

**LIHI Response Public Comments on 2nd Recertification Proposal
December 17, 2021**

The second LIHI recertification proposal was issued for public comment on October 6, 2021 along with a redline version of proposed changes to the LIHI 2nd Edition Handbook. The second proposal was revised significantly in response to comments received on the initial recertification proposal which was issued for public comment in October 2020.

This second proposal's comment period ended December 6, 2021 with 6 comment letters received, four from organizations that had commented on the first proposal.

LIHI is grateful for the thoughtful comments we received on both proposals, which help us to continually improve the LIHI program. We have incorporated the many recommendations and requests for clarification into the final version of the [LIHI 2nd Edition Handbook, Revision 2.05](#) which was approved by the LIHI Governing Board at its December 16, 2021 meeting.

Revision 2.05 will become effective on January 1, 2022. The final markup version reflecting the changes below can be found [here](#).

Comments on the second proposal were received from six entities including one federal agency, two ENGOs, and three hydro owners. The table below provides the summarized comments and LIHI's responses to them.

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<p>I had investigated the possibility of applying for FERC and LIHI permits which I would have designed into my project repairs. However, the process was way too long and way too complicated with chance of approval so low, I declined to apply.</p>	<p>We agree that the FERC process is onerous, particularly for very small projects. The LIHI process is designed to be rigorous but not onerous and LIHI staff is available for assistance on applications.</p>
<p>The Ecological Flows PLUS standard for adaptive management programs should only be awarded to projects that have actually changed operations based on the adaptive management plan. There can be changes in owner management and a potential lack of follow through.</p>	<p>The PLUS standard references the definition of Adaptive Management in Appendix A of the LIHI Handbook, which is “A system of management practices based on clearly identified timeframes and outcomes with monitoring to determine if management actions are meeting outcomes, and, if they are not, facilitating management changes that will best ensure that outcomes are timely met or to re-evaluate the outcomes.”</p>
<p>The Water Quality PLUS standard should acknowledge and reward facilities that actively discharge cooler water on demand during heat spells to improve water quality and protect aquatic species.</p>	<p>This activity would likely qualify as an Adaptive Management approach and be eligible for the PLUS standard.</p>
<p>The Downstream Passage standard D-4 should require telemetry data showing that delayed mortality is minimal. In absence of telemetry data proving juveniles are not being injured in turbines, we should assume they are.</p>	<p>Standard D-4, Acceptable Mitigation requires that “resource agencies must approve the measures and must have determined that the total benefits provided by them are likely to equal or exceed the benefits” of providing fish passage.</p> <p>Standard D-2, Agency Recommendation and D-3, Best Practice/Best Available Technology both also include monitoring and effectiveness evaluations if required by resource agencies.</p>
<p>For the Cultural and Historic Resources criterion, the facility should have proof that the tribes that formally lived on the land approve of the way the utility is managing the water body. Ideally, there should be a Memorandum of Understanding between the tribes and the utility or dam owner. The standard "plus " of a new educational opportunity should be more substantial than just interpretive signs.</p>	<p>LIHI is currently exploring better integration of tribal interests in our criteria.</p> <p>The PLUS standard requires “a significant new educational opportunity about cultural or historical resources in the area” which would generally be more than interpretive signage.</p>

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<p>Are fees based on generation capacity? Are there any reduced fee programs for native/local electric cooperatives that might not have the necessary funds?</p>	<p>Application fees are not based on generation, but annual fees to remain certified are. Annual fees are determined based on participation (or not) in a Renewable Energy Credit market. LIHI fees are available at https://lowimpacthydro.org/lihi-fee-structure/</p> <p>There are reduced fees for projects that meet the Very Low Impact designation (they meet Standard 1 in all 8 criteria). Starting in 2022, minimum fees for projects less than 1 MW capacity will be reduced even more than the current minimum fees.</p> <p>On occasion, LIHI may accommodate a request for special consideration. Such requests should be addressed to the LIHI Executive Director.</p>
<p>Building a new dam should not necessarily disqualify a project as LIHI eligible.</p>	<p>The LIHI program was created in 2000 with a specific goal to not encourage new dam building, and instead focus on improving outcomes at existing dams. LIHI evaluated the possibility of allowing newer dams or diversions in 2018 but determined that new criteria and standards would be needed. There are too few new dams being built in the US to warrant further evaluation at this time, although LIHI acknowledges that the majority of them are in Alaska.</p>
<p>A single set of standards should not be applied across different regions of the country, outside of the Pacific Northwest and New England, many dams support multiple uses in addition to hydropower. Applying the same standards regardless of regional differences ignores the importance of other essential non-hydro water uses that occur in some parts of the country.</p>	<p>As a nation-wide program, LIHI must use consistent standards across all regions while accounting for the site-specific uniqueness of each hydro facility. At facilities with other primary water uses (e.g., navigation, irrigation, drinking water, flood control) LIHI focuses on the impacts from the hydropower operation.</p>

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<p>Certification should be withheld pending the results of the FERC relicensing process.</p>	<p>The decision to accept a new application for a project approaching or in relicensing is made on a case-by-case basis and rests on several factors including project complexity, ability to change operations or make improvements under a new license, availability of pre-licensing or other information and data to demonstrate compliance with the LIHI criteria, the level of controversy surrounding the project’s relicensing and significant issues expressed by relicensing stakeholders, and whether the project has agency and/or stakeholder support for LIHI certification.</p> <p>Handbook Section 5.3.4 now includes a new FERC license as a trigger for a mid-term review.</p>
<p>These events should trigger full recertification (or should be deemed ineligible for LIHI certification):</p> <ol style="list-style-type: none"> 1. Rescheduling of agreed restoration milestones such as fish passage resulting in delays of a year or more. 2. Failure to meet agreed restoration targets for fish or other wildlife. 3. Dewatering of falls, cascades or significant river area due to diversion of water for hydroelectric generation. 4. Fencing that denies access to traditionally used areas in project vicinities denigrating established uses such as fishing or viewing of waters, especially falls and rapids. 5. New listing of state and federal threatened and endangered species in the watershed where the project is located. 6. Changes in state water quality status (upgrades or downgrades). 7. Dam removal downstream of the dam that enables access to the dam by anadromous or potamodromous species known to be present in the watershed. 	<p>Comment items 1, 2, 5, 6, and 7 are already considered in application reviews, annual compliance statements, mid-term reviews, and recertification reviews.</p> <p>Comment items 3, and 4 are among many aspects considered during initial application and recertification reviews on a case-by-case basis incorporating relevant science-based resource agency recommendations.</p>

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<p>Would interested parties who had not participated in the certification or recertification be able to participate in the annual reviews or would they be required to wait for the mid-term reviews (Section 5.3). Which would be the case?</p>	<p>LIHI welcomes comments from any interested party at any time. We do not publicly announce annual reviews but will continue to provide public notice of new and recertification applications and will provide public notice of mid-term reviews. In 2022, we will begin posting the status of annual reviews.</p>
<p>Does the term “pumped storage” need to be defined in Appendix A?</p>	<p>We agree and have added a definition of pumped storage in Appendix A.</p>
<p>There are other pumped storage projects that are LIHI certified. These will no longer meet LIHI certification criteria (Section 2.2) if Revision 2.05 is adopted. What will be the process be for review of their LIHI status?</p>	<p>LIHI has never certified pumped storage hydro projects and Handbook Revision 2.05 does not change that fact. The example provided in the comment letter does not meet the standard definition of a pumped storage project.</p>
<p>Has LIHI suspended or revoked certifications for projects in the past and (if so) what projects and on what grounds?</p>	<p>Yes, LIHI has suspended several certificates over the years and has revoked one certificate to date, each on the grounds of non-compliance with specific LIHI criteria or with certificate conditions, or more generally with LIHI program requirements.</p>
<p>Does Revision 2.05 still give LIHI the power to award certification over the specific objection of applicable state and federal resource protection agencies?</p>	<p>LIHI carefully reviews all objections to certification received in comments from resource agencies and the public as well as comments submitted as part of FERC licensing. LIHI seeks to accommodate such objections where possible within the bounds of the independent LIHI program. The 2nd Edition Handbook that has been in effect since 2016 requires agency recommendations to be science-based (see definition in Handbook Appendix A) in order to be seriously considered.</p>
<p>We continue to see facilities that are re-certified against agency and NGO recommendation, even under the new handbook. We also aren’t seeing that LIHI-certified facilities are making extra efforts to lower their impact on rivers.</p>	<p>Please see Maine TU 8 comment above. Many LIHI facilities are in fact making extra efforts to get or remain certified. These are sometimes but not always reflected in award of PLUS standards or in certificate conditions that require continuation of voluntary actions as part of certification.</p>

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<p>The best way to ensure stakeholder involvement is to create a space in which the stakeholders are aware of and able to review facility performance and provide comments or dialogue.</p>	<p>As noted above, stakeholders and the public are welcome to provide comments on certified facilities at any time.</p> <p>LIHI also welcomes additional dialogue with all interested parties and can facilitate dialogue between stakeholders and certificate holders.</p> <p>Starting in 2022, more detailed information on annual compliance status will be added to project webpages on the LIHI website.</p>
<p>The public or the agencies are not necessarily going to flag issues as a result of annual reviews, and because of that, the mid-term review would rarely be invoked. This reduces public engagement, to once every 10 years instead of every 5 years.</p>	<p>We do not believe that mid-term reviews would be rare. Mid-term reviews are required if there are any material changes at a facility. Owners are required to report material changes annually and LIHI investigates additional potential material changes that may have occurred (e.g., in the watershed) during annual compliance reviews.</p> <p>LIHI will provide public notice of mid-term reviews and welcomes the public's input at that time, or any time that the public wishes to inform LIHI of new information.</p>
<p>We have seen with re-certification that applicants frequently state that they are in compliance with all requirements, even if they aren't or if there have been concerns that have come up.</p>	<p>The annual compliance reporting requirements have evolved over time. As part of Handbook Revision 2.05, annual reporting requires more in-depth information to be provided by the certificate holder than in the past, including a requirement to report on any substantive complaints received.</p> <p>As noted above, LIHI welcomes information from the public and resource agencies at any time regarding issues or concerns that LIHI will investigate and work with the certificate holder to resolve.</p>
<p>Stage 1 review for re-certification is a limited process and we don't see why this can't be retained every 5 years instead of the current proposal.</p>	<p>If there have been no material changes and the facility remains in compliance as determined in the enhanced annual compliance reviews, there is no need to conduct a review.</p>

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We recommend that ownership change automatically trigger a mid-term review if the timing is applicable.	Ownership change should not in itself trigger a mid-term review. However, Handbook Section 5.3.6 has been added to clarify program requirements and the responsibilities of the new owner to maintain compliance. LIHI makes a point of connecting with new owners to ensure thorough understanding of expectations.
We'd recommend adding that the longer recertification length (now 10, proposed to be 15) are for special cases as described in Section 3.1 of the Handbook.	We agree and Handbook Section 3.1 has been modified.
In Appendix B - Table 9, applicants should provide a letter from both the state historic preservation office AND the tribal preservation office. The two cover very separate areas of expertise.	We agree and Table 9 in Appendix B has been modified.
In Section B.2.8, #3 requirement about providing representative photos of recreational facilities and amenities, it should be clarified to say that the photos should be taken within the last 12 months.	We agree and the 3 rd requirement in Section B.2.8 in Appendix B has been modified.
We also recommend adding a 4th requirement that the applicant include any public website and/or signage informing the public about the project's recreational amenities.	We agree and a 4 th requirement in Section B.2.8 in Appendix B has been added.
Section 4.5.1 "New applicants are encouraged to apply for LIHI Certification at least one year in advance of filing the Notice of Intent related to a FERC licensing proceeding." Comment: Timing of application seems premature given the Project will continue to operate under existing license conditions for an approximate period of 5-6 years until a new FERC license is issued. Suggest that application for LIHI Certification be made at the time applicant files Final License Application to the FERC or when FERC issues a license. The text of 4.5.1 goes onto address this very concern stating "LIHI will advise the applicant to delay application until they have completed that proceeding." Given the conflict of the text, I suggest the first sentence be removed.	We agree and the first sentence in Section 4.5.1 (and the similar sentence in Section 6.1) has been eliminated.

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<p>Section 4.5.3 “the applicant has obtained a FERC license or exemption, water quality certification and/or similar required authorizations addressing environmental and social impacts” Comment: FERC licenses generally are not granted without water quality certification and other applicable conditions (e.g., biological opinion, 4e conditions, etc.).</p>	<p>The purpose of Section 4.5.3 language was to distinguish FERC-regulated from non-FERC-regulated facilities that may still be required to have a state or tribal water quality certificate and/or other regulatory authorizations. There are also cases where no water quality certification is issued. The section language has been made more general to encompass a wider range of possibilities.</p>
<p>For Criteria 3.2.1 Standard A-1 for Ecological Flows, suggests that LIHI specify that there are no bypass reaches or water diversions in this Zone of Effect.</p>	<p>We agree and have modified Section 3.2.1 and Table 3 in Appendix B to clarify “in the designated Zone of Effect” (or ZoE).</p>
<p>For Criteria C and D believes that for upstream, the clarification could be that the “Zone of Effect does not create a barrier to upstream passage” such as for the Impoundment rather than the facility. For downstream, the bypass reach/tailrace “Zone of Effect does not create a barrier to downstream passage”.</p>	<p>We agree and have modified applicable portions of Section 3.2 and Tables 3 through 10 in Appendix B to clarify “in the designated Zone of Effect” (or ZoE) where appropriate.</p>
<p>LIHI allows applicants to respond to public comments and applicants are given a “reasonable period to respond”. With respect to publishing applications on the website for the 60-day review period, suggests that LIHI consider including a list of contacts from the applicant’s organization in the notice and provide clarification of the expectation of a “reasonable period to respond”.</p>	<p>LIHI typically notifies the applicant’s primary contact when the public comment period has opened and can expand that notification to include all applicant contacts listed in the application.</p> <p>If comments are received, LIHI shares them with the applicant and discusses the length of time needed by the applicant to respond if they intend to do so.</p>
<p>An upstream or downstream facility receiving a new FERC license should not be considered a trigger worthy of mid-term review unless it significantly changes the operational circumstances of the Certified Project.</p>	<p>A new FERC license at an upstream or downstream facility is considered a “watershed change”. Section 5.3.4 defines such changes as being material changes if they “directly affect the facility and are likely to change the nature or extent of impacts related to the LIHI criteria”.</p>

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<p>In Section 5.3.4, LIHI indicates that “newly identified threatened or endangered species” at a facility would trigger a mid-term review. Is it LIHI’s expectation then that we run a USFWS IPaC report and obtain information on state listed species annually for the Compliance Statements? How would we otherwise be informed of this since we don’t routinely conduct listed species surveys? We assume that this is more related to a newly listed species for which its range has been determined to include lands/waters within the project boundary rather than a newly identified species.</p>	<p>LIHI does not expect certificate holders to run a USFWS IPaC report or conduct a state species data check each year for compliance purposes. The revised annual compliance statements ask if the certificate holder is aware of any changes in the watershed or agency management plans related to listed species.</p> <p>Information on newly listed species or species status changes can come from many sources and LIHI will check that information as part of annual compliance reviews.</p>
<p>LIHI says that the mid-term review information would need to be submitted within 3 months of submitting the annual compliance statement or after notification by LIHI but information regarding new FERC licenses is within 6 months of issuance. Would this be in addition to the annual submittal?</p>	<p>Yes, the annual compliance statement serves in part to identify the need for a mid-term review due to material changes and such changes would need to be described in an additional brief submittal focused on those changes. Similarly, a submittal triggered by a new FERC license would be in addition to the annual compliance statement and would result in a new LIHI term. LIHI will coordinate with certificate holders to minimize redundancy.</p>
<p>Concerned with potential notices of violations that surface immediately after a lengthy certification process and urges LIHI to consider a minimum certification period or the option to consolidate violations two years after certification into a single application.</p>	<p>Notices of violation or non-compliance with regulatory requirements must be reported in annual compliance statements.</p> <p>Substantive notices of violation would trigger a mid-term review and are defined in Appendix A as including “<i>formal FERC notices of violation and/or written resource agency compliance warnings or violations that directly relate to the LIHI criteria. Excludes short-term deviations and those beyond operator control, that are properly reported to LIHI, applicable resource agencies (and FERC if required), and if corrected in a timely manner with minimal environmental impact.</i>”</p>