



Highlights of [GAO-10-770](#), a report to the Chairman, Committee on Energy and Natural Resources, United States Senate

## Why GAO Did This Study

Under the Federal Power Act, the Federal Energy Regulatory Commission (FERC) issues licenses for up to 50 years to construct and operate nonfederal hydropower projects. These projects must be relicensed when their licenses expire to continue operating. Relevant federal resource agencies issue license conditions to protect federal lands and prescriptions to assist fish passage on these projects. Under section 241 of the Energy Policy Act of 2005, parties to the licensing process may (1) request a “trial-type hearing” on any disputed issue of material fact related to a condition or prescription and (2) propose alternative conditions or prescriptions. In this context, GAO was asked to (1) determine the extent to which stakeholders have used section 241 provisions in relicensing and their outcomes and (2) describe stakeholders’ views on section 241’s impact on relicensing and conditions and prescriptions. GAO analyzed relicensing documents filed with FERC and conducted a total of 61 interviews with representatives from relevant federal resource agencies, FERC, licensees, tribal groups, industry groups, and environmental groups.

## What GAO Recommends

GAO recommends that cognizant officials who do not adopt a proposed alternative include reasons why in their statement to FERC. The resource agencies generally agreed, but commented that no explanation is required when an alternative is withdrawn as a result of negotiations.

View [GAO-10-770](#) or [key components](#). For more information, contact Frank Rusco at (202) 512-3841 or [RuscoF@gao.gov](mailto:RuscoF@gao.gov).

## HYDROPOWER RELICENSING

### Stakeholders’ Views on the Energy Policy Act Varied, but More Consistent Information Needed

#### What GAO Found

Since the passage of the Energy Policy Act in 2005, nonfederal stakeholders—licensees, states, environmental groups, and an Indian tribe—used section 241 provisions for 25 of the 103 eligible hydropower projects being relicensed, most of which occurred within the first year. Of these 25 projects, stakeholders proposed a total of 211 alternative conditions and prescriptions. In response, the federal resource agencies (U.S. Department of Agriculture’s Forest Service, Department of Commerce’s National Marine Fisheries Service, and several bureaus in the Department of the Interior) accepted no alternatives as originally proposed but instead modified a total of 140 and removed a total of 9 of the agencies’ preliminary conditions and prescriptions and rejected 42 of the 211 alternatives; the remaining alternatives are pending as of May 17, 2010. Under section 241, resource agencies must submit a statement to FERC explaining the basis for accepting or rejecting a proposed alternative. While agencies generally provided explanations for rejecting alternative conditions and prescriptions, with few exceptions, they did not explain the reasons for not accepting alternatives when they modified conditions and prescriptions. As a result, it is difficult to determine the extent, type, or basis of changes that were made and difficult to determine if and how the proposed alternatives affected the final conditions and prescriptions issued by the agencies. As of May 17, 2010, nonfederal stakeholders requested trial-type hearings for 18 of the 25 projects in which section 241 provisions were used, and three trial-type hearings were completed. Of the remaining 15 projects, requests for hearings were withdrawn for 14 of them when licensees and agencies negotiated a settlement agreement before the administrative law judge made a ruling, and one is pending because the licensee is in negotiations to decommission the project. In the three hearings held to date, the administrative law judge ruled in favor of the agencies on most issues.

According to the federal and nonfederal relicensing stakeholders GAO spoke with, the section 241 provisions have had a variety of effects on the relicensing process and on the license conditions and prescriptions. While most licensees and a few agency officials said that section 241 encourages settlement agreements between the licensee and resource agency, some agency officials said that section 241 made agreements more difficult because efforts to negotiate have moved to preparing for potential hearings. Regarding conditions and prescriptions, some stakeholders commented that under section 241, agencies put more effort into reviewing and providing support for their conditions and prescriptions, but environmental groups and some agency officials said that in their opinion, agencies issued fewer or less environmentally protective conditions and prescriptions. Many agency officials also raised concerns about increases in workload and costs as a result of section 241. For example, their estimated costs for the three hearings to date totaled approximately \$3.1 million. Furthermore, many of the stakeholders offered suggestions for improving the use of section 241, including adjusting the time frame for a trial-type hearing.