in the agencies' data to determine its reliability and to identify any potential limitations. While these were the best available consultation and permitting data maintained by these agencies, we found inconsistencies, errors, and limitations in some data; we address these flaws later in this report. We reviewed agency policies and procedures on ensuring accurate and reliable data and compared them with federal standards for internal controls.⁷

To examine the actions used by resource agencies to streamline environmental consulting and permitting, we interviewed officials in seven FWS field offices, seven Corps district offices, and two NMFS regional offices. We reviewed field office documents and policies used to accelerate environmental consulting and permitting reviews. We selected these offices based on several factors identified through analysis of

⁷GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

federal resource agencies' data between fiscal years 2009 and 2016 to include locations with a relatively large number of consultations or permit decisions performed by each office, a mix of the average length of time for consultations or permit decisions by each office, a mix of different types of consultations or permit decisions performed by each office, and a mix of geographic regions. We also interviewed officials from seven state DOTs to discuss streamlining actions and additional opportunities to streamline the consulting and permitting processes.⁸ We selected the state DOTs based on our analysis of federal resource agency data between fiscal years 2009 and 2016 to include locations with a large number of consultations and permit decisions requested by state, a mix of average consultation or permit decision times by state, a mix of different types of consultations or permit decisions the states received, and a mix of geographic regions. We obtained the perspectives of these field, district, regional, and state DOT officials on additional efforts, beyond the statutory streamlining provisions, to accelerate the resource agencies' environmental consulting and permitting reviews. These responses from the interviews are not generalizable.

To describe actions taken by CEQ, we reviewed guidance and regulations issued by the Council and interviewed CEQ officials about the Council's actions to help streamline the environmental review process for federal transportation projects. We also interviewed the Department of Transportation (DOT) and federal resource agency officials to discuss the extent to which CEQ actions resulted in streamlining environmental reviews.

We conducted this performance audit from March 2017 to July 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁸We interviewed state DOT officials from California, Florida, Ohio, Pennsylvania, Tennessee, Texas, and Virginia.

Background

Enacted in 1970, NEPA, along with subsequent CEQ implementing regulations, sets out an environmental review process that has two principal purposes: (1) to ensure that an agency carefully considers information concerning the potential environmental effects of proposed projects; and (2) to ensure that this information is made available to the public.⁹ DOT's Federal Highway Administration (FHWA) and Federal Transit Administration are generally the federal agencies responsible for NEPA compliance for federally funded highway and transit projects. Project sponsors—typically state DOTs and local transit agencies—may receive DOT funds, oversee the construction of highway and transit projects, develop the environmental review documents that are approved by federal agencies, and collaborate with federal and state stakeholders.¹⁰

In addition, the Clean Water Act and the Endangered Species Act are two key substantive federal environmental protection laws that may be triggered by a proposed transportation project and that may require the federal resource agencies to issue permit decisions or perform consultations before a project can proceed.

⁹NEPA generally requires federal agencies to evaluate the potential environmental effects of actions they propose to carry out, fund, or approve (e.g., by permit) by preparing analyses of different comprehensiveness depending on the significance of a proposed project's effects on the environment—from the most detailed environmental impact statements to the less comprehensive environmental assessments and categorical exclusions. A categorical exclusion can be used by an agency if a proposed project fits within a category of activities that an agency has already determined normally does not have the potential for significant environmental impacts and the agency has established that category of activities in its NEPA implementing procedures. Although projects may be excluded from the requirement to prepare an environmental assessment or environmental impact statement, projects that meet the NEPA categorical exclusion criteria are still subject to other statutory requirements, such as consultations under the Endangered Species Act and permitting under the Clean Water Act.

¹⁰We previously reported on use and reported effects of recent statutory provisions aimed at accelerating the delivery of highway and transit projects and the extent to which DOT has assigned NEPA authority to states and the reported effects of these assignments. See GAO, *Highway and Transit Projects: Evaluation Guidance Needed for States with National Environmental Policy Act Authority*, [GAO-18-222](#) (Washington, D.C.: Jan. 30, 2018).

Permits under Section 404 of the Clean Water Act

Section 404 of the Clean Water Act generally prohibits the discharge of dredged or fill material, such as clay, soil or construction debris, into the waters of the United States, except as authorized through permits issued by the Corps.¹¹ Before the Corps can issue a section 404 permit, it must determine that the discharge of material is in compliance with guidelines established by the Environmental Protection Agency.¹²

The Corps issues two types of permits:

- Individual permits: issued as a standard permit for individual projects, following a case-by-case evaluation of a specific project involving the proposed discharge of dredged or fill material and/or work or structures in navigable water.¹³
- General permits: issued for categories of projects the Corps has identified as being similar in nature and causing minimal individual and cumulative adverse environmental impacts. General permits may be issued on a state, regional, or nationwide basis.

In fiscal year 2016, the Corps completed approximately 250 individual permits and 10,750 general permits for transportation projects, based on agency data. The Corps is not required to complete its permit reviews within a specified time frame; however, it has performance metrics,

¹¹33 U.S.C. § 1344. Exceptions to this requirement are listed at 33 C.F.R. § 323.4.

¹²The guidelines appear at 40 C.F.R. part 230. Their purpose is to restore and maintain the chemical, physical, and biological integrity of waters of the United States through the control of discharges of dredged or fill material. 40 C.F.R. § 230.1(a). In addition, the Corps can also issue permit decisions under section 10 of the Rivers and Harbors Appropriation Act of 1899. Under this Act, structures or work in, over, or under any navigable water of the United States, or any structures or work that would affect the course, location, condition, or capacity of those waters are prohibited without a permit from the Corps.

¹³The Corps also issues letters of permission, which follow an abbreviated processing procedure, that do not require the publishing of an individual public notice. 33 C.F.R. § 325.2(e)(1). Letters of permission may only be issued if, among other things, the district engineer, through consultation with federal and state fish and wildlife agencies, EPA, and relevant state agencies, develops a list of categories of activities eligible for such letters. 33 C.F.R. § 325.2(e)(1)(ii)(A).

including target time frames for issuing permit decisions based on permit type.¹⁴

Consultations under Section 7 of the Endangered Species Act

The purpose of the Endangered Species Act is to conserve threatened and endangered species and the ecosystems upon which they depend. Section 7 of the Act directs federal agencies to consult with FWS or NMFS when an action they authorize, fund, or carry out, such as a highway or transit project, could affect listed species or their critical habitat.¹⁵ Section 7 also applies if non-federal entities receive federal funding to carry out actions that may affect listed species.

Before authorizing, funding, or carrying out an action, such as a highway or transit project, lead federal agencies must determine whether the action may affect a listed species or its critical habitat.¹⁶ If a lead federal agency determines a proposed action may affect a listed species or its critical habitat, formal consultation is required unless the agency finds, with FWS' or NMFS' written concurrence, that the proposed action is not likely to adversely affect the species. Formal consultation is initiated when FWS or NMFS receives a complete application from the lead agency, which may include a biological assessment and other relevant documentation, which describe the proposed action and its likely effects. The formal consultation usually ends with the issuing of a biological opinion by FWS or NMFS, which generally must be completed within time frames specified in the Endangered Species Act and in its implementing

¹⁴The Corps' national performance metrics are approved and monitored by the Office of Management and Budget. The agency has a performance target of issuing 50 percent of its individual permit decision in 120 days or less of receipt of a complete application, and to issue 80 percent of its general permit decisions in 60 days or less of receipt of a complete application.

¹⁵FWS has primary responsibility for freshwater (rivers and lakes) and terrestrial species, while the NMFS has primary responsibility for most marine (ocean) species.

¹⁶A federal agency may designate a non-federal entity, such as the project sponsor, to take on the federal agency's role during informal consultation. When this designation occurs, the "designated non-federal representative" takes the lead role in preparing the biological assessment, but the federal agency must furnish guidance and supervision and must independently review and evaluate the biological assessment. For this report, we are using the term "project sponsor" to refer to any non-federal designated representative, such as state DOTs.

regulations.¹⁷ Specifically, FWS and NMFS have 135 days to complete a formal consultation and provide a biological opinion to the lead federal agency and project sponsor in order for the project to proceed.¹⁸ The consultation period can be extended by mutual agreement of the lead federal agency and FWS or NMFS. In fiscal year 2016, FWS completed 179 formal consultations and NMFS completed 29 formal consultations for federally-funded highway and transit projects, based on agency data.¹⁹

The three most recent transportation reauthorization acts include provisions that are intended to streamline various aspects of the environmental review process for highway and transit projects. We identified 18 statutory provisions from these acts that could potentially affect time frames for the environmental permitting and consulting processes for highway and transit projects.²⁰ Based on our review, we grouped the provisions into two general categories: Administrative and Coordination Changes and NEPA Assignment.²¹ See appendix II for a complete list and descriptions of the 18 provisions that we identified.

The 16 Administrative and Coordination Changes provisions are process oriented. These provisions, for example: (1) establish time frames for the

¹⁷The Endangered Species Act requires consultations to be completed within 90 days, 16 U.S.C. § 1536(b)(1)(A), and the implementing regulations require biological opinions to be delivered within 45 days after consultation has been completed. 50 CFR 402.14(e).

¹⁸We have previously reported that FWS staff put a high priority on consulting informally, so they can help agencies design actions that will have little or no effect on listed species. Informal consultation can avert the need for formal consultation or, when formal consultation is necessary, help the action agency design projects that will minimize adverse effects on listed species. See GAO, *Endangered Species Act: The U.S. Fish and Wildlife Service Has Incomplete Information about Effects on Listed Species from Section 7 Consultations*, GAO-09-550 (Washington, D.C.: May 21, 2009).

¹⁹For this report we analyzed over 60,000 records from the FWS data system between fiscal year 2009 and 2016. These records included informal and formal consultations. We also analyzed approximately 400 records from the NMFS data system between fiscal year 2012 and calendar year 2016.

²⁰Of the 18 provisions we identified, 9 were first introduced in SAFETEA-LU, 6 were introduced in MAP-21, and 3 were introduced in the FAST Act. Some of the provisions, as originally enacted, were modified by subsequent legislation.

²¹In GAO-18-222, we identified 34 provisions from the three most recent transportation reauthorization acts designed to accelerate project delivery of highway projects and 29 provisions that applied to transit projects and grouped these provisions in four categories. In this review, we identified the provisions that could affect the consultation and permitting processes under the Endangered Species Act and Clean Water Act.

environmental review process, (2) encourage the use of planning documents and programmatic agreements, and (3) seek to avoid duplication in the preparation of environmental review documents.²² The two NEPA Assignment provisions authorize DOT to assign its NEPA responsibility to states.²³

Agency Experience Suggests Streamlining Provisions Had Some Positive Effect, but Lack of Reliable Data Hinders Impact Assessment

Resource agency and state DOT officials told us they believe that some actions called for by the 18 provisions we identified, such as programmatic agreements, have helped streamline the consulting and permitting processes. However, a lack of reliable agency data regarding permitting and consulting time frames hinders a quantitative analysis of the provisions' impact. Further, limitations in FWS and NMFS data, such as missing or incorrect data and inconsistent data entry, could impair the agencies' ability to determine whether the agencies are meeting statutory and regulatory requirements, such as the extent to which the agencies complete formal consultations and provide biological opinions within 135 days.²⁴ FWS and NMFS have limited controls that would help ensure the completeness and accuracy of their data.

²²Programmatic agreements are documents that establish the terms of a formal, legally binding agreement between a state DOT and federal agencies, and also establish a process for consultation, review, and compliance with one or more federal laws. Programmatic agreements are used, among other things, between a state DOT and federal agencies to streamline the review process for projects that meet conditions outlined in the agreement. Some provisions direct the DOT to seek opportunities with states to enter into programmatic agreements to conduct environmental and other project reviews. 23 U.S.C. § 139(b)(3) and 23 U.S.C. 139(note)). For the purposes of this report, we refer to programmatic approaches, including agreements, biological opinions, and consultations, as "programmatic agreements".

²³23 U.S.C. § 326, 327.

²⁴According to FWS and NMFS officials, the agencies have methods outside of their data systems to ensure their compliance with the timing requirement for completing formal consultation reviews.

Officials at Resource Agencies and State DOTs Identified Some Actions That Are Called for by Streamlining Provisions That May Accelerate Environmental Reviews

Resource agency and state DOT officials we interviewed told us they believe that some actions called for by the provisions we identified have helped streamline the consulting and permitting processes.²⁵ While these officials generally did not quantify or estimate the number of days review times may have been reduced, they did generally explain how the review processes were accelerated, depending upon the action being taken, for example:

- Programmatic agreements: Officials from 18 of the 23 state DOTs and federal resource agency field offices we spoke with told us that using programmatic agreements has generally helped reduce review times. Programmatic agreements can standardize the consulting and permitting processes for projects that are relatively routine in nature (e.g., repaving an existing highway). For example, one state DOT and an FWS field office have an agreement that establishes a consistent consultation process to address projects, such as pavement marking, that have either a minimal or no effect on certain federally protected species and their critical habitat. Programmatic agreements may contain review time targets that are shorter than those for reviews not subject to the agreements. For example, officials from one FWS field office said that they typically met the 60-day time limit that was established in one such agreement, compared to the standard 135-day period for completing formal consultations and issuing biological opinions. In part, DOT has assisted in establishing programmatic agreements affecting consultation and permit review processes. For example, according to DOT, its Every Day Counts initiative has helped create scores of programmatic agreements through efforts such as identifying best practices, performing outreach, developing new approaches, and improving existing ones.²⁶ In our 2018 report on

²⁵The federal resource agency and state DOT officials we interviewed generally did not cite specific statutory provisions; instead, they described actions associated with those provisions.

²⁶Every Day Counts is a DOT initiative that, beginning in 2009, has worked with state DOTs, local governments, tribes, private industry, and other stakeholders to identify and deploy proven, yet underutilized innovations to shorten the project delivery process, enhance roadway safety, reduce traffic congestion, and improve environmental sustainability.

highway and transit project delivery, 39 of 52 state DOTs in our survey reported that programmatic agreements had sped up project delivery within their states.²⁷

- Federal liaison positions: Officials from 21 of the 23 selected state DOT and federal resource agency field offices told us that liaison positions at resource agency offices, which are positions held by federal employees who work on consultation and permit reviews for state DOTs, have streamlined the consultation and permit review processes.²⁸ According to almost all of the selected officials, these positions provide benefits, such as dedicating staff to process the state DOTs' applications for permits and consultations, allowing state DOTs to prioritize projects, and enabling enhanced coordination between agencies to avoid conflicts and delays in the review process. For example, officials from one state DOT said that having a dedicated liaison at an FWS field office gave the state DOT a responsive point of contact, helped address workload concerns at the FWS field office, and enabled FWS office staff to attend interagency coordination meetings. According to DOT, as of November 2017, states had 43 full-time equivalent positions at FWS and 11 at NMFS. Corps officials stated that states had more than 40 full-time equivalent positions at the Corps in fiscal year 2017. In our 2018 report on highway and transit project delivery, 32 of 52 state DOTs in our survey reported that they had used this provision.²⁹ We found that 23 of those state DOTs reported that it had sped up project delivery within their states.
- Early coordination: Officials from 18 of the 23 state DOT and federal resource agency field offices we spoke with told us that early coordination in consultation and permit review processes has

²⁷[GAO-18-222](#). The 52 state DOTs surveyed for that report included the departments of transportation from the 50 states, the District of Columbia, and Puerto Rico.

²⁸The *Use of Federal Highway or Transit Funds to Support Agencies Participating in the Environmental Review Process* provision allows public entities, such as state DOTs and transit agencies, to use funds to support activities at agencies participating in the environmental review process. 23 U.S.C. 139(j). Also, Pub. L. No. 106-541, title II, § 214, 114 Stat. 2572, 2594 (2000), codified as amended at 33 U.S.C. § 2352 allows the Corps to accept funds from non-federal public entities to provide priority review of their permit applications. According to Corps officials, in fiscal year 2017, the Corps has 9 funding agreements with state DOTs and FHWA that cite the streamlining provision as the authority, and 16 other agreements with state DOTs that cite section 214 of the Water Resources Development Act of 2000.

²⁹[GAO-18-222](#).

generally reduced review times.³⁰ According to most selected state DOT and resource agency officials, this early coordination can provide benefits, such as improving the quality of applications, avoiding later delays by identifying concerns early in the process, and allowing permitting to be considered in the design phase of projects. For example, officials at one of the Corps' district offices told us that they routinely hold pre-application meetings with state, DOT, and resource agency contacts to define what the Corps needs to process the application quickly and to avoid later problems. Similarly, in our 2018 report on highway and transit project delivery, 43 of 52 state DOTs in our survey reported that they had used this provision, and 27 of those reported that the provision had sped up project delivery within their states.³¹

Although selected federal resource agency and state DOT officials were able to identify actions called for by the provisions that they believe have helped streamline the consulting and permitting processes, officials from all three resource agencies said that their agencies had not analyzed the impact of the streamlining provisions on permit review or consultation time frames and did not have plans to do so in future.³²

Lack of Resource Agencies' Data Hinders Analysis of Whether Streamlining Provisions Reduced Time to Conduct Reviews

For two reasons, we were unable to quantify the impact the 18 streamlining provisions had on the three federal resource agencies' consultation and permit review time frames. First, factors other than the streamlining provisions may have also affected review times, limiting our ability to discern the extent to which the provisions had an impact.

³⁰The *Early Coordination Activities in Environmental Review Process* provision encourages early cooperation between DOT and other agencies in the environmental review process and suggests early coordination activities, including establishing memorandums of understanding with states or local planning agencies. Pub. L. No. 112-141 div. A, tit. I, subtit. C, § 1320, 126 Stat, 405, 551, codified at 23 U.S.C. § 139 note.

³¹[GAO-18-222](#).

³²According to Corps officials, the agency tracks whether funded liaison positions are used in the review of a permit. The Corps' analysis of the impact of funded liaison positions across all Corps permit actions has shown that funding agreements have reduced average Corps permit processing times as compared to average time frames for applicants that do not have funding agreements.

Second, the resource agencies could not provide enough reliable data for us to analyze changes in consultation and permit review durations over time.

With respect to the first reason, factors other than the streamlining provisions can influence the durations of permit reviews and consultations, a situation that would make it difficult to establish whether the streamlining provisions in the reauthorization acts had a direct impact. In particular, officials from resource agencies and state DOTs we interviewed informed us that some offices took actions included in some of the various streamlining provisions before the three transportation reauthorizations were enacted. For example, officials at one FWS field office said that the office completed a programmatic agreement in 2004. Officials at one state DOT said that they had funded positions at resource agency offices for two decades. Corps officials said that the Corps implemented early coordination before the provision requiring this action was enacted. DOT officials also said that the provisions generally codified and expanded on existing actions. Further, factors such as staffing shortages at state DOTs and resource agency offices may also affect the length of consultations and permit reviews. Therefore, even if the durations of permit reviews and consultations could be evaluated over time with enough reliable data, it could be difficult to connect changes in the durations to the streamlining provisions with any confidence.

Second, none of the three resource agencies could provide enough reliable data to evaluate trends in the duration of consultations and permit reviews after the 15 provisions were introduced in SAFETEA-LU and MAP-21, and the FAST Act was enacted too recently to evaluate any trends following the 3 provisions it introduced. To evaluate trends in permit review and consultation durations before and after the provisions were enacted, we would need sufficient data before and after their enactment. The SAFETEA-LU, MAP-21, and FAST Act provisions were enacted in August 2005, July 2012, and December 2015, respectively.

- Available Corps' data could not be used to determine trends in permit review durations before and after the SAFETEA-LU and MAP-21 provisions were enacted. Specifically, Corps officials told us that their data prior to October 2010 should not be used to evaluate trends due to changes in the Corps' data tracking system and data entry

practices.³³ The Corps did not provide more than one full fiscal year of data prior to 2012, and we would need more than one year of data to establish an adequate baseline in order to control for variations that may occur from year to year.

- Further, FWS and NMFS could not provide reliable data to evaluate trends in the durations of consultations before or after enactment of SAFETEA-LU and MAP-21. FWS and NMFS officials informed us of limitations in their agencies' consultation data that rendered the data incomplete prior to fiscal year 2009 and calendar year 2012 respectively, a circumstance that would prevent us from evaluating trends following SAFETEA-LU. Specifically, FWS officials told us that use of its data tracking system was not mandatory in all regions for consultation activities prior to fiscal year 2009. NMFS officials told us that data from its tracking system are incomplete prior to 2012, because some prior records did not transfer properly during a migration to a newer version of the database.³⁴ Further, the weaknesses in more recent FWS and NMFS data that we identify below would also limit an analysis of changes in consultation durations following MAP-21.
- Finally, since the three agencies provided data through fiscal year 2016, we had less than one fiscal year of data following the December 2015 enactment of the FAST Act, an amount that was insufficient to evaluate trends in consultation and permit review durations following the Act's enactment.

Weaknesses in FWS and NMFS Data Would Limit Analysis of Consultation Time Frames

We identified limitations, such as incorrect or missing data and inconsistent data entry practices, in more recent FWS and NMFS data, and such limitations would limit future analysis of trends in the duration of consultations. We did not identify similar limitations in Corps data. These limitations could also hinder analyses of the extent to which the agencies meet statutory and regulatory requirements, such as the extent to which the agencies completed formal consultations and issued biological opinions within 135 days. Standards for internal control in the federal

³³The Corps uses its Operations and Maintenance Business Information Link Regulatory Module 2 system to track permit reviews.

³⁴FWS and NMFS use their Tracking and Integrated Logging System and Public Consultation Tracking System respectively to track their consultations.

government state that agency management should use quality information to achieve the agency's objectives and should design appropriate controls for information systems that ensure that all transactions are completely and accurately recorded. Information systems should include controls to achieve validity, completeness, and accuracy of data during processing, including input, processing, and output controls.³⁵ However, we identified errors in consultation data provided by FWS and NMFS officials. For example, FWS's data included 1,568 unique transportation-related formal consultations that started and concluded within fiscal years 2009 through 2016. Of those records, 27 had formal consultation initiation dates that followed the conclusion date, resulting in a negative duration; 113 lacked an initiation date, precluding a determination of the duration; and 19 had formal consultation initiation dates that preceded the dates on which FWS could begin work.³⁶ NMFS officials said that records cannot be removed from the database once saved—including duplicate, incomplete, withdrawn, or otherwise bad records—and that the database does not always retain corrections after they are made. As a result, data exported from the database are manually reviewed for errors, according to NMFS officials. However, data provided to us after this manual review process still contained errors.

Further, FWS and NMFS officials described limited controls to ensure the completeness and accuracy of their data. FWS officials said that they do not currently conduct systematic reviews to examine the accuracy of the data. The officials also said that they do not have procedures for follow-up when errors are found, although regional or headquarters staff may conduct outreach to an affected office if errors are found. FWS officials also acknowledged that the database lacks sufficient electronic safeguards on all fields to prevent errors. Similarly, NMFS officials said that NMFS has not tracked the accuracy of its data and that many fields in NMFS's database do not have safeguards to limit data entry errors.

FWS and NMFS also lack procedures to ensure that they consistently track all data associated with consultation time frames. For example, FWS and NMFS officials could not provide data on whether formal consultations and the issuance of biological opinions that exceeded 135

³⁵GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014).

³⁶FWS and NMFS define the initiation date for formal consultations as the date on which the agency has received all necessary information to begin the consultation.

days obtained extensions, data that officials would need to track the extent to which their agencies comply with the requirement to complete consultations and issue biological opinions within 135 days absent an extension. The officials said that the agencies do not require their staff to enter extension data, and that some staff enter extension dates but others do not. In addition, although hundreds of projects may be reviewed under a single programmatic agreement, FWS and NMFS do not record all projects reviewed under programmatic agreements. For example, NMFS officials told us that the agency's system is not designed for staff to enter individual actions reviewed under programmatic agreements. This process prevents comparisons of review time frames for individual projects under programmatic agreements with projects not reviewed under those agreements. FWS's database also does not require some critical information for determining consultation time frames, such as the initiation dates for formal consultations. Further, FWS headquarters officials acknowledged that differing field office procedures had contributed to varying record-keeping methods, and officials at five of the seven FWS field offices we interviewed told us that FWS's database is not used consistently among field offices.³⁷

The quality of FWS's and NMFS's consultation data may limit the ability of the agencies to determine whether they are completing consultations within required time frames, as described above, and may also impact other internal and external uses of the data. For example, the quality of the data may limit the agencies' evaluation and management of their consultation processes. FWS officials said that FWS uses its data internally in calculating annual performance measures and to answer questions from senior leadership, among other purposes. NMFS officials said that NMFS uses its data internally to examine the agency's Section 7 workload, help set agency funding priorities, and track projects through the consultation process. FWS and NMFS will also have to ensure that their data systems can provide reliable data to comply with an executive order requiring federal agencies to track major infrastructure projects, including the time required to complete the processing of environmental

³⁷According to FWS field office officials, four of the seven selected field offices had developed some form of guidance for entering data into their data system in their offices, but headquarters officials said that they do not review these procedures. FWS has issued a user guide for the data system, which officials said is not intended to provide required procedures, and agency-wide procedures for some specific projects, including FHWA-funded projects. However, even the specific project procedures do not require entry of the start dates for formal consultations or extension data, among other information.

reviews.³⁸ The August 2017 executive order directed the Office of Management and Budget, in coordination with the Federal Permitting Improvement Steering Council, to issue guidance for establishing a system to track agencies' performance in conducting environmental reviews for certain major infrastructure projects.³⁹ To meet this directive, this system is to include assessments of the time and costs for each agency to complete environmental reviews and authorizations for those projects, among other things. According to a multi-agency plan, system implementation is planned to begin in the fourth quarter of fiscal year 2018, and publishing of performance indicator data is planned to begin in the first quarter of fiscal year 2019. In addition, FWS has provided consultation data to outside researchers who have publicly reported them in a study and a web portal.⁴⁰ NMFS makes some data for completed consultations publicly available through the internet.

NMFS and FWS officials we interviewed said that the agencies are developing new versions of their databases, and FWS officials said that they will develop new standard-operating procedures and guidance for data entry. Specifically, FWS officials said that they have discussed the development of a new version of their database that would better track consultations chronologically and ensure greater data accuracy and consistency, but that effort is still in the planning stage. Those officials also said that they have formed a team to explore the development of new standard-operating procedures, training, and guidance for consistent data entry and that they are considering how to include data on whether consultations received extensions in the new system.⁴¹ NMFS officials said that the agency is modernizing its database, including improving data entry, error prevention, maintenance, and tracking of actions under programmatic agreements. However, FWS and NMFS officials could not provide specific time frames for implementation or documentation of

³⁸Exec. Order No. 13,807, 82 Fed. Reg. 40463 (Aug. 24, 2017).

³⁹The Federal Permitting Improvement Steering Council is an inter-agency council created by Title 41 of the FAST Act and tasked with improving federal infrastructure permitting.

⁴⁰J.W. Malcom and Y. Li, "Data Contradict Common Perceptions about a Controversial Provision of the U.S. Endangered Species Act," *Proceedings of the National Academy of Sciences of the United States of America*, vol. 112, no. 52 (2015).

⁴¹In December 2016, we reported that FWS planned to develop standard operating procedures to improve the reliability of data in its consultation tracking system, and that FWS planned to complete those procedures in 3 years. GAO, *Endangered Species Act: U.S. Fish and Wildlife Service's American Burying Beetle Conservation Efforts*, [GAO-17-154](#) (Washington, D.C.: Dec. 22, 2016).

these efforts. Therefore, it is not clear whether these efforts will include internal controls that address all of the types of issues we identified.

Federal and State Officials Identified Additional Actions That Helped Resource Agencies Streamline Processes

Some Officials at Resource Agencies and State DOTs Took Actions to Improve Applications

Officials at 19 of the 23 federal resource agency field offices and state DOTs we spoke with generally mentioned two additional actions, beyond the 18 provisions we identified, for streamlining the consultation and permitting process:

- field office assistance to lead federal agencies and project sponsors, including state DOTs, to improve applications for permits and consultations; and
- electronic systems for environmental screening and document submission.

First, officials from some of the 16 federal resource agency field offices we spoke with stated that they provide assistance to lead federal agencies and project sponsors to clarify the information required in permit and consultation applications before they are submitted to the resource agency. Officials from 8 of those 16 offices stated that they provided that assistance in order to improve the quality and completeness of information included in the applications. Resource agency officials stated that the permit or consultation process is delayed when the lead federal agency or project sponsor does not initially provide the quantity or quality of information necessary for resource agencies' field office staff to complete permits and consultations. These staff must then request additional information from the lead federal agency or project sponsor, extending the permit or consultation reviews.⁴² Therefore, officials at 16 of the 23 federal resource agency field offices and state DOTs we spoke with said that field office staff provided training to state DOT staff to

⁴²Resource agencies can request or require a number of relevant supporting documents and additional information for permit and consultation applications, including detailed maps and activities to offset a project's impact on the environment.

specify the information field offices required for initial permit or consultation applications. In addition, officials at 6 of the 23 resource agency field offices and state DOTs we spoke with created or were in the process of creating documents, such as application templates or checklists, that specify information required initially by field offices for applications. For example, according to officials at one FWS field office, a staff member created a standardized form letter for consultation applications that includes information for the state DOT to submit with its applications.

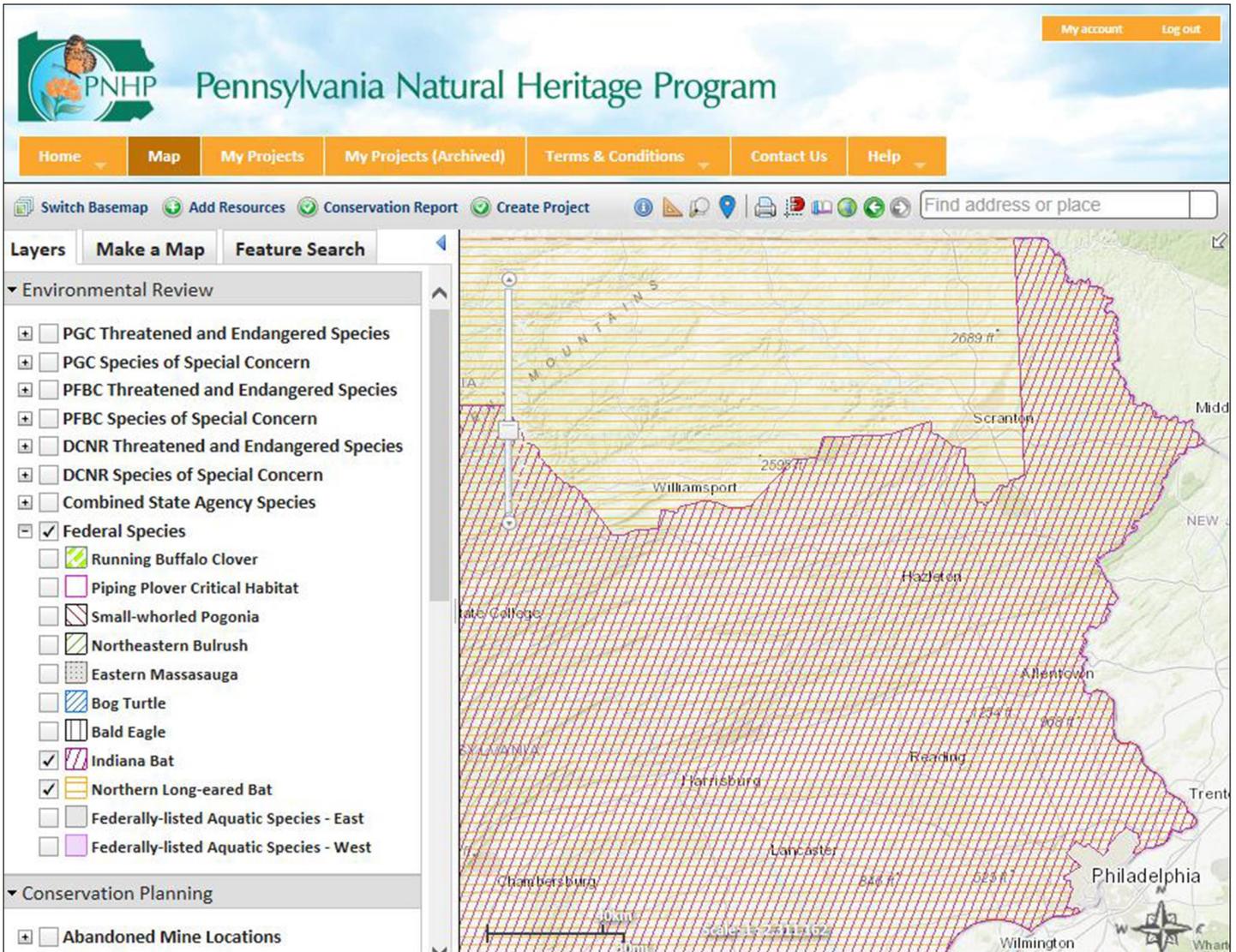
Second, officials at federal resource agency field offices and state DOTs also identified electronic systems for environmental screening and document submission as helpful streamlining actions. Some state agencies created electronic systems for permitting and consultation applications, according to officials at 6 of the 23 resource agency field offices and state DOTs we spoke with. Some of those state agencies created systems for submitting application documentation, which can include multiple reports and studies related to an endangered species or its critical habitat. In addition, some of those state agencies created electronic tools that screen potential transportation project areas for environmental impacts. For example, in Pennsylvania, state agencies created two electronic systems. The first system allows application materials to be shared with multiple state and federal agencies while the second allows applicants to screen project areas for potential impacts on endangered species. The Pennsylvania Natural Heritage Program, a partnership between four state agencies, created a system that allows lead federal agencies or project sponsors to determine what potential environmental impacts, if any, exist in a proposed project's geographic area (fig. 1).⁴³ According to field office officials who use this resource, it saves time and improves agency coordination on transportation projects. Officials at two additional offices stated that their state agencies were in the process of establishing such electronic systems. In addition, FWS has piloted additional capabilities for its existing electronic system that screens for species information.⁴⁴ According to FWS officials, the current

⁴³Once users screen a project's location for potential environmental impacts with these web-mapping tools, the electronic system will then recommend conservation measures and other actions that may be needed to fulfill the requirements for the project.

⁴⁴FWS's Information for Planning and Consultation (IPaC) system allows project sponsors to electronically obtain official lists of endangered species or critical habitats that are located in a project area. According to FWS officials, issuing species lists through this system saves time in the beginning of the consultation process.

... pilot is restricted to specific species included in existing programmatic agreements, but this updated system would guide applicants through the consultation application and allow electronic document submission.

Figure 1: The Pennsylvania Natural Heritage Program's Pennsylvania Conservation Explorer



Source: Pennsylvania Natural Heritage Program. | GAO-18-536

Note: In order to create this map, we selected two federally-protected species: the Indiana bat and the northern long-eared bat.

The federal resource agencies continue to seek out additional opportunities for their field offices to streamline the permitting and

consultation processes, according to officials at 11 of the 16 field offices. Officials at four of those offices stated that they discuss additional streamlining opportunities at regular transportation-related meetings with other federal and state agency offices. However, beyond the streamlining actions and provisions cited above, officials at resource agency field offices and state DOTs did not identify additional opportunities used by multiple field offices to streamline permits and consultations.

DOT Supports Actions to Streamline the NEPA Process

DOT has a role in streamlining the overall NEPA process for transportation projects.⁴⁵ Officials from DOT and its modal administrations, in coordination with federal resource agencies, participate in or support several efforts, including the following, to streamline the NEPA process:

- **Coordination meetings:** DOT officials participate in some early or regular coordination efforts, according to officials at some federal resource agency field offices and state DOTs we spoke with. For instance, according to officials at one Corps district office, DOT officials participate in some monthly meetings between federal and state agencies to discuss both specific transportation projects and recurring issues that may present streamlining opportunities.
- **Transportation liaisons:** As mentioned above, recipients of DOT funds may partially fund the transportation liaison positions at federal resource agency field offices. Officials at some resource agency field offices and state DOTs we spoke with stated that liaisons implemented streamlining actions at those offices. For example, officials at one FWS field office stated that the office's transportation liaisons are responsible for creating and maintaining programmatic agreements with the state DOT. In addition, DOT currently has interagency agreements to provide national transportation liaisons at resource agencies—including the Corps, FWS, and NMFS—who lead nationwide efforts, such as meetings among field offices where officials can share streamlining actions.

⁴⁵We have previously reported that DOT is responsible for NEPA compliance for the highway and transit projects that it funds, but it is not responsible for processing permits or providing biological opinions resulting from consultations to satisfy other environmental review requirements. [GAO-18-222](#).

- Streamlining resource database: DOT maintains an online database of resources created by DOT and transportation liaisons for streamlining the NEPA process. The database, which is part of the Transportation Liaison Community of Practice online portal, includes programmatic agreements, regional streamlining efforts, and liaison-funding agreements, among other resources. The purpose of this database is to provide examples of streamlining actions for transportation liaisons and state DOT officials to use in implementing these actions with state and federal agency offices to streamline NEPA processes.

DOT also participates in multi-agency efforts to identify recommendations for streamlining the NEPA process. Those efforts produced two multi-agency reports that have identified best practices for improving streamlining of the NEPA process:

- Red Book: In 2015, DOT coordinated with multiple federal agencies, including the resource agencies, to update the Red Book, a resource to help both federal and state agencies conduct concurrent environmental review processes and to improve coordination in the NEPA process for major transportation and other infrastructure projects.⁴⁶ For instance, the Red Book recommended electronic information systems, including systems that share geographic information with the agencies involved, as a way to streamline the NEPA process.
- Annual interagency report: DOT and multiple federal agencies, including the resource agencies, contribute to the Federal Permitting Improvement Steering Council's annual report on recommended actions for federal agencies.⁴⁷ In the reports for fiscal years 2017 and 2018, those recommended steps included actions taken by some resource agency field offices. For example, recommended steps in the 2017 report included the creation of electronic application submission systems and training to improve permit and consultation applications.

⁴⁶FHWA, 2015 *Red Book: Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects* (Washington, D.C.: September 2015).

⁴⁷The Federal Permitting Improvement Steering Council member agencies include the Council on Environmental Quality and the Department of the Interior, among others. Their recent report, *Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects for Fiscal Year 2018* (Dec. 1, 2017) contained recommendations to help improve timeliness and transparency in the permitting process for infrastructure projects.

DOT officials stated that they continue to seek additional streamlining opportunities with federal and state entities, including federal resource agencies and state DOTs, through outreach to those agencies. For example, the officials told us that they had reached out to the resource agencies and provided training to help them identify what basic application information is needed for certain types of projects that are unlikely to be fully designed at that point in the project's design. DOT officials also suggested that expanding the current streamlining actions that resource agencies have taken, such as utilizing the transportation liaison positions, would help streamline the process.

The Council on Environmental Quality Has Issued Regulations and Guidance to Streamline NEPA Reviews

CEQ oversees NEPA implementation, reviews and approves federal agency NEPA procedures, and issues regulations and guidance documents that govern and guide federal agencies' interpretation and implementation of NEPA. In addition, CEQ has focused some of its efforts on furthering the goal of streamlining environmental reviews. Those efforts have included publication of various guidance and memorandums on the effective use of programmatic reviews, according to CEQ officials.⁴⁸ For example, CEQ issued regulations that direct agencies, to the fullest extent possible, to integrate the NEPA process into project planning at the earliest possible time to avoid delays and resolve potential issues, and to perform coordinated and concurrent environmental reviews to the extent possible to minimize duplication of effort.⁴⁹ CEQ officials also noted that CEQ continues to co-chair the Transportation Rapid Response Team, a working group of federal agencies that facilitates interagency coordination and seeks to improve surface transportation project delivery consistent with environmental guidelines.

⁴⁸Council on Environmental Quality, *Memorandum for Heads of Departments and Agencies: Guidance on Effective Use of Programmatic NEPA Reviews* (Washington, D.C.: Dec. 18, 2014).

⁴⁹40 C.F.R. § 1500.2(c). See also Council on Environmental Quality, *Memorandum for Heads of Federal Departments and Agencies: Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act* (Washington, D.C.: Mar. 6, 2012).

CEQ periodically reviews and assesses its guidance and regulations to improve the effectiveness and timeliness of NEPA reviews, according to a CEQ official. For example, CEQ reviewed the environmental review processes of selected agencies in 2015 to identify model approaches that simplify the NEPA process and reduce the time and cost involved in preparing NEPA documents.⁵⁰ CEQ used this review to identify and recommend changes to modernize NEPA's implementation, including using information technology, such as a web-based application that identifies environmental data from federal, state, and local sources within a specific location, to improve the efficiency of environmental reviews.⁵¹

On August 15, 2017, the President signed an executive order that directed CEQ to develop a list of actions it will take to enhance and modernize the environmental review and authorization process.⁵² In September 2017, CEQ outlined its actions to respond to the executive order in a Federal Register Notice.⁵³ According to CEQ officials, in response to the executive order, CEQ is in the process of reviewing its existing regulations on the implementation of the provisions of NEPA to identify changes needed to update and clarify its regulations. In June 2018, CEQ published an advance notice of proposed rulemaking to solicit public comment on potential revisions to its regulations to ensure a more efficient, timely, and effective NEPA process consistent with the national environmental policy.⁵⁴ In addition, CEQ, along with the Office of Management and Budget, issued guidance for federal agencies for processing environmental reviews and authorizations in accordance with the executive order's goal of reducing the time for completing

⁵⁰Council on Environmental Quality, *Memorandum to Interested Parties and Heads of Federal Agencies: National Environmental Policy Act Pilot Projects Report and Recommendations* (Washington, D.C.: Jan. 26, 2015).

⁵¹The NEPA Assist tool is a web-based application that uses data from the Environmental Protection Agency and federal, state, and local sources to provide users within environmental information for a defined area of interest. This information includes data on regulated facilities, demographics, historic places, threatened and endangered species, wetlands, and other topics.

⁵²Exec. Order No. 13,807, 82 Fed. Reg. 40463 (Aug. 24, 2017).

⁵³CEQ Notice, 82 Fed. Reg. 43226 (Sept. 14, 2017).

⁵⁴Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 83 Fed. Reg. 28,591 (June 20, 2018) (advance notice of proposed rulemaking).

environmental reviews for major infrastructure projects.⁵⁵ Finally, CEQ officials stated that CEQ is leading an interagency working group, which includes representatives from the resource agencies, to review agency regulations and policies to identify impediments to the processing of environmental review and permitting decisions. CEQ anticipates the working group findings will address a number of issues relating to environmental reviews, including the environmental consulting and permitting processes.

Conclusions

The federal government has enacted a number of statutory provisions aimed at streamlining the environmental review process for highway and transit projects. However, while Corps, FWS, and NMFS officials believe that these provisions have helped streamline their permit reviews and consultations, the lack of data hinders quantification of any trends in the duration of those reviews. Furthermore, agency and government-wide efforts to track major infrastructure projects, such as the planned Office of Management and Budget performance tracking system, will be hindered without accurate and reliable data. FWS and NMFS do not have adequate internal control procedures in place to ensure accurate and reliable data and cannot accurately assess their ability to meet statutory and regulatory requirements for completing consultations and issuing biological opinions. Although FWS and NMFS are in the process of upgrading their data systems, the agencies do not have documented plans or time frames that identify what controls they will use to ensure accurate data on the time taken for consultation reviews.

Recommendations for Executive Action

We are making a total of two recommendations, one to the Fish and Wildlife Service and one to the National Marine Fisheries Service.

Specifically, we are making the following recommendation to the Fish and Wildlife Service:

⁵⁵Office of Management and Budget and Council on Environmental Quality, M-18-13, *Memorandum for Heads of Federal Departments and Agencies: One Federal Decision Framework for the Environmental Review and Authorization Process for Major Infrastructure Projects under Executive Order 13807* (Washington, D.C.: March 20, 2018).

The Principal Deputy Director of the Fish and Wildlife Service should direct the Fish and Wildlife Service to develop plans and time frames for improving its new consultation tracking system and develop appropriate internal controls, such as electronic safeguards and other data-entry procedures, to ensure accurate data on the time taken for consultations. (Recommendation 1)

We are making the following recommendation to the National Marine Fisheries Service:

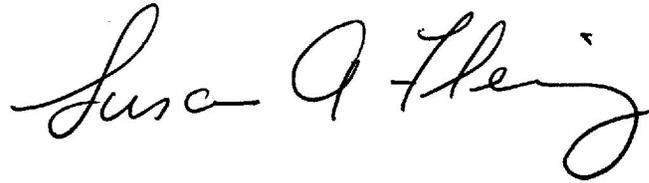
The Assistant Administrator for Fisheries should direct the National Marine Fisheries Service to develop plans and time frames for improving its new consultation tracking system and develop appropriate internal controls, such as electronic safeguards and other data-entry procedures, to ensure accurate data on the time taken for consultations. (Recommendation 2)

Agency Comments

We provided a draft of the report to the Departments of Transportation, Defense, Commerce, and Interior and the Council on Environmental Quality. The Departments of Commerce and Interior each provided written responses, which are reprinted in appendixes III and IV, respectively. The Departments of Commerce and Interior agreed with our recommendations. In addition, the Departments of Transportation, Defense, Commerce, and Interior and the Council on Environmental Quality provided technical comments, which we incorporated as appropriate.

We are sending copies of this report to appropriate congressional committees, the Secretary of the Department of Transportation, Secretary of the Department of Defense, Secretary of the Department of the Interior, Secretary of the Department of Commerce, and other interested parties. In addition, this report will be available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-2834 or flemings@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.

A handwritten signature in black ink that reads "Susan A. Fleming". The signature is written in a cursive style with a large, looping 'S' and 'F'.

Susan Fleming, Director,
Physical Infrastructure Issues

Appendix I: Scope and Methodology

Our work focused on federal-aid highway and transit projects and the provisions included in the past three surface-transportation reauthorizations that are intended to streamline the environmental consulting and permitting processes performed by the three federal resource agencies: Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), and the U.S. Army Corps of Engineers (Corps). This report (1) addresses the extent to which identified streamlining provisions had an impact on the time frames for the environmental consulting and permitting processes; (2) identifies actions taken by the resource agencies to streamline their consulting and permitting reviews and identifies additional streamlining opportunities, if any; and (3) describes the actions taken by the Council on Environmental Quality (CEQ) to accelerate highway and transportation projects.

To identify relevant provisions that were aimed at streamlining the consulting and permitting processes for highway and transit projects, we reviewed the last three surface transportation reauthorization acts and relevant federal statutes, regulations, and guidance.¹ The three reauthorizations we reviewed are as follows:

- the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU);
- the Moving Ahead for Progress in the 21st Century Act (MAP-21); and
- the Fixing America's Surface Transportation Act (FAST Act).

We identified 18 provisions that are intended to streamline various aspects of the NEPA environmental review process and could potentially affect the permitting and consultation processes of the three federal resource agencies. Provisions were grouped into categories developed in a previous GAO report on project delivery for ease of understanding.² In our review we identified relevant statutory provisions as they had been

¹Pub. L. No. 109-59, 119 Stat. 1144 (2005), Pub. L. No. 112-141, 126 Stat. 405 (2012), Pub. L. No. 114-94, 129 Stat. 1312 (2015).

²[GAO-18-222](#).

amended by the three surface transportation reauthorization acts. Some of the provisions, as originally enacted, were modified by subsequent legislation.

To evaluate the extent to which the streamlining provisions had an impact on the consulting and permitting processes, we requested official responses from each of the three resource agencies on the impact of the 18 provisions we identified on the consulting and permitting processes. We also conducted interviews with resource agency officials in Washington, D.C. and the respective field, district, and regional offices to determine the use and impact of the streamlining provisions from the surface transportation reauthorization acts.

To quantify the extent to which the streamlining provisions had an impact on the time frames for completing consultations and permit reviews, we requested data on the time frames of consulting and permitting from FWS, NMFS, and Corps data systems for fiscal years 2005 through 2016 for all federally funded highway and transit projects. We requested data from the resource agencies with a variety of information for each record that included the start and end dates for each consultation and permit decision, the type of consultation or permit decision, the project sponsor or entity requesting the consultation or permit decision, the project type, a description of the project, and the field, district, or regional office that received and entered each record. The agencies provided the most recently available data, which we analyzed. FWS was unable to provide us reliable data prior to fiscal year 2009; the Corps was unable to provide us reliable data prior to fiscal year 2011, and NMFS was unable to provide us reliable data prior to calendar year 2012. Agency officials stated that data prior to those years were unreliable because of various factors, such as NMFS's performing a data migration to a new system where some records did not transfer properly and Corps changes to its database in 2011 that made earlier data incomparable to post-2011 permit records. We performed checks to determine the reliability of the agency data and to identify potential limitations, such as missing data fields, errors, and discrepancies in calculations between records. We determined that the data provided by FWS and NMFS were not sufficiently reliable for examining the impact of the streamlining provisions on the time frames for completing consultation reviews. We also determined that the data provided by the Corps was sufficiently reliable to conduct analysis of permitting time frames, but because the Corps was unable to provide reliable data prior to fiscal year 2010, we were unable to examine the impact of streamlining provisions on the time frames for completing permit reviews. Our discussion in the report of resource

agency data focuses on these limitations. We reviewed agency policies and procedures on ensuring accurate and reliable data and compared them with federal standards for internal controls.³

To examine the actions used by resource agencies to streamline consulting and permitting reviews, we interviewed officials in seven FWS field offices, seven Corps district offices, two NMFS regional offices, three transit agencies, and seven state departments of transportation (state DOTs) to discuss leading practices and additional opportunities for streamlining the consulting and permitting processes, as well as the use of the respective agency data systems.⁴ We reviewed field office documents and policies used to accelerate consulting and permitting. To select the federal resource agency field and district offices for interviews, we used the consultation and permit data collected from the agencies. We selected the offices based on a number of criteria identified through analysis of federal resource agency data between fiscal years 2009 and 2016, including:

- the most consultations or permit decisions performed;
- a mix of the average length of time for consultations or permit decisions by office;
- a mix of the types of consultations (e.g., formal or programmatic) or permit decisions (e.g., general or individual) performed by office; and
- a mix of geographic regions.

For the selection of state DOTs, we used a number of selection criteria including:

- the most consultations and permit decisions requested by state;
- a mix of the average consultation or permit decision time by state;
- a mix of the types of consultations or permit decisions the states received; and
- a mix of geographic regions.

³GAO, Standards for Internal Control in the Federal Government, [GAO-14-704G](#) (Washington, D.C.: September 2014).

⁴We interviewed state DOT officials from California, Florida, Ohio, Pennsylvania, Tennessee, Texas, and Virginia.

To select the transit agencies for interviews, we used a number of selection criteria including: high ridership numbers, substantial federal capital funding between 2005 and 2015, and a mix of geographic regions. We interviewed officials from these offices to identify actions that the offices use to accelerate the consulting and permitting processes, challenges in the processes, and potential actions that could be implemented to further streamline the consulting and permitting processes. The officials we interviewed from three local transit agencies did not offer any perspectives on the use of streamlining practices or provisions related to environmental consulting and permitting, and are therefore not included in this report. These interviews are not generalizable to all resource agency, state DOT, or transit agency offices.

In addition, we met with transportation and environmental advocacy groups to discuss potential additional actions for consulting and permitting. We also reviewed federal reports and recommendations on best practices for streamlining environmental reviews for federal infrastructure projects, including highway and transit. These reports included the Department of Transportation's Red Book and the Federal Permitting Improvement Steering Council's annual best practices reports.⁵

To describe actions taken by CEQ, we reviewed guidance and regulations issued by CEQ and interviewed CEQ officials on the actions the Council has taken to help streamline the environmental review process for federal transportation projects. We also interviewed officials at the Department of Transportation and resource agencies to discuss the extent to which CEQ actions helped streamline environmental reviews for transportation projects.

We conducted this performance audit from March 2017 to July 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that

⁵Federal Highway Administration, *2015 Red Book: Synchronizing Environmental Reviews for Transportation and Other Infrastructure Projects*. (Washington, D.C.: September 2015); Federal Permitting Improvement Steering Council, *Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects* (Jan. 18, 2017); Federal Permitting Improvement Steering Council, *Recommended Best Practices for Environmental Reviews and Authorizations for Infrastructure Projects for Fiscal Year 2018* (December 2017).

the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Provisions from Recent Transportation Reauthorization Acts that May Streamline Consultation and Permit Reviews

Category	Description of the provision and the transportation reauthorization act reference
Administrative and Coordination Changes	<p>1. Programmatic approaches: Directs the Department of Transportation (DOT) to allow for programmatic approaches to conducting environmental reviews for an environmental impact statement and to the extent determined appropriate, other projects. Requires DOT to seek opportunities with states to enter into programmatic agreements to carry out environmental and other project reviews. MAP-21: §§ 1305(a) and 1318(d) and FAST Act: § 1304(b) (codified at 23 U.S.C. § 139(b)(3) and 23 U.S.C. § 109(note))</p>
	<p>2. Identifying participating agencies: Requires the lead agency to identify, no later than 45 days after the date of publication of a notice of intent to prepare an environmental impact statement or the initiation of an environmental assessment, any other federal and non-federal agencies that may have an interest in the project, and to invite those agencies to become participating agencies in the environmental review process for the project. SAFETEA-LU: § 6002(a) as amended by FAST Act: § 1304(d)(1) (codified at 23 U.S.C. § 139(d)(2))</p>
	<p>3. Concurrent reviews: Requires that each participating and cooperating agency carry out its obligations under other applicable law concurrently and do so in conjunction with the review required under the National Environmental Policy Act (NEPA), unless doing so would impair the ability of the agency to conduct needed analysis or otherwise to carry out those obligations, and that each agency should implement mechanisms to enable the agency to ensure completion of the environmental review process in a timely, coordinated, and environmentally responsible manner. SAFETEA-LU: § 6002(a) as amended by MAP-21: § 1305(c) (codified at 23 U.S.C. § 139(d)(7))</p>
	<p>4. Use single NEPA document: Requires to the maximum extent practicable and consistent with federal law, that the project's lead agency develop a single NEPA document to satisfy the requirements for federal approval or other federal action, including permits. FAST Act: § 1304(d)(2) (codified at 23 U.S.C. § 139(d)(8))</p>
	<p>5. Limiting participating agency responsibilities: Requires that participating agencies provide comments, responses, studies, or methodologies on areas within the special expertise or jurisdiction of the agency, and that an agency use the environmental review process to address any environmental issues of concern to the agency. FAST Act: § 1304(d)(2) (codified at 23 U.S.C. § 139(d)(9))</p>
	<p>6. Environmental checklist: Requires the development of a checklist by the lead agency, in consultation with participating agencies, as appropriate, to help identify natural, cultural, and historic resources. FAST Act: § 1304(e) (codified at 23 U.S.C. § 139(e)(5))</p>

**Appendix II: Provisions from Recent
Transportation Reauthorization Acts that May
Streamline Consultation and Permit Reviews**

Category	Description of the provision and the transportation reauthorization act reference
	<p>7. Alternatives analysis: Requires the lead agency to determine the range of alternatives for consideration in any document that the lead agency is responsible for preparing for a project, and requires that those alternatives should be used to the extent possible in all reviews and permit processes required for the project, unless the alternatives must be modified to address significant new information or circumstances or for the lead agency or a participating agency to fulfill the agency's responsibilities under NEPA in a timely manner.</p> <p>SAFETEA-LU: § 6002(a) and FAST Act: § 1304(f) (codified at 23 U.S.C. § 139(f)(4))</p>
	<p>8. Coordination and scheduling: Requires a coordination plan for public and agency participation in the environmental review process within 90 days of notice of intent to prepare an EIS or the initiation of an EA, including a schedule for completion of the environmental review process for the project.</p> <p>SAFETEA-LU: § 6002(a) as amended by MAP-21: 1305(e) and FAST Act: § 1304(g) (codified at 23 U.S.C. § 139(g)(1))</p>
Administrative and Coordination Changes	<p>9. Issue resolution process: Establishes procedures to resolve issues between state DOTs and relevant resource agencies, including those issues that could delay or prevent an agency from granting a permit or approval, and describes lead and participating agency responsibilities.</p> <p>SAFETEA-LU: § 6002(a) as amended by MAP-21: § 1306, and FAST Act: § 1304(h) (codified at 23 U.S.C. § 139(h))</p>
	<p>10. Financial penalty provisions: Can cause a rescission of funding from the applicable office of the head of an agency, or equivalent office to which the authority for rendering the decision has been delegated by law, if that office fails to make a decision within certain time frames under any federal law relating to a project that requires the preparation of an EIS or EA, including the issuance or denial of a permit, license, or other approval.</p> <p>MAP-21: § 1306 as amended by FAST Act: § 1304(h)(3) (codified at 23 U.S.C. § 139(h)(7))</p>
	<p>11. Use of federal highway or transit funds to support agencies participating in the environmental review process: Allows a public entity to use its highway and transit funds to support a federal (including DOT) or state agency or Indian tribe participating in the environmental review process on activities that directly and meaningfully contribute to expediting and improving project planning and delivery.</p> <p>SAFETEA-LU: § 6002(a) as amended by MAP-21: § 1307, and FAST Act: § 1304(i) (codified at 23 U.S.C. § 139(j))</p>
	<p>12. 150-Day statute of limitations: Bars claims seeking judicial review of a permit, license, or approval issued by a federal agency for highway projects unless they are filed within 150 days after publication of a notice in the Federal Register announcing the final agency action, or unless a shorter time is specified in the federal law under which the judicial review is allowed.</p> <p>SAFETEA-LU: § 6002(a) as amended by MAP-21: § 1308 (codified at 23 U.S.C. § 139(l))</p>
	<p>13. Enhanced technical assistance and accelerated project completion: At the request of a project sponsor or a governor of the state in which the project is located, requires DOT to provide additional technical assistance for a project where EIS review has taken 2 years, and establish a schedule for review completion within 4 years. In providing assistance, DOT shall consult, if appropriate, with resource and participating agencies on all methods available to resolve the outstanding issues and projects delays as expeditiously as possible.</p> <p>MAP-21: § 1309 (codified at 23 U.S.C. § 139(m))</p>
	<p>14. Early coordination activities in environmental review process: Encourages early cooperation between DOT and other agencies, including states or local planning agencies, in the environmental review process to avoid delay and duplication, and suggests early coordination activities. Early coordination includes establishment of memorandums of agreement with states or local planning agencies.</p> <p>MAP-21: § 1320 (codified at 23 U.S.C. § 139(note))</p>

**Appendix II: Provisions from Recent
Transportation Reauthorization Acts that May
Streamline Consultation and Permit Reviews**

Category	Description of the provision and the transportation reauthorization act reference
	<p>15. Planning documents used in NEPA review: To the maximum extent practicable and appropriate, authorizes the lead agency for a project and cooperating agencies responsible for environmental permits, approvals, reviews, or studies under federal law to use planning products, such as planning decisions, analysis, or studies, in the environmental review process of the project.</p> <p>MAP-21: § 1310 as amended by FAST Act: § 1305 (codified at 23 U.S.C. § 168(b))</p>
	<p>16. Programmatic mitigation plans used in NEPA review: Allows a state DOT or metropolitan planning organization to develop programmatic mitigation plans to address potential environmental impacts of future transportation projects. It also requires that any federal agency responsible for environmental reviews, permits, or approvals for a transportation project give substantial weight to the recommendations in a state or metropolitan programmatic mitigation plan, if one had been developed as part of the transportation planning process, when carrying out responsibilities under NEPA or other environmental law.</p> <p>MAP-21: § 1311 as amended by FAST Act: § 1306 (codified at 23 U.S.C. § 169(f))</p>
NEPA Assignment	<p>17. Categorical exclusion determination authority: Authorizes DOT to assign and a state to assume responsibility for determining if projects can be categorically excluded from NEPA review, and allows states that have assumed that responsibility to also assume DOT's responsibility for environmental review, consultation, or other actions required under federal law applicable to activities classified as categorical exclusions.</p> <p>SAFETEA-LU: § 6004(a), as amended by MAP-21: § 1312, and FAST Act: § 1307 (codified at 23 U.S.C. § 326)</p>
	<p>18. Surface transportation project delivery program: Authorizes DOT to assign and a state to assume many federal environmental review responsibilities for highway, public transportation, and railroad projects, to be administered in accordance with a written agreement between DOT and the participating state.</p> <p>SAFETEA-LU: § 6005(a), as amended by MAP-21: § 1313 and FAST Act: § 1308 (codified at 23 U.S.C. § 327)</p>

Source: GAO analysis of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users; the Moving Ahead for Progress in the 21st Century Act; and the Fixing America's Surface Transportation Act. | GAO-18-536

Appendix III: Comments from the Department of Commerce



UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

June 29, 2018

Ms. Susan Fleming
Director, Physical Infrastructure Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Fleming:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) draft report entitled *Highway and Transit Projects: Better Data Needed To Assess Changes in the Duration of Environmental Reviews* (GAO-18-536).

The Department of Commerce agrees with GAO's recommendation pertaining to the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS). NMFS has developed a plan and time frame for replacing the current consultation tracking system with an upgraded one that will improve its functionality and provide additional safeguards. Enclosed also are a small number of recommended technical changes to the draft report.

If you have any questions, please contact MaryAnn Mausser, GAO Liaison, at (202) 482-8120 or MMAusser@doc.gov.

Sincerely,


Wilbur Ross

Enclosure

Department of Commerce
National Oceanic and Atmospheric Administration
Response to the GAO Draft Report Entitled
*Highway and Transit Projects: Better Data Needed To Assess
Changes in the Duration of Environmental Reviews*
(GAO-18-536)

General Comments

The Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) appreciates the opportunity to review the Government Accountability Office's (GAO) report on the environmental review process for highway and transit projects. It identifies challenges that NOAA's National Marine Fisheries Service (NMFS) has faced with the current consultation tracking system and notes that it is improving its new consultation system. Notwithstanding the limitations of the current consultation system, NMFS has used other tools successfully to track its adherence to the 135 day regulatory requirements for formal consultations.

NOAA Response to GAO Recommendations

The draft GAO report made two recommendations; one applies to NMFS:

Recommendation 2: The Assistant Administrator for Fisheries should direct the National Marine Fisheries Service to develop plans and time frames for improving its new consultation tracking system and develop appropriate internal controls, such as electronic safeguards and other data-entry procedures, to ensure accurate data on consultation time frames.

NOAA Response: NOAA agrees with this recommendation. NOAA acknowledges that its current consultation tracking system does not have optimal reporting capabilities or electronic safeguards to ensure 100 percent accuracy for consultation time entries. NMFS has developed a plan (scope of work) and time frame for replacing it with an upgraded consultation tracking system that will improve its functionality and provide additional safeguards.

Appendix IV: Comments from the Department of Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JUN 27 2018

Ms. Anne-Marie Fennell
Director, Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Fennell:

Thank you for providing the U.S. Department of the Interior (Department) the opportunity to review and comment on the draft Government Accountability Office (GAO) report entitled, *Highway and Transit Projects: Better Data Needed to Assess Changes in the Duration of Environmental Reviews* (GAO-18-536). We appreciate GAO's review of multi-agency efforts to streamline the environmental review processes for transportation projects and the challenges agencies face in accurately assessing the efficacy of those efforts.

GAO issued one recommendation to the U.S. Fish and Wildlife Service (FWS). Below is a summary of actions taken or planned by the Department to implement the recommendation.

Recommendation: The Principal Deputy Director of the FWS should direct the FWS to develop plans and time frames for improving its new consultation tracking system and develop appropriate internal controls, such as electronic safeguards and other data-entry procedures, to ensure accurate data on consultation time frames.

Response: Concur. In 2017, the FWS conducted an internal review of the existing Tracking and Integrated Logging System (TAILS) to identify software programming and system modifications. The FWS anticipates completing improvements to TAILS, including appropriate internal controls sufficient to ensure accurate data on Endangered Species Act section 7 consultation timeframes, within two years.

Enclosed are additional technical comments for your consideration before finalizing the report. If you have any questions or need additional information, please contact Mr. Craig Aubrey with the FWS Ecological Services program, at (703) 358-2442.

Sincerely,

Ryan M. Hambleton
Deputy Assistant Secretary
For Fish and Wildlife and Parks

Enclosure

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Susan Fleming, (202) 512-2834 or flemings@gao.gov

Staff Acknowledgments

In addition to the contact named above, Brandon Haller (Assistant Director), Lauren Friedman, Tobias Gillett, Rich Johnson, Delwen Jones, Hannah Laufe, Jeff Miller, Cheryl Peterson, Malika Rice, Alison Snyder, Kirsten White, and Elizabeth Wood made significant contributions to this report.

Appendix VI: Accessible Data

Agency Comment Letters

Accessible Text for Appendix III Comments from the Department of Commerce

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June 29, 2018

UNITED STATES DEPARTMENT OF COMMERCE

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Director, Physical Infrastructure Issues

U.S. Government Accountability Office

441 G Street, NW

Washington, DC 20548

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Wilbur Ross

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Page 2

Department of Commerce

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Sincerely,

Ryan M. Hambleton

Deputy Assistant Secretary

For Fish and Wildlife Parks

Enclosure

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