



October 2019

INFRASTRUCTURE PROJECTS

Actions Needed to Fully Develop Performance Schedules for Environmental Reviews

GAO Highlights

Highlights of [GAO-20-19](#), a report to congressional addressees.

Why GAO Did This Study

FAST-41 outlined specific procedures for improving the timeliness, predictability, and transparency of the environmental review and authorization process for certain infrastructure projects in 10 specific sectors, including pipelines, renewable energy projects, and electricity transmission.

Congress included provisions in statute for GAO to review the efforts of the Permitting Council to implement FAST-41. This report examines, among other objectives, the Permitting Council's process for developing and assessing implementation of best practices for environmental reviews, and the steps the Permitting Council has taken to develop performance schedules for the 10 infrastructure sectors. GAO reviewed the Permitting Council's documents and guidance; evaluated the council's process for developing performance schedules against selected GAO best practices related to the development of the schedules; and interviewed officials from federal agencies that are members of the Permitting Council, as well as selected project sponsors selected based on several factors, including projects' status and infrastructure sector.

What GAO Recommends

GAO recommends that the Executive Director of the Permitting Council incorporate selected best practices into its process for developing performance schedules for infrastructure projects covered under FAST-41. The Executive Director agreed with the recommendation and described current and planned actions to address it.

View [GAO-20-19](#). For more information, contact Susan Fleming at (202) 512-4431 or flemings@gao.gov.

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INFRASTRUCTURE PROJECTS

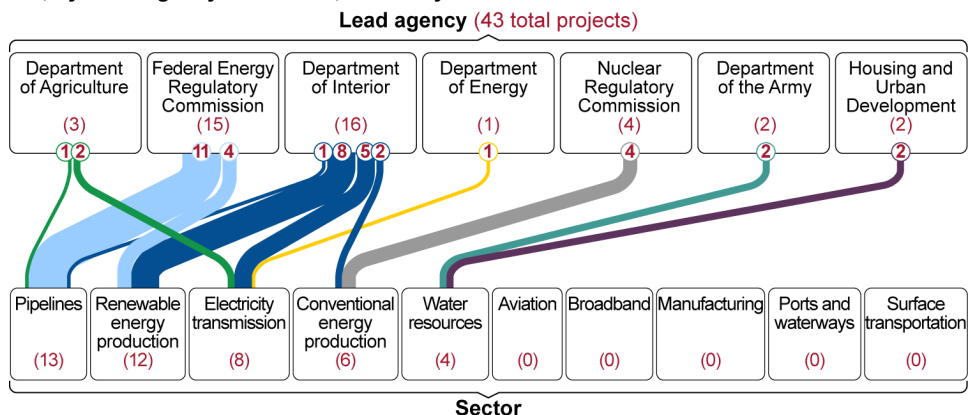
Actions Needed to Fully Develop Performance Schedules for Environmental Reviews

What GAO Found

GAO found that the Federal Permitting Improvement Steering Council's (Permitting Council) process for developing and assessing member agencies' implementation of best practices for environmental reviews and authorizations, as required by Title 41 of the Fixing America's Surface Transportation Act (FAST-41), was generally consistent with key features of effective interagency collaboration that GAO has previously identified, such as having shared goals and establishing mechanisms to measure performance. The Permitting Council, an interagency body established by FAST-41, oversees the implementation of FAST-41's provisions to streamline the federal permitting process.

As of July 2019, the Permitting Council has not issued performance schedules for ten infrastructure sectors, as mandated by FAST-41, due to a lack of sufficient project data and resource constraints. These schedules are to serve as baselines for environmental reviews and authorizations for projects covered under FAST-41. The Permitting Council has taken steps to develop performance schedules for the three infrastructure sectors—pipelines, renewable energy production, and electricity transmission—that account for 80 percent of the 43 FAST-41 projects (see figure). GAO found that the process the Permitting Council used to develop draft performance schedules for the three sectors did not fully implement two of three selected best practices for project schedules identified by GAO: (1) maintaining the baseline schedule and (2) conducting an analysis of potential risks. For example, the Permitting Council's process included identifying the relevant environmental review actions for infrastructure projects, but it did not take into account how potential risks, such as incomplete applications by project sponsors, could result in delays of the actions. Without incorporating these selected best practices, the Permitting Council will be constrained in developing defensible performance schedules against which to evaluate whether the FAST-41 process has improved the environmental review and authorization process.

Infrastructure Projects Covered under Title 41 of the Fixing America's Surface Transportation Act, by Lead Agency and Sector, as of July 2019



Source: GAO analysis of the Department of Transportation's permitting dashboard data on FAST-41 projects. | GAO-20-19

Contents

Letter		1
	Background	4
	The Permitting Council Used Interagency Collaboration to Develop and Assess Recommended Best Practices	10
	The Permitting Council Has Taken Steps to Develop Some Performance Schedules, but Its Process Does Not Fully Implement Best Practices	14
	Selected Stakeholders Identified Some Benefits of FAST-41 but Generally Agreed Its Streamlining Provisions Were More Appropriate for Large, Complex Infrastructure Projects	20
	Conclusions	25
	Recommendation for Executive Action	26
	Agency Comments	26
Appendix I	Comments from the Permitting Council	28
Appendix II	GAO Contact and Staff Acknowledgments	33
Table		
	Table 1: GAO’s Assessment of the Federal Permitting Infrastructure Steering Council’s Implementation of Selected Best Practices in the Development of Sector Performance Schedules	17
Figures		
	Figure 1: Selected Information Available on the Permitting Dashboard	8
	Figure 2: Infrastructure Projects Covered Under Title 41 of the Fixing America’s Surface Transportation Act (FAST-41) by Lead Agency and Sector, as of July 2019	9
	Figure 3: Mid-Barataria Sediment Diversion Project (included under Title 41 of the Fixing America’s Surface Transportation Act)	22

Abbreviations

CEQ	Council on Environmental Quality
EIS	environmental impact statement
FAST Act	Fixing America's Surface Transportation Act
FAST-41	Title 41 of the FAST Act
MOU	memorandum of understanding
NEPA	National Environmental Policy Act
OMB	Office of Management and Budget
Permitting Council	Federal Permitting Improvement Steering Council

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October 29, 2019

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

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Jerry Nadler
Chairman
The Honorable Doug Collins
Ranking Member
Committee on the Judiciary
House of Representative

Under the National Environmental Policy Act (NEPA), federal agencies are generally required to evaluate the potential environmental effects of actions they propose to carry out, fund, or approve, including the development of infrastructure projects. NEPA has been praised by proponents for helping protect the environment and for increasing public participation in government decision-making, but critics have criticized NEPA for requiring a time-consuming review process.

The 2015 Fixing America's Surface Transportation Act (FAST Act) was enacted to streamline permitting and to hold agencies accountable for their role in the process.¹ Title 41 of the FAST Act (FAST-41) included provisions intended to improve the timeliness, predictability, and transparency of the environmental review and authorization process for certain infrastructure projects, such as renewable or conventional energy production projects that require complex environmental reviews and authorizations and cost more than \$200 million, among other

¹Pub. L. No. 114-94, 128 Stat. 1312 (2015).

requirements.² The FAST Act also established the Federal Permitting Improvement Steering Council (Permitting Council), an interagency council chaired by a presidentially-appointed Executive Director, which is tasked with providing oversight of the implementation of FAST-41. The Executive Director is also responsible for developing recommended best practices for environmental reviews and authorizations, and performance schedules that specify the expected duration of most environmental reviews and authorizations for the infrastructure sectors of FAST-41 projects.

The FAST Act included provisions for us to assess the efforts of the Permitting Council to implement FAST-41, as well as the potential for expanding FAST-41 to include smaller infrastructure projects.³ This report:

- examines the extent to which the Permitting Council collaborated with council agencies to develop recommended best practices and to assess agencies' implementation of those practices;
- evaluates the steps the Permitting Council has taken to develop recommended performance schedules for environmental reviews for infrastructure projects; and
- provides selected stakeholders' views on the benefits and challenges of participating in the FAST-41 process, as well as on the implications of expanding the process to include smaller infrastructure projects currently not covered under FAST-41.

To determine the extent to which the Permitting Council collaborated with member agencies to develop its best practices and assess their implementation, we reviewed the Permitting Council's guidance, as well as its process and methodology for developing the best practices and assessing agencies' implementation of those recommended best practices. We also interviewed officials from selected member agencies of the Permitting Council to discuss the collaboration practices used in conducting Permitting Council meetings, developing the recommended best practices, and producing annual reports that assess agencies' implementation of those practices. We selected the Department of the

²For the purposes of this report, we refer to projects covered under FAST-41 as "FAST-41 projects."

³Pub. L. No. 114-94, div. D, tit. XLI §§ 41008 and 41011, 128 Stat. 1312, 1760-1761 (2015).

Interior, U.S. Army Corps of Engineers, Federal Energy Regulatory Commission, and Nuclear Regulatory Commission to interview because they were designated as the lead federal agencies on approximately 80 percent of FAST-41 projects. We assessed the Permitting Council collaborative efforts against six of the seven key features of collaborative efforts for interagency organizations that we previously identified.⁴

To evaluate the Permitting Council's steps to develop recommended performance schedules for environmental reviews for infrastructure projects, we interviewed the Executive Director regarding his office's plans for developing the schedules. We also reviewed GAO's Schedule Assessment Guide to identify best practices for assessing a schedule and selected three practices that we determined to be most relevant to the development of the Permitting Council's baseline performance schedules.⁵ We evaluated the process used to develop the performance schedules described by the Executive Director against the three selected practices. We interviewed the Executive Director and other officials regarding the steps they used to develop the schedules and compared the process they described with the selected best practices. We did not evaluate whether the draft schedules the Office of the Executive Director had developed for three infrastructure sectors were reliable because, according to the Executive Director, the schedules were still in development and had not yet been reviewed by the Permitting Council's member agencies.

To obtain selected stakeholder views regarding the benefits and challenges of participating in the FAST-41 process, we interviewed

⁴GAO, *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, [GAO-12-1022](#) (Washington, D.C.: Sept. 27, 2012). Key features include: written guidance and agreements, leadership, bridging organizational culture, clarity of roles and responsibilities, participants, resources, and outcomes and accountability. For this report, we did not evaluate collaboration related to resources as the Office of the Executive Director of the Permitting Council is funded through annual appropriations, and the FAST-41 environmental reviews and authorizations are performed by the individual council member agencies and supported by agency appropriations and collected fees.

⁵GAO, *Schedule Assessment Guide: Best Practices for Project Schedules*, [GAO-16-89G](#) (Washington, D.C.: December 2015). For this report, we evaluated the Permitting Council's implementation of three of the ten key practices identified in the Guide that were relevant to developing schedules: capturing all activities, conducting a schedule risk analysis, and maintaining a baseline schedule. We excluded the remaining practices from our evaluation because we could not assess the practices without evaluating completed schedules.

officials from four selected Permitting Council agencies. We also used publicly available data from the federal infrastructure Permitting Dashboard to select project sponsors and state agencies to interview based on various criteria, such as the status of the project, the project's infrastructure sector, and the length of the permitting process.⁶ In addition, we asked federal agencies and project sponsors for their perspectives on the applicability of these provisions to streamline federal permitting for smaller infrastructure projects currently not covered under FAST-41.

We conducted this performance audit from May 2018 to October 2019 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.

Background

FAST-41

Many proposed infrastructure projects undergo an environmental review and authorization process under various federal laws. This can include the review of licenses, permits, or other federal agency decisions necessary for a private, public, or public-private entity to site (the project's location), construct, reconstruct, or commence operations of an infrastructure project. Enacted in 1970, NEPA, along with subsequent Council on Environmental Quality's (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

⁶We selected projects that were from different infrastructure sectors and had varying permitting process lengths, in order to obtain diverse perspectives.

that this information is made available to the public.⁷ In addition, federal environmental laws, such as the Endangered Species Act or the Clean Water Act, may be triggered by a proposed infrastructure project and may require federal agencies to conduct environmental reviews and issue authorizations or permit decisions before a project can proceed.⁸

The provisions of FAST-41 establish an oversight framework for guiding the improvement of environmental review and authorization actions for a diverse portfolio of proposed large-scale, complex infrastructure projects across the nation. Specifically, FAST-41 applies to select projects, which are defined as any activity that requires authorization or environmental review by a federal agency involving construction of infrastructure in 10 sectors—renewable energy production, conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, and manufacturing.⁹ FAST-41 projects (1) are likely to require an investment of more than \$200 million, (2) are subject to NEPA, and (3) do not qualify for abbreviated environmental review processes, such as a categorical exclusion.¹⁰

⁷NEPA generally requires federal agencies to evaluate the potential environmental effects of actions they propose to carry out, fund, or approve (e.g., by authorization of permit) by preparing analyses of varying degrees of comprehensiveness depending on the significance of a proposed project's effects on the environment—from the most comprehensive environmental impact statements, to the less comprehensive environmental assessments and categorical exclusions. CEQ, an agency within the Executive Office of the President established by NEPA, is responsible for overseeing the implementation of NEPA through regulations and guidance that, among other things, are intended to make environmental reviews more efficient.

⁸The 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 the U.S. Fish and Wildlife Service or the National Marine Fisheries Service when an action they authorize, fund, or carry out, such as a highway or transit project, could affect listed species or their critical habitat. 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 U.S. Army Corps of Engineers.

⁹Additional sectors may be determined by a majority vote of the Permitting Council.

¹⁰A 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.

Federal Permitting Improvement Steering Council

FAST-41 established the Permitting Council to (1) oversee agencies' implementation of FAST-41, (2) facilitate the coordination of environmental review and authorization decisions for FAST-41 projects, and (3) help federal agencies institutionalize best practices to improve how environmental reviews and authorizations are conducted. The Permitting Council is composed of the following 14 federal departments and agencies, which must designate a member at the level of Deputy Secretary (or the equivalent) or higher to serve on the Council:

- Departments of Agriculture, Army, Commerce, the Interior, Energy, Transportation, Defense, Homeland Security, and Housing and Urban Development
- General Services Administration
- Environmental Protection Agency
- Federal Energy Regulatory Commission
- Nuclear Regulatory Commission
- Advisory Council on Historic Preservation

The Director of the Office of Management and Budget (OMB) and the Chairman of CEQ are also members of the council. The Executive Director of the Permitting Council serves as chair, and the council is required to develop and assess agencies' compliance with recommended best practices for environmental reviews and authorizations, and to develop performance schedules for each of the ten FAST-41 infrastructure sectors. These performance schedules are required to include the duration of most environmental reviews and authorizations for projects within each infrastructure sector and serve as baselines for setting project-specific timetables. FAST-41 also mandates that the Permitting Council and the Executive Director complete three reports on a recurring basis:

1. an annual report on the recommended best practices for environmental reviews and authorizations for infrastructure projects;
2. an annual report that assesses the performance of federal agencies based on the recommended best practices; and
3. a biennial report on recommended performance schedules for environmental reviews and authorizations most commonly required for each of the FAST-41 infrastructure sectors.

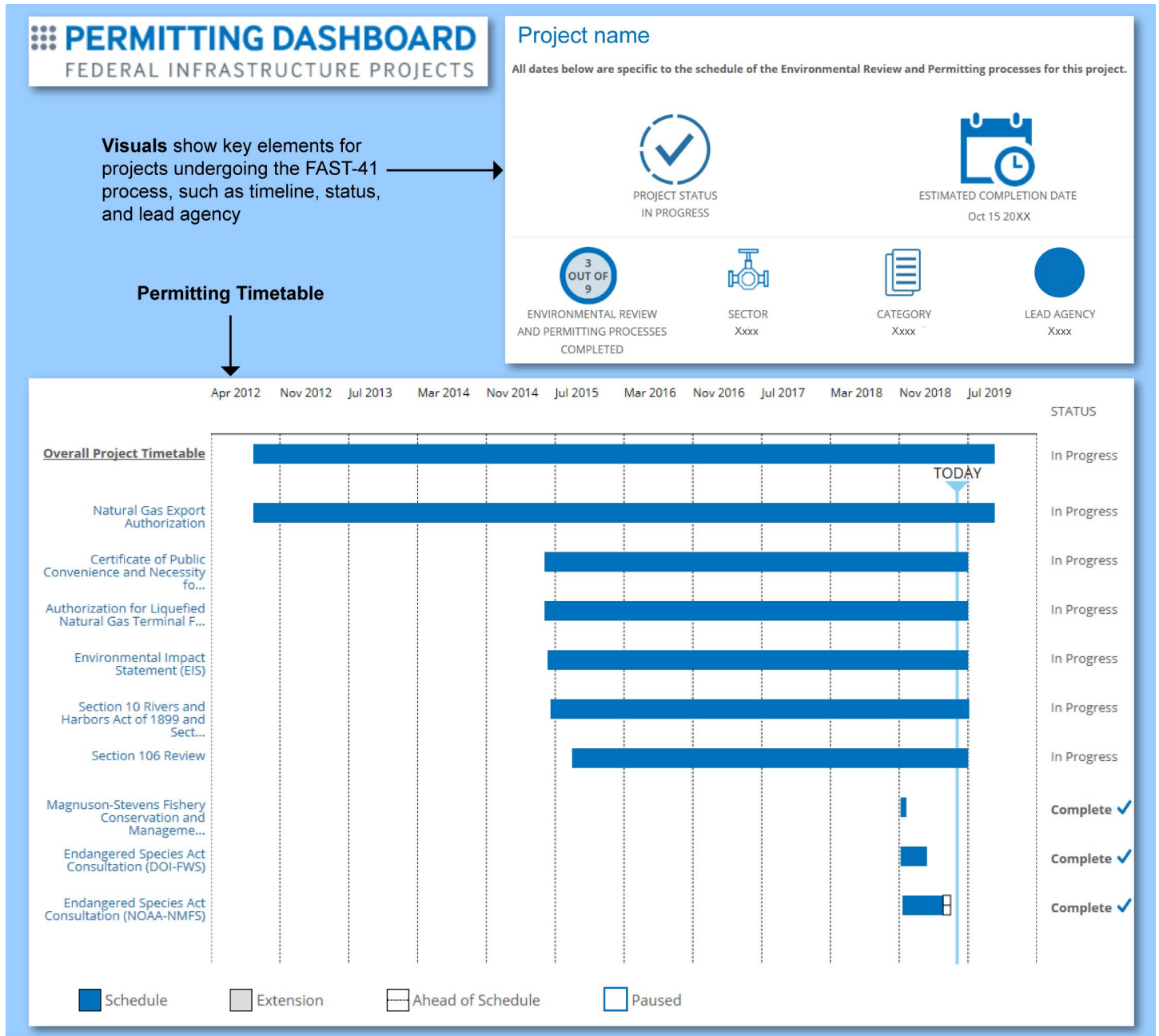
FAST-41 Process

FAST-41 outlines specific procedural requirements intended to improve the timeliness, predictability, and transparency of the federal environmental review and authorization process. FAST-41:

- Establishes the responsibilities of the lead agencies, cooperating and participating agencies, and project sponsors for the process. The lead agency is the federal agency with principal responsibility for an environmental review or authorization of a project. A cooperating agency is any agency that has jurisdiction by law or special expertise with respect to any environmental impact, and a participating agency participates in the environmental review or authorization for a project. A project sponsor is an entity—including any private, public, or public-private entity—seeking an authorization for a project.
- Requires that federal agencies develop a coordinated project plan, which is a plan for coordinating public and agency participation in the federal environmental review and authorization process for a project. The coordinated project plan, among other things, outlines agency roles and responsibilities, permitting timetables, and outreach and coordination efforts for each project.
- Requires that the Office of the Executive Director and the Permitting Council agencies publish and track the scheduled and completed federal agency environmental reviews and authorizations on the Permitting Dashboard.¹¹ The Permitting Dashboard is intended to provide transparency and facilitate inter-agency coordination on environmental reviews and authorizations for certain infrastructure projects, including those covered under FAST-41 (see fig. 1).

¹¹To become a covered project under FAST-41, among other requirements, project sponsors need to submit a FAST-41 initiation notice that includes a description of the project, as well as the purpose and objective of the project. Acceptance of the project as a FAST-41 project by federal agencies and posting of the project on the Permitting Dashboard marks the beginning of the FAST-41 process.

Figure 1: Selected Information Available on the Permitting Dashboard

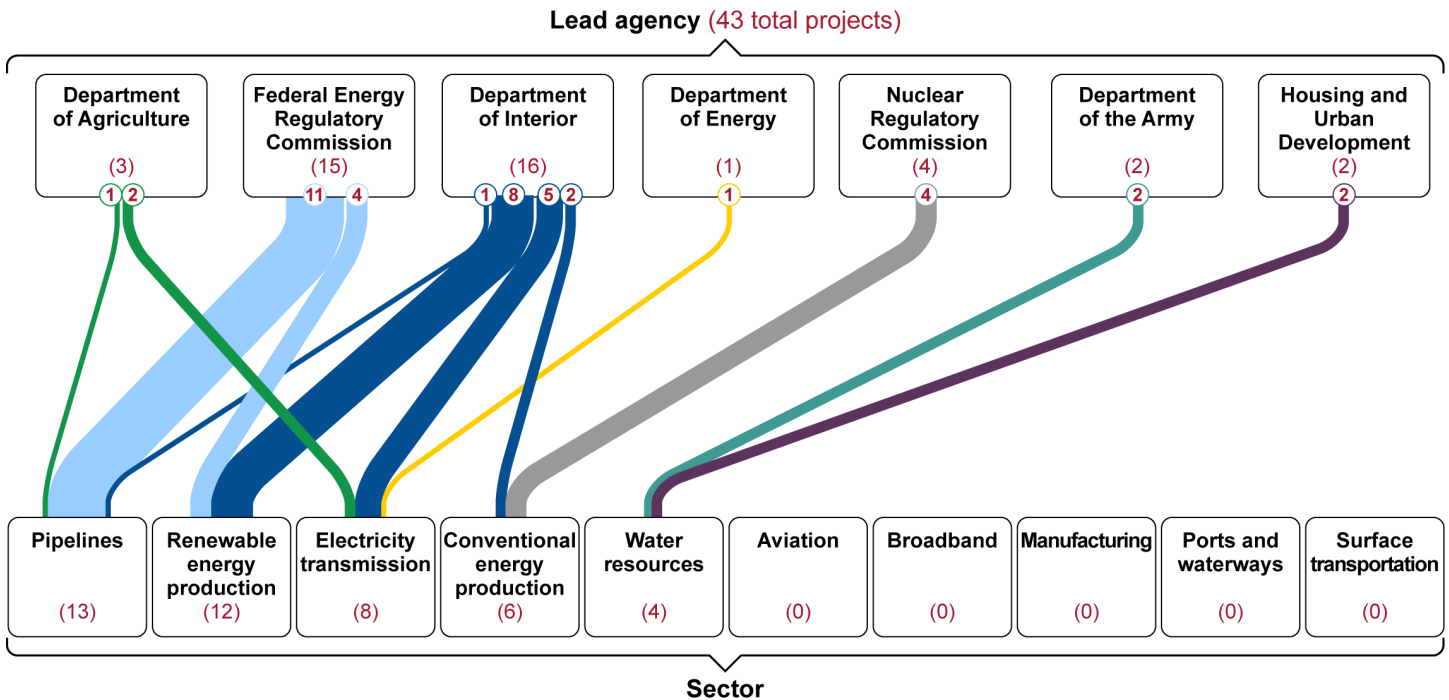


Source: GAO and www.permits.performance.gov | GAO-20-19

FAST-41 Projects

In September 2016, the Permitting Council established the initial inventory of FAST-41 projects by designating 34 projects pending environmental reviews or authorizations for inclusion. Participation in the FAST-41 process is voluntary for new projects and requires project sponsors to submit an initiation notice to apply for inclusion. As of July 2019, there have been a total of 43 FAST-41 projects in various stages of the environmental review and authorization process.¹² FAST-41 projects were led by various agencies and involved a range of sectors (see figure 2).

Figure 2: Infrastructure Projects Covered Under Title 41 of the Fixing America’s Surface Transportation Act (FAST-41) by Lead Agency and Sector, as of July 2019



Source: GAO analysis of the Department of Transportation’s permitting dashboard data on FAST-41 projects. | GAO-20-19

¹²Of these 43 FAST-41 projects, two were canceled before the environmental review and authorization process was completed. Of the remaining 41 FAST-41 projects, 16 projects (or 39 percent) have completed all of their federal environmental review and authorization processes. The remaining projects are in progress.

The Permitting Council Used Interagency Collaboration to Develop and Assess Recommended Best Practices

The Permitting Council process for developing and assessing its recommended best practices for environmental reviews and authorizations for FAST-41 infrastructure projects was generally consistent with selected key features for implementing interagency collaborative mechanisms that we have previously identified. FAST-41 requires that the Permitting Council develop recommended best practices in eight areas to improve federal environmental reviews and authorizations and assess agencies' implementation of the recommended best practices.¹³ The Permitting Council published annual reports on the recommended best practices in fiscal years 2017 through 2019, as well as annual reports in fiscal years 2016 through 2018 that evaluated agency implementation of these practices in each of the eight areas. We have previously reported on the importance of incorporating key features of collaborative mechanisms in interagency efforts.¹⁴

Based on our review of the selected Permitting Council documents and interviews with Permitting Council and other member agency officials, we found that the Permitting Council efforts generally utilized the key featured practices for effective interagency collaboration we have identified, as described below.¹⁵

- **Outcomes and accountability.** Our prior work has noted that collaborating agencies should have shared goals and should develop mechanisms to monitor, evaluate, and report on results that measure performance.¹⁶ Based on our review of the annual reports, the Permitting Council outlined objectives for each of the eight areas and identified specific, measurable actions that the Executive Director uses to assess agency implementation of the best practices.

¹³The eight areas in which the Permitting Council is required to develop best practices are: enhancing early stakeholder engagement, ensuring timely decisions, including through the development of performance metrics, improving coordination between federal and non-federal governmental entities, increasing transparency, reducing information collection requirements, developing and making available to applicants appropriate geographic information systems and other tools, creating and distributing training materials, and addressing other aspects of infrastructure permitting.

¹⁴[GAO-12-1022](#).

¹⁵As noted above, we assessed the Permitting Council's collaborative efforts to develop and assess its recommended best practices against six of the seven key features of collaborative efforts for interagency organizations that we previously identified.

¹⁶[GAO-12-1022](#).

According to the Executive Director, agencies provided feedback on the proposed best practices and suggested additional practices for the annual report. Officials from the Permitting Council member agencies we interviewed stated that the Executive Director requested comments on the recommended best practices and incorporated feedback provided by the agencies. In addition, the Permitting Council used metrics to measure the agencies' progress towards implementing the recommended best practices. For example, in 2017 and 2018 annual reports to Congress, the Permitting Council tracked agencies' implementation of the recommendations and provided a "score" for each agency based on the progress each agency made in implementing the recommended best practices. For example, the 2017 annual report calculated the percentage of infrastructure projects by lead agency that published a timetable on the Permitting Dashboard.

- **Bridging organizational cultures.** Our prior work has noted that collaborating agencies should establish ways to operate across agency boundaries and address their different organizational cultures.¹⁷ According to the Executive Director, the Permitting Council works together to improve the transparency and accountability of FAST-41 projects. The Permitting Council holds periodic meetings to discuss FAST-41 implementation, as well as project-specific coordination meetings between lead and cooperating agencies to discuss a variety of topics, from general coordination to issues concerning specific FAST-41 projects, according to the Office of the Executive Director. Officials from two agencies we interviewed stated that the additional coordination required under the FAST-41 process and the oversight provided by the Permitting Council ensures that agencies adhere to the established project environmental review and authorization timetables. In addition, the Permitting Council reported that it has expanded and updated the use of the online Permitting Dashboard to facilitate enhanced interagency coordination and provide transparency on project-specific permitting and review activities.
- **Leadership.** Our prior work has noted that committed and consistent leadership is needed when working across agencies.¹⁸ The FAST Act specified the agencies involved in the Permitting Council and directed that the Council be chaired by a presidentially-appointed Executive

¹⁷[GAO-12-1022](#).

¹⁸[GAO-12-1022](#).

Director. In fall 2018, the President appointed an Executive Director to lead the Permitting Council. The Executive Director has continued taking steps to fulfill the responsibilities identified in the FAST Act, such as establishing the inventory of FAST-41 projects, maintaining the Permitting Dashboard, and submitting annual reports to Congress detailing the progress accomplished under FAST-41.

- **Clarity of roles and responsibilities.** Our prior work has noted that agencies can obtain clarity by defining the roles and responsibilities of the collaborating agencies.¹⁹ FAST-41 guidance defines the roles and responsibilities of the federal and non-federal agencies involved in the FAST-41 process. For example, the guidance describes the authorities and responsibilities of the Executive Director, Permitting Council agencies, and the project sponsor. In addition, project-specific coordinated project plans outline the roles of the lead and cooperating agencies with NEPA or federal environmental review or authorization responsibilities for the project. For example, the coordinated project plan lists the agencies associated with the project and the specific environmental reviews and authorizations to be completed by the agency, as well as the proposed dates for completing those respective reviews and authorizations. According to one project sponsor representative, the coordinated project plan enhanced transparency by listing the milestones for environmental reviews and authorizations and documenting agencies' actions to complete those milestones.
- **Participants.** Our prior work noted that including relevant participants helps ensure individuals with the necessary knowledge, skills, and abilities will contribute to the collaborative effort.²⁰ FAST-41 established the Permitting Council, which is composed of 14 agencies, along with OMB and CEQ. According to FAST-41 guidance, these are the federal agencies that have financing, environmental review, authorization, or other responsibilities for the construction of a FAST-41 infrastructure project.²¹ Each agency is required to designate at least a Deputy Secretary or equivalent representative. In

¹⁹[GAO-12-1022](#).

²⁰[GAO-12-1022](#).

²¹OMB and CEQ issued guidance for agencies to carry out the responsibilities under FAST-41. Office of Management and Budget and Council on Environmental Quality, *Guidance to Federal Agencies Regarding the Environmental Review and Authorization Process for Infrastructure Projects*, OMB and CEQ Memorandum M-17-14, (January 13, 2017).

addition, each Permitting Council member agency is required to designate a Chief Environmental Review and Permitting Officer to provide advice and technical support to facilitate timely processes for environmental reviews and authorizations for FAST-41 projects, among other responsibilities. FAST-41 guidance recommends that these officials have the required seniority to facilitate successful coordination, as needed, across agency bureaus, modes, program offices, and programs, including programs implemented by states and other entities.

- **Written guidance and agreements.** Our prior work noted that agencies that formally document their agreements can strengthen their commitment to working collaboratively.²² Agencies and stakeholders may use multiple written agreements designed to improve coordination of the environmental review and authorization process. For example, each FAST-41 project requires a coordinated project plan, which is used to coordinate public and agency participation in, and completion of, any required federal environmental review and authorization for a FAST-41 project. In addition, according to FAST-41 guidance, the coordinated project plan should also take into consideration other existing agreements between agencies designed to improve coordination during the federal environmental review and authorization process.

²²[GAO-12-1022](#)

The Permitting Council Has Taken Steps to Develop Some Performance Schedules, but Its Process Does Not Fully Implement Best Practices

The Permitting Council Has Taken Steps to Develop Draft Performance Schedules for Three Sectors

The FAST Act required that the Permitting Council develop recommended performance schedules that would include the durations for most environmental reviews and authorizations for projects within each infrastructure sector. These schedules would also serve as baselines for setting project-specific timetables. The Permitting Council was to draw on 2 years of data from FAST-41 projects to develop the performance schedules. These performance schedules were to be completed by December 2016, within 1 year of the enactment of the FAST Act. As of July 2019, the Permitting Council had not published performance schedules for any of the ten sectors.²³ According to the Executive Director and Permitting Council reports, the Permitting Council has been unable to complete the mandated performance schedules for the following reasons:

- **The number of completed FAST-41 projects does not provide an adequate sample size to calculate a recommended performance schedule.** In the 2016 annual report to Congress, the Permitting Council cited a lack of sufficient data from FAST-41 projects to calculate a 2-year average for environmental review and authorization times for the development of sector performance schedules. As of July 2019, four of the 10 FAST-41 infrastructure sectors—aviation, broadband, manufacturing, and surface transportation—did not have

²³In its 2016 annual report to Congress, the Permitting Council published a generic permitting schedule that is based on the requirements of FAST-41. However, the generic schedule does not identify estimated time frames for the agency environmental reviews and authorizations. In addition, according to Permitting Council officials, the generic schedule is not used to assess agency results in implementing FAST-41.

any FAST-41 projects or data on the Permitting Dashboard.²⁴

Furthermore, other sectors, such as water resources, include FAST-41 projects that are not completed and would not provide enough data to develop a baseline.

- **While data from projects not included in FAST-41 could also potentially be used to develop the performance schedules, there were limitations in the environmental review and authorization data maintained by federal agencies due to a lack of internal agency tracking systems.** The Permitting Council agencies started collecting FAST-41 project data in fiscal year 2016, which may provide accurate data to help calculate baseline schedules going forward, but at present, sufficient data are not yet available for this purpose.
- **According to the Executive Director, his office does not have enough staff to develop the performance schedules.** However, the Executive Director anticipates increased funding through appropriations and proposed initiation fees that project sponsors would pay to reimburse the Permitting Council for the costs of implementing FAST-41. The funding will be used to support additional staff, who would increase the office's ability to develop performance schedules, according to the Office of the Executive Director. Additional staff could perform data editing and review to improve the quality of the environmental review and authorization data that agencies submit to the Permitting Dashboard, and enable the Office of the Executive Director to conduct additional analysis.

Despite these factors, officials in the Office of the Executive Director told us the Permitting Council was taking steps to develop performance schedules for three of the ten FAST-41 sectors. According to those officials, the Council decided to focus on the three sectors that, to date, contained almost 80 percent of FAST-41 projects—pipelines, renewable energy production, and electricity transmission. Absent sufficient data from FAST-41 projects on the Permitting Dashboard to develop performance schedules, the Office of the Executive Director collected additional data from similar infrastructure projects not covered under FAST-41. The Executive Director said the three performance schedules are awaiting review by Permitting Council agencies. According to the Executive Director, there is a lack of sufficient data on projects (both

²⁴According to the Executive Director, one ports and waterways sector project was initiated under FAST-41 in July 2019, but no milestones or data have been added to the Permitting Dashboard.

those included and not included in FAST-41) to develop performance schedules for the remaining seven sectors. For example, while collecting project data from the Environmental Impact Statement Database,²⁵ the Executive Director found that there was an inadequate sample size of projects in the seven remaining sectors that would have qualified for inclusion in the FAST-41 process.

In addition to the lack of available project data, the Executive Director noted concerns with the quality of the data. The 2018 annual report to Congress stated that the completeness of the Permitting Dashboard data are critical to gathering project data to develop the required performance schedules. The Permitting Council reported that it has worked with the FAST-41 lead and cooperating agencies to improve the completeness of permitting data on the Permitting Dashboard, and that it has continued to engage agencies to gather needed data to draft the recommended performance schedules. According to the Executive Director, the Permitting Council will continue to develop performance schedules for the other sectors as additional data become available through the Permitting Dashboard.

The Permitting Council's Process for Developing Draft Performance Schedules Does Not Fully Implement Two of Three Selected Best Practices

We have previously reported on best practices for developing project schedules, which provide not only a road map for systematic project execution, but also the means by which to gauge program performance against a baseline, identify and resolve potential problems, and promote accountability at all levels of the program.²⁶ While the Office of the Executive Director has taken steps to develop the mandated performance schedules for three of the FAST-41 infrastructure sectors, we determined that the process does not fully implement two of the three selected best practices for developing performance schedules we have identified (see table 1).

²⁵The Environmental Impact Statement (EIS) Database provides information about EISs prepared by federal agencies, as well as the Environmental Protection Agency's comments concerning the EISs. The database is maintained by the Environmental Protection Agency and contains records of all EISs received by the agency since 1987.

²⁶GAO, *Schedule Assessment Guide: Best Practices for Project Schedules*, [GAO-16-89G](#) (Washington, D.C.: December 2015).

Table 1: GAO’s Assessment of the Federal Permitting Infrastructure Steering Council’s Implementation of Selected Best Practices in the Development of Sector Performance Schedules

GAO selected best practice for developing schedules	Description of the best practice	GAO assessment of Permitting Council implementation
Capture all actions	Project schedules should reflect all the activities that will accomplish all of the actions associated with a project.	Implemented
Maintain the baseline schedule	Establishing and maintaining a baseline schedule are the bases for measuring, monitoring, and reporting program performance. The schedule should be continually monitored to reveal when forecasted completion dates differ from baseline dates. A corresponding basis document explains the overall approach of the program, including the rules and assumptions used to establish and maintain the schedules	Not fully implemented
Conduct a risk analysis	Organizations should recognize that uncertainties and risks exist and include the results of a risk analysis in creating a baseline schedule.	Not fully implemented

Source: GAO analysis of Permitting Council documents and interviews. | GAO-20-19

- **Capture all actions.** According to Office of the Executive Director, it determined the major potential environmental review and authorization actions for the majority of projects in each of the three FAST-41 sectors, as well as their expected durations, by:
 - Analyzing each sector’s FAST-41 projects to determine the major potential environmental review and authorization actions for the majority of projects, such as the Endangered Species Act consultations, National Historic Preservation Act reviews, and Clean Water Act permits. For example, the office identified seven federal agencies’ environmental review and authorization actions, such as Endangered Species Act consultations and Clean Water Act permits, for transmission and renewable energy projects. According to the Office of the Executive Director, the environmental review and authorization actions required for a given project are dependent upon a variety of factors, such as the type of permit proposed or changes in statute, regulation, or procedures that determine how agencies process various environmental reviews or authorizations.
 - Collecting data from 59 randomly selected projects in these sectors using the Environmental Impact Statement database, and contacting agencies directly to confirm and correct revised and missing data to ensure the data used for the performance

schedules were accurate. From these collected data, the office calculated the average time to complete each environmental review or authorization in order to establish project milestones.

- **Maintain the baseline schedule.** A key aspect of maintaining the baseline schedule is to develop a basis document that explains the overall approach of the program, including ground rules and assumptions. Our prior work has noted that a basis document would include a detailed explanation or rationale for the basic approach to estimating key environmental and authorization durations for the different sectors. For example, a basis document could include a description of the factors that affect a given project schedule, such as geographic location and type of environmental reviews and authorizations that may be completed. While the Executive Director said he considered some of these issues in developing the draft schedules, his office had not created a basis document. The Executive Director told us that he anticipated agencies would identify additional considerations after they had reviewed the draft schedules. As we have previously noted, however, a basis document would provide agencies with an understanding of the schedules' development and underlying assumptions, and it can be updated to reflect additional considerations as needed.²⁷
- **Conduct a risk analysis.** A risk analysis identifies the potential risks and uncertainties that could affect the duration of environmental review and authorization actions, and includes a calculation of the margin of extra time needed to account for these factors. According to the Office of the Executive Director, the office did not conduct a formal risk analysis because it does not perform the environmental reviews and authorizations and could not provide an assessment of the potential risks. However, the Office of the Executive Director reported that the office continued to work with agencies to gather the required data to draft recommended performance schedules. In addition, the Executive Director said his office had identified some risks that could potentially affect time frames for environmental reviews and authorizations, such as modifications to an agency's processing procedures, and delayed or incomplete project application submissions, but did not use them in a risk analysis to calculate the performance schedule baselines. Without an analysis that incorporates those potential risks, the Permitting Council may be unable to determine the likelihood of projects completing

²⁷[GAO-16-89G](#)

environmental reviews and authorizations within the time frames specified by the baseline schedules. Furthermore, because the durations of each activity may be affected by risks and uncertainties, project schedules may underestimate the overall durations of environmental reviews and authorizations.

Without implementing selected best practices for developing performance schedules, the Office of the Executive Director may not be able to develop defensible baseline schedules against which to measure program performance. Such schedules would support Permitting Council efforts to evaluate whether FAST-41 has resulted in improvements in the timeliness, predictability, and transparency of the environmental review and authorization process for FAST-41 projects.

Selected Stakeholders Identified Some Benefits of FAST-41 but Generally Agreed Its Streamlining Provisions Were More Appropriate for Large, Complex Infrastructure Projects

Selected Stakeholders Cited Increased Transparency and Enhanced Coordination as Key FAST-41 Benefits

Selected project stakeholders we spoke with most frequently cited two benefits of the environmental streamlining provisions in FAST-41: (1) increased transparency and accountability, and (2) enhanced interagency coordination.²⁸

- **Increased transparency and accountability:** Ten of the 17 project stakeholders we spoke with told us that FAST-41 has increased the transparency and accountability of the environmental review and authorization processes for FAST-41 infrastructure projects. For example, according to some project stakeholders, the reporting of target permitting milestones on the Permitting Dashboard has helped increase the predictability and efficiency of permitting decisions by allowing all stakeholders to be fully informed about the environmental review and authorization process. In addition, some project sponsor representatives said the Permitting Council provides high-level oversight to ensure that federal agencies adhere to established

²⁸Project stakeholders cited these benefits based on their experience participating in or leading the FAST-41 streamlining provisions. However, not every project sponsor provided GAO with perspectives on the FAST-41 streamlining provisions, as some were legacy projects (i.e. projects underway at the time FAST-41 legislation had passed, yet were entered into the program), or were in the initial stages of the FAST-41 process and could not readily speak to the benefits and challenges.

permitting timetables developed and posted on the Permitting Dashboard.²⁹

- **Enhanced interagency coordination:** Ten of the 17 project stakeholders we spoke with told us that the streamlining provisions in FAST-41 have helped to enhance interagency coordination. Within 60 days of a project's initiation under FAST-41, the lead federal agency must work with other cooperating and participating agencies to develop the coordinated project plan, a process that coordinates public and agency participation in, and completion of, any required federal environmental reviews and authorizations. In drafting the coordinated project plan, FAST-41 guidance requires agencies to focus on those environmental reviews and authorizations that are complex, require extensive coordination, and might significantly affect the project review schedule. According to one project sponsor's representative, improved coordination among the participating and cooperating agencies has helped to accelerate the environmental review and permitting process for large, complex projects. In particular, the project sponsor stated that the coordinated project plan between the lead and cooperating agencies helped to bolster interagency coordination, which was not as robust prior to FAST-41. We have previously reported that establishing coordinating agreements among agencies can streamline the permitting process and reduce the time required to complete routine processes.³⁰ According to the Executive Director, the Mid-Barataria Sediment Diversion project's memorandum of understanding (MOU) between the state of Louisiana and the federal permitting agencies was a key example of interagency coordination.³¹ (See figure 3 for more information on this project.) The MOU established roles and responsibilities for both federal and state permitting agencies. In

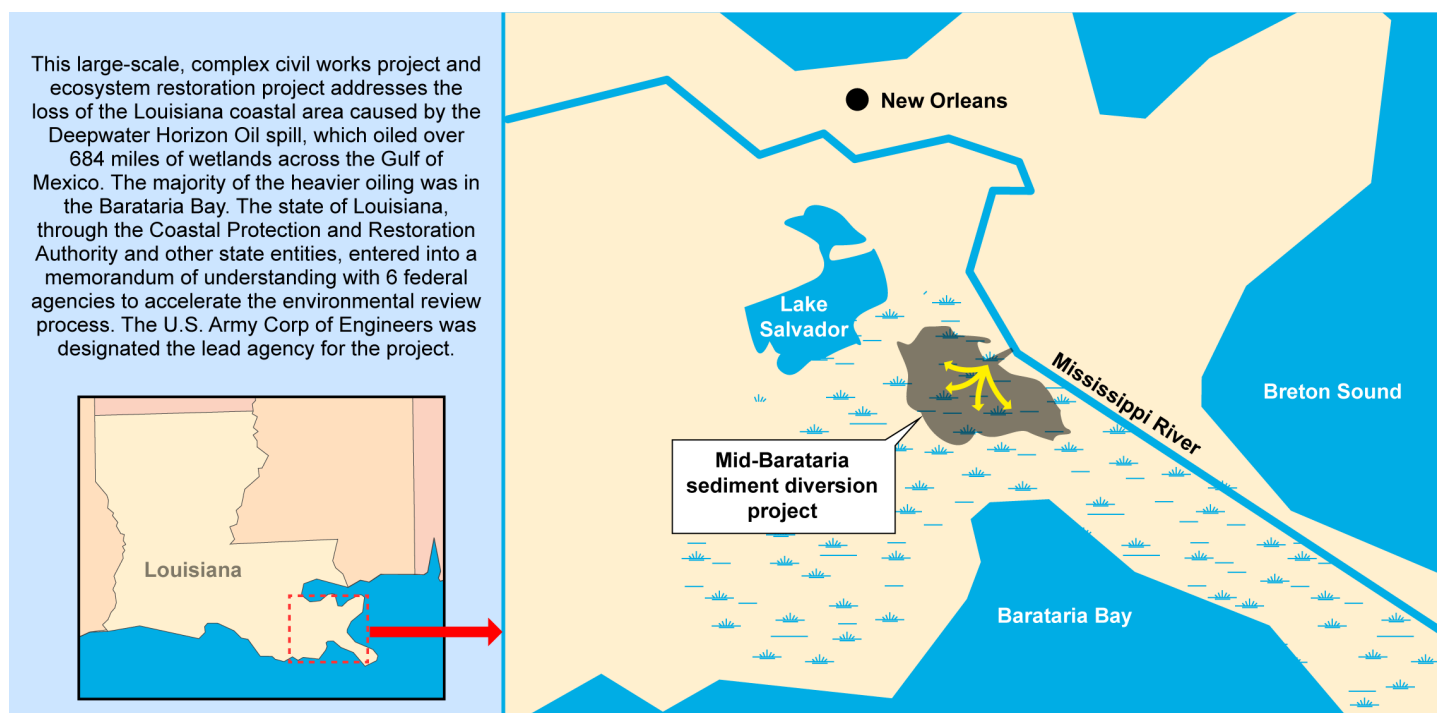
²⁹In addition, the Permitting Council must report to Congress if the total length of modifications to a permitting timetable delays the permitting process for a project covered by FAST-41 by more than 150% of the original schedule.

³⁰For example, in our February 2013 review of natural gas pipeline permitting, we reported that the Federal Energy Regulatory Commission and nine other agencies signed an interagency agreement for early coordination of required environmental and historic preservation reviews to encourage the timely development of pipeline projects. GAO, *Pipeline Permitting: Interstate and Intrastate Natural Gas Permitting Processes Include Multiple Steps, and Time Frames Vary*, [GAO-13-221](#) (Washington, D.C.: February 15, 2013).

³¹Any coordinated project plan with state, local and tribal agencies should, to the maximum extent practicable, be included in a MOU pursuant to 42 U.S.C. § 4370m-2(c)(3)(C).

developing the MOU, the Executive Director identified complex questions related to NEPA's implementation not yet resolved by the agencies and worked with CEQ to provide subject matter expertise to the agencies to assist them in determining their next steps. According to the Executive Director, this enhanced interagency coordination resulted in the reduction of the current permitting schedule by nearly 2 years.

Figure 3: Mid-Barataria Sediment Diversion Project (included under Title 41 of the Fixing America's Surface Transportation Act)



Source: GAO analysis of project documentation. | GAO-20-19

Selected Stakeholders Cited a Lack of Awareness of the FAST-41 Process and Its Potential Benefits and Challenges

According to some project sponsor representatives we interviewed, lack of awareness of FAST-41's streamlining provisions and their potential benefits was a challenge they faced in participating in the process.

- Lack of awareness of the FAST-41 process.** Ten project sponsors' representatives said the lack of knowledge about the FAST-41 streamlining provisions was a challenge they faced participating in the process. According to one project sponsor's representative, the lead agency for the project said the FAST-41 process would result in schedule delays and adversely affect project timeframes. Some project sponsor representatives suggested that lead and cooperating

agencies, particularly at the field level, could benefit from training in their roles and responsibilities in implementing FAST-41. Another project sponsor representative said the sponsor decided not to opt in to FAST-41 due to its own lack of knowledge about the FAST-41 process and greater familiarity with the traditional permitting process.

- **Lack of awareness of the potential benefits of FAST-41.** Nine project sponsors' representatives told us they would like to know more about the measurable, tangible benefits of the FAST-41 streamlining provisions. For example, one project sponsor's representative said that additional information about the project costs and time saved by participating in the process would help project sponsors decide early in the project development process whether to opt in to the FAST-41 process. As stated above, developing defensible performance schedules and using them to assess the performance of FAST-41 projects would enable the Executive Director to report on the time saved by a project's inclusion in the FAST-41 process.

The Executive Director told us he has participated on panels at several large conferences to educate stakeholders on the benefits of FAST-41; conducted workshops for new FAST-41 projects to emphasize to stakeholders the importance of agencies coordination and planning; and has been involved in early coordination meetings with projects' stakeholders to clarify roles and responsibilities in order to streamline decision-making. In addition, the Executive Director coordinated with the Department of Transportation to modify the project timetable framework on the Permitting Dashboard to better display the various steps required in agencies environmental review and authorization processes.³² The updated timetable framework, according to the Permitting Council, could result in more transparent roles and responsibilities, as well as a better understanding of the dependencies that exist between various agency reviews and authorizations and how they relate to the overall project timeline.

In addition, the Executive Director told us that he secured agreements with some member agencies of the Permitting Council to detail senior-level staff responsible for coordinating federal environmental reviews on the ground to either the Executive Director or other lead and cooperating agencies. According to the Executive Director, these detailees will facilitate greater communication among the member agencies and the

³²The Department of Transportation, through its Infrastructure Permitting Improvement Center, manages the Permitting Dashboard on behalf of the Permitting Council.

Office of the Executive Director and improve the implementation of the recommended best practices at their home agencies.

Selected Stakeholders Generally Agreed That FAST-41 Streamlining Provisions Are More Appropriate for Large, Complex Infrastructure Projects

Selected stakeholders generally agreed that while smaller infrastructure projects could potentially benefit from FAST-41, the process was more appropriate for large, complex infrastructure projects that involve multiple federal and state permitting agencies. Some project sponsor representatives noted that less complex projects do not require major permits and approvals, thus limiting the potential effect of FAST-41, and that some smaller infrastructure projects already have expedited environmental review and permitting processes.

Permitting Council officials stated that while the most significant benefit of the FAST-41 process is to increase the efficiency of the environmental review and authorization process of large, complex projects, some of the best practices learned from the larger projects may be institutionalized within and across the permitting agencies and appropriately applied to all infrastructure projects regardless of size. Permitting Council officials said that while the Council has the authority to track relatively smaller infrastructure projects on the Permitting Dashboard, FAST-41 streamlining provisions are targeted to relatively the larger, more complex projects.³³

According to some of the project stakeholders we interviewed, revising the threshold requirements of FAST-41 to include smaller infrastructure projects could have the following negative effects:

- **Increased workloads/human capital challenges:** According to some project stakeholders, a potential expansion could increase the workloads of federal and state agencies. For example, one project sponsor representative noted that the federal agencies, in particular, are already busy implementing FAST-41, other administration priorities and executive orders, and their own missions. Additionally, the Executive Director said that there could be limitations to the support his office could provide for smaller, non-FAST-41 projects, due to its own resource limitations.

³³Under Exec. Order No. 13,807, 83 Fed. Reg. 40,463 (Aug. 15, 2017), in addition to the major infrastructure projects, the Executive Director can also monitor other classes of projects on the Permitting Dashboard at its discretion.

- **Slower environmental reviews and permitting decisions:**

According to some project sponsor representatives, applying all of the FAST-41 requirements to smaller projects would not necessarily result in faster reviews, and adding smaller projects to the FAST-41 process could slow the federal reviews of the larger, more complex projects, which often require more attention from federal permitting agencies.

Although we did not evaluate these potential effects, they provide context for the consideration of any changes to the threshold requirements of FAST-41 infrastructure projects. Moreover, some stakeholders said that the Permitting Council's proposed initiation fee could adversely affect FAST-41 participation, especially for smaller infrastructure projects. The Permitting Council has proposed rulemaking to establish an initiation fee for project sponsors to reimburse the Executive Director for the costs of implementing FAST-41's requirements and authorities.³⁴ According to some project stakeholders, the proposed fee schedule of \$200,000 for initiating the FAST-41 process could be a deterrent to sponsors of smaller-scale infrastructure projects that might otherwise opt for the FAST-41 process. According to one project sponsor, there needs to be some consideration given to the appropriate threshold for a smaller infrastructure project's inclusion in the process. For example, a project with \$200 million in capital investments might be able to afford to pay the fee, but a smaller infrastructure project might not be able to do so.

Conclusions

Title 41 of the FAST Act aims to streamline the often complex environmental review and authorization process that many major infrastructure projects are required to undergo. The Executive Director's office has made some progress in developing performance schedules for three FAST-41 infrastructure sectors. These performance schedules, when completed could enable the Executive Director to assess time and cost savings by comparing baseline and actual projects' time frames. Implementing selected best practices that we identified for developing schedules—specifically, maintaining the baseline schedule and conducting a risk analysis—would enable the Office of the Executive Director to create more defensible performance schedules, and therefore to more effectively gauge program effectiveness, identify and resolve

³⁴Notice of Proposed Rulemaking, Fees for Governance, Oversight, and Processing of Environmental Reviews and Authorizations by the Federal Permitting Improvement Steering Council, 83 Fed. Reg. 44,846 (Sept. 4, 2018.)

potential problems, and promote accountability at all levels of the FAST-41 process.

Recommendation for Executive Action

The Executive Director of the Permitting Council should incorporate selected best practices we have identified (maintaining the baseline schedule and conducting a risk analysis) into the Permitting Council's process for developing performance schedules for the infrastructure sectors covered under FAST-41. (Recommendation 1)

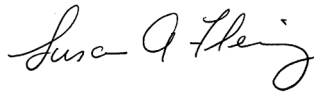
Agency Comments

We provided a draft of the report to the Office of Executive Director of the Permitting Council, CEQ, Departments of Defense and the Interior, Federal Energy Regulatory Commission, and Nuclear Regulatory Commission. We received written comments from the Office of the Executive Director of the Permitting Council that are reprinted in appendix I. The Office of the Executive Director concurred with our recommendations and also described additional efforts it is undertaking to incorporate into its processes the best practices we identified for developing performance schedules. However, we are unable to assess the extent to which these efforts fully implement GAO best practices, because the Permitting Council has not yet published baseline performance schedules and associated documentation. We will continue to monitor these efforts as part of our regular recommendation follow-up.

In addition, the Department of the Interior, Federal Energy Regulatory Commission, and CEQ provided technical comments, which we incorporated as appropriate. The Department of Defense and the Nuclear Regulatory Commission told us they had no comments.

We are sending copies of this report to the appropriate congressional committees, the Council on Environmental Quality, the Departments of Defense and the Interior, Federal Energy Regulatory Commission, the Nuclear Regulatory Commission, and other interested parties. In addition, the report is available at no charge on the GAO 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 II.



Susan Fleming
Director, Physical Infrastructure Issues

Appendix I: Comments from the Permitting Council



PERMITTING COUNCIL

Transparency • Efficiency • Accountability

October 15, 2019

Susan Fleming
Physical Infrastructure Director
U.S. Government Accountability Office
Washington, DC

Dear Ms. Fleming:

The Federal Permitting Improvement Steering Council (Permitting Council) – Office of the Executive Director (OED) appreciates the opportunity to review and comment on the U.S. Government Accountability Office (GAO) draft report entitled *Infrastructure Projects: Actions Needed to Fully Develop Performance Schedules for Environmental Reviews* (GAO-20-19).

GAO made the following recommendation to the Permitting Council: "The Executive Director of the Permitting Council should incorporate selected best practices we have identified (maintaining the baseline schedule and conducting a risk analysis) into its process for developing performance schedules for the infrastructure sectors covered under FAST-41."

OED concurs with the recommendation but offers supplemental information, which provides a more robust and accurate assessment of the full scope of the Permitting Council activities and reports that directly relate to the GAO recommendations (see enclosure). This supplemental information is not part of the initial scope of the statutory mandate or the expanded GAO inquiry. However, the associated technical explanation in the attached OED comments will further identify current Permitting Council activities that incorporate to the maximum extent practicable the selected best practices identified by GAO into the current draft baseline schedules. Additionally, the enclosure includes steps OED has already taken to incorporate this recommendation into the development of future baseline schedules.

If you have any questions or concerns, please contact me at (202) 322-6856 or Alexander.Herrgott@fpisc.gov.

Sincerely,


Alexander Herrgott
Executive Director, Federal Permitting Improvement Steering Council

Enclosure

cc: The Honorable Gene L. Dodaro, Comptroller General

Federal Permitting Improvement Steering Council • Office of the Executive Director
General Services Administration Headquarters • 1800 F Street NW • Washington, DC 20405
Email: FASTFortyOne@fpisc.gov

Enclosure

Federal Permitting Improvement Steering Council – Office of the Executive Director
Actions Planned to Address the Recommendations in the GAO Draft Report
Actions Needed to Fully Develop Performance Schedules for Environmental Reviews
(GAO-20-19)

Recommendation: 1

“The Executive Director of the Permitting Council should incorporate selected best practices we have identified (maintaining the baseline schedule and conducting a risk analysis) into its process for developing performance schedules for the infrastructure sectors covered under FAST-41.”

Response: Recommendation 1

Part A:

The Executive Director’s maintenance and utilization of the baseline schedule to measure, monitor, and report program performance.

OED concurs with this GAO recommendation but offers supplemental analysis for GAO reference as to how current and planned activities and reports sufficiently address GAO’s recommendations. OED, with the support of the Permitting Council, is actively implementing internal procedures and guidance to effectively utilize draft baseline schedules, particularly under unprecedented and evolving Administrative instruction to agencies. Some of these directions enforce enhanced coordination, modernize data management, institute agency-wide requirements on concurrent reviews, establish new elevation and dispute resolution requirements, and require technology modernization away from a legacy paper-based system with an expressed intent to execute a 2-year goal under Executive Order 13807. Therefore, projects that have applied to become covered under FAST-41 have schedules that are shorter than those of the draft baseline schedules, which are based on projects completed prior to implementation of Executive Order 13807. These baselines encompassed dates as recent as possible, however some dates reached back as far as nine years to populate a proper sample size.

OED’s development of the current Draft Recommended Performance Schedule Report (*herein referred to as the baseline schedule*) supplemented the data available at the time of development of the Permitting Dashboard with data from previously completed projects to ensure a reliable and sufficiently informative reference set. In the intervening time since those projects’ environmental review and authorization actions occurred, policy changes across government and within agencies have been implemented that have significantly altered traditional factors that directly impact permitting timetables. These policy changes presented significant challenges to create a relevant empirical-based data set to instruct an appropriate baseline in which to sufficiently evaluate agency-wide permitting timetable performance. The Executive Director has directed the

Permitting Council to avoid presenting a false narrative of incremental agency-wide performance gains on timeframes, measuring against static baseline performance schedule that relies on increasingly irrelevant past reference data sets. The Executive Director has also directed the Permitting Council to augment the baseline schedule with new informative elements of the Annual Report to Congress (ARC) and the Best Practices (BP) Report to provide a relevant dynamic assessment of agency-wide performance in increasing transparency, accountability, and predictability in the environmental review and authorization process.

Therefore, in addition to other reports and tools, the current draft baseline schedules serve, to the maximum extent practicable and reasonable, as the most reliable and accurate baseline OED can use to measure, monitor, and report program performance. FAST-41 agency-wide implementation and Executive Order 13807 have drastically changed agencies' permitting schedules in the last 24 months. OED is collecting data on target versus actual dates for environmental review and authorization actions as these projects progress under the new in environmental review process paradigm. This will allow OED to compare those target and actual dates with the baseline schedules, which can then be reported and included in the ARC to provide a dynamic assessment of actual agency performance to better inform Congress and the public.

Part B:

How OED is incorporating risk into the recommended performance schedules (baseline schedules):

While OED concurs with this GAO recommendation, OED offers supplemental analysis to evaluate current OED methodology and performance as it relates to this GAO best practice recommendation. This additional information seeks to demonstrate the OED's consistent reliance on real-time, dynamic, and agency-wide assessment of performance schedules, employed across multiple Permitting Council activities and reports that sufficiently address risk analysis. Furthermore, the Executive Director believes OED currently conducts and incorporates an innovative dynamic assessment of risk and uncertainty and probability and source of delay in other Permitting Council activities and reports, which would be difficult to incorporate effectively into static draft baseline schedules. Furthermore, OED, in coordination with the Department of Transportation (DOT), continues to develop additional features on the Permitting Dashboard that will allow remaining identified sources of risk to be tracked and incorporated into future baseline schedules. The Executive Director believes that this is an optimal data-driven tool to monitor and measure actual agency-wide performance on improving the environmental review process than GAO's recommended risk analysis on existing baseline schedules.

The Permitting Council captures areas of risk and uncertainty through various Permitting Council activities and reports such as the Permitting Dashboard, Coordinated Project Plans, baseline schedules, the ARC, and project-specific daily coordination with the Permitting Council agencies. Data on the causes of schedule variability for the projects used to supplement the Permitting Dashboard data in the draft baseline

schedules is not available. However, OED is actively utilizing the above FAST-41 workflows to identify and track recurring sources of uncertainty and risk to project schedules. OED will utilize this information in the development and maintenance of future baseline schedules going forward to minimize sources of uncertainty and risk.

Examples of risk analysis already identified by the OED and incorporated to the maximum extent practicable and reasonable into the draft baseline schedules include:

- Additional mandatory timelines – Agencies may have additional statutory timelines with which they are required to comply. FAST-41 permitting timetables are required to be consistent with any other applicable time period established by Federal law. (42 U.S.C. § 4370m-2(c)(2)(E)).
- Dependency on other agencies for layered and independent authorizations – Agencies often rely on the completion of other agencies' environmental review and authorization actions prior to completing their own. For example, the U.S. Army Corps of Engineers (USACE) may have to rely on the lead agency to complete the Endangered Species Act (ESA) or National Historic Preservation Act Section 106 consultation process before they can complete their Rivers and Harbors Act Section 10 or Clean Water Act 404 review. The Permitting Dashboard now tracks these inter-agency dependencies and their impacts to the overall schedule in real-time, which can then be accounted for in future baseline schedules. Current draft baseline performance schedules do not effectively instruct the actual reason for the delay of the final element of the authorization tracked by the baseline schedules. In recognition of this risk and uncertainty, OED methodology employs a far more comprehensive and instructive approach to fully inform agency-wide performance on causality of delay. Absent this more accurate assessment, extreme difficulty in targeting process reforms will continue to exist agency-wide.
- Project Development Suspensions or Revisions – The development of large, complex infrastructure projects often requires modifications to the proposed project design as project sponsors undertake the permitting process. The extent to which such modifications affect the overall schedule is now being tracked on the Permitting Dashboard; however, this factor can be accounted for in future baseline schedules to provide a more dynamic and comprehensive analysis of causality of delay.
- Pre-Notice of Intent Activities prior to Federal Register Notice –Consistent with the 2018 Council on Environmental Quality (CEQ) EIS timeline report¹, a Notice of Intent (NOI) is not necessarily the initiation of the permitting process, upon which the performance schedules evaluate. Agencies issue NOIs at different points in the permitting processes. For consistency across agencies, the policy direction given by CEQ and the Office of Management and Budget (OMB) was for the initial milestone for the National Environmental Policy Act (NEPA) process to be the NOI. Therefore, the initial milestone of NEPA in the baseline schedules is the NOI. However, other agency actions often lack the receipt of an

¹ Council on Environmental Quality (2018). *Environmental Impact Statement Timelines (2010-2017)*. Retrieved from https://ceq.doe.gov/docs/nepa-practice/CEQ_EIS_Timelines_Report_2018-12-14.pdf

application, which begins those actions, and that is incorporated into the baseline schedules.

- An example is the Federal Energy Regulatory Commission's (FERC's) pre-filing process for any project covered under Section 7 of the Natural Gas Act. (7 U.S.C §717f) (see also, 18 C.F.R. §158.21) The NOI is issued for these projects during FERC's pre-filing process, but the permitting process doesn't begin until the project sponsor files an application with FERC. Therefore, the Permitting Council tracks both the NOI and the application date, and for the purposes of the baseline schedules and identifying a "Start" for these FERC projects, OED utilizes the application date.
- Application Submissions – An agency cannot begin formal review of a project until the application from the project sponsor is deemed complete. If the initial application submission is delayed, or more information is needed before the agency can deem it complete, permitting schedules will vary in relation to the NOI published in the Federal Register. The Permitting Dashboard now tracks this potential risk to the overall schedule, through the Coordinated Project Plan directed tracking of milestones for target and actual completion dates, which can then be accounted for in future baseline schedules.

The Office of the Executive Director has worked closely with OMB, CEQ, and DOT to develop features on the Permitting Dashboard that allow OED to track and incorporate these underlying areas of uncertainty into the current draft baseline schedules and those being developed in the future. These Permitting Dashboard enhancements ensures OED fully implements GAO's recommendation, which helps OED more accurately predict the timeframe required for agencies to conduct a robust, coordinated analysis to inform their permitting decisions.

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Susan Fleming at (202) 512-2834 or Flemings@gao.gov

Staff Acknowledgments

In addition to the contact named above, Brandon Haller (Assistant Director), Michael Alleyne, Peter Beck, Antoine Clark, Hannah Laufe, Jason Lee, John F. Miller, Joshua Ormond, Cheryl Peterson, Sarah Veale, Laurel Voloder, and Elizabeth Wood made significant contributions to this report.

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