

§ 221.72

(1) Be a license party; and
(2) File a written proposal with the Office of Habitat Conservation within 30 days after the deadline for NMFS to file preliminary prescriptions with FERC.

(b) *Content.* Your proposal must include:

(1) A description of the alternative, in an equivalent level of detail to NMFS's preliminary prescription;

(2) An explanation of how the alternative will be no less protective than the fishway prescribed by NMFS;

(3) An explanation of how the alternative, as compared to the preliminary prescription, will:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production;

(4) An explanation of how the alternative will affect:

(i) Energy supply, distribution, cost, and use;

(ii) Flood control;

(iii) Navigation;

(iv) Water supply;

(v) Air quality; and

(vi) Other aspects of environmental quality; and

(5) Specific citations to any scientific studies, literature, and other documented information relied on to support your proposal, including any assumptions you are making (*e.g.*, regarding the cost of energy or the rate of inflation). If any such document is not already in the license proceeding record, you must provide a copy with the proposal.

§ 221.72 What will NMFS do with a proposed alternative?

If any license party proposes an alternative to a preliminary prescription under § 221.71(a)(1), NMFS must do the following within 60 days after the deadline for filing comments to FERC's NEPA document under 18 CFR 5.25(c):

(a) Analyze the alternative under § 221.73; and

(b) File with FERC:

(1) Any prescription that NMFS adopts as its modified prescription; and

(2) Its analysis of the modified prescription and any proposed alternatives under § 221.73(c).

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§ 221.73 How will NMFS analyze a proposed alternative and formulate its modified prescription?

(a) In deciding whether to adopt a proposed alternative, NMFS must consider evidence and supporting material provided by any license party or otherwise available to NMFS including:

(1) Any evidence on the implementation costs or operational impacts for electricity production of the proposed alternative;

(2) Any comments received on NMFS's preliminary prescription;

(3) Any ALJ decision on disputed issues of material fact issued under § 221.60 with respect to the preliminary prescription;

(4) Comments received on any draft or final NEPA documents; and

(5) The license party's proposal under § 221.71.

(b) NMFS must adopt a proposed alternative if NMFS determines, based on substantial evidence provided by any license party or otherwise available to NMFS, that the alternative will be no less protective than NMFS's preliminary prescription and will, as compared to NMFS's preliminary prescription:

(1) Cost significantly less to implement; or

(2) Result in improved operation of the project works for electricity production.

(c) When NMFS files with FERC the prescription that NMFS adopts as its modified prescription under §§ 221.72(b), it must also file:

(1) A written statement explaining:

(i) The basis for the adopted prescription; and

(ii) If NMFS is not adopting any alternative, its reasons for not doing so; and

(2) Any study, data, and other factual information relied on that is not already part of the licensing proceeding record.

(d) The written statement under paragraph (c)(1) of this section must demonstrate that NMFS gave equal consideration to the effects of the prescription adopted and any alternative prescription not adopted on:

(1) Energy supply, distribution, cost, and use;

(2) Flood control;