



Energy and Wildlife Action Coalition
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**Comments regarding the November 3, 2017
Final Nationwide Programmatic Environmental
Impact Statement Evaluating the Environmental
Impacts of Proposed Modifications to the
National Flood Insurance Program**

Submitted by:

Energy and Wildlife Action Coalition

Filed electronically to the attention of:

Docket ID FEMA-2012-0012
Regulatory Affairs Division
Office of Chief Counsel
Federal Emergency Management Agency
8NE, 500 C St. SW.
Washington, DC 20472

On June 6, 2017 the Energy and Wildlife Action Coalition ("EWAC"), a national coalition of electric utilities, electric transmission providers, and renewable energy entities operating throughout the United States, and related trade associations, submitted comments (see attached) in response to the Federal Emergency Management Agency's ("FEMA") draft Nationwide Programmatic Environmental Impact Statement ("NPEIS") evaluating the environmental impacts of proposed modifications to the National Flood Insurance Program ("NFIP").¹

In the draft NPEIS, FEMA explained that the Preferred Alternative (Alternative 2) included actions to:

- Clarify that pursuant to 44 C.F.R. § 60.3(a)(2),² a community must obtain and maintain documentation of compliance with the appropriate Federal or State laws, including the ESA, as a condition of issuing floodplain development permits
- Clarify that the issuing of certain Letter of Map Change ("LOMC") requests (i.e., map revisions) is contingent on the community, or the project proponent on the community's behalf, submitting documentation of compliance with the Endangered Species Act ("ESA").

EWAC's comments highlighted a number of issues related to the proposed determination and demonstration of compliance with the ESA and made recommendations on how FEMA should address these defects in the final NPEIS. Most notably, EWAC suggested that FEMA should develop guidance outlining how an applicant or host community would obtain such concurrence from the U.S. Fish & Wildlife Service ("Service") and suggested that FEMA play an active role as a "lead agency" in the concurrence process. We were disappointed to read in the final NPEIS that FEMA did not respond to EWAC's recommendations on how to improve the ESA compliance process. The final NPEIS provided no notable guidance on how an applicant or its host community would seek and obtain concurrence from the Service that they are in compliance with the ESA. We again urge FEMA to prepare such guidance and play a meaningful role in obtaining the concurrence.

We repeat here that, consistent with ESA Section 7 compliance procedures of other federal agencies, FEMA should make clear in the final NPEIS that a concurrence letter from USFWS is not required where a project proponent and/or FEMA have reached a "no effect" conclusion. Further, if FEMA requires demonstration of ESA compliance for its LOMCs, the agency should take a more traditional "action agency" role or develop clear pathways that project proponents can follow, similar to the 8-step process FEMA previously developed for coordinating floodplain management activities involving wetlands³, instead of pushing the responsibility down to the project proponent with little guidance. By not providing the recommended guidance or serving as the lead agency in coordinating these ESA compliance demonstrations, the agency will be creating unnecessary cost and time burdens, as well as uncertainty, for applicants and/or the host communities. FEMA is well poised to develop programmatic pathways that minimize the burden on both the Service and project proponents

¹ 82 Fed. Reg. 17023 (April 7, 2017).

² Section 60.3(a)(2) currently requires that the administrator of the NFIP: "Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334."

³ 44 C.F.R. 9.5(f)(2)

and minimize project delay. We strongly encourage FEMA to make these recommended changes in the final NPEIS or explain to the public why they are unnecessary in the ROD.

EWAC appreciates this opportunity to comment and would welcome further dialogue with FEMA on the topics above.

Please feel free to contact the following EWAC representatives:

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