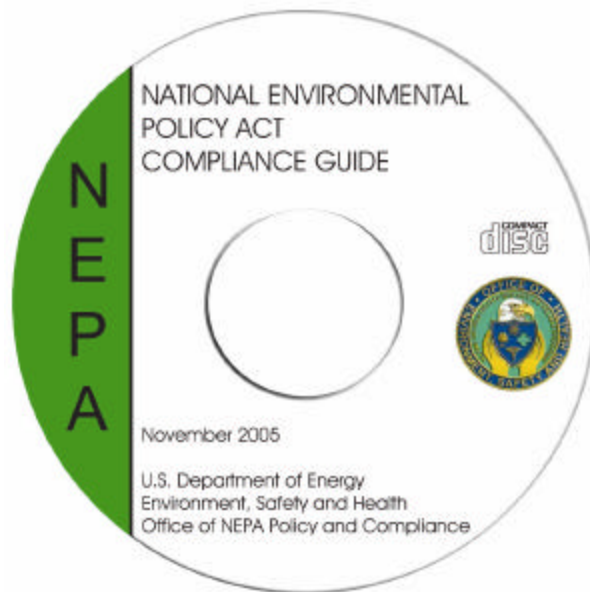


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DOE NEPA Compliance Guide *Companion to Compact Disk*



Preface and Table of Contents
November 2005



U.S. Department of Energy
Environment, Safety and Health
Office of NEPA Policy and Compliance

**U.S. Department of Energy
National Environmental Policy Act Compliance Guide**

Preface

This *National Environmental Policy Act Compliance Guide* is a three-volume compendium of electronic files of laws, executive orders, regulations, policies, guidance, and other information. The *NEPA Compliance Guide* was prepared by the Department of Energy (DOE) to assist its NEPA practitioners.

The *NEPA Compliance Guide* contains:

Volume 1 General NEPA References

- Part 1. Laws
- Part 2. Executive Orders Concerning Environmental Matters
- Part 3. Council on Environmental Quality (CEQ) Regulations
- Part 4. CEQ Guidance
- Part 5. Policies from Other Federal Agencies

Volume 2 Department of Energy NEPA Regulations and Guidance

- Part 1. Regulations, Orders, and Policy
- Part 2. Guidance on NEPA Document Preparation
- Part 3. Guidance on Site-wide NEPA Reviews
- Part 4. Guidance on Public Participation
- Part 5. Guidance on Other Aspects of the NEPA Process

Volume 3 Related Environmental Review Requirements

This volume provides regulations for environmental review and consultation requirements – concerning **Air Quality, Biota, Cultural Resources, and Land use and Special Land and Water Designations** – that should to the fullest extent possible be conducted concurrently with and integrated with the NEPA process.

The Department of Energy has published the *NEPA Compliance Guide* on compact disk and posted on the DOE NEPA Web site at www.eh.doe.gov/nepa/guidance.html. This preface links to:

- Printer-friendly Table of Contents: This “Companion to Compact Disk” is a pdf file of this preface and the detailed contents of the three volumes.
- Content Documents: This detailed table of contents provides hyperlinks to the cited documents.

To request additional copies of the *NEPA Compliance Guide* disk, send complete mailing address to askNEPA@eh.doe.gov.

**U.S. Department of Energy
National Environmental Policy Act Compliance Guide
Volume 1**

General NEPA References

PART 1. Laws

- 1-1 National Environmental Policy Act of 1969, as amended
- 1-2 Environmental Quality Improvement Act of 1970
- 1-3 Clean Air Act, Section 309

PART 2. Executive Orders Concerning Environmental Matters

(Selection, in chronological order)

- 2-1 Executive Order 11514, **Protection and Enhancement of Environmental Quality** (March 5, 1970), as amended by Executive Order 11991 (May 24, 1977)
- 2-2 Executive Order 11988, **Floodplain Management** (May 24, 1977)
- 2-3 Executive Order 11990, **Protection of Wetlands** (May 24, 1977)
- 2-4 Executive Order 12088, Federal Compliance with **Pollution Control Standards** (October 13, 1978)
- 2-5 Executive Order 12114, **Environmental Effects Abroad** of Major Federal Actions (January 4, 1979) (See also 4-2 and 5-1 in Volume 1 and 1-5 in Volume 2.)
- 2-6 Executive Order 12898, Federal Actions to Address **Environmental Justice** in Minority Populations and Low-Income Populations (February 11, 1994, with Presidential Memorandum)
- 2-7 Executive Order 13112, **Invasive Species** (February 3, 1999)
- 2-8 Executive Order 13148, **Greening the Government** through Leadership in Environmental Management (April 21, 2000)
- 2-9 Executive Order 13186, Responsibilities of Federal Agencies to Protect **Migratory Birds** (January 10, 2001)

- 2-10 Executive Order 13211, Actions Concerning Regulations that Significantly Affect **Energy Supply, Distribution, or Use** (May 18, 2001)
- 2-11 Executive Order 13212, Actions to Expedite **Energy-Related Projects** (May 18, 2001)
- 2-12 Executive Order 13287, **Preserve America** (March 3, 2003)

PART 3. Council on Environmental Quality (CEQ) Regulations

Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Parts 1500-1508)

Preambles:

- 43 FR 55978; November 29, 1978
- 51 FR 15618; April 25, 1986

Versions:

- pdf: codified version from CFR and page with July 18, 2005, revision to section 1506.9
- html: includes all changes through July 18, 2005
- pdf: 2005 CEQ booklet reprint (contains CEQ's NEPA regulations with index, NEPA, Environmental Quality Improvement Act, Clean Air Act Section 309, E.O. 11514, and information about NEPAnet) and added page with July 18, 2005, revision to section 1506.9

PART 4. CEQ Guidance (Selection, in chronological order)

- 4-1 Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (46 FR 18026, March 23, 1981; as amended, 51 FR 15618, April 25, 1986)
- 4-2 Environmental Effects Abroad of Major Federal Actions, Executive Order 12114; Implementing and Explanatory Documents (44 FR 18722, March 29, 1979) (See also 2-5 and 5-1 in Volume 1 and 1-5 in Volume 2.)
- 4-3 Publishing of Three Memoranda for Heads of Agencies (45 FR 59189, September 8, 1980)
 - Analysis of Impacts on Prime or Unique Agricultural Lands in Implementing the National Environmental Policy Act (August 11, 1980)
 - Prime and Unique Agricultural Lands and the National Environmental Policy Act (August 11, 1980)
 - Interagency Consultation to Avoid or Mitigate Adverse Effects on Rivers in the Nationwide Inventory (August 10, 1980)

- 4-4 Guidance on Applying Section 404(r) of the Clean Water Act to Federal Projects Which Involve the Discharge of Dredged or Fill Materials into Waters of the U.S., Including Wetlands (November 17, 1980)
- 4-5 Scoping Guidance (46 FR 25461, May 7, 1981, Notice of Availability of Memorandum to Agencies Containing Scoping Guidance, and April 30, 1981, Memorandum)
- 4-6 Guidance Regarding NEPA Regulations (includes Scoping, Categorical Exclusions, Adoption Procedures, Contracting Provisions, Selection of Alternatives in Licensing and Permitting Situations, and Tiering Regulations) (48 FR 34263, July 28, 1983)
- 4-7 National Environmental Policy Act Implementation Procedures; Appendices I, II, and III (49 FR 49750, December 21, 1984) **Note:** Contacts are outdated. Refer to “Directory of Potential Stakeholders for DOE Actions under NEPA.” (See 4-2 in Volume 2: www.eh.doe.gov/nepa/tools/StakeholdersDirectory.pdf, updated annually.)
- Appendix I: Federal and Federal-State Agency National Environmental Policy Act Contacts
 - Appendix II: Federal and Federal-State Agencies with Jurisdiction by Law or Special Expertise on Environmental Quality Issues
 - Appendix III: Federal and Federal-State Agency Offices for Receiving and Commenting on Other Agencies' Environmental Documents
- 4-8 NEPA at 19: A Primer on an "Old" Law with Solutions to New Problems (Dinah Bear, 19 Env'tl. L. Rep. 10060, (2/1989)) **Note:** While not official CEQ guidance, this article is a useful basic reference.
- 4-9 Incorporating Biodiversity Considerations into Environmental Impact Analysis under the National Environmental Policy Act (January 1993)
- 4-10 Memorandum to Heads of Federal Departments and Agencies: Pollution Prevention and the National Environmental Policy Act (January 12, 1993) (58 FR 6478, January 29, 1993)
- 4-11 CEQ Guidance on Cumulative Effects
- 4-11.1 Considering Cumulative Effects Under the National Environmental Policy Act (January 1997)
 - 4-11.2 Guidance on the Consideration of Past Actions in Cumulative Effects Analysis (June 24, 2005)
- 4-12 Environmental Justice - Guidance Under the National Environmental Policy Act (December 10, 1997)

4-13 CEQ Memoranda on Cooperating Agencies

4-13.1 Designation of Non-Federal Agencies as Cooperating Agencies (July 28, 1999)

4-13.2 Identifying Non-Federal Cooperating Agencies in Implementing the Procedural Requirements of NEPA (September 25, 2000)

4-13.3 Guidance on Cooperating Agencies in Implementing the Procedural Requirements of NEPA (January 30, 2002) [superseded in part by 4-13.4 but includes Factors for Determining Whether to Invite, Decline or End Cooperating Agency Status] and Distribution Memoranda

4-13.4 CEQ Memorandum to Heads of Federal Agencies: Reporting Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (December 23, 2004)

- Attachment 1: Cooperating Agency Report Form
- Attachment 2: Cooperating Agency Frequently Asked Questions

4-14 Purpose and Need, CEQ Exchange of Letters with Secretary of Transportation (May 2003)

4-15 Improving the NEPA Process Through Enhanced Tribal Capacity (July 30, 2004)

4-16 Emergency Actions and NEPA (September 8, 2005)

- Attachment 1: Emergency Alternative Arrangements under the National Environmental Policy Act
- Attachment 2: Preparing Focused, Concise and Timely Environmental Assessments

PART 5. Policies from Other Federal Agencies (Selection, in chronological order)

5-1 Department of State. Unified Procedures Applicable to Major Federal Actions Relating to Nuclear Activities Subject to Executive Order 12114 (44 FR 65560, November 13, 1979) (See also 2-5 and 4-2 in Volume 1 and 1-5 in Volume 2.)

5-2 Environmental Protection Agency. Policy and Procedures for the Review of Federal Actions Impacting the Environment (Office of External Affairs and Office of Federal Activities, October 3, 1984)

- 5-3 Environmental Protection Agency Guidance on Submitting Environmental Impact Statements
 - 5-3.1 Filing System Guidance for Implementing 1506.9 and 1506.10 of the CEQ Regulations (54 FR 9592, March 7, 1989)
 - 5-3.2 Memorandum (Office of Federal Activities, February 15, 1994)
 - 5-3.3 Submitting Environmental Impact Statements
(www.epa.gov/Compliance/nepa/submiteis/index.html)
- 5-4 Environmental Protection Agency. Guidance on Incorporating EPA's Pollution Prevention Strategy into the Environmental Review Process (Office of Federal Activities, February 24, 1993)
- 5-5 Environmental Protection Agency. Habitat Evaluation: Guidance for the Review of Environmental Impact Assessment Documents (Office of Federal Activities, March 8, 1993)
- 5-6 Environmental Protection Agency. Pollution Prevention/Environmental Impact Reduction Checklists for NEPA/309 Reviewers (January 1995) [The opening pages provide an overview of pollution prevention and discuss incorporating pollution prevention into NEPA; the checklists that follow have project-specific relevance.]
- 5-7 Department of Justice. Agreed to Report of March 31, 1994 Meeting Regarding The Application of NEPA to CERCLA Cleanups (January 23, 1995) (NEPA-CERCLA policy)
- 5-8 Environmental Protection Agency, Office of the Federal Environmental Executive. Guidance for Presidential Memorandum on Environmentally and Economically Beneficial Landscape Practices on Federal Landscaped Grounds (60 FR 40837, August 10, 1995)
- 5-9 Environmental Protection Agency. Consideration of Cumulative Impacts in EPA Review of NEPA Documents (May 1999)
- 5-10 Environmental Protection Agency. EPA Guidance for Consideration of Environmental Justice in Clean Air Act Section 309 Reviews (July 1999)
- 5-11 Environmental Protection Agency. EPA's Section 309 Review: The Clean Air Act and NEPA (July 1999)

**U.S. Department of Energy
National Environmental Policy Act Compliance Guide
Volume 2**

Department of Energy NEPA Regulations and Guidance

PART 1. Regulations, Orders, and Policy (Each ordered chronologically)

- 1-1 National Environmental Policy Act Implementing Procedures (10 CFR Part 1021) and preambles to final rulemakings
 - Preamble (57 FR 15122, April 24, 1992)
 - Preamble (61 FR 36222, July 9, 1996)
 - Preamble (61 FR 64603, December 6, 1996)
 - Preamble (68 FR 51429, August 27, 2003)

- 1-2 Frequently Asked Questions on the Department of Energy's National Environmental Policy Act Regulations (revised August 21, 1998)

- 1-3 Compliance with Floodplain and Wetland Environmental Review Requirements (10 CFR Part 1022) (68 FR 51429, August 27, 2003)

- 1-4 DOE O 451.1B, National Environmental Policy Act Compliance Program (Change 1, September 28, 2001)

- 1-5 Implementation of Executive Order 12114, Environmental Effects Abroad of Major Federal Actions; Final Guideline (46 FR 1007, January 5, 1981) (See also 2-5, 4-2, and 5-1 in Volume 1.)

- 1-6 NEPA Policy Statements and Related Documents
 - SEN-15-90 [status: cancelled]
 - Secretarial Policy on the National Environmental Policy Act (June 13, 1994) [status: provisions incorporated into 1-4 above and other guidance as appropriate]
 - Questions and Answers on the Secretarial Policy Statement on the National Environmental Policy Act (July 1994)

- 1-7 DOE P 430.1, Land and Facility Use Planning (July 9, 1996) (with Secretary of Energy Memorandum, December 21, 1994)

- 1-8 DOE P 141.1, Management of Cultural Resources (May 2001)

- 1-9 Final Report Implementing Office of Management and Budget Information Dissemination Quality Guidelines (67 FR 62446, October 7, 2002)

PART 2. Guidance on NEPA Document Preparation

- 2-1 Guidance Related to Analysis of Impacts to Workers in National Environmental Policy Act Documentation (June 1988)
- 2-2 Integrating Pollution Prevention with NEPA Planning Activities (October 1992)
- 2-3 Environmental Assessment Checklist (August 1994)
- 2-4 Environmental Impact Statement Checklist (November 1997)
- 2-5 Environmental Impact Statement Summary (September 1998)
- 2-6 Glossary of Terms Used in DOE NEPA Documents (September 1998)
- 2-7 Clean Air Act General Conformity Requirements and the NEPA Process (April 2000)
- 2-8 Analyzing Accidents under NEPA (July 2002)
- 2-9 The EIS Comment-Response Process (October 2004)
- 2-10 Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements (Second Edition, December 2004)
- 2-11 The Supplement Analysis Process (July 2005)
- 2-12 The Environmental Style: Writing Environmental Assessments and Impact Statements (October 2005)

PART 3. Guidance on Site-wide NEPA Reviews

- 3-1 Recommendations on Alternative Actions for Analysis in Site-wide NEPA Reviews (May 26, 1992)
- 3-2 Benefits of Site-wide National Environmental Policy Act Review (December 15, 1994)
- 3-3 Guidance for Site-wide Environmental Impact Statements (May 8, 1995)

PART 4. Guidance on Public Participation

- 4-1 Effective Public Participation under the National Environmental Policy Act (Second Edition, August 1998)
- 4-2 Directory of Potential Stakeholders for DOE Actions under NEPA (www.eh.doe.gov/nepa/tools/StakeholdersDirectory.pdf, updated annually)

PART 5. Guidance on Other Aspects of the NEPA Process

- 5-1 DOE Guidance on NEPA Contracting
 - National Environmental Policy Act Contracting Reform Guidance (December 1996)
 - Statement of Work, DOE-wide Contracts (2002)
 - A Brief Guide: Department of Energy-wide Contracts for National Environmental Policy Act Documentation (May 2003)
 - See also the resources provided at www.eh.doe.gov/nepa/contracting.html.
- 5-2 DOE Guidance on NEPA, CERCLA, and RCRA
 - Guidance for Compliance with the National Environmental Policy Act for Corrective Actions Conducted under the Resource Conservation and Recovery Act (December 23, 1997)
 - DOE Policies on Application of NEPA to CERCLA and RCRA Cleanup Actions (July 11, 2002) (See also 5-7 in Volume 1 for Department of Justice memorandum.)
- 5-3 Guidance on National Environmental Policy Act Categorical Exclusion Determinations (January 16, 1998)
- 5-4 Designating and Supporting NEPA Document Managers (November 24, 1998)
- 5-5 Guidance Regarding Actions That May Proceed During the NEPA Process: Interim Actions (June 2003)
- 5-6 Annual NEPA Planning Summaries Guidance (December 2003)
- 5-7 Mini-guidance Articles from *Lessons Learned Quarterly Reports*, December 1994 to September 2005 (Second Edition, October 2005)

**U.S. Department of Energy
National Environmental Policy Act Compliance Guide
Volume 3**

Related Environmental Review Requirements

Preface

This volume provides regulations for environmental review and consultation requirements that should to the fullest extent possible be conducted concurrently with or integrated with the Department of Energy’s NEPA review process, as provided by 40 CFR 1502.25(a). The information is presented in two ways: organized first by environmental topic, then by *Code of Federal Regulations* (CFR) title number.

The focus is on requirements that the Department is responsible for fulfilling, either in consultation with another agency or through its own independent review and analysis. This volume does not include environmental regulatory requirements that are implemented by permit programs administered by agencies such as the Environmental Protection Agency and the Army Corps of Engineers.

In all cases, consult with the agency responsible for a law and its implementing regulations or check www.gpoaccess.gov/cfr/ to verify that regulations are still current or to obtain an updated version. The DOE Office of Environment has posted additional information on environmental laws and regulations and associated guidance at www.eh.doe.gov/oepa/.

Contents Listed by Environmental Topic

Topic	Law: Statutory Citation	Regulation Name: Code of Federal Regulations Citation
<i>Air Quality</i>		
Clean Air Act Conformity	Clean Air Act (CAA), Section 176(c)(1): P.L. 88-206, as amended; 42 U.S.C. 7401 <i>et seq.</i>	Determining Conformity of Federal Actions to State or Federal Implementation Plans: 40 CFR Part 51, Subpart W 40 CFR Part 93, Subpart B
<i>Biota</i>		
Eagles	Bald and Golden Eagle Protection Act: 16 U.S.C. 668a-668d, as amended	General Provisions (for taking, possession, etc. of wildlife and plants): 50 CFR Part 10 Eagle Permits: 50 CFR Part 22

Topic	Law: Statutory Citation	Regulation Name: Code of Federal Regulations Citation
Endangered and Threatened Species and Critical Habitats	Endangered Species Act (ESA), Section 7: P.L. 93-205, as amended; 16 U.S.C. 1536(a)-(d)	Interagency Cooperation: 50 CFR Part 402 Endangered Species Exemption Process: 50 CFR Parts 450-453
Essential Fish Habitat	Magnuson-Stevens Fishery Conservation and Management Act (also known as the Sustainable Fisheries Act): P.L. 104-297 (major amendments to P.L. 94-265), 16 U.S.C. 1801 <i>et seq.</i>	Magnuson–Stevens Act Provisions: 50 CFR Part 600 The following subparts deal with Essential Fish Habitat (EFH): Table of contents; Subpart A-General (purpose and scope, definitions, other acronyms); Subpart D-National Standards, section 600.305 General, particularly subsection 600.305(c); Subpart J-Essential Fish Habitat; Subpart K-EFH coordination, consultation, and recommendations
Fish and Wildlife	Fish and Wildlife Coordination Act (FWCA): P.L. 85-624, as amended; 16 U.S.C. 661 <i>et seq.</i>	No implementing regulations
Marine Mammals	Marine Mammal Protection Act (MMPA), Section 103: P.L. 92-522; 16 U.S.C. 1361-1407 and 104	Fish and Wildlife Service General Permit Procedures: 50 CFR Part 13 Marine Mammals: 50 CFR Part 18 National Marine Fisheries Service Regulations Governing the Taking and Importing of Marine Mammals: 50 CFR Part 216
Migratory Birds	Migratory Bird Treaty Act (MBTA): 16 U.S.C. 703-712	General Provisions (for taking, possession, etc. of wildlife and plants): 50 CFR Part 10 Migratory Bird Permits: 50 CFR Part 21

Topic	Law: Statutory Citation	Regulation Name: Code of Federal Regulations Citation
<i>Cultural Resources</i>		
Archaeological Resources	Archaeological Resources Protection Act (ARPA): P.L. 96-95; 16 U.S.C. 470aa-mm	Protection of Archaeological Resources: 43 CFR Part 7
Historic Resources	National Historic Preservation Act (NHPA), Sections 106 and 110: P.L. 89-665, as amended; 16 U.S.C. 470	Protection of Historic Properties: 36 CFR Part 800
Native American Graves	Native American Graves Protection and Repatriation Act (NAGPRA): P.L. 101-601; 25 U.S.C. 3001 <i>et seq.</i>	Native American Graves Protection and Repatriation Regulations: 43 CFR Part 10
Native American Religions	American Indian Religious Freedom Act (AIRFA): P.L. 95-341; 42 U.S.C. 1996 and 1996a	No implementing regulations
<i>Land Use and Special Land and Water Designations</i>		
Coastal Zone Areas	Coastal Zone Management Act (CZMA): P.L. 92-583, as amended; 16 U.S.C. 1451 <i>et seq.</i>	Federal Consistency with Approved Coastal Management Programs: 15 CFR Part 930
Farmland	Farmland Protection Policy Act (FPPA): P.L. 97-98, as amended; 7 U.S.C. 4201 <i>et seq.</i>	Prime and Unique Farmlands: 7 CFR Part 657 7 CFR Part 658
National Marine Sanctuaries	Marine Protection, Research, and Sanctuaries Act (MPRSA), Title III: P.L. 92-532, as amended; 16 U.S.C. 1431-1445	National Marine Sanctuary Program Regulations: 15 CFR Part 922
National Natural Landmarks	Historic Sites Act: P.L. 74-292, as amended; 16 U.S.C. 461-467	National Natural Landmarks Program: 36 CFR Part 62
Wild and Scenic Rivers	Wild and Scenic Rivers Act (WSRA), Sections 5 and 7: P.L. 90-524, as amended; 16 U.S.C. 1271-1287	Wild and Scenic Rivers: 36 CFR Part 297

Topic	Law: Statutory Citation	Regulation Name: Code of Federal Regulations Citation
Wilderness Areas	Wilderness Act: P.L. 88-577; 16 U.S.C. 1131-1133	Forest Service Regulations: Prohibitions: 36 CFR Part 261 Special Areas: 36 CFR Part 294

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Title 7: Agriculture

7 CFR Part 657 Prime and Unique Farmlands
7 CFR Part 658 Farmland Protection Policy Act

Title 15: Commerce and Foreign Trade

15 CFR Part 922 National Marine Sanctuary Program Regulations
15 CFR Part 930 Federal Consistency with Approved Coastal Management Programs

Title 36: Parks, Forests, and Public Property

National Park Service, Department of Interior

36 CFR Part 62 National Natural Landmarks Program

Forest Service, Department of Agriculture

36 CFR Part 261 Prohibitions
36 CFR Part 294 Special Areas
36 CFR Part 297 Wild and Scenic Rivers

Advisory Council on Historic Preservation

36 CFR Part 800 Protection of Historic Properties

Title 40: Protection of the Environment

40 CFR Part 51, Subpart W Determining Conformity of General Federal Actions to State or Federal Implementation Plans
40 CFR Part 93, Subpart B Determining Conformity of General Federal Actions to State or Federal Implementation Plans

Title 43: Public Lands: Interior

43 CFR Part 7 Protection of Archaeological Resources
43 CFR Part 10 Native American Graves Protection and Repatriation Act

Title 50: Wildlife and Fisheries

50 CFR Part 10 General Provisions
50 CFR Part 13 General Permit Procedures
50 CFR Part 18 Marine Mammals
50 CFR Part 21 Migratory Bird Permits
50 CFR Part 22 Eagle Permits
50 CFR Part 216 Regulations Governing the Taking and Importing of Marine Mammals
50 CFR Part 402 Interagency Cooperation-Endangered Species Act of 1973, as Amended
50 CFR Parts 450-453 Endangered Species Exemption Process
50 CFR Part 600 Magnuson-Stevens Act Provisions