

Attachment 3A
Explanatory Note for Department of Commerce (DOC) Report
May 2, 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 March 31, 2011.

National Oceanic and Atmospheric Administration (NOAA) (spreadsheet page 1, rows 1-2 and page 2, rows 1-30)

NOAA Operations, Research and Facilities (ORF) (spreadsheet page 1, row 1 and page 2, rows 1-8):

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 8th report as 85 when it should have been reported as 83 (two EAs were double-counted). The correct total for this reporting period is 85 (two projects were added this quarter- see explanatory notes below for elaboration on those two projects).

NOTE: Obligations (spreadsheet page 1, row 1) fluctuated due to small increases resulting from Prompt Payment penalties and decreases due to items such as freight charge reductions; contract cancellations or decreases; reimbursable funds from other Agencies; and deobligations for the NOAA Finance Office A-123 review of ARRA projects.

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 1-7)

There are 85 ARRA projects under this program:

- Sixty-three are habitat projects covered under two Programmatic EA documents (spreadsheet page 2, row 1);
- Seventeen habitat projects are covered under specific EAs (spreadsheet page 2, rows 2, 3 and 6); and

- Three habitat projects are covered under individual EISs (spreadsheet page 2, rows 4-5)

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).

The two pending EAs from the previous reporting period (spreadsheet page 2, line 3 and 6) are still pending and the Habitat Conservation office still anticipates these will be completed as scheduled.

Additionally, two new ARRA Habitat Restoration actions are added as pending (one new EIS on spreadsheet page 2, line 5 and one new EA added to spreadsheet page 2, line 6). The new EIS (spreadsheet page 2, line 5) action uses available ARRA funds and may complete its NEPA via an adoption on an existing FEIS and has been added to as a pending EIS. The new added EA (spreadsheet page 2, line 6) is an expansion of an existing ARRA project and requires no new money, but will require NEPA analysis since it was not previously considered under previous NEPA programmatic reviews. It will be considered as "Multi-phased" pending EA.

As previously reported, and unchanged since the last report, spreadsheet page 2, row 7 was reported as a completed EA in reports prepared prior to the April 15th 2010 report. This was a reporting error. These projects did not result in an additional EA, as it was determined the ARRA project was within the scope of the 2002 Programmatic Environmental Assessment (PEA) for the Community-based Restoration Program (page 2, row 1) and a 2006 Supplemental PEA. Spreadsheet page 2, row 7 has been amended to show that it was combined with the PEA in page 2, row 1.

Vessel Maintenance and Repair (spreadsheet page 2, row 8): 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 9 -30)

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

NOAA Climate Computing/Modeling (spreadsheet page 2, row 20) was completed on 1/3/2011.

National Institute of Standards and Technology (NIST) (spreadsheet page 1, rows 3-5 and page 2, rows 31-42)

NIST has completed all NEPA actions under ARRA.

NIST Construction and Research Facilities (CRF) (spreadsheet page 1, row 3 and spreadsheet page 2, rows 31 – 40):

There are a total of 21 ARRA projects under CRF which are covered under 18 CEs, two EAs, and one EIS. Two projects have been withdrawn. (spreadsheet page 1, row 3)

Design and Construct New Time Code Radio Broadcast Stations: Low Frequency Station in Kauai, HI (spreadsheet page 2, row 35): 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 36): 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 38-40): 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 41)

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

NIST Health Information Technology (spreadsheet page 1, row 5 and spreadsheet page 2, row 42)

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 43-51)

Digital to Analog Converter Box Program (spreadsheet page 1, row 6 and page 2, row 43)

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

NOTE: As reported in the 8th report, (spreadsheet 1, row 6) Due to Congress rescinding a portion of the project, the total appropriation for the DTV Converter Box Program was decreased by \$239,500,000. This decreased the overall appropriation from \$650,000,000 to \$410,500,000.

NOTE: Obligations (spreadsheet page 1, row 7) fluctuated due to transfer of a grant from one entity to another, deobligation of two grants, and due to personnel awards/comp time processing.

Broadband Technology Opportunities Program (BTOP) (spreadsheet page 1, row 7 and page 2, rows 44- 51):

Note: As reported on the last report, spreadsheet page 1, row 7, Broadband Technology Opportunities Program (BTOP) had \$302Mil 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).

The breakdown of those 233 BTOP projects is as follows:

BTOP Construction and Deployment of Broadband Infrastructure (spreadsheet page 2, row 44): 16 EAs that were previously reported as pending have been completed resulting in a total of 40 EAs completed. This is an increase from the previously reported 24 EAs completed.

BTOP Construction and Deployment of Broadband Infrastructure (spreadsheet page 2, rows 45 and 46): 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 46)

BTOP Construction and Deployment of Broadband Infrastructure (spreadsheet page 2, rows 47 and 48): There is total of 60 pending EAs, down from 77 last reporting period. This reflects the 16 EAs that have been completed as well as the one EA (Wisconsin Department of Administration- explained in previous section) that was withdrawn from the total number of BTOP construction and deployment projects (spreadsheet page 1, row 7 and spreadsheet page 2, row 48).

It is important to note that the majority of grant recipients were previously not cognizant of the federal environmental and historic preservation review requirements. This has resulted in NTIA having to devote significant time to educating the grantees through special teleconferences, guidance documents and one-on-one calls, to explain the federal NEPA environmental review requirements. While this level of interaction with the grant recipients is unusual, it is having the desired effect in that BTOP grantees are able to prepare the draft EAs for submission within the allotted time-frames.

BTOP Non-construction Broadband Projects (spreadsheet page 2, row 49): 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 is required to prepare an EA.

BTOP Non-construction Broadband Projects (spreadsheet page 2, row 50): The total number of CEs remained at 108.

BTOP Broadband Mapping Grants (spreadsheet page 2, row 51): 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.

BTOP has had two separate rounds of funding, August 2009 and January 2010. As of September 30, 2010, the first and second round, including all the separate waves of awards in each round, are complete and all funds are obligated. As a result, this report accounts for all the projects funded by BTOP and reflects the status for all BTOP projects.

Infrastructure projects that are funded by BTOP and receive a Special Award Condition that includes the preparation of an Environmental Assessment (EA) have six months from the date of award to submit the draft EA to NTIA/BTOP for review and comment. The project will be reported as finalized if a Finding of No Significant Impact determination is made following a sufficiency review of the final EA. Accordingly, the number of completed EAs reported will dramatically increase as the six month deadlines are realized and subsequent final EAs and FONSI are issued.

Economic Development Administration (EDA) (spreadsheet page 1, rows 8-9 and page 2 rows 52- 54):

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 an increase in salaries (spreadsheet page 1, row 8) from \$2,874,869 to \$2,901,762.

Census Bureau (spreadsheet page 1, row 10 and page 2 row 55):

NOTE: Obligations (spreadsheet page 1, row 10) fluctuated due to salary/payroll adjustments for Census activities as well as advertising contract close-out activities which resulted in final invoices lower than the original estimate.

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, row 55.) 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.

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 Mil to \$1.5 Mil to complete within the aggressive time-frame). 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 the remaining 40+ miles of tortoise-proof fencing 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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