

Attachment 3A

Explanatory Note for Department of Commerce (DOC) Report August 1, 2011

This note and the accompanying spreadsheet report the status and progress of National Environmental Policy Act (NEPA) compliance for the Department of Commerce on all projects and activities funded under Division A of the American Recovery and Reinvestment Act of 2009 (ARRA) through June 30th, 2011.

National Oceanic and Atmospheric Administration (NOAA) (spreadsheet page 1, rows 1-2 and page 2, rows 1-29)

NOAA Operations, Research and Facilities (ORF) (spreadsheet page 1, row 1 and page 2, rows 1-7):

NOAA ORF incorporates the NOAA Habitat Conservation Projects as well as the Vessel Maintenance and Repair projects.

NOTE: The total number of projects (spreadsheet page 1, row 1) was erroneously reported in the 9th report as 85 when it should have been reported as 84 (there was not an additional EA for multi-phased, only for one new EIS). The correct total for this reporting period and last is 84.

Please note that total obligations fluctuated due to Prompt Payment penalties (spreadsheet page 1, row 1).

NEPA not Applicable (spreadsheet page 1, row 1)

One of the ARRA projects under NOAA ORF is currently noted as “NEPA Not Applicable” on spreadsheet page 1. This includes just a small portion of funds being used by NOAA Fisheries to carry out Endangered Species Act (ESA) Section 7 consultations: (1) for habitat restoration grants, and (2) on external Federal actions funded under ARRA (ESA consultations are requested by lead action agencies preparing NEPA documents for their proposed Federal actions).

NOAA Habitat Restoration (spreadsheet page 2, rows 1-6)

There are 84 ARRA projects under this program:

- Sixty-four are habitat projects covered under two Programmatic EA documents (spreadsheet page 2, row 1);
- Sixteen habitat projects are covered under specific EAs (spreadsheet page 2, rows 2, and 3); and
- Three habitat projects are covered under individual EISs (spreadsheet page 2, rows 4-5)
- One project where NEPA is not applicable (as noted above).

The NOAA Office of Habitat Conservation (OHC) continues to administer the projects under the ORF to restore coastal and marine habitats through a phased approach. The “Full project

implementation” falls within the scope of two programmatic environmental assessments (page 2, row 1). There are multiple Habitat Restoration NEPA actions for projects with 2 or more phases (page 2, rows 2-6).

Please note that one of the two EAs previously reported as pending in “Habitat Restoration-Multi-phase” was reported in error (spreadsheet page 2, line 6). It should have indicated only one EA was pending on line 6 instead of two. The other pending EA was already accounted for on line 3 “Habitat Restoration- Phase 2 of 2.” In total, there are two pending EAs (spreadsheet page 2, lines 3 and 6) and one pending EIS (an adoption of an existing FEIS on spreadsheet page 2, line 5). The Habitat Conservation office still anticipates all pending NEPA actions will be completed as scheduled by the September 30, 2011 reporting period.

Vessel Maintenance and Repair (spreadsheet page 2, row 7): The Vessel Maintenance and Repair program was covered under one programmatic categorical exclusion which was completed on October 13, 2009. This programmatic categorical exclusion covered numerous maintenance and repair activities on NOAA vessels.

NOAA Procurement, Acquisition and Construction (PAC) (spreadsheet page 1, row 2 and spreadsheet page 2, rows 8 -29)

The total number of projects under PAC remains at 22 projects on spreadsheet 1, row 2. All are completed.

Please note total obligations (spreadsheet page 1, row 2) fluctuated due to recompetition of a contract; moving charges from ARRA project code to non-ARRA project code; contract adjustments; correction for late processing of transactions; travel deobligations, and increases due to Prompt Payment penalties.

National Institute of Standards and Technology (NIST) (spreadsheet page 1, rows 3-5 and page 2, rows 30-41)

NIST has completed all NEPA actions under ARRA.

NIST Construction and Research Facilities (CRF) (spreadsheet page 1, row 3 and spreadsheet page 2, rows 30 – 39):

There are a total of 23 ARRA projects under CRF which are covered under 18 CEs, two EAs, and one EIS and two withdrawn projects. Please note that in the previous reports the two withdrawn projects (spreadsheet page 2, line 34 and 35) were not included in the total number of ARRA funded projects for CRF (spreadsheet 1, line 3). To remain consistent with how withdrawn projects were handled by NTIA, they have been added to the total number of ARRA funded projects for CRF.

Design and Construct New Time Code Radio Broadcast Stations: Low Frequency Station in Kauai, HI (spreadsheet page 2, row 34): This project has been deleted from the list of NIST ARRA funded projects.

Design and Construct New Time Code Radio Broadcast Stations: Low Frequency Station in Eastern US (spreadsheet page 2, row 35): The Redstone, Alabama site location became unavailable when other Federal tenants raised concerns about potential electromagnetic interference from the proposed NIST station. Regretfully, NIST has withdrawn this project from its ARRA Construction Program and has deferred it to a later date - if a viable site can be identified and secured.

NIST Construction Grants for Research Facilities (spreadsheet page 2, rows 37-39): The NEPA documentation has been completed for all 16 Construction Grants.

NIST Scientific and Technical Research and Services (STRS) (spreadsheet page 1, row 4 and spreadsheet 2, row 40)

One CE has been completed for this project on 9/30/2009.

Please note that total obligations (spreadsheet page 1, row 4) fluctuated due to installation modifications on machinery, payment for legal work, and a refund that was issued this reporting period.

NIST Health Information Technology (spreadsheet page 1, row 5 and spreadsheet page 2, row 41)

One CE has been completed for this project on 9/30/2009.

National Telecommunications and Information Administration (NTIA) (spreadsheet page 1, rows 6-7 and page 2, rows 42-50)

Digital to Analog Converter Box Program (spreadsheet page 1, row 6 and page 2, row 42)

One EA was completed for this project on 8/20/2009.

NOTE: Total obligations (spreadsheet page 1, row 6) fluctuated due to a refund and deobligations as well as NIST returning funds from the DTV MOU.

Broadband Technology Opportunities Program (BTOP) (spreadsheet page 1, row 7 and page 2, rows 43- 50):

Note: As reported on the last report, spreadsheet page 1, row 7, Broadband Technology Opportunities Program (BTOP) had \$302 million rescinded by Congress. This left the total appropriation at \$4,388,000,000.

The number of ARRA projects awarded under the BTOP program has remained at 233 but two projects have been withdrawn, Wisconsin Department of Administration (an EA) and Education Networks of America (a CE).

Total obligations (spreadsheet page 1, row 7) fluctuated due to funds being returned to NTIA from Census, ITA, and the Department of Interior; refund from prior-year bankcard transactions; return of excess funds from an MOU with DOC/ICIO; travel order deobligations; and a deobligation of a portion of the Iowa Health Systems grant. There was also a small increase resulting from an upward adjustment of an old travel order.

The breakdown of those 233 BTOP projects is as follows:

BTOP Construction and Deployment of Broadband Infrastructure- completed (spreadsheet page 2, row 43): 43 EAs that were previously reported as pending have been completed. The completion of these 43 EAs brings the total number of EAs completed to 83 when added to the 40 EAs that had been completed as of March 31st, 2011.

BTOP Construction and Deployment of Broadband Infrastructure (spreadsheet page 2, rows 44 and 45): As was previously reported in the 9th report, the total number of CEs decreased from 22 to 21 due to the Education Networks of America decision to not accept the award. This resulted in the project being withdrawn (spreadsheet page 1, row 7 and spreadsheet page 2, row 45)

BTOP Construction and Deployment of Broadband Infrastructure- Pending (spreadsheet page 2, rows 46 and 47): There are a total of 17 pending EAs, down from 60 last reporting period. This reflects the 43 EAs that have been completed this reporting period. One EA (Wisconsin Department of Administration- explained in previous section and on spreadsheet page 2, row 47) that was withdrawn (spreadsheet page 1, row 7) as they chose not to accept the grant.

BTOP Non-construction Broadband Projects (spreadsheet page 2, row 48): One project proposed to build a new Public Computer Center on Tribal lands. As the project was a Public Computer Center it was categorized for funding purposes as “non-construction.” This grantee was required to prepare an EA. The EA was completed April 2011.

BTOP Non-construction Broadband Projects (spreadsheet page 2, row 49): The total number of CEs remained at 108.

BTOP Broadband Mapping Grants (spreadsheet page 2, row 50): One Categorical Exclusion was used for all potential NTIA “State Broadband Mapping Grants.” The projects only involve data development for program planning purposes, do not adversely impact the environment, and do not have any extraordinary circumstances. Therefore a categorical exclusion was deemed the appropriate level of NEPA analysis. All 56 grants have been issued under this one categorical exclusion for broadband mapping.

Economic Development Administration (EDA) (spreadsheet page 1, rows 8-9 and page 2 rows 51- 53):

Economic Development Assistance Program (EDAP)

EDA has completed a total of 69 NEPA actions for ARRA projects, including 63 EAs and 6 CEs.

EDA has obligated all of its ARRA funds, and completed the NEPA actions for all of those awards. EDA did not have any report updates since the last reporting period other than a fluctuation due to the deobligation of funds for projects in Indiana and Illinois and legal work requested by OS (spreadsheet page 1, row 8)

Census Bureau (spreadsheet page 1, row 10 and spreadsheet page 2, line 54):

NOTE: Obligations (spreadsheet page 1, row 10) fluctuated due to deobligation of funds for an advertising contract; refund due to change in vendor rates; payroll adjustments; and a refund from a Department web-hosting MOU.

2010 Census and Programs

The one CE for this program involves salaries and related information collection activities and has been completed. (CE completed on 11/30/2009, spreadsheet page 2, line 54.) The total obligations amount to \$999,997,458.

Please note that all reported “Date NEPA Done” projects reflect actual dates that the CE memos were signed and EA FONSI’s “concurred” with by the NOAA NEPA Coordinator, or in the case of EDA or NTIA, when the FONSI’s are signed by their respective NEPA Official.

Pending Action Explanatory Statements:

There are 20 pending NEPA actions as of June 30th, 2011. These are as follows:

NOAA has three pending projects:

1. Line 3, Phase 2 of 2, EA: Great Works Dam Removal, Penobscot River, ME

- **Project Description:** This award will remove the Great Works Dam, thereby enhancing fish passage for endangered Atlantic Salmon on the Penobscot River.
- **Reason for delay:** Additional information learned about the project site, and delays in the availability of materials required for a co-occurring project, caused a delay in the overall implementation plan for the project. As project implementation is not expected until fall 2012, agency staff prioritized their time towards other, more imminent projects requiring NEPA review.

- Actions to date: A first draft of the EA adoption document has been written and is being reviewed by NOAA Restoration Center staff, prior to being sent for wider agency review.
- Anticipated completion date: Sept 30, 2011.

2. Line 6, Multiphase, EA; CA CC

- Project description - This overall award provided for instream and riparian restoration activities at a number of locations in California.
- Reasons for pending status - One of the sub-awards is a water conservation project in central California. For that sub-award, we still do not know for certain if the project will fall under an existing analysis, or if an individual EA will be needed. There may be cultural resources in the area that require MOA with the State Historic Preservation Officer.
- Progress - Project partners have begun a more thorough review and coordination of historical resource issues to determine if an MOA is necessary.
- Estimated completion date - Depending on the resolution of the historical resource issue, we may need to do an individual EA. We should know by early August if the new analysis is needed, and if so, complete it by the end of September

3. Line 5, EIS: S. San Francisco

- Project description - This overall award will be completing large scale tidal marsh restoration activities in the southern part of San Francisco Bay.
- Reasons for pending status - Because of unforeseen complexities, some of the project activities have been adjusted and the grantee has requested a Change of Scope. Some of the new activities were not considered in the original NEPA analysis, and therefore additional NEPA analysis is needed. The additional NEPA analysis is going to be in the form of adopting an existing EIS.
- Progress - NOAA and project partners have begun drafting the documents required for adopting an EIS. An initial draft is expected in early August.
- Estimated completion date - Because of formal review timelines, although we have already begun working on this activity we do not expect our adoption to be completed until late October / early November.

NTIA: 17 pending EA's in NTIA's Broadband Technology Opportunities Program

- Project Description: The BTOP program issued grants to expand broadband capability into unused and underserved areas throughout the US. Grants were made in every state

and three territories, most were hundreds of miles long (or contained multiple tower sites) and were often located in more than one state.

- These actions have been pending since the 7th ARRA report
- Reasons for Delay: Each of the remaining projects has multiple federal and/or tribal lands that are crossed of those, four have CEQA clearances to obtain; two had major route revisions after the grant was awarded; one project had issues at the state level due to a change in Administration; and one project had scope changes post award and is in discussions with the FCC regarding towers.
- Progress: With the exception of the one project that had state-level issues, all of the projects have submitted draft EA's and all but one of them has received comments back on the draft and are preparing their Final EAs. One grantee submitted their draft EA this week due to route changes made to avoid some Federal lands. In all cases, the Federal Program Officer and the Federal Environmental Reviewer have weekly (or twice a week in some cases) meetings/telecoms with the grantees and is in regular contact with the relevant resource agencies. The biggest hurdle we have found is coordination with multiple resource agencies that each have unique requirements, sometimes even within the same state.
- Estimated Completion: It is anticipated that six projects will complete their NEPA actions in July, three in August, and six in September. BTOP anticipates two projects will complete their NEPA actions after September 30th. It is possible that due to unforeseen circumstances some of the 15 anticipated to be finalized prior to September 30th, 2011 may be delayed until after that date. There are several unknown factors associated with both their consultations and ability to obtain permits/permission to utilize Federal lands. Only three have completed their Section 106 consultations and only six have completed their Section 7 consultations. One project is required to have a formal Section 7 consultation which is on-going at this time.

Benefits of the NEPA process on ARRA projects:

NOAA Operations, Research and Facilities

Benefits provided as a result of NEPA compliance for these actions include effective standard and special award conditions placed on the use of ARRA funds, which will ensure adequate protection for federally administered areas of coastal or marine habitat, and/or biological resources such as anadromous fisheries, federally listed endangered or threatened species, and marine mammals, and also adequate protection for NHPA-listed (or eligible for listing) historic structures and cultural resources.

NIST Construction and Research Facilities

NIST Construction Activities in Gaithersburg – Programmatic Environmental Assessment:

The programmatic environmental assessment process allowed NIST to evaluate the environmental effects of several projects at the same time. By analyzing all ARRA projects and a few additional non-ARRA projects at once, a holistic approach to the campus was taken and environmental impact boundaries were outlined in the Finding of No Significant Impact for all present and future projects. Projects must fall within the boundaries or they will require additional environmental analysis.

NTIA/BTOP

Broadband Infrastructure Fiber Optic Cable Project– Environmental Assessment: The NEPA process was the key procedural step in identifying and protecting critical habitat and protected lands in the State of Washington, while still allowing the grantee to use ARRA funds to add fiber backbone capacity to existing networks and specifically target and develop broadband infrastructure in areas that were underserved due to economic infeasibility.

The NoaNet was developed to serve the State of Washington by allowing the state to upgrade and expand broadband infrastructure to combat the social and economic issues facing local and rural communities and to enhance broadband connectivity to six Indian tribes in the state. Specifically, this \$54.4 million project funded by the NTIA Broadband Technology Opportunities Program will increase high-speed internet connectivity in 25 of Washington's 39 counties over 285 community anchor facilities, such as schools, libraries, hospitals, etc, and public safety agencies allowing for end-point users to have access to vital healthcare, educational, and emergency services. Since Washington is a land with many historical sites, protected tribal lands and sensitive ecological habitats, the prospect of ground disturbing activities in any of these areas has the potential to significantly impact the environment. As a result of the NEPA review process, NTIA environmental reviewers were able to identify a potential project activity, the installation of submarine cable across an environmentally rich lake, which could have had a devastating effect on wildlife in the region. However, the grantee and NTIA worked closely with the U.S. Fish and Wildlife Service and other state and federal

agencies to develop an alternative route insure that sensitive areas and habitats would not be disturbed as a result of this broadband infrastructure project.

Another of the BTOP Projects, California Broadband Cooperative (CBC), proposes to bury cable in the right of way of Highway 395 in California. The proposed path would traverse critical habitat for the endangered Desert Tortoise and would have elevated the NEPA requirements to an Environmental Impact Statement (EIS) rather than the Environmental Assessment (EA) initially planned. As this is an ARRA-funded project and must be completed within three years of the grant, the preparation of an EIS would have taken too long to complete and still maintain a reasonable construction schedule. Furthermore, the EIS would have required considerable additional funding (estimated at from \$1 million to \$1.5 million to complete within the aggressive time-frame required by ARRA). As a result, the project was likely to be cancelled.

In researching alternatives that would protect the endangered tortoise and still allow the project to go forward, NTIA staff observed that the state transportation agency (CalTrans) had begun erecting tortoise-proof fencing over a portion of the critical habitat along hwy 395, but had not finished fencing in approximately 40 miles along the highway due to funding issues. Fish and Wildlife Service representatives had previously determined that cable placement along the right of way that had previously been fenced was not likely to impact the tortoise as the tortoise would be unable to access the area where the cable was proposed to be buried. Negotiations with CalTrans, Fish and Wildlife Service representatives, the grantee, and NTIA staff resulted in an agreement to erect tortoise-proof fencing in areas designated by FWS as most critical, using grant funding set aside for environmental mitigation. This would not only mitigate the impacts of burying the cable along the right of way, but would protect the tortoise from being hit by motor vehicles on the road (or vehicular accidents caused by motor vehicles striking the slow-moving creatures). As the resulting environmental determination from the Fish and Wildlife Service would be “not likely to impact” the Desert Tortoise, the project can remain an EA and taxpayers would not be required to shoulder the burden of the additional costs associated with an EIS. Additionally, there is no reason to cancel the 583 mile project that proposes to connect 36 remote communities (including several Indian reservations).

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