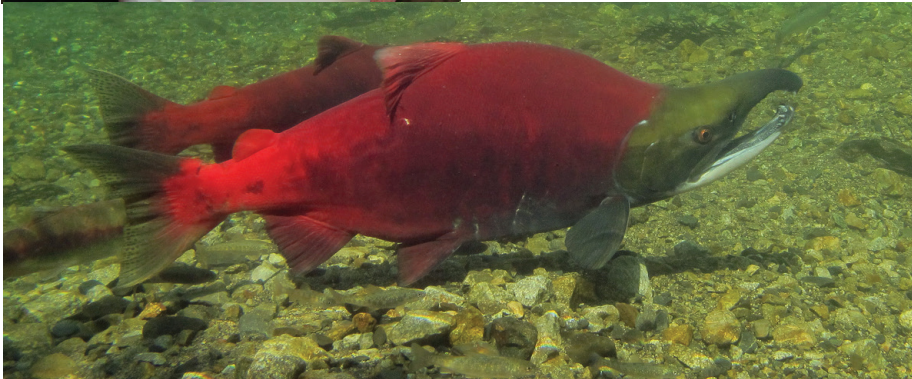


U.S. Fish & Wildlife Service

# NEPA for National Wildlife Refuges

*A Handbook*



*The mission of the National Wildlife Refuge System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.*

**National Wildlife Refuge System Improvement Act of 1997  
(Public Law 105—57, October 9, 1997)**



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# Section 1. Introduction to NEPA

## 1.1. Purpose and Need for Handbook

The U.S. Fish and Wildlife Service (Service) designed this Handbook to help National Wildlife Refuge System (Refuge System) managers comply with the National Environmental Policy Act (NEPA, Act) and other pertinent Federal laws and regulations. Refuge management is guided by the purposes of the individual refuges, the mission and goals of the Refuge System, Service and Department of the Interior (Department) policy, Executive Orders, laws, and international treaties.

All refuge management activities and refuge actions require some level of NEPA compliance and possibly compliance with other environmental laws and regulations (e.g., Endangered Species Act, National Historic Preservation Act).

To comply with NEPA, Refuge System managers must review proposed Federal actions to determine their effects on the human environment (the natural and physical environment and the relationship of people with that environment) before beginning an activity. The anticipated significance of effects on the human environment will dictate the type of process needed to comply with NEPA.

This Handbook is intended to provide a general overview of NEPA processes and documentation requirements. It is not intended to be a substitute for NEPA training and consultation with experts. Accurate scientific analysis and, in many cases, agency coordination and public involvement are essential for satisfying NEPA process requirements. It is best to consult early and often with the Regional Office and/or Headquarters (HQ) NEPA experts for guidance and to

### HELPFUL HINTS: Common Activities on Refuges Requiring NEPA Compliance:

- Opening a refuge to hunting or a new category of hunting (e.g., big game, upland game), adding a new species to or opening new area(s) to an existing hunting program;
- Actions affecting wetlands or floodplains;
- Actions with controversial environmental effects;
- Actions requiring development of a new compatibility determination or modification to an existing compatibility determination;
- Actions requiring issuance of special use permits;
- Realty actions, such as granting a right-of-way;
- Actions associated with step-down management plans; and
- Constructing new facilities.

gain a common understanding of process and procedures, as well as policy updates, document examples, and templates. Additional resources, including NEPA document examples, are available through your Regional Office NEPA experts or on the HQ SharePoint site.

## 1.2 Intent of NEPA

NEPA was signed into law on January 1, 1970 by President Richard Nixon (42 U.S.C. 4321 – 4347). The Act is the cornerstone of the Nation’s environmental policy.

- Some of its major provisions are to require Federal agencies to:
  - prepare and consider alternatives to major Federal actions that significantly affect the quality of the human environment;
  - ensure that environmental considerations are weighed

equally in the decision-making process,

- use an interdisciplinary process to develop and analyze alternatives; and
- invite public participation in the NEPA process, including providing NEPA documents to the public and other Federal, State, Native American Tribal, and local agencies, as appropriate, and before decisions are made. This allows the public an opportunity to be part of the decision-making process.

- It also created an Executive level agency, the Council on Environmental Quality (CEQ), to coordinate Federal environmental efforts.

The CEQ issued regulations for carrying out NEPA at 40 CFR 1500 – 1508. Each agency and bureau, in consultation with CEQ, created its own regulations to ensure

it complies with the intent and goals of the Act. The Departmental regulations are found at 43 CFR 46; Service NEPA procedures are found in the Departmental Manual and in policy (see section 1.3.1).

Although case law has interpreted NEPA to be primarily a procedural process, the legislative history clearly shows that Congress intended for NEPA to be a substantive process that would protect the environment for present and future generations. Refuge System managers must carefully follow the steps of the process which will allow them to incorporate long-term ecological goals into the procedural steps that evaluate the environmental ramifications of pursuing various courses of action.

NEPA and the CEQ regulations state that the broad goals of NEPA are to encourage harmony between humans and the environment and to promote efforts to prevent or eliminate environmental damage. It is clear from the Act and CEQ regulations that NEPA aligns with the goals of the Refuge System as stated in Section 4(2) of the National Wildlife Refuge System Improvement Act of 1997:

*“The mission of the System is to administer a national network of land and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.”*

NEPA documents must concentrate on the issues that are truly relevant to the action in question rather than amassing needless detail. Always keep in mind that compliance with NEPA does not take the place of compliance with other environmental statutes, requirements for government-to-government consultation, or permit requirements. However, the information gathered and analyzed on the environmental, historical, social, and economic context for a project can assist in complying with other authorities such as environmental statutes and permits.

## NEPA PRINCIPLES: Foster Excellent Action

NEPA’s purpose is “to foster excellent action,” and analysis must be done early in the planning process.

*Ultimately, of course, it is not better documents, but better decisions that count. NEPA’s purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action (40 CFR 1500.1(c)).*

### 1.3 Service Procedures and Other Authorities

#### 1.3.1. Service Procedures

NEPA guidance documents encourage early coordination with other agencies and the public to resolve issues in a timely manner, and provide techniques for streamlining the NEPA process and integrating it with other Service programs, environmental laws, and Executive Orders. Regional Offices will have a complete list of current regulations, policies, and guidance. Listed are foundational statute, regulations, policies, and guidance.

- National Environmental Policy Act of 1969, as amended: Pub. L. 91-190
- CEQ Implementing Regulations: 40 CFR 1500–1508

- Department of the Interior NEPA Regulations: 43 CFR 46.10-46.450
- Departmental Management (DM) chapter specific to the Service: 516 DM 8
- Service policy:
  - 30 AM 2-3 (organizational structure and internal NEPA compliance). The AM (Administrative Manual) is only available in hard copy.
  - 550 FW 3
- Additional NEPA guidance can be found in:
  - 602 FW 1-3 (Refuge System planning guidance)



### 1.3.2 Addressing Other Authorities

In addition to Departmental and Service regulations and policies, Refuge System managers must comply with a number of other authorities, such as local/State statutes, other Federal statutes, and Executive Orders, when considering an action. The supplemental mandate of NEPA requires that we comply with all applicable authorities on each action to protect the environment. These authorities may require that you address them in NEPA, some may contain specific direction about NEPA compliance, and they may be relevant during the NEPA process. In addition, other laws and regulations may play a part when you are determining whether the effects of the proposed Federal action on the human environment will be significant.

NEPA documents should include a description of how other environmental statutes, regulations, and policy requirements have been satisfied. For example, a NEPA document's analysis of the potential effects of a proposed action on a species subject to the provisions of the Endangered Species Act, or on a historic property subject to the provisions of the National Historic Preservation Act would not satisfy the specific consultation requirements required by those laws. Instead, a NEPA document should demonstrate that all other applicable laws have been complied with, and you should reference or append any necessary documentation to the NEPA document and include appropriate documentation of compliance in the planning record.



## Section 2. Overview of the NEPA Process

This section provides a brief overview of the NEPA process. The process should be integrated with other planning at the earliest possible time to ensure that planning and decisions reflect environmental values and to avoid delays and potential conflicts.

The NEPA process is iterative in nature. It is common to have to loop back to an earlier step to make refinements in previous work. The iterative nature of the process ensures that we will make decisions that are based on an understanding of the environmental consequences associated with our actions.

### *2.1 Determining When NEPA Applies*

NEPA requires Federal agencies to consider the environmental effects of all discretionary “actions” they undertake. “Actions” mean policies, plans, programs, or projects that are implemented, funded, permitted, or controlled by a Federal agency. Most daily activities on refuges, however, qualify for categorical exclusion (CatEx) and do not require preparation of a NEPA document (see Section 3:3, Categorical Exclusions). A CatEx can be documented in an Environmental Action Statement or memo to the files that outlines the applicable Department and/or Service reasons for the action qualifying for exclusion from further NEPA documentation.

Federal actions that do not qualify as a CatEx require preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS), depending on whether the action *significantly* affects the quality of the human environment.



#### **2.1.1 Determining What Constitutes a Major Federal Action**

For NEPA purposes, a major Federal action is one that has or has the potential to result in significant effects on the human environment. “Major Federal actions” are described in the CEQ regulations as actions to adopt rules and regulations, formal plans, programs, and approval of specific projects (40 CFR 1508.18). Federal actions include when a Federal agency would conduct a proposed action, when a Federal agency would authorize or permit a proposed action, or when a Federal agency would authorize funding for a proposed action. The key is to evaluate a potential action based on the definition of significantly. [Note: “Major” (40 CFR 1508.18) does not have a meaning independent of significantly (40 CFR 1508.27).] The level of NEPA analysis and documentation (CatEx, EA with Finding of No Significant Impact, or EIS with Record of Decision) for a

potential Federal action depends on the issues raised and the associated potential impacts, as well as on the level of controversy associated with a proposal. (Note: High levels of controversy can indicate issues or concerns that have not been addressed or appropriately resolved.)

For Refuge System units, major Federal actions tend to fall within

#### **HELPFUL HINT:**

NEPA applies when a Federal action would result in an effect on the human environment, even when the effect would be beneficial.

NEPA also applies when a Federal agency responds to an outside request for a permit and license.

**HELPFUL HINTS:  
Do Your Homework**

- Read the entire Executive Order or Act and any associated regulations before attempting to comply.
- Document your compliance with other authorities at the same time that you document NEPA compliance.

one of the listed categories that are defined in 40 CFR 1508.18.

1. Adoption of official policy, such as rules, regulations, and interpretations under the Administrative Procedure Act; treaties and international conventions or agreements; and formal documents establishing policies that will result in or substantially alter agency programs (NEPA compliances for these types of actions are managed at HQ and/or Regional Offices).
2. Adoption of formal plans on which we base future actions (e.g., Comprehensive Conservation Plans (CCPs)).
3. Adoption of programs to implement a policy, plan, specific statutory program, or Executive directive, etc.
4. Approval of projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision, as well as Federal and federally-assisted activities.

Significance varies with the setting of the proposed action as well as the sensitivity of the affected resource. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant. [(1508.27(a)] Proposal-specific criteria for evaluating the degree of severity will serve to improve the ability to meet the “hard look” standard required

for NEPA. In order to develop the most appropriate criteria for evaluating impacts at a local scale, the process for developing and defining significance criteria should provide for input from tribes, the public, and other agencies. Significance criteria also help identify factors that can be used to develop appropriate levels and types of mitigation.

**2.1.2 Significant Environmental Impacts**

Because you must prepare NEPA documentation for a proposed action “significantly affecting the quality of the human environment,” it is important to understand what the word ‘*significantly*’ means. NEPA regulations (40 CFR 1508.27) base the term ‘*significantly*’ on the two criteria of *context* and *intensity*.

*Context* means the affected environment in which a proposed action would occur. The environment can be local, regional, national, or all three, depending on the circumstances. Both short- and long-term effects are relevant. *Intensity* means, or refers to, the magnitude of the impact. The following should be considered in evaluating intensity:

1. Adverse effects associated with “beneficial projects;”
2. Effects on public health or safety;
3. Unique characteristics of the geographic area (e.g., historic resources, park lands, prime farmland, wetlands, wild and

scenic rivers, wilderness, and ecologically critical areas);

4. Degree of controversy over facts used in this analysis;
5. Degree of highly uncertain effects or unique or unknown risks;
6. Precedent-setting effects;
7. Cumulative effects;
8. Adverse effects on scientific, cultural, or historical resources;
9. Adverse effects on endangered or threatened species or designated critical habitat under the Endangered Species Act; and
10. Violations of Federal, State, or local environmental law.

Consider the following example: Suppose an invasive species control project is expected to raise the water temperature of the adjacent stream by two degrees. If the fish occupying that stream were species highly tolerant of varying stream temperatures (such as common carp or catfish), one might conclude that the water temperature effects associated with the invasive species control project would be minor or negligible. However, if the fish species occupying the stream were highly sensitive to stream temperature changes (such as trout or salmon), one would likely conclude the effects of the invasive species control project would be more severe. In this example we see the intensity of the effect is the same (two-degree change in water

**HELPFUL HINTS:**

Listed are some examples of activities that could be considered major Federal actions.

- Development of CCPs and step-down plans, such as Habitat Management Plans (HMPs)
- Consideration of a new public use program (e.g., hunting program)
- Development of a new headquarters or visitor center, trails, or large restoration efforts
- Development of a compatibility determination for a proposed use of a Refuge System unit



temperature), but the significance of the effects is quite different depending on the different contexts in which we examine this same intensity.

## *2.2 Determining the Level of NEPA Analysis Required by the Proposed Action*

The level of environmental analysis required to comply with NEPA will differ depending on the action proposed and the anticipated impacts. The issues raised during a planning process and the amount of controversy associated with a proposal can help you to decide the appropriate level of NEPA documentation. There are three different levels of NEPA analysis:

- **Categorical Exclusion (CatEx).** The Department and the Service have established lists of categorical exclusions that may cover the proposed action. The Department publishes the list of actions that are categorically excluded in 43 CFR 46.205 and 46.210. The Service's CatEx list is in 516 DM 8. The Department's list of extraordinary circumstances that would preclude use of a



### **HELPFUL HINTS:**

- If at the very beginning of your planning, you expect the action to have significant or controversial effects, skip the EA and go straight to an EIS.
- Sometimes determining the differences between an EA and EIS are difficult; consult your Regional Office experts for assistance.
- Consult current mitigation policy to understand the applicability of mitigation, especially on a NWRS unit.

CatEx are in 43 CFR 46.215. If the proposed action is covered by one of the listed categorical exclusions and no extraordinary circumstances apply, no further analysis under NEPA is required. It is not necessary to document that an action qualifies as a CatEx before implementing the action, but in certain circumstances it may be prudent to do so (see Section 4.1.1). An Environmental Action Statement or memo to the files can be used to document one or more applicable CatEx(s) for an action. Generally, signature authority for an EAS for a CatEx rests with a Project Leader.

- **Environmental Assessment (EA).** If the proposed action is not covered by a CatEx, and the impacts of the proposed action are **not likely** to be controversial

or to have a significant effect on the human environment, than you should prepare an EA. As a result of the EA, if you find no significant impacts, as determined by evaluation of the impacts relative to the significance criteria defined for the proposal, or impacts can be mitigated below a level of significance through appropriate mitigation commitments, then the NEPA review process ends with preparation of a Finding of No Significant Impact (FONSI). The FONSI would include any mitigation. You can then begin implementing the action. However, if analyses in an EA indicate that there will be significant or controversial impacts, then you must prepare an Environmental Impact Statement (EIS). If significant or controversial impacts from the proposed action are anticipated, doing an EIS from the beginning (and skipping the EA) may save time and resources. Generally, signature authority for a FONSI rests with the Regional Director, Assistant Regional Director, or Regional Chief of the National Wildlife Refuge System (consult your NEPA Coordinator for the specific authority in your Region).

- **Environmental Impact Statement (EIS).** If the proposed action will have a significant impact on the human environment or will be controversial, an EIS is required. Once you complete the EIS, you must develop and issue a Record of Decision (ROD) that describes the alternative selected for implementation and includes any mitigation. Generally, signature authority for an EIS rests with the Regional Director.

Sometimes an environmental analysis document (EA or EIS) may exist that has already sufficiently analyzed the impacts from the proposed action. If so, these documents can be ‘adopted’ to cover the proposed action, and no new NEPA analysis is necessary (see Section 5.5).

## 2.3 Actions Exempt from NEPA

NEPA compliance is required for most Federal actions. However, there are unusual situations that may occur where an action may be exempt from NEPA compliance. For example, if there is a clear and unavoidable conflict between NEPA compliance and another statutory authority, NEPA compliance is not required. A consultation with the Office of the Solicitor is recommended if there are potential conflicts between NEPA and other statutory provisions.

### 2.3.1 Congressionally Exempt Actions

Although it is rare, occasionally Congress exempts an action from NEPA compliance. For example, Congress could write a law directing the Service to take action, such as closing an area to a specific use, and stating that the provisions of NEPA do not apply. The relevant statutory language should be reviewed carefully to determine the extent and scope of the action being exempted.

Another real world example is where a congressional Act directs the Service to establish a refuge on a specific piece of property. Since NEPA applies to Federal agencies when they have discretionary authority, in this situation NEPA would not apply because the law removes the Service’s discretionary authority to determine the boundary of the refuge.

However, in most cases the Service does have discretion for actions, and those discretionary actions require appropriate NEPA analysis. For example, a congressional Act may

### HELPFUL HINTS: Responsible Official

CEQ calls the ‘Responsible Official’ the person who is authorized to sign the NEPA decision document. The person responsible for signing, or Responsible Official, can vary depending on the nature of the NEPA action (CatEx/EAS, EA/FONSI, or EIS/ROD). This Handbook will follow CEQ tradition and call this person the Responsible Official.

authorize the Service to establish a refuge of up to 10,000 acres. NEPA analysis would be required for acquisitions since the Service has discretion as to the size and configuration of the refuge as long as it is not bigger than 10,000 acres.

### 2.3.2 Emergency Actions

Emergency circumstances requiring immediate action are exempt from CEQ’s NEPA implementation provisions prior to taking action. Refuge System managers should consult with their Regional Office for guidance. However, where emergency circumstances occur, NEPA is not waived entirely, as described in the following section. CEQ regulations specify that in the event of an emergency, immediate action should be taken to prevent or reduce either risks to public health or safety or serious resource losses.

It is important to note that only actions required to resolve the emergency are exempt. Examples of emergency actions are cleanup of immediately threatening hazardous materials spills, fire suppression, and prevention or repair of damage by unanticipated floods or other natural disasters. Other actions that are related to the emergency, but not necessary to resolve the immediate threat, remain subject to the requirements of NEPA. For example, post-wildfire habitat restoration, while related to the emergency, would still be subject to NEPA compliance.

#### 2.3.2.1 Procedures for Emergency Actions

When faced with an emergency, before taking action without NEPA, we must document the emergency and include a description of the

actions that will be taken to respond. The Responsible Official has the authority to make that decision and determine the appropriate form of documentation required. Regulations and policy require that both CEQ and the Department’s Office of Environmental Policy and Compliance (OEPC) be consulted as soon as possible about NEPA compliance in such an event.

The CEQ regulations (40 CFR 1506.11) require that after dealing with the emergency, “alternative arrangements” be made to comply with NEPA. These arrangements establish an alternative means for compliance. They take the place of an EIS and only apply to Federal actions with significant environmental impacts. If the emergency action does not have the potential to result in significant environmental effects (see Section 2.1.2), then the ability to use the ‘alternative arrangements’ regulation does not apply, and normal NEPA procedures must be followed.

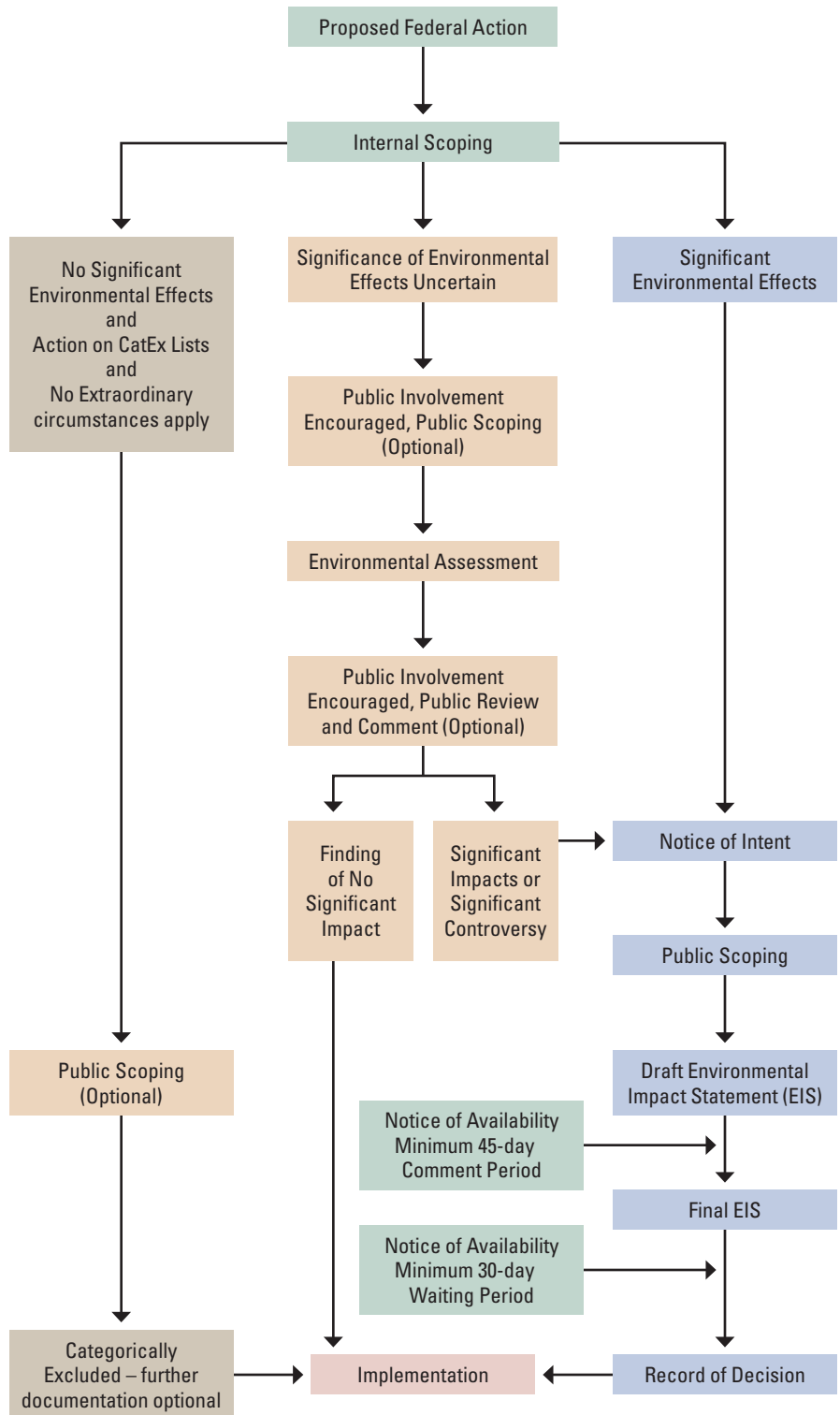
The authority for granting an alternative arrangement is delegated to the Assistant Secretary of Policy, Management and Budget. Any alternative arrangement must be documented and a Department consultation set up to discuss it. This consultation is coordinated through the Refuges office in HQ. The Department will consult with CEQ about alternative arrangements as soon as possible if the Responsible Official takes an action in response to an emergency.

# Section 3. NEPA Decision-making Process

The NEPA process is a transparent process intended to help public officials make informed decisions based on an understanding of the environmental consequences of actions. The following figure is a flowchart showing the NEPA decision-making process. This flowchart and the following chapter is intended to aid in determining which NEPA process is appropriate for the proposed action and the steps that need to be taken to properly analyze and document the effects. Chapter 4 will provide detailed instructions on how to write the NEPA documents for each part of the process described in this chapter.

The Service often employs consultants to prepare NEPA documents and to assist with other NEPA tasks (e.g., scoping and public meetings). As long as there's no conflict of interest, a contractor may prepare a NEPA document for internally or externally generated proposals. The contractor first must sign a waiver to verify there is no conflict (no financial or other interest in the project) (40 CFR 1506.5). Although consultants often do substantial amounts of work for the agency, the Service is legally required to determine whether the consultant's products meet the agency needs, and the Service makes the ultimate NEPA decision.

**NEPA Decision-making**



### 3.1 Internal Scoping

Internal scoping is the use of Service staff at the HQ, Regional, and/or field station level to decide what needs to be analyzed in a NEPA document. It is an interdisciplinary process, and at a minimum, should be used to define issues, formulate preliminary alternatives, and identify data needs. Internal scoping may also be used to:

- Formulate and refine the purpose and needs statement;
- Identify connected, cumulative, or similar actions associated with the proposal;
- Start preparation for cumulative effects analysis;
- Decide on the appropriate level of documentation;
- Identify interested members of the public (stakeholders) and interested cooperating agencies;
- Develop a public involvement strategy; and
- Decide other features of the NEPA process (e.g., logistics for maintaining the administrative record and formulating strategies for interdisciplinary analyses).

### 3.2 Determination of Significance

Based on the outcome of the internal scoping process, an initial determination must be made as to whether or not we would anticipate the action(s) proposed for implementation to result in, or have the potential to result in, significant impacts of effects. The NEPA regulations (40 CFR 1508) use the terms “impact” and “effect” synonymously (see sections 4.7.1.1 and 4.7.1.2 for additional discussion).

#### 3.2.1 Significant Impacts

NEPA does not prescribe hard and fast rules as to whether or not impacts on the human environment are considered significant; this determination is subject to interpretation and varies due to the

#### NEPA PRINCIPLES: Interdisciplinary Team

NEPA analyses must be performed by individuals with credentials appropriate to the issues—an interdisciplinary or interactive team approach is required. Members of the interdisciplinary team may also come from other Federal, State, and/or local agencies or Native American Tribes. The need for an interdisciplinary team does not mean that a large group of specialists must be assembled, instead, one or two specialists should be consulting with a number of sources, staff (including biological, visitor services, maintenance, operations, and others), and non-agency personnel. For more information, see 40 CFR 1502.6, NEPA section 102 (A).

context, intensity, and duration of all direct, indirect, and cumulative effects (see section 2.1.2).

An interdisciplinary team must be convened to work through whether or not the proposed action would result in significant impacts. If this team determines that the action would be likely to result in significant impacts, an EIS and ROD must be completed before proceeding with the action.

When the likelihood of significant impacts is verified with HQ or the Regional Office, the interdisciplinary team must immediately begin the preparation of an EIS by publishing a Notice of Intent (NOI) in the *Federal Register*.

### 3.3 Categorical Exclusions (CatEx)

#### 3.3.1 Introduction and Definition

Categorical exclusions (CatEx) are categories of actions that do not have a significant effect on the quality of the human environment (individually or cumulatively) and therefore, neither an EA nor an EIS is required. A CatEx is a form of NEPA compliance, without the analysis that occurs in an EA or an EIS. It is not an exemption from NEPA, but a means to expedite project implementation because the actions were found to have no significant impacts. A decision on the action being taken under a CatEx may be subject to appeal (e.g., denial of a special use permit).

The Department publishes the list of actions that are categorically excluded in 43 CFR 46.205 and

46.210. A Service-specific CatEx list is in 516 DM 8. Congress may also establish CatEx actions by legislation. The terms for these CatEx actions are described within the legislation. The Department lists extraordinary circumstances in 43 CFR 46.215 — the Service does not have a separate list.

When using a CatEx, other procedural requirements may still apply. For example, Native American Tribal consultation and consultation under the National Historic Preservation Act and the Endangered Species Act may still be required. Further, some type of public scoping, although not required, may be advisable, especially for proposed actions with some level of controversy [e.g., public scoping could help lower the level of controversy below the threshold of significance, allowing for the use of the applicable CatEx].

In some extraordinary situations, the Service may determine that an EA or EIS is necessary even if an action would normally qualify as a CatEx. These circumstances include actions that **may** result in significant impacts, be controversial, have uncertainty or unknown risks, or potentially violate laws or Executive Orders. If an extraordinary circumstance exists, the Service may modify the proposal to alleviate or resolve the extraordinary circumstance so the action can be categorically excluded.

#### 3.3.2 Determining if a Proposed Action Qualifies as a Categorical Exclusion

Use the listed thought process to determine if a proposal for action qualifies as a CatEx.



### 3.3.3 CatEx Public Involvement

No specific public involvement steps are required by law when categorically excluding an action from further NEPA analysis and documentation. However, because CEQ requires agencies to always make a diligent effort to involve any interested and affected public, consider the level of public interest in the action in question.

If there is substantial public interest in an action that will be categorically excluded, it would be prudent to involve the public (through notification or scoping). Public involvement may be valuable in determining whether extraordinary circumstances apply. Though not required, in some circumstances, preparing an EA for proposed actions otherwise excluded may be the best planning or decision-making (e.g., action with a high level of public interest). Document the rationale for completing an EA rather than using a CatEx (also see Section 4.1 on documenting a CatEx).

1. Will the action being proposed result in only minor or negligible direct or indirect impacts?

If project actions have the potential for measurable environmental impact or mitigation is required to avoid the potential for environmental impact on the human environment, the action *does not* qualify as a CatEx.

If no, go to number 2.

2. Will multiple similarly situated actions, if carried out to their logical extent, result in minor or negligible impacts (this addresses whether the proposal will cumulatively have a significant effect on the human environment)?

If the answer is yes, or mitigation is required to avoid the potential for cumulative effects, then the action *does not* qualify as a CatEx.

If no, go to number 3.

3. Was a determination made that the proposed action will not individually or cumulatively have a significant effect on the human environment?

Review the list of Departmental and Service categorical exclusions to see if the proposed action is on the list. **If the action is not on these lists, then it cannot qualify as a CatEx.**

If the action is included on either of the lists, then proceed to number 4.

4. Will the proposed action trigger one of the extraordinary circumstances described in 43 CFR 46.215 that describes *exceptions* to categorical exclusions?

If an exception is triggered, then the proposed action no longer qualifies as a CatEx.

If no exception is triggered, go to number 5.

5. If the proposal does not trigger an exception, has been determined to not individually or cumulatively have a significant effect on the human environment (number 1 and 2), and is on the list of categorical exclusions (number 3), then it qualifies as a CatEx.

If the action being proposed does not qualify as a categorical exclusion, then preparation of an EA or EIS is required.

## 3.4. Environmental Assessments (EA)

### 3.4.1 Introduction

You should prepare an EA when the proposed action does not qualify as a CatEx, when the impacts are not expected to be significant, or when the impacts of the action are uncertain. If one or more CatEx(s) would apply to the proposal, but the proposal has a high level of controversy, you may decide to do an EA to better understand the proposal, the issues, the controversy, and the impacts. As discussed earlier, whether an action would potentially result in significant impacts is a matter of interpretation and it is not always clear from the outset (40 CFR 1508.9).

You must prepare an EA for all proposed Federal actions that are not otherwise specially exempt with the following exceptions: actions that are covered by a CatEx; actions that are sufficiently covered by another environmental document (i.e., an EA/FONSI or EIS/ROD); or actions where a decision to prepare an EIS

has already been made. An EA may also be prepared to assist in planning or to facilitate preparation of an EIS. While we are only required to develop an EA, there may be cases where we decide to develop a draft EA, take public comment on the draft EA, and then develop the final EA.

### 3.4.2 EA Public Involvement

The Department's NEPA regulations state that public notification and public involvement must be provided for, to the extent practicable and appropriate, when preparing an EA. Depending on the proposal, the anticipated impacts, the level of interest (e.g., local v. national), and the level of controversy, the public involvement for a particular EA may range from simply taking written comments on the EA to an expanded outreach effort that includes public scoping meetings prior to development of the EA, followed by public review and comment meetings on the EA once it has been developed. It may be prudent for more complex projects to include a public scoping period (likely with at least one public meeting) prior to development of the EA, followed by a public review and comment period where written comments are taken (likely without needing a public meeting).

Although there are many ways to facilitate public involvement, regulations do not require that the draft NEPA document be published to receive public input. In most instances the Service's standard practice is to provide the public with a copy of the EA for a period of review, often 30 days, before we make a decision. If the Service decides to seek comments on an EA, such as when the level of public interest or the uncertainty of effects warrants review, then we revise the EA based on comments received without initiating another comment period. Certain programmatic requirements may outline a public involvement approach for EAs (e.g., for CCPs with an EA, the standard includes publishing notices in the *Federal Register*, conducting public scoping prior to document development, and conducting public review and comment on the EA and the draft CCP). Prior to conducting outreach to potentially

#### HELPFUL HINTS: Environmental Assessments

An EA is a concise document prepared in compliance with NEPA that briefly discusses the purpose and need for an action and alternatives to such action, and provides a listing of agencies and people consulted. It provides sufficient evidence and analysis of impacts to allow us to determine whether to prepare an EIS or a FONSI.

interested members of the public, other Federal agencies, State and local agencies, Native American Tribes, and others, NWRS units may develop an Outreach Plan and have the appropriate Regional External Affairs office review it.

CEQ regulations, Departmental NEPA regulations, and Service policy emphasize agency coordination and cooperation as early as possible in the NEPA process. An invitation to solicit participation of affected Federal, State, and local agencies, any affected Native American Tribes, and other interested parties (including those who might not be in accord with the action on environmental grounds) should be sent out as part of the scoping process. In addition, any other Federal agency that has jurisdiction by law or special expertise with respect to any environmental issue should be invited to be a 'cooperating agency' in our NEPA process. The Service has specific regulations and policies for coordination with States (see DOI, Fish and Wildlife Policy: State—Federal Relationships, 43 CFR Part 24 and 601 FW 7 – Coordination and Cooperative Work with State Fish and Wildlife Agencies). Additionally, the Department and the Service have specific policies for consulting with Native American Tribes (see Secretarial Order 3317 – DOI Tribal Consultation Policy, The Native American Policy of the U.S. Fish and Wildlife Service (June 28, 1994), and Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, November 6, 2000).

There is wide discretion for determining how much and what kind of involvement works best for each EA. For preparation of an EA, public involvement may include any of the following: external scoping, public notification before or during preparation of an EA, public meetings, and public review and comment on the completed EA and unsigned FONSI. You should use similar notification venues throughout the process (e.g., if a *Federal Register* notice provided the Notice of Intent, then a *Federal Register* notice should also be used to provide the Notice of Availability of the EA).

Although not required, workshops, meetings, hearings, or other opportunities to give verbal input on an EA may be appropriate when there is large-scale interest in a proposal. However, public meetings or hearings are required when there is substantial environmental controversy concerning the environmental effects of the proposed action, a substantial interest in holding a meeting, or a request for a meeting by another agency with jurisdiction by law over the action. For example, in Alaska, the Alaska National Interest Lands Conservation Act requires "a public hearing" for any proposed land management plan, plan revision, or any action that could affect subsistence.

In addition to public involvement in the preparation of an EA, we must notify the public of the availability of a completed EA. You must also consider all comments received

#### HELPFUL HINT: Beneficial Impacts

Both adverse *and* beneficial impacts must be analyzed, as taking action with "beneficial environmental impact" is not a NEPA exception. The language of NEPA requiring an EIS for any major Federal action "significantly affecting the quality of the human environment" is intentionally broad because one person's "benefit" may be another person's adverse effect.

within the stated timeframes, whether specifically solicited or not.

### 3.4.3 Environmental Assessment Document

An EA is an analytical document, not a decision document, so it does not require a signature. Thus, a proposed action may not be implemented based solely on completion of an EA. Instead (assuming an EIS is not warranted), you must develop a FONSI and it must be signed by the appropriate Responsible Official; the FONSI is the decision document for the EA.

You use the information and analyses included in the EA to make the decision regarding whether or not development of an EIS is warranted for a particular Federal proposal. You can decide to proceed with development of an EIS at any point in the process of developing an EA. Once you make the decision to develop an EIS instead of an EA, you must document this decision in an Environmental Action Statement (see Section 4.1.1) and redirect all future efforts to the EIS process and document. If, on the other hand, the EA process reveals that an EIS is not warranted, you must develop a FONSI.

A more thorough description of the analysis and writing of an EA is covered in chapter 4.

### 3.4.4 Finding of No Significant Impact (FONSI)

A FONSI documents an agency's determination that a proposed action is not a major Federal action significantly affecting the quality of the human environment and, as such, does not require development of an EIS. A FONSI is a legal finding, and the information in it must adequately address the relevant statutes and regulations on which it is based.

The FONSI must disclose all the alternatives and effects discussed in the EA and explain why one alternative has been selected for implementation. The FONSI must also explain why the action will not have a significant effect on the human environment, or how mitigation measures will reduce the impacts to less than significant levels (see Section 4.7.4). Additionally,

#### HELPFUL HINTS:

Additional guidance for a FONSI:

- CEQ regulations 40 CFR 1501.4, 1508.13, 1508.27;
- Departmental NEPA regulations 43 CFR 46.140, 46.150, 46.300—325; and
- Service policy (550 FW 3.3B and 30 AM 3.9B(3)).

every FONSI must be made available for public review. For those actions that are without precedent, the FONSI must be made available for public review for 30 days before the action can be implemented (40 CFR 1501.4(e)(2)).

For actions/projects where mitigation is an integral component of project design (e.g., best management practices to prevent stormwater runoff, adhering to “in water work” seasons, establishing buffer strips), agencies may prepare an EA and FONSI rather than a more detailed EIS. However, they can only do this when environmental impacts can be mitigated below a level of significance through mitigation commitments. Mitigation requirements from the EA should be included in the FONSI. A FONSI prepared under such circumstances is sometimes referred to as a “mitigated FONSI.” (See “Final Guidance for Federal Departments and Agencies on the Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact” 76 *Fed. Reg.* 3843.)

#### 3.4.4.1 FONSI Notice of Availability

Because a signed FONSI is a NEPA environmental document, it must be made available to the affected public. You can use a combination of methods, such as local mailings, Web site postings, publication in newspapers, and publication in the *Federal Register* to provide notice, as appropriate to the needs of the particular case. Note: A *Federal Register* notice is not required for

most EAs. You should use similar notification venues throughout the process (e.g., if a *Federal Register* notice provided the Notice of Intent, then a *Federal Register* notice should also be used to provide the Notice of Availability of the FONSI).

You may provide simultaneous public notification of the availability of an EA and FONSI. Barring other restrictions, you may implement the proposed action immediately following such notification, unless you decide to establish a public review period during the EA process (see Section 4.8.2).

## 3.5 Environmental Impact Statements (EIS)

### 3.5.1 Introduction and Purpose

You should prepare an EIS when proposing a major Federal action that is expected to result in significant impacts or when, through an EA process, you determine that the effects of the proposed action would be significant and cannot be mitigated to a level of non-significance.

### 3.5.2 Notice of Intent (NOI)

CEQ specifies that we must issue a Notice of Intent (NOI) in the *Federal Register* that describes our ‘intent’ to prepare an EIS for a proposed action. The notice must:

1. Describe the proposed action and alternatives, if any, developed to date;
2. Describe the intended scoping process and tell when and where any scoping meetings might be held;
3. Give the name and address of a Service contact who can answer questions about the proposed action and the EIS; and
4. Make a statement advising the public that individual names and addresses of commenters may be included as part of the public record.

### 3.5.3 Public Scoping

As described in CEQ regulations (40 CFR 1501.1(d) and 1501.7), scoping must be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. Scoping serves not only as a process for assessing the scope of the proposed action, but also as a means for conducting early coordination with agencies and/or organizations that have jurisdiction by law and special expertise and for engaging the interested public in the agency planning process.

Formal public scoping, or external scoping, begins following publication of an NOI. External scoping will be done to allow for public review and comment on the products resulting from internal scoping, such as the purpose and needs statement, issues, and alternatives.

External scoping occurs early in the process and generally extends through the development of alternatives. External scoping methods include, but are not limited to *Federal Register* notices, public meetings and open houses, media releases, planning updates, and Web postings.

The scoping done for an EA that leads to an EIS does not usually substitute for the official required scoping for the EIS. However, if a statement was made in the public scoping notice for the EA that there is potential that an EIS may need to be prepared, and the NOI for the EIS indicates that comments on the scope of the alternatives and impacts received during the EA process will continue to be considered, then the comments received for the EA can be considered as additional scoping for the EIS.

### 3.5.4 Draft EIS Notice of Availability/ Filing with the Environmental Protection Agency

The CEQ regulations require that we file draft and final EISs with EPA. EPA will prepare a Notice of Availability (NOA) in the *Federal Register* under its “Environmental Statements, Availability, etc. – Weekly Receipts” that is published on the Friday of the week after they receive the draft EIS. The

#### HELPFUL HINTS:

The *Federal Register* is used at least 4 times for an EIS.

- Notice of Intent to prepare an EIS
- Notice of Availability of a Draft EIS
- Notice of Availability of a Final EIS
- Notice of Record of Decision

date of EPA’s NOA in the *Federal Register* is significant because it is the official first day of the comment period. For EISs delegated to Regional Directors, the Regional Office is responsible for coordinating publication of the *Federal Register* notice and filing the EIS with EPA.

The EPA *Federal Register* EIS notification provides limited information; therefore, the Department requires the Service to publish an additional, but separate notice in the *Federal Register*. The Service’s notice provides detailed contact information and summarizes the project proposal, the alternatives considered, and the issues associated with the proposal. The due date for comments indicated in this notice must be the same as the date required in the EPA notice.

### 3.5.5 Recipients of the Draft EIS

A copy of the draft EIS must be sent to:

1. All Federal agencies that have jurisdiction by law or special expertise, and all appropriate Federal, State, or local agencies or Native American Tribes;
2. Any interested or affected individuals or organizations; and
3. Anyone who requests a copy.

EISs are typically made available via the internet, or distributed via electronic copies (such as compact discs) if the requester has the means to access it electronically. A limited number of paper copies may be available for distribution by request.

For requests made after all printed copies have been distributed, or for those EISs without paper copies, requesters should be directed to the nearest library or government office that has an official copy.

### 3.5.6 EIS Public Comment Period

Unless the Service wants to establish a longer timeline, the minimum comment period must be 45 days for a draft EIS and 30 days for a final EIS from the EPA publication date in the *Federal Register*. (Note: Projects in states that fall under the Coastal Zone Management Act are provided 60 days for comments.) For a final EIS, a 30-day period must elapse from the EPA publication date in the *Federal Register* before a ROD can be signed. For complex projects and/or those with a high level of public interest, 60-day, 90-day, or 120-day comment periods may be warranted. The review period may be extended as long as EPA is notified (see 40 CFR 1506.10). Please note, the date of EPA’s NOA in the *Federal Register* is the official first day of the comment or review period.

### 3.5.7 Draft EIS Public Meetings/Hearings

If there is a desire to sponsor a public forum for gathering public comments, it is best to allow ample time for the public to review the NEPA document and formulate their comments. You should advertise the meeting through a reliable method, such as a purchased advertisement, direct mail, electronic mail, notices posted in local gathering spots, or by asking community organizations to spread the word. Press releases are not a reliable method because they are published or aired at the discretion of the media. We recommend that you schedule a public input session no sooner than 2 weeks after EPA publishes the NOA and provide 2 weeks for developing comments after a public forum.

The public meeting format can be a workshop, meeting, hearing, or other option, but attendees must be allowed to express reasonable substantive concerns with the draft EIS. Speakers may be limited to a certain number of minutes to ensure that all who want to speak



### HELPFUL HINT: Comments

You may want to include and consider comments that arrive a few days after the review period without formally extending the comment period. However, there should not be an arbitrary “cut-off” point or “cherry picking” of comments to include.

are heard in a reasonable amount of time. Enabling multiple methods to comment (e.g., in writing by email, mail, fax, or comment card; verbally to a designated staff person or court reporter at a public meeting; or verbally during the verbal comment period at a public meeting) provides the public a better opportunity to participate in the planning process. You should use similar notification venues throughout the planning process. Use of a trained facilitator (Service staff, staff of another agency, or outside contractor) can prove helpful for many public meetings, and especially for those with controversy.

### 3.5.8 Substantive Comments and Response Options

When preparing a final EIS, you must address all substantive comments submitted during the

public comment period for the draft EIS in the final EIS either by modifying the text of the final EIS or writing a response to the comments separately.

Please see Chapter 4 for more information on responding to comments.

### 3.5.9 Final EIS Notice of Availability/Filing with EPA

Following public review of the draft EIS, the office issuing the EIS must finalize the document (unless a decision is made to terminate the EIS), file it with EPA, and issue a NOA in the *Federal Register*. As with the filing requirements for a draft EIS, EPA will publish a separate NOA. A minimum of 30 days must pass from the time EPA publishes the NOA before a ROD can be signed.

#### 3.5.9.1 Abbreviated Final EIS

You may use an abbreviated final EIS when only minor responses, factual responses, or explanations why further response is unnecessary, are required to respond to the comments on a draft EIS. If you prepare an abbreviated EIS, you must send the appropriate number of draft EISs to EPA with the abbreviated final EIS for publication according to the process described in Section 3.5.4 above. The purpose

of including the draft EIS is so the public can see what changes were made.

When deciding if an abbreviated final EIS is appropriate, you should consider whether the project is controversial or of national interest, the number of substantive comments received, and the scope of the project.

The documents required for an abbreviated final EIS include:

- A cover sheet,
- An explanation of the abbreviated EIS,
- Copies of substantive comments received on the draft,
- Responses to those comments, and
- A document identifying the specific modifications and corrections to the draft EIS made in response to comments.

#### 3.5.9.2 Recipients of a Final EIS

You must make the full content of the final EIS available on a Web site, and it is standard practice to have a limited number of official paper copies available to the public through a library or government office. You must also send a final copy of the EIS to any interested parties, including those who received a full draft EIS but did not comment.

#### 3.5.9.3 Changes in the Selected Alternative

If the Responsible Official determines that the selected alternative should be modified after the final EIS has been released, you may need to conduct additional analysis. Additional analysis is needed only if:

- The alternative will have additional impacts on the human environment, or
- The alternative will have impacts that are different from those described in the final EIS.

If the alternative requires a new analysis, you must prepare a supplement to the EIS.



### 3.5.10 Record of Decision

Following completion of an EIS, you must prepare a ROD that serves to document which alternative we selected for implementation and describes accompanying mitigation measures. You may integrate the ROD into any other record prepared by the Service, such as compatibility findings or Endangered Species Act findings. The Service can take no action concerning a proposal that would have an adverse environmental impact or limit the choice of reasonable alternatives until the ROD has been signed.

#### 3.5.10.1 Content of the ROD

CEQ regulations require that a ROD include the following:

- A summary of all alternatives analyzed in the EIS.
- Identification of the environmentally preferable alternative.
- Identification of the Service's preferred alternative.

- A concise explanation of why we selected one alternative and not the others.
- Identification of mitigation measures that will be implemented if they are not obviously integral to the alternative selected, and a summary of any monitoring or other enforcement programs or plans. The description of mitigation and monitoring should be specific enough to enable the public to determine whether measures have been effectively implemented, but not be so specific as to duplicate the EIS.
- A statement of whether all practical means to avoid or minimize environmental harm from the selected alternative have been adopted, and if not, why not.

In addition, the ROD should include a brief description of the project's public involvement process to document that NEPA's public involvement requirements have been satisfied.

#### 3.5.10.2 Processing and Distributing the ROD

A minimum of 30 days must pass after EPA publishes the NOA of the final EIS in the *Federal Register* before the ROD can be signed. You must make the signed ROD available to the affected public by publishing it in the *Federal Register*, and by other appropriate means. You must also provide a copy of the ROD to those who have requested it, and provide it to others known to have a strong interest in the proposal. You should use similar notification venues throughout the planning process.

#### 3.5.10.3 Implementing the Action in the ROD.

The action may be initiated immediately after the ROD has been signed by the appropriate Responsible Official. The Service must comply with the decision made in the ROD; the actions, terms, and conditions stated in the ROD are enforceable by Federal agencies and private parties. The ROD can be used to compel compliance with or execution of mitigation, monitoring, and enforcement measures that are identified in it (40 CFR 1505.3). The Service should make a diligent effort to involve the public in the implementation of the action (40 CFR 1506.6).



*Former Secretary Salazar and Director Dan Ashe at Congressional NEPA hearing.*

# Section 4. Writing NEPA Documents

## 4.1 *CatEx* Documentation Requirements

Documenting a CatEx is not necessary for obvious and routine actions that clearly do not result in significant effects. Examples include actions that have no environmental effect, such as personnel actions or routine financial transactions, or actions that have a negligible environmental effect, such as installation of routine signs and markers. However, there may be instances where you want to create a record documenting that an action qualifies as a CatEx. Examples include situations where there may be some question about whether an action qualifies as a CatEx, if there is a Regional requirement that certain CatEx actions be documented, or you believe it would be prudent to create a written record that an action qualifies as a CatEx. An Environmental Action Statement (EAS) or memo to the files should be used to document applicable CatExs for an action. If scoping was used in the planning process, include documentation of that scoping in the EAS and in the planning record.

### 4.1.1 The CatEx Administrative Record

The administrative record consists of all relevant documents and materials that existed and were available to the decision-maker at the time of the decision. It is the Service's evidence that our decision and process comply with the relevant statutory and regulatory requirements. Although the administrative record for a CatEx will be much smaller than that maintained for an EA or an

#### HELPFUL HINT:

An Environmental Action Statement (EAS) is a short document, indicating:

- The proposal,
- The Service decision,
- Summary of any public involvement
- References to supporting documents (if any), and
- Signature block.

The EAS serves as an administrative record of decisions that are not captured by a Finding of No Significant Impact or a Record of Decision. See 550 FW 3 for more information.

EIS, it can be critically important should our decision be challenged in court.

For an action where there may be some question about whether it qualifies as a CatEx, we recommend that you create a record (called an EAS) that shows how the action qualifies as a CatEx. At a minimum, an EAS should describe the proposed action, explain why the proposed action is expected to result in only minor or negligible effects, and identifies the CatEx that best applies to the action. The EAS format can be found in 550 FW 3.

Although not a decision document such as a FONSI or a ROD, an EAS serves much the same function and provides documentation of the rationale for the decision.

### 4.1.2 Documentation Requirements When Using the Hazardous Fuels and Post-Fire Rehabilitation CatEx

If you decide that a CatEx can be used for a hazardous fuels treatment, a post-fire rehabilitation, or emergency stabilization project, you must document that decision.

You must also complete an EAS that contains the specific elements required by the Department's Office of Environmental Policy and Compliance and the Service. The Refuge System unit manager should consult with a Regional Office Fire Management specialist and a NEPA specialist for additional guidance regarding the information requirements for preparing a Hazardous Fuels/Post-Fire Rehabilitation/Emergency Stabilization EAS.

## 4.2 *Documentation for EAs and EISs*

If the Service is developing the proposed action, the typical steps for writing an EA or EIS are:

- Define the purpose and need for action,
- Develop a public involvement strategy and scope issues,
- Develop a proposed action and reasonable range of alternatives

which address the purpose and need for action,

- Describe the human environment that will be affected by the action,
- Analyze and disclose the impacts of each alternative, and
- Ensure the public has an opportunity to be involved.

These steps are also used for externally generated projects (i.e., a proposed action developed by an agency other than the Service, such as a State's request for a right-of-way through a refuge).

#### 4.2.1 EA Length

A key purpose of an EA is to help decide if a proposed action will have a significant effect on the human environment (40 CFR 1501.3). CEQ regulations emphasize preparing a concise document. To avoid preparing an EA that is too long, incorporate by reference background data that supports the EA's discussion of the proposal and relevant issues. Incorporation by reference is the act of including another document or portions of another document by referencing the other document and summarizing the incorporated material. Even though the goal is to prepare a concise document, in practice it is common for a Service proposal to be complex enough that an EA of 30, 40, or even 50-plus pages is needed to fully examine impacts.

#### 4.2.2 EA Format

While CEQ does not require a particular format for EAs, Departmental regulations (43 CFR 46.310) state that an EA must contain brief discussions of the need for the proposal, the alternatives considered, the potential effects of the proposed action and alternatives on the human environment, and a listing of agencies and people consulted.

You should organize an EA so that the flow of information is logical and easy to follow. This will help with decision-making and enhance general reader understanding of the proposal, the analysis process, and the results.

#### HELPFUL HINTS: EA Length

An EA longer than 50 pages is often an EIS in disguise. To avoid duplicating efforts, carefully consider whether an EIS is more appropriate for long, complex EAs.

The Department requires that the environmental impacts and alternatives sections be clearly and separately identified and not spread throughout or interwoven into other sections of the document. EAs do not need to have a separate affected environment section, although you must clearly describe baseline information to compare impacts. Programmatic guidance may provide requirements or insight into EA formats (e.g., a CCP with an EA has a recommended format; 602 FW 5 Exhibit 5).

#### 4.2.3 EIS Format

The format of an EIS should clearly present the alternatives and corresponding impacts to the human environment. You should use the following standard format for EISs (per CEQ regulations) unless there is a compelling reason to do otherwise:

1. Cover sheet
2. Summary
3. Table of Contents
4. Purpose of and Need for Action
5. Alternatives, Including Proposed Action
6. Affected Environment
7. Environmental Consequences
8. List of Preparers
9. List of Agencies, Organizations, and People to Whom Copies of the EIS are Sent
10. Index
11. Appendices

### 4.3 Step 1: Define the Purpose and Need for Action

The following guidance pertains to writing both EAs and EISs. In situations where the requirements for writing these documents diverge, we clearly identify which document we are discussing.

#### 4.3.1 The Purpose and Need Statement

“Purpose and need for action” is usually the title of chapter one of an EIS or an EA, although “Introduction” may be more appropriate. The purpose and need statement describes the problem or opportunity to which the refuge is responding, and what the refuge hopes to accomplish by taking the action. The purpose and need statement should be drafted early in the NEPA process. Including a draft purpose and need statement with scoping materials will help focus internal and external scoping comments. Reexamine and update the purpose and need statement as appropriate throughout the NEPA process, especially when refining the proposed action and developing alternatives.

##### 4.3.1.1 Purpose for Action

The purpose for action section identifies goals and objectives that the Service intends to fulfill by taking action; the purpose is the end to be attained and is often linked to a mandate. These goals can come from a refuge's purpose and significance (if the action proposed is a CCP, for instance), from management objectives or mission goals, from implementing or other legislation, from another plan, from standards and guidelines for a particular management zone, from public or staff input, and from other sources. Because some of these objectives also may resolve needs, there may be overlap between purpose and need. The purpose and need set the sideboards for the alternatives, they are the decision factors that evaluate the appropriateness or reasonableness of the alternatives to be evaluated, and they are used to eliminate alternatives that do not meet the stated purpose and need. Limit the discussion to those goals

and objectives that are critical for success.

#### 4.3.1.2 *Need for Action*

The CEQ regulations do not differentiate the “purpose” of the action from the “need” for the action. However, distinguishing the “purpose” and the “need” as two separate aspects of the statement may help clarify why the refuge is proposing an action. For many types of actions, the “need” for the action can be described as the underlying problem or opportunity to which the refuge is responding with the action.

When writing the need for taking action, describe existing conditions that should be changed, problems that need to be remedied, decisions that need to be made, and policies or mandates that need to be implemented (i.e., why the refuge is proposing this action at this time). It may have elements that would otherwise be included in a discussion of project background. There may be one or several needs that an action will resolve.

“Need” is not a discussion of the need for NEPA or other regulatory compliance, but rather reasons why the refuge is proposing to take action at this time and in this place. Although CEQ describes it as brief, the discussion of need may require several pages.

#### 4.3.1.3 *Drafting the Purpose and Need Statement*

When drafting the purpose and need section, consider the following:

- The statement must be for the action being proposed, not the purpose and need for the document.
- Accurately describing the purpose and need statement is important because it dictates the range of alternatives. A carefully crafted purpose and need statement can be an effective tool in controlling the scope of the analysis and, as a result, increasing efficiencies by eliminating unnecessary analysis and reducing delays in the process.
- The purpose and need statement provides a framework for

### NEPA PRINCIPLES: The Planning Process

- NEPA must be integrated with other planning at the earliest possible time to ensure that planning and decisions reflect environmental values.
- The NEPA process is typically triggered at the “proposal” stage if implementing the project would have environmental impacts.
- Environmental planning through NEPA is useful in defining goals, particularly in broader planning, such as for a CCP

identifying issues and will form the basis for the eventual rationale for selecting an alternative for implementation. Generally, the action alternatives respond to the problem or opportunity described in the purpose and need statement, helping to provide the basis for eventual selection of an alternative in a decision.

The purpose and need statement should not be too broad or too narrow. For example, if the purpose statement is “to provide a recreational experience at the refuge,” there are too many alternatives that could achieve that end. If the purpose statement is too narrowly defined — for example, “to welcome and orient visitors with a kiosk at the refuge parking lot” — there is a potential that NEPA may be violated by making a decision before completing the NEPA process. Be more realistic in identifying reasons for taking action on the refuge by trying to create a range of reasonable alternatives in which environmental impact information and public involvement would be helpful — for example, “to provide a compatible, wildlife-dependent recreational experience for refuge visitors.”

The purpose and need statement for an externally generated action (e.g., request for grant of right-of-way, request for permission to access a closed area, or request for a new use of the Refuge System unit) must describe the Service’s purpose and need, not an applicant’s or external proponent’s purpose and need. The Service action of responding to the application triggers the NEPA analysis. In such instances, the NEPA document is the Federal agency’s document, which is used

to help the Federal agency make a decision.

For example, if an electric utility applied for a right-of-way (ROW) through the refuge, we are obligated to respond to the ROW application. The discretion we have to approve, approve with conditions, or deny the ROW application triggers the need for NEPA compliance. The need for the Service action—to respond to the ROW grant application—is subject to several Federal statutes and Executive Orders, including the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd-668ee). These authorities articulate our purpose and govern the range of alternatives that we may consider in the context of the ROW application.

A purpose and need statement for the example above would state the need for taking action is “responding to an application for a ROW” and the purpose for taking action is “to ensure the Refuge use (granting a ROW) is appropriate and compatible with Refuge purposes and the System mission.”

### 4.4 *Step 2: Scope and Issues*

Scoping is “an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action” (40 CFR 1501.7). Departmental regulations instruct us to solicit participation of all interested or affected parties or organizations as early as possible in the NEPA process. We accept scoping comments until the EA or draft EIS is distributed for public review;

however, to ensure that comments are included in the development of the NEPA document, we usually encourage getting scoping comments early in the scoping process, typically 30 days following initial public notice about the project/plan.

We develop a preliminary purpose and need statement and identify the “No Action Alternative” (see Section 4.5.1) in advance of scoping so internal and external audiences are better able to provide focused input on potential issues and the consequences of not meeting the need for action. We use scoping to identify actions others are undertaking that may have a cumulative effect with the proposed action, and we seek to identify geographical, temporal, baseline, threshold, and incomplete/unavailable information during scoping.

An issue represents a question or decision that is important to one or more stakeholders. Only describe issues significant to the action in question in the NEPA document. Significant issues are those related to significant or potentially significant effects, and are defined as effects of sufficient context and intensity that would require an EIS. Rationale for not analyzing any externally generated issues in the NEPA process must be documented for disclosure to the public.

### *4.5 Step 3: Develop Alternatives (including the Proposed Action)*

The development and analysis of alternatives is the heart of the NEPA process and is required by the CEQ regulations. Alternatives are different ways that we can achieve project goals. Analysis of different alternatives is essential to good decision-making.

We usually work out alternatives in consultation with appropriate Service programs and stakeholders for a project. Comments from public and internal scoping often identify alternatives, and an iterative process will likely be needed to map out a range of alternatives as a NEPA analysis proceeds.

#### **4.5.1 The No Action Alternative**

The ‘no action’ alternative is the existing condition; it is a summary of the present condition or current course of action if we don’t implement a project. The analysis may include a brief summary of what will happen in the foreseeable future without the project. It is what all other alternatives are compared against. You usually describe this alternative first.

#### **4.5.2 Range of Alternatives**

Projects of limited scope or complexity may have only a few alternatives, but larger or more complex projects could have many possible alternatives, far more than reasonably should be analyzed and discussed. Fortunately, there is not a requirement to discuss and analyze all possible alternatives in an EA or EIS. You only need to evaluate a reasonable number of examples that cover the full spectrum of alternatives, known as the “reasonable range of alternatives.”

In considering alternatives, you only need to provide detailed analysis for the alternatives that you determine are reasonable. Reasonable alternatives are those that address the concrete details of how, who, what, when, and where the purpose and need will be achieved. You should write alternatives so the reader can clearly see the differences between each choice. We recommend that you use matrices to help demonstrate and summarize the differences between the alternatives, along with potential environmental effects.

#### **4.5.3 Role of the Purpose and Need Statement in Alternatives Development**

A NEPA document’s purpose and need statement can help you frame the descriptions of the reasonable

and proposed alternatives. The need statement establishes, in the broader sense, what you expect to accomplish. The purpose statement can serve as a second filter for the alternatives, using the specific project limitations of budget, time, regulations, personnel, and goals to identify reasonable and workable alternatives.

Alternatives must fit the logic of the purpose and need statement. If they don’t, you may need to revise the purpose and need statement. You may need to make revisions several times while developing alternatives. It may also be helpful to summarize and briefly discuss the factors that are inherent in the purpose and need statement that determine the reasonable alternatives and the preferred alternative. This discussion does not need to be extensive, but it should bring out the factors you are using to choose a particular alternative, and why other reasonable alternatives are less desirable.

#### **4.5.4 Appropriate Number of Alternatives**

There is no hard and fast rule about how many alternatives are enough. That will depend on such factors as the scope, scale, and nature of a project along with the refuge’s establishing purposes and its resource and public use management objectives. In general, when a careful analysis of the internal and external scoping, plus discussions between project managers and proponents, begin to identify the same general alternatives, a reasonable limit has been reached. When you determine that an alternative cannot be considered reasonable, you must describe the reasoning used in the process of eliminating that alternative.

### **NEPA PRINCIPLES: Problem Solving and Common Sense**

NEPA documents are meant to be short, focused, analytic, problem-solving documents that help us make informed and wise decisions about the use of resources. Alternatives and mitigation must be feasible, both technically and economically. Common sense and usability are precepts that run throughout NEPA.

#### 4.5.5 Alternatives Considered But Eliminated from Detailed Analysis

The process of scoping and planning will likely result in alternatives that, while possible, are not practical and do not fit the purpose and need statement well enough to warrant detailed analysis. You should provide a description of these alternatives and why they do not warrant further consideration. We recommend that you use a matrix or table to do this.

#### 4.5.6 Two Alternatives: Go/No Go

In special cases, it is possible for there to be *just one* action alternative — the ‘go/no go’ or project/no project situation. The purpose and need may be so limited by budget, spatial, or personnel factors that the planned project is the only feasible alternative. If this is the case, you will need to clearly explain your rationale for choosing this approach. The purpose and need statement, in particular, must be carefully worded to match and support the single action alternative situation. This approach should not be used simply as a ‘fall back’ position or a strategy to avoid considering alternatives.

#### 4.5.7 Proposed Action/ Preferred Alternative

You should fully describe the ‘no action’ alternative and the action alternatives to be evaluated along with relevant goals, objectives, and strategies. These descriptions should be detailed and objective. In most cases there is an alternative that the agency identifies as the one it intends to implement.

Commonly, NEPA documents will refer to the alternative that the agency intends to implement as the “proposed action” or the “preferred alternative.” Whichever term you choose to label the alternative you intend to implement, use that term consistently within your NEPA document. Using these two different terms interchangeably in the same NEPA document can cause reader confusion.

The proposed action/preferred alternative may not be the alternative that will ultimately be implemented; it is only one of the alternatives in the EA and EIS. It



is typical for the proposed action/preferred alternative to evolve as the agency learns more from internal and external scoping and evaluation. The final proposed action/preferred alternative may be quite different from the original.

#### 4.6 Step 4: Describe the Affected Environment

In NEPA, the affected environment chapter describes those components of the environment that could be affected by the alternatives under consideration. These components can relate to biological, physical, social, and economic elements of the environment. Descriptions of the affected environment components must be no longer than is necessary to understand the effects of the alternatives. The data and analyses you use must be proportionate with the importance of the impact. For less important material, summarize, consolidate, or simply reference the material.

You should use quantitative descriptions of the resources wherever possible and provide sufficient detail to serve as a scientific baseline to measure the potential impacts of implementing an action. You should provide a description of the current condition of whatever resource is being

affected by the alternative within a geographic scope. This provides a baseline for comparing and selecting alternatives. You should also describe past and ongoing actions that contribute to existing conditions in order to help develop the cumulative effects analysis.

The Affected Environment section of an EA or EIS for a CCP identifies and describes additional conditions and their trends for the planning unit and planning area. See 602 FW 3, section 3.1(e) for the list of required conditions.

It is necessary to address climate change in Service planning, decision-making, consultation and evaluation, management, and restoration efforts in accordance with the Department’s Policy on Climate Change Adaptation (523 DM 1) and the Service’s Climate Change Adaptation Policy (056 FW 1). The affected environment section of the document will outline established baseline conditions that allow effective evaluation of actual and projected climate change impacts to the resources.

## 4.7 Step 5: Describe Environmental Impacts—Effects

### 4.7.1 Effects Analysis

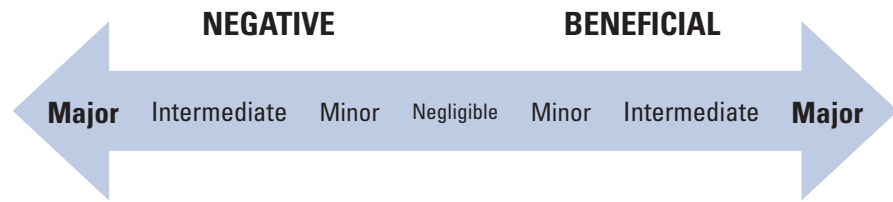
The NEPA document section where the environmental effects analysis is described forms the basis for the scientific and analytic comparison of alternatives. Evaluate each alternative substantially, at the same level of detail, and using the same factors. The discussion of environmental consequences should be a factual description that treats each alternative similarly and does not market the proposed action or any one alternative.

The analysis must identify known and predicted effects related to the issues. An issue is not the same as an effect. An issue describes an environmental problem or the relationship between a resource and an action. An effects analysis predicts the degree to which a resource would be affected when implementing an action.

#### HELPFUL HINTS:

Examples of affected resources include:

- Air quality
- Soils
- Water quality and quantity
- Wetlands and floodplains
- Vegetation, fish, and wildlife resources
- Threatened and endangered species
- Cultural resources, recreation, special land use designations, human health, and safety
- Social and economic (e.g., transportation/infrastructure, cost analysis, environmental justice)



#### 4.7.1.1 Defining Environmental Effects

The NEPA regulations use the terms “impact” and “effect” synonymously (40 CFR 1508). Effects may also include those resulting from actions that may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial. Impacts and effects can be ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health-related. Identify the effects that you will analyze for each alternative, including the no action alternative and the action alternatives.

You will also need to define the context, intensity, and duration of effects. The definitions of these terms are listed below.

##### Context

Context (also known as scale) describes the extent of the effect, such as site-specific, local, regional, or other scale. The appropriate scales will need to be considered for the analysis and each term defined.

##### Intensity

Intensity can range from no effect to a significant effect. Again, you have to decide how many increments to include in the analysis to describe the intensity of effects, and then define each term. Avoid overly subjective terms such as “good,” “bad,” “positive,” or “negative” when formulating the definitions. Because the term “significant” has a very specific meaning in the NEPA context, do not use it in NEPA documents unless you intend it to

take on the NEPA meaning. If not, use another term that means the same thing (e.g., major).

##### Duration

The duration of an effect has to do with how long the effect will persist. Most NEPA documents describe these as “long-term” or “short-term” effects. You’ll need to define “long-term” and “short-term” for each NEPA document, as these definitions can vary depending on the action and the scope of analysis.

You’ll also need to consider and analyze three categories of effects for each alternative—direct, indirect, and cumulative (as described in Section 4.7.2 and 4.7.3). Your NEPA document should clearly define these terms using CEQ’s definitions (see 40 CFR 1508.7, 1508.8).

#### 4.7.1.2 Analyzing Environmental Effects

Effects analysis predicts the degree to which an action will affect resources. The effects analysis included in NEPA documents must demonstrate that the Service conducted a reasoned analysis containing quantitative or detailed qualitative information. The level of detail must be sufficient to support reasoned conclusions by comparing the amount and the degree of change or impact caused by implementing the alternatives.

The discussion of effects should be a factual description of what the implications will be for each of the alternatives as compared to the no action alternative. The NEPA document is an analytical document, not a decision document, so the analysis should not favor any one alternative over the others.



Impacts/effects are assessed for scope, scale, and intensity of impacts to the human environment. Effects may be identified further as beneficial or negative as well as long-term or short-term.

Scope, scale, and intensity can be defined on a scale from negligible to major. Below are examples of terms commonly used to define scope, scale, and intensity that can be modified to meet individual project needs.

- **Neutral or Negligible:** Resources would not be affected (neutral effect), or the effects would be at or near the lowest level of detection (negligible effect). Resource conditions would not change or would be so slight there would not be any measurable or perceptible consequence to a population, wildlife or plant community, recreation opportunity, visitor experience, or cultural resource.
- **Minor:** Effects would be detectable, but localized, small, and of little consequence to a population, wildlife or plant community, recreation opportunity, visitor experience, or cultural resource. Mitigation, if needed to offset adverse effects, would be easily implemented and is likely to be successful.
- **Intermediate:** Effects would be readily detectable and localized with consequences to a population, wildlife or plant community, recreation opportunity, visitor experience, or cultural resource. Mitigation measures would be needed to offset adverse effects and would be extensive, moderately complicated to implement, and probably successful.
- **Major or Significant:** Effects would be obvious and would result in substantial consequences to a local area or regional population, wildlife or plant community, recreation opportunity, visitor experience, or cultural resource. Extensive mitigating measures may be needed to offset adverse effects and would be large-scale, very complicated to implement, and may not guarantee success. In some instances, major effects

## NEPA PRINCIPLES: Be Systematic

NEPA analyses must be systematic. The many aspects of the NEPA process must be based on evidence and sound, repeatable thought processes for the selection of appropriate issues, impact topics, mitigation strategies, analysis boundaries, and alternatives, and the involvement of the interested and affected public.

would include the irretrievable loss of the resource.

Time scales are defined as either short-term or long-term.

- **Short-term or temporary:** An effect that generally would last less than a year or season.
- **Long-term:** A change in a resource or its condition that would last longer than a single year or season.

For complex analyses, the NEPA document should describe the methodology you use to come to a conclusion about impacts.

### *Methodology*

You must describe the analytical methodology you use well enough for the reader to understand how you performed the analysis and why you used that particular methodology. This explanation must include a description of any limitations inherent in the methodology. If there is substantial dispute over models, methodology, or data, you must recognize the opposing viewpoint(s) and provide a rationale for your choices. You may place discussions of methodology in the text or in the appendix of the document. To the extent possible, we recommend that you quantify the analysis of impacts.

### *Assumptions*

Clearly state all analytical assumptions, including the geographic and temporal scope of the analysis (which may vary by issue or resource area), the baseline for analysis, and the reasonably foreseeable future actions considered. Any assumptions you make must be accompanied with an explanation when information critical to the analysis was incomplete or unavailable. It is important to note that if incomplete or unavailable information results in substantial uncertainty about the significance of effects, preparation of an EIS may be required to address the uncertainty, or additional studies may possibly be warranted.

### *Impact topics*

For each impact topic, describe the severity or magnitude of the expected effects — the qualitative and quantitative environmental consequences of implementing each alternative and their significance compared to the environmental baseline and the no action alternative, even for those actions with a beneficial environmental impact. When preparing an EIS, you must include an analysis of any adverse environmental effects that cannot be avoided if the proposal is implemented, the relationship between short-term uses of the

## HELPFUL HINTS:

- Clarity of expression, logical thought processes, and rational explanations are more important than length or format in the discussion of impacts.
- Analysis should be in specific terms, such as an increase or decrease in the number of ducks produced.
- Use objective, professional language without being overly technical.
- Use charts, maps, and tables to present information as a means to avoid lengthy text descriptions.

human environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources (NEPA 102 (C) and 40 CFR 1502.16) that would be involved. Irretrievable commitments are those that are lost for a period of time, while irreversible commitments are those that cannot be reversed, except perhaps in the extreme long-term.

The scope of the analysis of impacts should include only those impacts caused by the proposed action and alternatives, not impacts resulting from prior disturbance or from other unrelated actions (see Section 4.7.3, where past impacts have bearing on cumulative impacts analysis). Identify possible conflicts between the actions and the objectives of Federal, State, regional, local, and Native American land use plans, policies, or controls for the area concerned. The environmental effects section of the NEPA document should also identify ways to mitigate adverse environmental impacts, if mitigation has not been fully explained in the description of the alternatives.

You must use the best available science to support NEPA analyses and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed. Analytical documents such as EAs and EISs are used to support Federal agency decision-making, but these documents are not considered publications of scientific research subject to peer review (see 117 FW 1 for more information about peer review of other scientific documents). You may choose members of the scientific community to review NEPA analysis documents as part of the public review. While such review may be desirable to improve the quality of the analysis or shared information, this is not the same as formal peer review.

Insert a brief, concise table at the end of the environmental effects section of the document. The table should summarize the environmental effects of each impact topic by alternative. It allows the decision-maker and the affected public to compare changes in the level of

impacts between alternatives with the no action alternative.

#### 4.7.2 Direct and Indirect Effects

NEPA requires that we analyze both direct and indirect effects in order to ensure no effects are overlooked. Direct effects are those that are caused by the action and occur at the same time and place. For example, grading a building site removes soil and vegetation and, if an archeological resource is present, destroys surface and subsurface deposits. Indirect effects are those effects that are caused by the action, but occur later in time or farther removed in distance, and are still reasonably foreseeable. For example, if a utility is allowed to install a transmission line through a refuge to serve a nearby town, it would be reasonable to expect that increased growth and encroachment of development might occur that could put pressure on the boundaries of the refuge.

The distinction between direct and indirect effects is often difficult to distinguish. If you are uncertain about whether an effect is direct or is indirect, you may describe the effects together because they are weighted the same in the analysis.

#### 4.7.3 Cumulative Effects

Cumulative effects are impacts on the environment resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes the actions.

The purpose of a cumulative effects analysis is to ensure that we consider the full range of consequences of each alternative. A complete picture of forces already acting on a particular environmental resource is essential in making reasonable decisions about the management of that resource. Whether sources of impact are on private or public land, were taken in the past or are ongoing, or have a reasonable chance of occurring in the future, their combined impacts give decision-makers and the public a clear idea of the total impact the resource would experience.

#### HELPFUL HINTS: Cumulative Effects

- A cumulative effects assessment should begin early in the NEPA process, such as during internal and external scoping.
- Often, analyzing cumulative effects is more difficult than direct or indirect effects due to difficulty defining spatial and temporal boundaries.

##### 4.7.3.1 Cumulative Effects Issues

You'll need to determine which of the issues identified for analysis may involve a cumulative effect with other past, present, or reasonably foreseeable future actions. If the proposed action and alternatives would have no direct or indirect effects on a resource, you do not have to do cumulative effects analysis on that resource. Be aware that minor direct and indirect effects may interact with or compound one another, resulting in cumulative effects that may require analysis.

For example, if a refuge proposes to build an environmental education shelter and an unstructured play area on grassland habitat, the NEPA document would discuss the effects of the reduction in grassland habitat. Suppose the adjacent landowner plans to convert grassland habitat to pivot irrigated crops, resulting in a reduction in grassland habitat and ground water withdrawals. Since the Service NEPA document must analyze the direct, indirect, and cumulative effects of constructing the environmental education facilities, the cumulative effects analysis would address additive effects of the reduction in grassland habitat associated with the Service project *and* the adjacent landowner's project. However, since the Service project would not have any effects on ground water, the cumulative effects analysis would not need to address ground water effects.

##### 4.7.3.2 Geographic Scope of Cumulative Effects

We recommend that you establish, describe, and provide a rationale

for the geographic scope of each cumulative effects issue. Generally, geographic scope is based on the natural boundaries of the resource affected rather than jurisdictional boundaries, and geographic scope is often different for each cumulative effects issue.

The geographic scope of cumulative effects may extend beyond the scope of the direct effects, but not beyond the scope of the indirect effects of the proposed action and alternatives. In general, those actions occurring geographically farther away from the proposed action have a diminishing additive impact.

#### *4.7.3.3 Temporal Scope for Cumulative Effects*

It is necessary to establish and describe the timeframe for each cumulative effects issue—that is, define long-term and short-term and incorporate the duration of the effects anticipated. Long-term, for example, could be as long as the longest lasting effect or the length of a planning horizon (e.g., 15 years). The timeframes should be based on the duration of the direct and indirect effects of the proposed action and alternatives, rather than the duration of the action itself. Describe the rationale for the established timeframe in the NEPA document.

Timeframes, like geographic scope, can vary by resource. For example, the timeframe for economic effects may be much shorter than the timeframe for effects on vegetation structure and composition. In general, those actions occurring farther apart in time from the proposed action have a diminishing additive impact.

#### *4.7.3.4 Past, Present, and Reasonably Foreseeable Effects*

The cumulative effects analysis considers past, present, and reasonably foreseeable future actions that would affect the resource of concern within the geographic scope and the timeframe of the analysis. Therefore, other Service actions, other Federal actions, and non-Federal (including private) actions must be considered in the NEPA cumulative effects analysis.

#### *Past Actions*

The existing condition is the state of the resource condition as affected by past events, both natural and anthropogenic. By considering past actions within the geographic scope, you provide context for the cumulative effects analysis. You should analyze both the direct and indirect effects of past actions. You can usually describe the aggregate effect of past actions without listing or analyzing the effects of individual past actions.

You may need to describe past actions in greater detail if they bear some relation to the proposed action. For example, past actions that are similar to the proposed action might have some bearing on what effects can be anticipated from the proposed action or alternatives.

#### *Present and Reasonably Foreseeable Future Actions*

In addition to past actions, you should consider present and reasonably foreseeable future actions within the geographic scope and timeframe of the analysis. Present actions are actions that are ongoing at the time of the analysis. Reasonably foreseeable future actions are those for which there are existing decisions, funding, or formal proposals, and those actions that are highly probable based on known opportunities or trends. Even though reasonably foreseeable actions should not be limited to those actions that are approved or funded, you are not required to speculate about future actions.

Although many actions may create minor impacts to the resource affected by the proposed action, you should only include those impacts that are clear contributors or that you can feasibly analyze. As a

general rule, the farther removed an action is from the project area or the project start date, the less need there is for detailed analysis of the action's cumulative impacts.

For example, if a refuge is proposing to clear vegetation to build an environmental education shelter in the middle of an important elk winter range, last year's timber cut and associated road construction in elk winter range on the adjacent National Forest has additive impacts on the elk population and must be part of the cumulative impact. You should consider the effects of a hazard tree removal project happening this summer on a trail along the refuge/National Forest boundary and/or a large housing development in elk habitat that is proposed for next year on nearby private land. But you probably do not need to consider a natural gas pipeline that people have been talking about for 15 years, but for which there is only a vague proposed route near the refuge and forest since there is no certainty of it ever being studied, permitted, or funded.

Climate change is another important factor to consider. Climate change can increase the vulnerability of a resource, ecosystem, or human community, causing a proposed action to result in consequences that are more damaging than prior experience with environmental impacts analysis might indicate. For example, an industrial process may draw cumulatively significant amounts of water from a stream that is dwindling because of decreased snow pack in the mountains or add significant heat to a water body that is exposed to increasing atmospheric temperatures.

#### **HELPFUL HINTS:**

When considering reasonably foreseeable future actions, ask:

- Is there an existing proposal?
- Is there a commitment of resources?

You should use common sense and your best professional judgment to decide the extent of actions to include in your cumulative impacts assessment.

For a detailed discussion on developing cumulative impact analyses, see the CEQ guidance document entitled “Considering Cumulative Effects Under the National Environmental Policy Act.” For addressing climate change as part of a cumulative effects analysis, contact subject matter experts at your Regional office or Headquarters for the latest guidance on approach for assessing effects associated with climate change.

#### 4.7.3.5 Analyzing Cumulative Effects

For each cumulative effects issue, analyze the direct and indirect effects of each alternative together with the effects of the other actions that have a cumulative effect. You will normally analyze cumulative effects separately for each alternative because each alternative will have different direct and indirect effects.

Typically, cumulative effects analyses start with an analysis of the no action alternative and then address each of the action alternatives, one at a time. Regardless of how you present this analysis, you must describe the incremental differences in cumulative effects as a result of the effects of the proposed action and each of the alternatives. You should describe how the incremental effect of the proposed action and each alternative relates to any relevant regulatory, biological, socioeconomic, or physical thresholds.

The level of detail in the analysis and NEPA documentation of these effects will vary among affected resource values. For example, if a proposed project requires the use of significant quantities of water, you may need to discuss changes in water availability associated with climate change in greater detail than other consequences of climate change. In some cases, discussion of climate change effects in an EA or EIS may warrant a separate section, while in others such discussion may be integrated into the broader discussion of the affected environment.

For each alternative analyzed, you must describe the interaction of effects for the action and among the various past, present, and

#### HELPFUL HINTS:

Step-by-step summary of a cumulative effects analysis:

1. Start with the current condition described in the affected environment.
2. Describe the effects of other present actions.
3. Describe the effects of reasonably foreseeable future actions.
4. Describe the effects of each of the proposed actions on each of the alternatives.
5. Describe the interaction among the above effects.
6. Describe the relationship of the cumulative effects to any thresholds.

reasonably foreseeable actions. The interactions of effects may be:

- Additive – the effects of the actions add together to make up the cumulative effect,
- Offsetting – the effects of some actions balance or mitigate the effects of other actions, or
- Synergistic – the effects of the actions together are greater than the sum of their individual effects.

How the different effects interact may help determine how to describe and display the cumulative effects analysis. It is often helpful to describe the cause-and-effect relations for the resources affected to understand if the cumulative effect is additive, offsetting, or synergistic.

#### 4.7.4 Mitigation

Mitigation includes specific means, measures, or practices that would reduce, avoid, or eliminate the effects of the proposed action or alternatives on biological, physical, or socioeconomic resources, whether or not these impacts are significant in nature. As part of the agency decision to adopt and implement

a specific alternative, mitigation measures are enforceable, and if they are not implemented, an EIS or reevaluation of the proposal is required. Monitoring is required to ensure the implementation of these measures.

For an action analyzed in an EA, you can use mitigation to reduce the effects of an action below the threshold of significance and avoid the need for an EIS (See 40 CFR 1508.20 for a list of possible mitigation measures). CEQ has issued guidance on the appropriate use of a mitigated FONSI, which is available on the CEQ Web site.

#### 4.7.4.1 Mitigation Outside Service Jurisdiction

In an EIS, we must identify all “relevant, reasonable mitigation measures” that could improve the project, even if they are outside Service jurisdiction. When you present mitigation measures that are not within the Service’s jurisdiction, it is particularly beneficial to work with other agencies. For example, socioeconomic impacts are usually indirect and largely fall on communities and local government institutions. While we may be able to provide information and cooperate with responsible officials to the fullest extent feasible, it will be largely up to cities, counties, and State agencies to implement socioeconomic mitigation.

You may need to identify mitigation measures that would reduce or eliminate the effects of a non-Federal action when it is related to the proposed action. For such non-Federal actions, the relevant, reasonable mitigation measures are likely to include measures that other Federal, State, local regulatory agencies, or Native American Tribes carry out. When you describe mitigation under the authority of another government agency, you must discuss the probability of the other agency implementing the mitigation measures.

#### 4.7.4.2 Mitigation and Environmental Effects

For the impact analysis, you should analyze the impacts of the proposed action with all mitigation measures applied, as well as any further

impacts caused by the mitigation measures themselves. You will need to address the anticipated effectiveness of those mitigation measures that are intended to reduce or avoid adverse impacts. You will also need to address any residual effects of any adverse impacts that remain after applying mitigation measures.

#### 4.7.5 Environmental Effects Analysis and Decision-making

Decision-makers want to know the ramifications associated with taking one course of action over another. The point of the NEPA effects analysis is to provide the information necessary for decision-makers to make well-informed decisions, so we need to prepare well thought-out courses of action (the alternatives) and provide effects analyses that rigorously and objectively disclose all direct, indirect, and cumulative effects. The FONSI or ROD for an action needs to be succinct, while providing sufficient detail and rationale upon which the decision-maker can rely.

### 4.8 Step 6: Public Involvement

#### 4.8.1 Involving and Notifying the Public

NEPA requires that we make environmental information available to the affected and interested public before we make decisions and take action. The level and method of public involvement varies with the different types of NEPA compliance, the type of action, the level of interest in the action, the level of controversy associated with the action, the issues associated with the action, the potential impacts of the action, and the decision or decisions to be made related to the action.

#### NEPA PRINCIPLES: Inform the Public

The CEQ regulations require that environmental information be made available to public officials and citizens before we make decisions or take actions. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.

#### NEPA PRINCIPLES: Involve the Public

CEQ requires agencies to make “diligent” efforts to involve interested and affected members of the public in the NEPA process, regardless of the level of impact and/or documentation. Agencies must also “encourage and facilitate public involvement in decisions which affect the quality of the human environment.” If the public finds that an agency did not follow the procedural requirements of NEPA, or that the agency’s analysis of a proposal in a NEPA document was lacking or inadequate, they often seek relief through the courts.

#### HELPFUL HINT:

Public meetings or hearings are required when there is a:

- Substantial environmental controversy concerning the environmental effects,
- Substantial interest in holding the meeting, or
- Request for a meeting by another agency with jurisdiction over the action.

A primary goal of public involvement is to ensure that all interested and affected parties are aware of the proposed action. Knowing the local communities well is the first step in determining the interested and affected parties. If there is already a core list of those interested in and potentially affected by the Service’s proposed action, this is a good starting point. Entities capable of assisting with determining other interested and affected public sectors include: Service planners, Service External Affairs officers, other Service staff, community leaders, and other governmental agencies (Federal, State, local, and Native American Tribes).

In many cases, people attending field trips and public meetings will

be interested or affected parties. Providing attendance sheets that capture contact information at field trips and meetings helps to establish a list of people who may want to be contacted about and involved in the NEPA process. In some cases, those affected by the proposed action may not be actively engaged in the NEPA process; however, it is still important to reach out to them. You can do this by using a variety of methods to help inform and engage them. Note: Members of the public who sign up for mailing lists must be told that under the Freedom of Information Act (FOIA), names and addresses on Federal Government mailing lists could be made available to the public.

If practicable, you can combine public meetings about NEPA processes with hearings required by another law (e.g., there is a requirement in the Alaska National Interest Lands Conservation Act to hold hearings if certain findings are made regarding the effects of a proposed action on subsistence). In all cases, you must maintain records of public meetings and hearings, including creating a list of attendees and taking notes or minutes of the proceedings. Public scoping meetings are more informal than public hearings, often conducted without the use of speaker cards or sign in sheets; instead, mailing list request forms can be used. These request forms should include a FOIA note and be made available at public meetings, on the internet, and at appropriate Service offices.

The CEQ regulations explicitly discuss agency responsibility toward interested and affected parties, including requiring agencies to make a diligent effort to involve the public in preparing and implementing the NEPA procedure through soliciting input, providing

updates, and making environmental documents available. Notification methods include, but are not limited to: newsletters, Web sites, bulletin boards, newspapers, and *Federal Register* notices. *Federal Register* notices are required for EISs. Generally, you don't have to use a *Federal Register* notice for an EA, but you do for CCPs. Projects of national interest are likely to use *Federal Register* notices as part of their public outreach efforts. In addition, the regulations require that we provide notice of hearings or meetings with interested or affected parties whenever appropriate or required. We recommend that you review and adhere to the detailed requirements in 40 CFR 1506.6 when planning for public involvement.

#### *Combining Public Involvement with Other Planning Documents*

CEQ regulations require agencies to reduce excessive paperwork and delays. One of the methods commonly used to comply with this regulation is to combine NEPA documents with other planning documents. In doing so, the public review requirements for the all planning documents combined must be met; therefore, knowing the review requirement for the combined documents is essential. For example, we must publish a NOI to prepare a CCP and NOAs of the draft and final CCP in the *Federal*

#### **HELPFUL HINTS:**

A FONSI must be made available for public review:

- If the proposal is a borderline case about whether or not an EIS is appropriate;
- If it is an unusual case, a new kind of action, or a precedent-setting action;
- When there is either scientific or public controversy over the proposal; or
- When the proposed action would be located in a 100-year floodplain or wetland.

#### **HELPFUL HINTS:**

The CEQ regulations recognize several options for responding to substantive comments, including:

- Modifying one or more of the alternatives as requested;
- Developing and evaluating suggested alternatives;
- Supplementing, improving, or modifying the analysis;
- Making factual corrections; and
- Explaining why the comments do not warrant further agency response, citing cases, authorities, or reasons to support the Service's position.

*Register*, regardless of whether it is accompanied by an EA or an EIS. We must also provide a minimum of 14 calendar days for review and comment on a compatibility determination, even if the proposed use is categorically excluded from NEPA.

#### **4.8.2 Public Review of NEPA Documents**

CEQ regulations specify the requirements for notifying the public about the availability of draft and final EISs, including specific minimum comment period time frames. Department NEPA regulations (43 CFR 46.305) state that bureaus must, to the extent practicable, provide for public notification and public involvement when an EA is being prepared. However, the methods for providing public notification and opportunities for public involvement are at the discretion of the Responsible Official. We are required to prepare EAs as appropriate; publication of draft and final EAs is not required. We may seek comments on an EA if we determine it to be appropriate, such as when the level of public interest or the uncertainty of effect warrants. We may also revise EAs based on comments received without initiating another comment period. We must notify the public of the availability of an EA and any associated FONSI once they are complete.

Under certain circumstances (40 CFR 1501.4), you must make the FONSI you develop from an EA available for a 30-day public review before you make a final

determination about whether to prepare an EIS. In this situation, Service policy requires that we make the EA available for public review (if it was not previously circulated for review).

#### **4.8.3 Managing Comments and Preparing Responses**

If you anticipate receiving a large number of comments, you should develop an organized system for receiving and cataloging them before they start arriving. For proposals that may have a large number of comments, you should develop a systematic way to track substantive comments and the Service's response, such as in a searchable database.

#### **4.8.4 Substantive Comments and Response Options**

Comments on the NEPA document and proposed action may be received in response to a scoping notice or in response to public review of an EA and FONSI or draft EIS. NEPA requires us to include a written response in the final EIS for every substantive comment received on the draft EIS. A formal response may also be needed for comments received at other times in the process. You must consider all substantive comments you receive, to the extent feasible.

Comments must be in writing (paper, electronic format, or a court reporter's transcript taken at a formal hearing), substantive, and timely in order to merit a written response. If you receive

oral comments at public meetings or a workshop, it is helpful to write these down and note where and from whom you received them in order to address them during the NEPA process. To ensure that the true intent of the comment is captured, you should offer the commenter the opportunity to record his or her comment in writing.

#### 4.8.4.1 Response Options

The following guidance on how to respond to public comments applies whether developing an EA or an EIS.

CEQ recommends that responses to substantive comments normally result in changes in the text of the NEPA document instead of lengthy replies to individual comments in a separate section. The EIS must state what the response is, and if no further agency response is necessary, briefly explain why. A short response to each substantive comment and a citation to the section or page where the change was made may be appropriate. If a number of comments are identical or very similar, you can group them and then prepare a single answer for each group. You may also

#### HELPFUL HINTS:

Substantive comments do one or more of the following:

- Question, with reasonable basis, the accuracy of information in the EIS or EA.
- Question, with reasonable basis, the adequacy of, methodology for, or assumptions used for the environmental analysis.
- Present new information relevant to the analysis.
- Present reasonable alternatives other than those analyzed in the EIS or EA.
- Cause changes or revisions in one or more of the alternatives.

#### NEPA PRINCIPLES: Be Candid

A theme that runs through NEPA, CEQ regulations, and case law is that agencies must be candid in their NEPA documentation. Expert agency criticism and public scrutiny help ensure such disclosure. If reviewing agencies indicate they disagree with the impact analysis, you should record these conflicting opinions in the NEPA document. You should also state in the NEPA document if information important to the decision between alternatives is incomplete or unavailable.

summarize voluminous comments. You must attach the comments and/or summaries to the EIS, regardless of whether they merit individual discussion in the body of the final EIS.

If public comments on a draft EIS identify impacts, alternatives, or mitigation measures that are not addressed in the draft, you must determine whether these comments warrant further consideration. If they do, you must further determine whether you need to analyze the new impacts, new alternatives, or new mitigation measures in either the final EIS or a supplemental draft EIS. Similarly, with an EA, you should consider whether public comments that identify new impacts, alternatives, or mitigation measures warrant preparation of a supplement to the original EA or a new EA.

Comments that express a professional disagreement with the conclusions of the analysis or assert that the analysis is inadequate may or may not lead to changes in the NEPA document. When there is disagreement within a professional discipline, you must carefully review the various interpretations. In some instances, public comments may prompt a reevaluation of the analytical conclusion. If, after reevaluation, you determine that a change is not warranted, you should include the rationale for that conclusion in your response to the comment that prompted the reevaluation. A thorough documentation of methodology and assumptions in the analysis may improve readers' understanding of the Service's analytical methods and reduce the number of questions we receive later.

Because it is important for the public and agencies to be able to track responses, you should consider

including both a subject or author index and a section or page citation that indicates where changes were made. You may also group similar comments and prepare a single answer for each group using a side-by-side comment-and-response format, or refer commenters to other responses. Direct and complete responses can be written to comments from certain commenters, such as other Government agencies or Native American Tribes. You may reprint some or all of the comment letters in full and include them as part of the final EIS. You should put reprinted letters in the "consultation and coordination" chapter or in a separate volume of the final EIS.

#### 4.8.5 Responding to Non—substantive Comments

The following are the types of comments that are not substantive:

- Comments in favor of or against the proposed action or alternatives without reasoning that meets the criteria for substantive comments;
- Comments that only agree or disagree with Service policy or resource decisions without justification or supporting data that meets the criteria for substantive comments;
- Comments that don't pertain to the project area or the project; and
- Comments that take the form of vague, open-ended questions.

Although a response is not required to comments that are not substantive, such as those comments merely expressing approval or disapproval of a proposal without reason, or comments you received after the close of the comment



period, you may still send a reply. Be cautious, however, about not responding to untimely comments from Government agencies with jurisdiction by law or those with special expertise. In circumstances where all comment received are not substantial, you can prepare an errata sheet to show minor changes to an EA or EIS.

#### 4.8.6 Cooperating Agency Comments

If a cooperating agency is satisfied that its views are adequately reflected in an EIS, it should simply comment accordingly. Conversely, when a cooperating agency determines a draft EIS is incomplete, inadequate, or inaccurate, it should promptly state so, conforming to the requirements laid out in 40 CFR 1503.3.

### 4.9 Step 7: Maintaining an Administrative Record

No matter what level of environmental analysis (CatEx, EA, or EIS) is required for the proposed action, you must create a decision file and maintain an administrative record to document the decision-making process and compliance with NEPA.

#### 4.9.1 Decision File

A decision file is an information trail that tells a story that documents the Service's decision-making process and provides the basis for final Service decisions. It not only documents decisions and involvement of Service employees, but also the decisions of contractors and involvement by outside parties relative to Service decision-making. A designated employee must compile and maintain this file during the NEPA process. It should contain important, substantive information that was used in the decision-

making, as well as information that was presented during the process. The purpose of maintaining the decision file is to demonstrate that a reasoned decision-making process has been followed.

A decision file can be used for many types of actions such as: permit decisions, listing and critical habitat decisions, drafting and amending regulations, policy decisions, Freedom of Information Act (FOIA) requests, adverse personnel actions, and land acquisition decisions, among others.

The decision file is an important set of records that officials may request if a decision is challenged in the court system. Once a challenge occurs, the decision file will be included in the administrative record prepared for the court challenge.

The types of records/information that should be incorporated in the decision file include:

1. All specialist reports, survey information (can include a summary, rather than all field forms), and technical information.
2. The date and name of the person responsible for the content.
3. All public involvement records, such as: letters to Native American Tribes, scoping letters, public notices, planning updates, information provided on Service

#### HELPFUL HINTS:

The following information should NOT be included in a decision file:

1. Internal "working" drafts of documents;
2. Comments on internal drafts, informal notes (such as most email messages between team members), or other informal preliminary internal deliberations;
3. Documents that were not in existence at the time of the agency decision;
4. Communications marked privileged or confidential;
5. Proprietary information (information about a private business or corporation); and
6. Cultural resource sensitive site locational information.



Internet sites, mailing lists, media notices, records of public meetings or field trips, comment letters, and legal notices.

4. Documentation of meetings or agreements with local, State, or other Federal agencies and Native American Tribes.
5. Documentation of telephone conversations and teleconferences.
6. Minutes of meetings, such as team or other staff meetings that include information used in making the decision. (Do not include informal notes.)
7. NEPA analysis and decision documents.
8. Documents referenced in the NEPA documents. If they are lengthy, include a copy of the cover and the specific chapter, section, or page referenced. Documents that are not readily available should be included in their entirety.

#### 4.9.2 Administrative Record

An administrative record (AR) is a compilation of documents that includes the decision file, as well as relevant agency documents generated or received in the course of the decision-making process. If a Service AR is incomplete or decisions are not documented correctly within a decision file, our ability to defend decisions is greatly diminished. We recommend that managers start a filing system early in the NEPA process to more effectively manage information and ensure all pertinent information is included in the AR.

If an action (decision) is challenged, the Administrative Procedure Act gives the courts the authority to review an agency action to determine if it was “*arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.*” The AR should clearly demonstrate that the required procedures, as provided by statute, regulation, and any applicable agency policies, explain and rationally support our decisions. The AR should also demonstrate that we considered opposing viewpoints, if any, and provide an

#### HELPFUL HINTS:

The Administrative Record:

- Is the ‘complete story’ the judge reviews to determine if the final decisions are substantiated and supported within the letter of the law;
- Must begin with the decision file;
- Reveals the reason for both the decision and the decision-making process; and
- Includes documentation of the involvement of all the decision-making parties, including employees, contractors, and outside parties.

explanation on why we adopted the preferred course of action. The AR should provide evidence that the planning process was a transparent process that followed applicable laws, regulations, and policies. The AR tells the story of the process that lead to the decision.

Examples of materials to be excluded from an AR include documents associated with, but not part of, the decision-making process, various versions of draft documents where the differences among drafts reflect minor editing changes, and emails and other correspondence that discuss agency action but do not reflect decision-making considerations.

Other types of information that should not be included in the AR (or the NEPA document) include cultural resource sensitive site locational information (see Section 304 of the National Historic Preservation Act).

To assure the completeness of the AR, you must consult with all Service and Department employees who were involved in the decision-making process and include their files in the AR. While you need not have copies of all documents referenced or cited in your NEPA document (e.g., peer reviewed literature and Federal regulations), all documents that comprise the AR must be readily available.

The types of files that may be included are:

- Central program files,

- Working files kept at an employee’s desk,
- Documents that were received as a courtesy copy,
- Handwritten notes,
- Electronic mail, and
- Any other records, electronic or otherwise, related to the decision in any way.

Collected records, with pertinent decision supporting information, may not be removed or redacted from the AR by anyone unless we get approval from the Office of the Solicitor, the Department of Justice, or the Service or Regional Records Officer. The determination to remove or redact records is done on the basis of privilege. The removal or redaction may be challenged, and if it is, the court will determine if it was appropriate.

The Service Records Officer in HQ certifies the AR for programs involved in litigation. For program litigation within the Regions, the Regional Records Officer or the employee most familiar with how the record was prepared certifies the record (with communication from the Regional Records Officer).

# Section 5. Using Existing Environmental Analyses

## 5.1 Introduction

NEPA regulations (40 CFR 1500.4) describe a variety of techniques for reducing paperwork and more effectively managing the NEPA process. Many of these techniques have already been discussed in this Handbook. Other techniques deal with using existing NEPA documents to satisfy the requirements of the NEPA document being developed. In the following sections we discuss incorporation by reference, tiering, supplementation, and adoption. It is appropriate to use these techniques when doing so builds on work that was already done by the Service or another Federal agency, helps to avoid redundancy, and/or provides a coherent and logical record of the analytical and decision-making process.

Using existing analyses may range from considering them as the basis for decision-making (following written documentation of the analysis conclusion or through adoption of an existing NEPA analysis); using components of them (through tiering or incorporation by reference); or supplementing them with a new analysis.

## 5.2 Determining NEPA Adequacy

### 5.2.1 Identify Existing Environmental Documents

A new proposed action may rely on a single or multiple existing NEPA documents where available. The NEPA documents that may be relevant include an EA or EIS:

- Associated with a refuge CCP,
- Associated with a Land Protection Plan,

### HELPFUL HINTS:

To determine the degree on which you can rely on existing NEPA analyses, consider the following:

- Have any relevant environmental analyses related to the proposed action been prepared (for example, a CCP/EIS/EA, or programmatic EIS)?
- Who prepared or cooperated in the preparation of the analyses (the Service or another agency)?
- Do any of the existing analyses fully analyze the proposed actions, alternatives, and effects?
- Have new circumstances or information come up since the original analysis was conducted?

- Associated with a programmatic restoration project,
- For a specific project or step-down management plan, or
- Prepared by another Federal agency with or without the Service as a cooperating agency.

If the existing document is an EIS or EA prepared by another agency, the Service must adopt the document in order to use it for NEPA compliance (see Section 5.5).

### 5.2.2 Review Existing Environmental Documents

Review existing environmental documents and answer the following questions to determine whether they adequately cover a proposed action currently under consideration.

- Is the new proposed action a feature of or essentially the same as, an alternative analyzed in the existing NEPA document(s)?  
Have any relevant environmental analyses related to the proposed action been prepared (for example, a CCP with an EIS or an EA or programmatic EIS)?

- Who prepared or cooperated in the preparation of the analyses (the Service or another Federal agency)? Do any of the existing analyses fully analyze the proposed actions, alternatives, and effects?
- Is the project within the same analysis area, or if the project location is different, are the geographic and resource conditions sufficiently similar to those analyzed in the existing NEPA document(s)? If there are differences, can you explain why they are not substantial?
- Is the range of alternatives analyzed in the existing NEPA document(s) appropriate with respect to the new proposed action, given current environmental concerns, interests, and resource values?
- Is the existing analysis valid in light of any new information or circumstances?
- Can you reasonably conclude that new information and new circumstances would not

## NEPA PRINCIPLES: Be Site-Specific

Before implementing an action, the decision-maker must have detailed site-specific environmental impact information in order to proceed. There may be instances where an additional NEPA analysis is required when broader actions, such as plans, programs, or policies, are under consideration. The data collected to analyze these more general actions should be comparatively general, with progressively more specific data analyzed as you move toward implementing an action.

substantially change the analysis of the new proposed action?

- Are the direct, indirect, and cumulative effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document?
- Are all the impacts resulting from the new proposed action addressed in the existing NEPA document?

If the answer to any of the above questions is “no,” then you must prepare a new EA or EIS. However, it may still be appropriate to tier to or incorporate by reference from the existing EA or EIS or supplement the existing EA or EIS (see section 5.3 below).

In addition to answering these questions, evaluate whether the public involvement and interagency review associated with existing EAs or EISs are adequate for the new proposed action. In general, where the new proposed action has not already been discussed during public involvement for the existing EA or EIS, some additional public involvement for the new proposed action will be necessary.

If you conclude that it is necessary to provide additional public involvement, the Responsible Official will decide how to provide it. Public involvement may include any of the following: external scoping, public notification before or during the review of the existing EA or EIS, public meetings, or public notification when the review is complete.

### 5.2.3 Document the Review

You must document, either by an EAS or a memo to the file, that a ‘review of the existing NEPA analysis’ has occurred and a determination has been made that no additional NEPA documentation is needed. The EAS and/or the memo are not NEPA documents. Instead, they are part of the administrative record that is necessary to support an agency decision.

### 5.3 Incorporation by Reference and Tiering

Incorporation by reference and tiering provide opportunities to reduce paperwork and redundant analysis in the NEPA process. When incorporating by reference, refer to other available documents that cover similar issues, effects, and resources that you considered during the NEPA analysis. Incorporation by reference allows for citing information in an existing NEPA document, using the term “incorporated by reference herein”, and developing a brief summary of the relevant portion(s) of these other documents instead of repeating them.

Tiering (40 CFR 1508.28) from other NEPA documents can narrow the scope of the subsequent analysis and help to focus on issues that are important for decision-making, while incorporation by reference does not. Tiering is only possible from an EA or EIS, but any type of document can be incorporated by reference.

#### 5.3.1 Incorporation by Reference

Incorporation by reference (40 CFR 1502.21) is the process of using an existing analysis rather than creating a new document that

duplicates the same analysis. It is appropriate to incorporate by reference to reduce paperwork; however, you have to be careful not to impede agency and public review of the action. If it is not essential to the analysis, the material can be referenced. A brief description of the material content must be cited if incorporating by reference. Incorporated material can be any document, including non-NEPA documents, but must be available for inspection during the comment period unless it includes proprietary data. If using proprietary data, summarize the information as fully as possible and mention that the privileged information is not available for public review.

Cite the name of the document and reference the pages where the material can be found. Make this citation as specific as possible so there is no ambiguity for the reader about what material is being incorporated. If the cited material is unpublished, state where it is available.

When you summarize the material, describe it in the context of the NEPA document at hand. For example, if analysis is incorporated by reference from one NEPA document into another, summarize the previous analysis and explain what was concluded based on that previous analysis and how it relates to the action in question. The summary of the incorporated material must be sufficient to allow the decision-maker and other readers to follow the analysis and arrive at a conclusion.

There are many ways to make incorporated material available for public inspection, such as mailing the material upon request or posting the material on the internet. If a document incorporated by reference is central to the analysis in the EIS, circulate the document for comment as part of the draft. At a minimum, incorporated material must be available for inspection at the applicable refuge or refuge complex.

#### 5.3.2 Tiering

Tiering (40 CFR 1508.28) is using the material and analysis in broader NEPA documents in subsequent narrower NEPA documents. This

## HELPFUL HINTS: Tiering

When preparing a tiered NEPA document:

- State that it is tiered to another NEPA document,
- Describe the NEPA document to which it is tiered, and
- Incorporate by reference the relevant portions of the NEPA document to which it is tiered.

allows you to narrow the range of alternatives and concentrate solely on issues that are not already addressed. Tiering is appropriate when the analysis for the proposed action will be a site-specific or project-specific refinement to, or extension of, the existing NEPA document.

Before you tier from an existing NEPA document, you must evaluate that broader NEPA document to determine if it has sufficiently analyzed site-specific effects and considered the current proposed action. If so, documenting that the existing NEPA document is sufficient may be more appropriate than preparing a subsequent, tiered NEPA document. You should make this decision in consultation with the Regional Office NEPA experts.

You may tier from an existing NEPA document for a broader action when the new narrower action is clearly consistent with the decision associated with the broader action, such as a step-down plan to a CCP. In the tiered document, it is not necessary to reexamine alternatives analyzed in the broader document. Focus the tiered document on those issues and mitigation measures specifically relevant to the narrower action, but that are not analyzed in sufficient detail in the broader document.

Tiering can be particularly useful in the context of the cumulative impact analysis. A programmatic EIS often analyzes the typical effects anticipated as a result of the individual actions that make

up a program, as well as the total effects of the overall program. An EA prepared in support of an individual action can be tiered from a programmatic EIS. An EA may be prepared for an action with significant effects if the EA is tiered to a broader EIS that fully analyzed those significant effects and the remaining effects of the individual action are not significant. If there are new circumstances or information that would result in significant effects of an individual action not considered in the previous EIS, tiering to the previous EIS is not appropriate because it cannot provide the necessary analysis to support a FONSI for the individual action.

In some instances, a broader existing EIS might fully analyze significant effects on some resources affected by the individual action, but not all resources. The tiered EA (i.e., the new EA) for the individual action need not re-analyze the effects on resources fully analyzed in the broader existing EIS, but may instead focus on the effects of the individual action not already analyzed.

## 5.4 Supplementing an EA or EIS

Supplementation (40 CFR 1502.9(c)) is a process generally applied to a draft or final EIS. However, EAs can also be supplemented following a notification and planning process similar to the original EA, much like supplementing an EIS.

A supplemental EA or EIS must provide a rational basis for the decision and give the public and other agencies an opportunity to review and comment on the analysis of the changes or new information.

Substantial changes include changes in the design, location, or timing of a proposed action that are relevant to environmental concerns. Adding a new alternative requires a supplement if the new alternative is outside the spectrum of alternatives already analyzed and not just a variation. Describing alternatives that are considered, but eliminated from detailed analysis does not require a supplemental EA or EIS.

New circumstances or information trigger a supplemental EA or EIS if they are relevant to environmental concerns and bear on the proposed action and its effects. These might include the listing under the Endangered Species Act of a species that was not analyzed in the original EA or EIS, development of new technology that alters significant effects, or unanticipated actions or events that result in changed circumstances, rendering the cumulative effects analysis inadequate.

### 5.4.1 When Supplementing an EA or EIS is Not Appropriate

A supplemental EA or EIS is not necessary if changes in the proposed action are not substantial (i.e., the effects of the changed proposed action are still within the range of effects analyzed in the EA or in the draft or final EIS).

If you add a new alternative after the circulation of a draft EIS, a supplement is not necessary if the new alternative either lies within the spectrum of alternatives you already analyzed in the draft EIS or is a minor variation of an alternative you already analyzed. In such circumstances, you may add the new alternative in the final EIS.

## HELPFUL HINTS:

You must prepare a supplement to an EA or to a draft or final EIS if, after circulation, but prior to implementation:

- You make substantial changes to the proposed action that are relevant to environmental concerns,
- You add a new alternative that is outside the spectrum of alternatives already analyzed, or
- There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its effects.



When new information or changed circumstances arise after the Federal action has been implemented, do not prepare a supplement. However, if the new information or changed circumstances impedes the use of the EA or EIS for subsequent tiering for a future decision, a new EIS or EA must be prepared and relevant material from the old EA or EIS must be incorporated by reference.

Finally, do not supplement when new circumstances or information arise prior to implementing the action if you conclude that significant results would not occur outside the range of effects you already analyzed. Instead, you may document the conclusion and your basis for it. If the new circumstances or information arise after publication of a draft EIS, but before release of the final EIS, you should document the conclusion in the final EIS. If the new circumstances or information arise after publication of the final EIS, but before issuance of the ROD, you should document the conclusion in the ROD.

#### **5.4.2 Preparing a Supplemental EA or EIS**

Although a supplemental EA or EIS will vary in scope and complexity depending on the nature of the proposed changes or new information or circumstances, they must be prepared, circulated, and filed in the same way as the original EA or EIS (without the scoping requirement). You may circulate a supplemental EA or EIS that

incorporates by reference the relevant portions of the EA or EIS you are supplementing, or you may circulate the entire EA or EIS with the supplemental EA or EIS.

Whether preparing the supplement after circulation of a draft or a final EIS, you must prepare and circulate the draft supplemental EIS and then prepare and circulate the final supplemental EIS, unless CEQ approves alternative procedures.

### *5.5 Adopting Another Agency's NEPA Analysis*

If an EIS or an EA prepared by another agency is relevant to an action proposed by the Service, the new EIS or EA being prepared can incorporate by reference the applicable portions of the other agency's document. It is also possible to adopt an EIS or EA prepared by another agency after following the steps below.

#### **5.5.1 Adopting Another Agency's EA**

You may use another agency's EA as the basis for a FONSI if you have evaluated that EA for the appropriate content and the Service is willing to take full responsibility for its scope and content. The EA must address environmental impacts of the proposed action and satisfy Service NEPA procedures. If the Service acted as a cooperating agency, it is necessary to ensure

that any concerns raised during the process of preparing the EA have been adequately addressed.

If you conclude that environmental impacts are adequately addressed, you must issue a FONSI to document the formal adoption of the EA and your conclusions regarding its adequacy.

#### **5.5.2 Adopting Another Agency's EIS**

Similar to adopting another agency's EA, adopting an EIS requires that the Service's action is adequately addressed and complies with all CEQ, Departmental, and Service requirements for preparation of an EIS. In addition, the other agency's public involvement process must be reviewed and a separate public involvement strategy should be developed. You should take into account what has already occurred. You must prepare a Service-specific ROD after adopting another agency's EIS.

If the Service is *not* a cooperating agency in the preparation of an EIS, it is still possible to adopt the EIS, but the document needs to be recirculated (i.e., made available for public review and comment) and adhere to the following requirements:

- If the Service's proposed action is substantially the same as the action covered by the other agency's EIS, the EIS can be adopted after recirculating it as a final EIS and including the Service's proposed action.
- If the Service adopts an EIS that is not final within the agency that prepared it, if the action the EIS assessed is the subject of a referral, or if the adequacy of the EIS is the subject of judicial action that is not final, then the status of the EIS must be disclosed in the recirculated draft and final EIS.

If the Service is a cooperating agency in the preparation of an EIS, it is not necessary to recirculate the EIS before adopting it as long as there is concurrence that comments and suggestions received have been satisfied.

### 5.5.3 Programmatic NEPA documents

Programmatic NEPA analyses and tiering can reduce or eliminate redundant and duplicative analyses and effectively address cumulative effects. Federal agencies have used programmatic analyses for broad categories of activities ranging from facilities and land use planning to sequencing multistage actions. The most common programmatic NEPA document used in the Refuge System is NEPA compliance associated with Comprehensive Conservation Plans.

Programmatic NEPA analyses and documents are valuable decision-making tools. Programmatic analyses can be helpful to more effectively evaluate cumulative effects and to formulate mitigation efforts comprehensively and/or to address mitigation parameters at the broad landscape, ecosystem or regional level, and to focus the scope of alternatives, environmental effects analyses, and mitigation in subsequent tiered levels of documentation, thereby reducing the need to readdress these measures at the site-specific level.

For example, it is common practice to tier other refuge-specific step-down plans, such as a Visitor Services Plan or Hunt Plan to the CCP/NEPA document. The NEPA analyses of the step-down plan can focus solely on the scope of

subsequent tiered project-level analyses since related refuge management activities have already been evaluated in the programmatic document.

### 5.5.4 NEPA and other compliance requirements

Complying with NEPA requirements does not satisfy compliance requirements of other laws and regulations. Projects which require NEPA compliance may also require compliance with other statutes and regulations such as Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act (NHPA), Compatibility for National Wildlife Refuge System Administration Act, or Coastal Zone Management Act, among others. However, addressing other compliance requirements involves addressing potential effects to resources (e.g. biological, cultural) and the impact analyses developed for NEPA compliance purposes, if done well, can often serve to address impact evaluations needed to comply with other statutes.

If possible, it is far more efficient to attempt to satisfy as many compliance processes as possible while conducting the NEPA process. Not only should you be able to use the NEPA analyses for other compliance purposes, you may be able to gain other efficiencies such

as conducting concurrent public reviews. For example, if a project requires a NEPA and compatibility public review period and a State Historic Preservation Office (SHPO) review, it would be most efficient to have the public review for both the NEPA document and compatibility determination occur at the same time the SHPO is conducting the NHPA review.

Coordinating concurrent reviews requires detailed knowledge of the NEPA process and time frames and of processes and time frames associated with other compliance requirements. We recommend Refuge System managers coordinate early and often with subject matter experts in Regional Offices or Headquarters in order to most effectively administer concurrent compliance processes.

### 5.6 Additional Information

This Handbook has been prepared to provide a general overview of the NEPA process and documentation requirements. For additional information, consult with your Regional NEPA experts, who can provide detailed information on NEPA topics of interest. The Regional Office and Headquarters will have the most current information on process, procedures, guidance, and NEPA document examples.



# Glossary

This section was adapted from the **Council on Environmental Quality (CEQ)** regulations that implement the provisions of NEPA (40 CFR 1508).

**Act** – means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as “NEPA.”

**Affecting** – means will or may have an effect on.

**Categorical exclusion** – means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (40 CFR 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in 40 CFR 1508.9 even though it is not required to do so. Any procedures under this section must provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

**Cooperating agency** – means any Federal agency other than a lead agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in 40 CFR 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, a Native American Tribe, may by agreement

with the lead agency become a cooperating agency.

**Council** – means the Council on Environmental Quality established by Title II of the Act.

**Cumulative impact** – is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

**Effects** – change or consequence of an action. These include:

- (a) Direct effects, which are caused by the action and occur at the same time and place.
- (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density, or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in the regulations are synonymous. Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions that may have both beneficial and detrimental effects, even if on balance the agency

believes that the effect will be beneficial.

**Environmental assessment** –

- (a) Means a concise public document for which a Federal agency is responsible that serves to:
  - 1. Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact,
  - 2. Aid an agency’s compliance with the Act when no environmental impact statement is necessary, and
  - 3. Facilitate preparation of a statement when one is necessary.
- (b) Must include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and people consulted.

**Environmental document** – (40 CFR 1508.10) includes the documents specified in 40 CFR 1508.9 (EA), 40 CFR 1508.11 (EIS), 40 CFR 1508.13 (FONSI), and 40 CFR 1508.22 (NOI).

**Environmental impact statement** – means a detailed written statement as required by 40 CFR Part 1502 of the Act.

**Federal agency** – means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes, for purposes of the regulations, States and units of general local government and

Native American Tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

**Finding of no significant impact** – means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (40 CFR 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement will not be prepared. It must include the environmental assessment or a summary of it and must note any other environmental documents related to it (40 CFR 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment, but may incorporate it by reference.

**Human environment** – must be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of “effects” (40 CFR 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

**Jurisdiction by law** – means agency authority to approve, veto, or finance all or part of the proposal.

**Lead agency** – means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

**Legislation** – includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency that

has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

**Major Federal action** – includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces, but does not have a meaning independent of, significantly (40 CFR 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (40 CFR 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

1. Adoption of official policy, such as rules, regulations, and interpretations adopted under the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; and formal documents establishing an agency’s policies that will result in or substantially alter agency programs.
2. Adoption of formal plans, such as official documents prepared or approved by Federal agencies that guide or prescribe alternative uses of Federal resources, upon

which future agency actions will be based.

3. Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; and systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.
4. Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as Federal and federally-assisted activities.

**Matter** – includes for purposes of 40 CFR Part 1504: (a) With respect to the Environmental Protection Agency, any proposed legislation, project, action, or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609). (b) With respect to all other agencies, any proposed major Federal action to which section 102(2)(C) of NEPA applies.

**Mitigation** – includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

**Mitigated FONSI** – is a term of art referring to a Finding of No Significant Impact for Federal actions in which environmental impacts have been mitigated below a level of significance through



mitigation commitments (see Section 3.4.4).

**NEPA process** – means all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.

**Notice of intent** – means a notice that an environmental impact statement will be prepared and considered. The notice must briefly:

- (a) Describe the proposed action and possible alternatives.
- (b) Describe the agency’s proposed scoping process, including whether, when, and where any scoping meeting will be held.
- (c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

**Proposal** – exists at that stage in the development of an action when an agency subject to NEPA has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (Sec. 1502.5) so that the final statement may be completed in time it to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

**Referring agency** – means the Federal agency that has referred any matter to the CEQ after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

**Scope** – consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (40 CFR 1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies must consider three types of actions, three types of alternatives, and three types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

1. Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:
  - (i) Automatically trigger other actions that may require environmental impact statements.
  - (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
  - (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

2. Cumulative actions, which when viewed with other proposed actions, have cumulatively significant impacts and should therefore be discussed in the same impact statement.

3. Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

1. No action alternative.
2. Other reasonable courses of actions.
3. Mitigation measures (not in the proposed action).

(c) Impacts, which may be:  
(1) direct; (2) indirect; (3) cumulative.

**Special expertise** – means statutory responsibility, agency mission, or related program experience.

**Significantly** – as used in NEPA, requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend on the effects in the locale rather than in the world as a whole. Both short – and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

1. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
2. The degree to which the proposed action affects public health or safety.
3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.
5. The degree to which the possible effects on the human environment are highly

uncertain or involve unique or unknown risks.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

**Tiering** – refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basin-wide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

- (a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.
- (b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues that are ripe for decision, and exclude from consideration issues already decided or not yet ripe.



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