



## U.S. Fish and Wildlife Service

### NATIONAL ENVIRONMENTAL POLICY ACT REFERENCE HANDBOOK



Welcome to the Fish and Wildlife Service's on-line version of the NEPA Reference Handbook. The purpose of this Handbook is to provide Fish and Wildlife Service personnel with the full text of various NEPA and NEPA-related authorities, checklists, and samples for the preparation and review of environmental documents. The Handbook includes documents cited in Service NEPA guidance and Departmental procedures and memoranda.

The files in this Handbook are provided in Adobe's portable document format (.pdf). The pages are also linked within the .pdf format. To read or print these documents, you must have [Adobe Acrobat Reader](#) set up as a plug-in to your browser.

Click here to proceed to the [Table of Contents](#) for the Service's NEPA Reference Handbook. To access files from the index, click on the green oval in front of the desired item. If there is no green oval, click on the number at the beginning of the line. (CEQ's 40 Most Asked Questions are linked in groups of 10, thereby requiring some scrolling to reach many questions.) To return to this page from the Table of Contents, you must use the "BACK" button on your browser.

Your opinion on this page is important to us. Please send comments to [Don Peterson](#) at [don\\_peterson@fws.gov](mailto:don_peterson@fws.gov).

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# Fish and Wildlife Service NEPA Reference Handbook

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## Other References Cited

The following references are cited for your information, but are not included in full text in the NEPA Reference Handbook. To obtain copies of these references, contact your Regional Environmental Coordinator, or the Washington Office Environmental Coordinator, at 703-358-2183.

1. CEQ. "Considering Cumulative Effects Under the National Environmental Policy Act," dated January 1997.
2. CEQ. "Memorandum to Heads of Agencies on the Application of the National Environmental Policy Act to Proposed Federal Actions in the United States with Transboundary Effects," dated July 1, 1997.
3. CEQ. "Incorporating Biodiversity Considerations into Environmental Impact Analysis Under the National Environmental Policy Act," dated January 1993.
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- ECM95-3 National Environmental Policy Act (NEPA) Responsibilities  
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- ECM98-2 CEQ B Environmental Justice Guidance under the NEPA
5. Department of the Interior. Memorandum from Associate Solicitor,  
Division of General Law to Distribution List, regarding "Federal Advisory  
Committee Act (FACA)", dated March 4, 1996.
  6. Department of the Interior. Memorandum from Assistant Solicitor to  
Director, OEPC, regarding "Applicability of Section 4(f) of the Department  
of Transportation Act to the Bowden National Fish Hatchery," dated  
December 24, 1975.
  7. Department of the Interior. Letter from the Secretary of the Interior to the  
Secretary, Department of Transportation, regarding the applicability of  
Section 4(f) to Department of the Interior lands and interests, dated June  
25, 1980.
  8. Fish and Wildlife Service. Manual, Refuge Planning, 602 FW 1-3.
  9. Fish and Wildlife Service. Manual, Federal Aid Manual, 521, 522, and  
523 FW.
  10. Fish and Wildlife Service. Habitat Conservation Planning Handbook,  
November 1996.
  11. Fish and Wildlife Service. Memorandum from Deputy Director to  
Regional Directors, regarding "Guidance Document - Federal Highway  
Administrations Consideration of Wetlands in the Planning of Federal Aid  
Highways," dated October 1, 1990.
  12. Fish and Wildlife Service. Memorandum from Acting Director to Service  
Directorate, regarding "Role of Ecological Services and the Office of  
Human Resources in Environmental Justice," dated December 17, 1996.
  13. Fish and Wildlife Service. Interagency Agreement Between National Park  
Service, Fish and Wildlife Service, Bureau of Land Management, and the  
Federal Aviation Administration Regarding Low-Level Flying Aircraft Over  
Natural Resource Areas, dated January 15, 1993.
  14. Federal Energy Regulatory Commission. Regulations for implementing  
NEPA. 18 CFR 2, 157, and 380.
  15. NEPA Handbook, NEPA Policy and Internal Service Compliance, (30 AM  
2-3)

## Purpose of the NEPA Reference Handbook

The purpose of the NEPA Reference Handbook, as authorized in 505 FW 1.7 and 550 FW 1, is to provide Fish and Wildlife Service personnel with full texts of various NEPA authorities, selected NEPA-related authorities, and NEPA-related checklists. The Handbook includes documents cited in Service NEPA guidance and Departmental procedures and memoranda. The Handbook is an accompanying document to the Service NEPA guidelines.

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## NEPA GLOSSARY

Affected Environment - A description of the existing environment to be affected by the proposed action (40 CFR 1502.15).

Alternative - A reasonable way to fix the identified problem or satisfy the stated need (40 CFR 1502.4).

Categorical Exclusion (CX)-A category of actions that do not individually or cumulatively have a significant effect on the human environment and have been found to have no such effect in procedures adopted by a Federal agency pursuant to NEPA (40 CFR 1508.4).

Council on Environmental Quality (CEQ) - Established under Title II of NEPA to develop Federal agency-wide policy and regulations for implementing the procedural provisions of NEPA, resolve interagency disagreements concerning proposed major Federal actions, and to ensure that Federal agency programs and procedures are in compliance with NEPA.

Cumulative Effect - The incremental environmental impact or effect of the proposed action, together with impacts of past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7).

Environmental Consequences - Environmental effects of project alternatives, including the proposed action, any adverse environmental effects which cannot be avoided, the relationship between short-term uses of the human environment, and any irreversible or irretrievable commitments of resources which would be involved if the proposal should be implemented (40 CFR 1502.16).

Environmental Action Statement (EAS) - A Service-required document prepared to improve the Service's administrative record for categorically excluded actions that may be controversial, emergency actions under CEQ's NEPA regulations (40 CFR 1506.1 1), decisions based on EAs to prepare an EIS, and any decision where improved documentation of the administrative record is desirable, and to facilitate internal program review and final approval when a FONSI is to be signed at the FWS-WO and FWS-RO level (550 FW ')).

Environmental Impact Statement (EIS) - A detailed written statement required by section 102(2)(C) of NEPA, analyzing the environmental impacts of a proposed action, adverse effects of the project that cannot be avoided, alternative courses of action, short-term uses of the environment versus the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitment of resources (40 CFR 1508.1 1).

Environmental Assessment (EA) - A concise public document, prepared in compliance with NEPA, that briefly discusses the purpose and need for an action, alternatives to such action, and provides sufficient evidence and analysis of impacts to determine whether to prepare an environmental impact statement or finding of no significant impact (40 CFR 1508.9).

Finding of No Significant Impact (FONSI) - A document prepared in compliance with NEPA, supported by an environmental assessment, that analyzes whether a Federal action will have no significant effect on the human environment and for which an environmental impact statement, therefore, will not be prepared (40 CFR 1508.13).

Human Environment - Includes the natural and physical environment and the relationship of people with the environment (40 CFR 1508.14).

Impact (Effect) - A direct result of an action which occurs at the same time and place; or an indirect result of an action which occurs later in time or in a different place and is reasonably foreseeable; or the cumulative results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions (40 CFR 1508.8).

Lead Agency - The agency or agencies responsible for preparing the environmental impact statement (40 CFR 1508.16).

Major Federal Action - Actions with effects that may be major and which are potentially subject to Federal control and responsibility (40 CFR 1508.18).

Mitigation - Planning actions taken to avoid an impact altogether to minimize the degree or magnitude of the impact, reduce the impact over time, rectify the impact, or compensate for the impact (40 CFR 1508.20)

National Environmental Policy Act of 1969 (NEPA) - Requires all agencies, including the Service, to examine the environmental impacts of their actions, incorporate environmental information, and utilize public participation in the planning and implementation of all actions. Federal agencies must integrate NEPA with other planning requirements and prepare appropriate NEPA documents to facilitate better environmental decision making. NEPA requires Federal agencies to review and comment on Federal agency environmental plans/documents when the agency has jurisdiction by law or special expertise with respect to any environmental impacts involved. (42 U.S.C. 4321-4327) (40 CFR 1500-1508).

Notice of Intent (NOI) - A notice that an environmental impact statement will be prepared and considered (40 CFR 1508.22).

No Action Alternative - The alternative where current conditions and trends are projected into the future without another proposed action (40 CFR 1502.14(d)).

Proposed Action - A plan that contains sufficient details about the intended actions to be taken, or that will result, to allow alternatives to be developed and its environmental impacts analyzed (40 CFR 1508.23).

Record of Decision (ROD) - A concise public record of decision prepared by the Federal agency, pursuant to NEPA, that contains a statement of the decision, identification of all alternatives considered, identification of the environmentally preferable alternative, a statement as to whether all practical means to avoid or minimize environmental harm from the alternative selected have been adopted (and if not, why they were not), and a summary of monitoring and enforcement where applicable for any mitigation (40 CFR 1505.2).

Relationship of Short-Term Uses and Long-Term Productivity - The balance or trade-off between short-term uses and long-term productivity need to be defined in relation to the proposed activity in question. Each resource, of necessity, has to be provided with its own definitions of short-term and long-term (40 CFR 1502.16).

Scope - The range of actions, alternatives, and impacts to be considered in an environmental impact statement (40 CFR 1508.25).

Scoping - An early and open process for determining the extent and variety of issues to be addressed and for identifying the significant issues related to a proposed action (40 CFR 1501.7).

Significant - Use in NEPA requires consideration of both context and intensity (40 CFR 1508.27):

Context - significance of an action must be analyzed in its current and proposed short-and long-term effects on the whole of a given resource (e.g.-affected region) Intensity - Refers to the severity of the effect

Tiering - The coverage of general matters in broader environmental impact statements with subsequent narrower statements of environmental analysis, incorporating by reference, the general discussions and concentrating on specific issues (40 CFR 1508.28).

Unavoidable Adverse Effects - Effects that can not be avoided due to constraints in alternatives. These effects do not have to be avoided by the planning agency, but they must be disclosed, discussed, and mitigated, if possible (40 CFR 1500.2(e)).

## ABBREVIATIONS AND ACRONYMS

AD-ES	Assistant Director - Ecological Services
BLM	Bureau of Land Management
BR	Bureau of Reclamation
CEQ	Council on Environmental Quality
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act of 1980
CG	U.S. Coast Guard
Corps	U.S. Army Corps of Engineers
CX	Categorical Exclusion
DHC	Division of Habitat Conservation
Director	Director, U.S. Fish and Wildlife Service
D-J	Dingell-Johnson Act (Federal Aid in Sport Fish Restoration Act)
DOI or Department	Department of Interior
DOT	Department of Transportation
EA	Environmental Assessment
EC	Environmental Coordination
ED	Environmental Document
EIS	Environmental Impact Statement
EO	Executive Order
EPA	Environmental Protection Agency
ER	Environmental Review
ES	Ecological Services
ESA	Endangered Species Act
FAA	Federal Aviation Administration
FERC	Federal Energy Regulatory Commission
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact
FWCA	Fish and Wildlife Coordination Act
ES Transmittal	ES Environmental Review Distribution Transmittal
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
MMPA	Marine Mammal Protection Act
NEPA	National Environmental Policy Act
NEPA Regulations	CEQ Regulations for Implementing the Procedural Provisions of NEPA
NOA	Notice of Availability
NOI	Notice of Intent
NPS	National Park Service
OEA	Office of Environmental Affairs (DOI)
P-R	Pittman-Robertson Act (Federal Aid in Wildlife Restoration Act)
PNRS	Preliminary Natural Resources Survey
REC	Regional Environmental Coordinator (Service)
REO	Regional Environmental Officer (DOI)

Secretary  
Service  
SOW  
WO

Secretary of the Interior  
U.S. Fish and Wildlife Service  
Scope of Work  
Washington Office

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# **The National Environmental Policy Act of 1969**

**The National Environmental Policy Act of 1969**, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."*

## **Purpose**

### **Sec. 2 [42 USC § 4321].**

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

## **TITLE I**

### **CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY**

#### **Sec. 101 [42 USC § 4331].**

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions,

programs, and resources to the end that the Nation may --

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

**Sec. 102 [42 USC § 4332].**

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

- (i) the State agency or official has statewide jurisdiction and has the responsibility for such action,
- (ii) the responsible Federal official furnishes guidance and participates in such preparation,
- (iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and
- (iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and,

where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

**Sec. 103 [42 USC § 4333].**

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

**Sec. 104 [42 USC § 4334].**

Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

**Sec. 105 [42 USC § 4335].**

The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

**TITLE II**

**COUNCIL ON ENVIRONMENTAL QUALITY**

**Sec. 201 [42 USC § 4341].**

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation

in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

**Sec. 202 [42 USC § 4342].**

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

**Sec. 203 [42 USC § 4343].**

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

**Sec. 204 [42 USC § 4344].**

It shall be the duty and function of the Council --

1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;
2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;
3. to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement

of such policy, and to make recommendations to the President with respect thereto;

4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;
5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;
6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;
7. to report at least once each year to the President on the state and condition of the environment; and
8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

**Sec. 205 [42 USC § 4345].**

In exercising its powers, functions, and duties under this Act, the Council shall --

1. consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and
2. utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

**Sec. 206 [42 USC § 4346].**

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].

**Sec. 207 [42 USC § 4346a].**

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

**Sec. 208 [42 USC § 4346b].**

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

**Sec. 209 [42 USC § 4347].**

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

**The Environmental Quality Improvement Act**, as amended (Pub. L. No. 91- 224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.

**42 USC § 4372.**

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91- 190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions ;under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by --

1. providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;
2. assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which

do not require individual project authorization by Congress, which affect environmental quality;

3. reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;
4. promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;
5. assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;
6. assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;
7. collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

**42 USC § 4373.** Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

**42 USC § 4374.** There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91- 190:

- (a) \$2,126,000 for the fiscal year ending September 30, 1979.
- (b) \$3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.
- (c) \$44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.
- (d) \$480,000 for each of the fiscal years ending September 30, 1985 and 1986.

**42 USC § 4375.**

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance --

1. study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and

2. Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

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Office of Federal Activities

## **Section 309 - Clean Air Act**

(a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this Act or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which Section 102(2)(C) of Public Law 91-190[\*] applies, and (3) proposed regulations published by any department or agency of the Federal government. Such written comment shall be made public at the conclusion of any such review.

(b) In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare to environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

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[\*] NEPA (42 USC 4332(2)(C) et seq.)

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## **Section 4(f) of the DOT ACT**

Section 4(f) of the Department of Transportation Act (80 Stat. 931; Public Law 89-670) as amended in Section 18 of the Federal Aid Highway Act of 1968 (82 Stat. 815; Public Law 90-495).

A(f) It is hereby declared to be the national policy that special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After the effective date of the Federal-Aid Highway Act of 1968, the Secretary shall not approve any program or project which requires the use of any publicly owned land from fowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.@

Section 4(f) is Codified in:

23 U.S.C. 138 and 49 U.S.C. 163 (f)

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**THE PRESIDENT**

Title 3  
The President

Executive Order 12114 of January 4, 1979

Environmental Effects Abroad of Major Federal Actions

By virtue of the authority vested in me by the Constitution and the laws of the United States, and as President of the United States, in order to further environmental objectives consistent with the foreign policy and national security policy of the United States, it is ordered as follows:

Section 1.

*1-1. Purpose and Scope.* The purpose of this Executive Order is to enable responsible officials of Federal agencies having ultimate responsibility for authorizing and approving actions encompassed by this Order to be informed of pertinent environmental considerations and to take such considerations into account, with other pertinent considerations of national policy, in making decisions regarding such actions. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act and the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act consistent with the foreign policy and national security policy of the United States, and represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.

Sec. 2.

*2-1. Agency Procedures.* Every Federal agency taking major Federal actions encompassed hereby and not exempted herefrom having significant effects on the environment outside the geographical borders of the United States and its territories and possessions shall within eight months after the effective date of this Order have in effect procedures to implement this Order. Agencies shall consult with the Department of State and the Council on Environmental Quality concerning such procedures prior to placing them in effect.

*2-2. Information Exchange.* To assist in effectuating the foregoing purpose, the Department of State and the Council on Environmental Quality in collaboration with other interested Federal agencies and other nations shall conduct a program for exchange on a continuing basis of information concerning the environment. The objectives of this program shall be to provide information for use by decision makers to heighten awareness of

and interest in environmental concerns and, as appropriate, to facilitate environmental cooperation with foreign nations.

*2-3. Actions Included.* Agencies in their procedures under Section 2-1 shall establish procedures by which their officers having ultimate responsibility for authorizing and approving actions in one of the following categories encompassed by this Order, take into consideration in making decisions concerning such actions, a document described in Section 2-4(a):

(a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g.; the oceans or Antarctica);

(b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;

(c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(1) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

(d) major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection under this subsection by the President, or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council on Environmental Quality and the Secretary of State.

*2-4. Applicable Procedures.* (a) There are the following types of documents to be used in connection with actions described in Section 2-3:

(i) environmental impact statements (including generic, program and specific statements):

(ii) bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(iii) concise reviews of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

(b) Agencies shall in their procedures provide for preparation of documents described in Section 2-4(a), with respect to actions described in Section 2-3, as follows:

(i) for effects described in Section 2-3(a), an environmental impact statement described in Section 2-4(a)(i);

(ii) for effects described in Section 2-3(b), a document described in Section 2-4(a)(ii) or (iii) as determined by the agency;

(iii) for effects described in Section 2-3(a), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iv) for effects described in Section 2-3(d), a document described in Section 2-4(a)(i), (ii) or (iii). As determined by the agency.

Such procedures may provide that an agency need not prepare a new document when a document described in Sec 2-4(a) already exists.

(c) Nothing in this Order shall serve to invalidate any existing regulations of any agency which have been adopted pursuant to court order or pursuant to judicial settlement of any case or to prevent any agency from providing in its procedures for measures in addition to those provided for herein to further the purpose of the National Environmental Policy Act and other environmental laws, including the Marine Protection Research and Sanctuaries Act and the Deepwater Port Act, consistent with the foreign and national security policies of the United States.

(d) Except as provided in Section 2-5(b), agencies taking action encompassed by this Order shall, as soon as feasible, inform other Federal agencies with relevant expertise of the availability of environmental documents prepared under this Order.

Agencies in their procedures under Section 2-1 shall make appropriate provision for determining when an affected nation shall be informed in accordance with Section 3-2 of this Order of the availability of environmental documents prepared pursuant to those procedures.

In order to avoid duplication of resources, agencies in their procedures shall provide for appropriate utilization of the resources of other Federal agencies with relevant environmental jurisdiction or expertise.

*2-5. Exemptions and considerations.* (a) Notwithstanding Section 2-3, the following actions are exempt from this Order:

(i) actions not having a significant effect on the environment outside the United States as determined by the agency;

(ii) actions taken by the President;

(iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

(iv) intelligence activities and arms transfers;

(v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954, as amended, or a nuclear waste management facility;

(vi) votes and other actions in international conferences and organizations;

(vii) disaster and emergency relief action.

(b) Agency procedures under Section 2-1 implementing Section 2-4 may provide for appropriate modifications in the contents, timing and availability of documents to other affected Federal agencies and affected nations, where necessary to:

(i) enable the agency to decide and act promptly as and when required;

(ii) avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities, or

(iii) ensure appropriate reflection of:

(1) diplomatic factors;

(2) international commercial, competitive and export promotion factors;

(3) needs for governmental or commercial confidentiality;

(4) national security considerations;

(5) difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and

(6) the degree to which the agency is involved in or able to affect a decision to be made.

(c) Agency procedure under Section 2-1 may provide for categorical exclusions and for such exemptions in addition to those specified in subsection (a) of this Section as may be necessary to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivities and other such special circumstances. In utilizing such additional exemptions agencies shall, as soon as feasible, consult with the Department of State and the Council on Environmental Quality.

(d) The provisions of Section 2-5 do not apply to actions described in Section 2-3(a) unless permitted by law.

Sec. 3.

*3-2. Rights of Action.* This Order is solely for the purpose of establishing internal procedures for Federal agencies to consider the significant effects of their actions on the environment outside the United States, its territories and possessions, and nothing in this Order shall be construed to create a cause of action.

*3-2. Foreign Relations.* The Department of State shall coordinate all communications by agencies with foreign governments concerning environmental agreements and other arrangements in implementation of this Order.

*3-3. Mufti-Agency Actions.* Where more than one Federal agency is involved in an action or program, a lead agency, as determined by the agencies involved, shall have responsibility for implementation of this Order.

*3-4. Certain Terms.* For purposes of this Order, "environment" means the natural and physical environment and excludes social, economic and other environments; and an action significantly affects the environment if it does significant harm to the environment even though on balance the agency believes the action to be beneficial to the environment. The term "export approvals" in Section 2-5(a)(v) does not mean or include direct loans to finance exports.

*3-5. Multiple Impacts.* If a major Federal action having effects on the environment of the United States or the global commons requires preparation of an environmental impact statement, and if the action also has effects on the environment of a foreign nation, an environmental impact statement need not be prepared with respect to the effects on the environment of the foreign nation.

The White House.

[FR Doc. 79-869

January 4, 1979

Filed 1-5-79; 3:38 pm]

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## EXECUTIVE ORDER 11988

### FLOODPLAIN MANAGEMENT

HISTORY: May 24, 1977; 42 FR 26951, 3 CFR, 1977 Comp., p. 117; Amended by Executive Order 12148, July 20, 1979; 44 FR 43239, 3 CFR, 1979 Comp., p. 412

[EDITOR'S NOTE: Executive Order 12148 --Federal Emergency Management, July 20, 1979, substituted "Director of the Federal Emergency Management Agency" for "Federal Insurance Administration" in Section 2(d).]

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat. 975), in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

#### Section 1.

Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Sec. 2.

In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

(a)(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain -- for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only

practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

(3) For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A-95 clearinghouses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

(4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Director of the Federal Emergency Management Agency, and the Council on Environmental Quality, and shall update such procedures as necessary.

In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

#### Sec. 4.

In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

#### Sec. 5.

The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

#### Sec. 6.

As used in this Order: (a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting

floodplains.

(b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

Sec. 7.

Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

Sec. 8.

Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

Sec. 9.

To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.

/s/JIMMY CARTER  
THE WHITE HOUSE  
May 24, 1977

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Office of the White House Press Secretary    May 24, 1977

**THE WHITE HOUSE**  
**EXECUTIVE ORDER 11990**  
**PROTECTION OF WETLANDS**

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By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), in order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative, it is hereby ordered as follows:

Section 1. (a) Each agency shall provide leadership and shall take action to the destruction, loss or degradation of wetlands, and to preserve and enhance natural and beneficial values of wetlands in carrying out the agency's responsibilities (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvement; and 3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) This order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal

Sec. 2. (a) In furtherance of Section 101(b)(3) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(b)(3)) to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation risk to health or safety, each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

(b) Each agency shall also provide opportunity for early public review of any plans or proposals for new construction in wetlands, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under on 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

Sec. 3. Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in wetlands, whether the proposed action is in accord with this Order.

Sec. 4. When Federally-owned wetlands or portions of wetlands are proposed for load, easement, right-of-way or disposal to non-Federal public or private parties, the Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

Sec. 5. In carrying out the activities described in Section 1 of this Order, each agency shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are:

(a) public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards, and sediment and erosion;

(b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and

(c) other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

Sec. 6. As allowed by law, agencies shall issue or amend their existing procedures in order to comply with this Order. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order.

Sec. 7. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting wetlands.

(b) The term "new construction" shall include draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective date of this Order.

(c) The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

Sec. 8. This Order does not apply to projects presently under construction, or to projects for

which all of the funds have been appropriated through fiscal Year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977. The provisions of Section 2 of this Order shall be implemented by each agency not later than October 1, 1977.

Sec. 9. Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

Sec.10 To the extent the provisions of Sections 2 and 5 of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decision making, and action pursuant to the National Environmental Policy Act of 1969, as amended.

Jimmy Carter

The White House

May 24, 1977

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Title: Executive Order 12898: Env. Justice for Minority Populations  
Author: The White House  
Date: Feb 11, 1994

## THE WHITE HOUSE Office of the Press Secretary

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For Immediate Release  
February 11, 1994

### EXECUTIVE ORDER 12898 FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS

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By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

#### **Section 1-1. Implementation.**

**1-101. Agency Responsibilities.** To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

#### **1-102. Creation of an Interagency Working Group on Environmental Justice.**

- a. Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget;

(m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

b. The Working Group shall:

1. provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;
2. coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;
3. assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3-3 of this order;
4. assist in coordinating data collection, required by this order;
5. examine existing data and studies on environmental justice;
6. hold public meetings as required in section 5-502(d) of this order; and
7. develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

**1-103. Development of Agency Strategies.**

Except as provided in section 6-605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b)-(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified

revisions and consideration of economic and social implications of the revisions.

- a. Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.
- b. Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.
- c. Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.
- d. Within 12 months of the date of this order, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. During the 12 month period from the date of this order, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.
- e. Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.
- f. Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

**1-104. Reports to the President.** Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1-103(e) of this order.

## **Sec. 2-2. Federal Agency Responsibilities for Federal Programs.**

Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

## **Sec. 3-3. Research, Data Collection, and Analysis.**

### **3-301. Human Health and Environmental Research and Analysis.**

1. Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority

populations, low-income populations and workers who may be exposed to substantial environmental hazards.

2. Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.
3. Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

**3-302. Human Health and Environmental Data Collection and Analysis.** To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a):

- a. each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;
- b. In connection with the development and implementation of agency strategies in section 1-103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law; and
- c. Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001- 11050 as mandated in Executive Order No. 12856; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations. Such information shall be made available to the public, unless prohibited by law.
- d. In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and tribal governments.

## **Sec. 4-4. Subsistence Consumption of Fish and Wildlife.**

**4-401. Consumption Patterns.** In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information

on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

**4-402. Guidance.** Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

## **Sec. 5-5. Public Participation and Access to Information.**

1. The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.
2. Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.
3. Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.
4. The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

## **Sec. 6-6. General Provisions.**

**6-601. Responsibility for Agency Implementation.** The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

**6-602. Executive Order No. 12250.** This Executive order is intended to supplement but not supersede Executive Order No. 12250, which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

**6-603. Executive Order No. 12875.** This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875.

**6-604. Scope.** For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

**6-605. Petitions for Exemptions.** The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

**6-606. Native American Programs.** Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian Tribes.

**6-607. Costs.** Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

**6-608. General.** Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

**6-609. Judicial Review.** This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
February 11, 1994.

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# **NEPA's Forty Most Asked Questions**

1. Range of Alternatives.
2. Alternatives Outside the Capability of Applicant or Jurisdiction of Agency.
3. No-Action Alternative.
4. Agency's Preferred Alternative.
5. Proposed Action v. Preferred Alternative.
6. Environmentally Preferable Alternative.
7. Difference Between Sections of EIS on Alternatives and Environmental Consequences.
8. Early Application of NEPA.
9. Applicant Who Needs Other Permits.
10. Limitations on Action During 30-Day Review Period for Final EIS.
11. Limitations on Actions by an Applicant During EIS Process.
12. Effective Date and Enforceability of the Regulations.
13. Use of Scoping Before Notice of Intent to Prepare EIS.
14. Rights and Responsibilities of Lead and Cooperating Agencies.
15. Commenting Responsibilities of EPA.
16. Third Party Contracts.
17. Disclosure Statement to Avoid Conflict of Interest.
18. Uncertainties About Indirect Effects of A Proposal.
19. Mitigation Measures.
20. Worst Case Analysis. [Withdrawn.]
21. Combining Environmental and Planning Documents.
22. State and Federal Agencies as Joint Lead Agencies.
23. Conflicts of Federal Proposal With Land Use Plans, Policies or Controls.
24. Environmental Impact Statements on Policies, Plans or Programs.

25. Appendices and Incorporation by Reference.
26. Index and Keyword Index in EISs.
27. List of Preparers.
28. Advance or Xerox Copies of EIS.
29. Responses to Comments.
30. Adoption of EISs.
31. Application of Regulations to Independent Regulatory Agencies.
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35. Time Required for the NEPA Process.
36. Environmental Assessments (EA).
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40. Propriety of Issuing EA When Mitigation Reduces Impacts.

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## **GUIDANCE REGARDING NEPA REGULATIONS**

**40 CFR Part 1500**

### *MEMORANDUM*

**For: Heads of Federal Agencies**

**From: A. Alan Hill, Chairman, Council on Environmental Quality**

**Re: Guidance Regarding NEPA Regulations**

**The Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) were issued on November 29, 1978. These regulations became effective for, and binding upon, most federal agencies on July 30, 1979, and for all remaining federal agencies on November 30, 1979.**

**As part of the Council's NEPA oversight responsibilities it solicited through an August 14, 1981, notice in the Federal Register public and agency comments regarding a series of questions that were developed to provide information on the manner in which federal agencies were implementing the CEQ regulations. On July 12, 1982, the Council announced the availability of a document summarizing the comments received from the public and other agencies and also identifying issue areas which the Council intended to review. On August 12, 1982, the Council held a public meeting to address those issues and hear any other comments which the public or other interested agencies might have about the NEPA process. The issues addressed in this guidance were identified during this process.**

**There are many ways in which agencies can meet their responsibilities under NEPA and the 1978 regulations. The purpose of this document is to provide the Council's guidance on various ways to carry out activities under the regulations.**

### **Scoping**

**The Council on Environmental Quality (CEQ) regulations direct federal agencies which have made a decision to prepare an environmental impact statement to engage in a public scoping process. Public hearings or meetings, although often held, are not required; instead the manner in which public input will be sought is left to the discretion of the agency.**

**The purpose of this process is to determine the scope of the EIS so that preparation of the document can be effectively managed. Scoping is intended to ensure that problems are identified early and properly studied, that issues of little significance do not consume time and effort, that the draft EIS is thorough and balanced, and that delays occasioned by an inadequate draft EIS are avoided. The scoping process should identify the public and agency concerns; clearly define the environmental issues and**

alternatives to be examined in the EIS including the elimination of nonsignificant issues; identify related issues which originate from separate legislation, regulation, or Executive Order (e.g. historic preservation or endangered species concerns); and identify state and local agency requirements which must be addressed. An effective scoping process can help reduce unnecessary paperwork and time delays in preparing and processing the EIS by clearly identifying all relevant procedural requirements.

In April 1981, the Council issued a "Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping" on the subject of Scoping Guidance. The purpose of this guidance was to give agencies suggestions as to how to more effectively carry out the CEQ scoping requirement. The availability of this document was announced in the Federal Register at 46 FR 25461. It is still available upon request from the CEQ General Counsel's office.

The concept of lead agency (§1508.16) and cooperating agency (§1508.5) can be used effectively to help manage the scoping process and prepare the environmental impact statement. The lead agency should identify the potential cooperating agencies. It is incumbent upon the lead agency to identify any agency which may ultimately be involved in the proposed action, including any subsequent permitting [48 FR 34264]a actions. Once cooperating agencies have been identified they have specific responsibility under the NEPA regulations (40 CFR 1501.6). Among other things cooperating agencies have responsibilities to participate in the scoping process and to help identify issues which are germane to any subsequent action it must take on the proposed action. The ultimate goal of this combined agency effort is to produce an EIS which in addition to fulfilling the basic intent of NEPA, also encompasses to the maximum extent possible all the environmental and public involvement requirements of state and federal laws, Executive Orders, and administrative policies of the involved agencies. Examples of these requirements include the Fish and Wildlife Coordination Act, the Clean Air Act, the Endangered Species Act, the National Historic Preservation Act, the Wild and Scenic Rivers Act, the Farmland Protection Policy Act, Executive Order 11990 (Protection of Wetlands), and Executive Order 11998 (Floodplain Management).

It is emphasized that cooperating agencies have the responsibility and obligation under the CEQ regulations to participate in the scoping process. Early involvement leads to early identification of significant issues, better decisionmaking, and avoidance of possible legal challenges. Agencies with "jurisdiction by law" must accept designation as a cooperating agency if requested (40 CFR 1501.6).

One of the functions of scoping is to identify the public involvement/public hearing procedures of all appropriate state and federal agencies that will ultimately act upon the proposed action. To the maximum extent possible, such procedures should be integrated into the EIS process so that joint public meetings and hearings can be conducted. Conducting joint meetings and hearings eliminates duplication and should significantly reduce the time and cost of processing an EIS and any subsequent approvals. The end result will be a more informed public cognizant of all facets of the proposed action.

It is important that the lead agency establish a process to properly manage scoping. In

appropriate situations the lead agency should consider designating a project coordinator and forming an interagency project review team. The project coordinator would be the key person in monitoring time schedules and responding to any problems which may arise in both scoping and preparing the EIS. The project review team would be established early in scoping and maintained throughout the process of preparing the EIS. This review team would include state and local agency representatives. The review team would meet periodically to ensure that the EIS is complete, concise, and prepared in a timely manner.

A project review team has been used effectively on many projects. Some of the more important functions this review team can serve include: (1) A source of information, (2) a coordination mechanism, and (3) a professional review group. As an information source, the review team can identify all federal, state, and local environmental requirements, agency public meeting and hearing procedures, concerned citizen groups, data needs and sources of existing information, and the significant issues and reasonable alternatives for detailed analysis, excluding the non-significant issues. As a coordination mechanism, the team can ensure the rapid distribution of appropriate information or environmental studies, and can reduce the time required for formal consultation on a number of issues (e.g., endangered species or historic preservation). As a professional review group the team can assist in establishing and monitoring a tight time schedule for preparing the EIS by identifying critical points in the process, discussing and recommending solutions to the lead agency as problems arise, advising whether a requested analysis or information item is relevant to the issues under consideration, and providing timely and substantive review comments on any preliminary reports or analyses that may be prepared during the process. The presence of professionals from all scientific disciplines which have a significant role in the proposed action could greatly enhance the value of the team.

The Council recognizes that there may be some problems with the review team concept such as limited agency travel funds and the amount of work necessary to coordinate and prepare for the periodic team meetings. However, the potential benefits of the team concept are significant and the Council encourages agencies to consider utilizing interdisciplinary project review teams to aid in EIS preparation. A regularly scheduled meeting time and location should reduce coordination problems. In some instances, meetings can be arranged so that many projects are discussed at each session. The benefits of the concept are obvious: timely and effective preparation of the EIS, early identification and resolution of any problems which may arise, and elimination, or at least reduction of, the need for additional environmental studies subsequent to the approval of the EIS.

Since the key purpose of scoping is to identify the issues and alternatives for consideration, the scoping process should "end" once the issues and alternatives to be addressed in the EIS have been clearly identified. Normally this would occur during the final stages of preparing the draft EIS and before it is officially circulated for public and agency review.

The Council encourages the lead agency to notify the public of the results of the scoping process to ensure that all issues have been identified. The lead agency should document

**the results of the scoping process in its administrative record.**

**The NEPA regulations place a new and significant responsibility on agencies and the public alike during the scoping process to identify all significant issues and reasonable alternatives to be addressed in the EIS. Most significantly, the Council has found that scoping is an extremely valuable aid to better decisionmaking. Thorough scoping may also have the effect of reducing the frequency with which proposed actions are challenged in court on the basis of an inadequate EIS. Through the techniques identified in this guidance, the lead agency will be able to document that an open public involvement process was conducted, that all reasonable alternatives were identified, that significant issues were identified and non-significant issues eliminated, and that the environmental public involvement requirements of all agencies were met, to the extent possible, in a single "one-stop" process.**

### **Categorical Exclusions**

**Section 1507 of the CEQ regulations directs federal agencies when establishing implementing procedures to identify those actions which experience has indicated will not have a significant environmental effect and to categorically exclude them from NEPA review. In our August 1981 request for public comments, we asked the question "Have categorical exclusions been adequately identified and defined?"**

**The responses the Council received indicated that there was considerable belief that categorical exclusions were not adequately identified and defined. A number of commentators indicated that agencies had not identified all categories of actions that meet the categorical exclusion definition (§1508.4) or that agencies were overly restrictive in their interpretations of categorical exclusions. Concerns were expressed that agencies were requiring [48 FR 34265] too much documentation for projects that were not major federal actions with significant effects and also that agency procedures to add categories of actions to their existing lists of categorical exclusions were too cumbersome.**

**The National Environmental Policy Act and the CEQ regulations are concerned primarily with those "major federal actions significantly affecting the quality of the human environment" (42 U.S.C. 4332). Accordingly, agency procedures, resources, and efforts should focus on determining whether the proposed federal action is a major federal action significantly affecting the quality of the human environment. If the answer to this question is yes, an environmental impact statement must be prepared. If there is insufficient information to answer the question, an environmental assessment is needed to assist the agency in determining if the environmental impacts are significant and require an EIS. If the assessment shows that the impacts are not significant, the agency must prepare a finding of no significant impact. Further stages of this federal action may be excluded from requirements to prepare NEPA documents.**

**The CEQ regulations were issued in 1978 and most agency implementing regulations and procedures were issued shortly thereafter. In recognition of the experience with the NEPA process that agencies have had since the CEQ regulations were issued, the**

**Council believes that it is appropriate for agencies to examine their procedures to insure that the NEPA process utilizes this additional knowledge and experience. Accordingly, the Council strongly encourages agencies to re-examine their environmental procedures and specifically those portions of the procedures where "categorical exclusions" are discussed to determine if revisions are appropriate. The specific issues which the Council is concerned about are (1) the use of detailed lists of specific activities for categorical exclusions, (2) the excessive use of environmental assessments/findings of no significant impact and (3) excessive documentation.**

**The Council has noted some agencies have developed lists of specific activities which qualify as categorical exclusions. The Council believes that if this approach is applied narrowly it will not provide the agency with sufficient flexibility to make decisions on a project-by-project basis with full consideration to the issues and impacts that are unique to a specific project. The Council encourages the agencies to consider broadly defined criteria which characterize types of actions that, based on the agency's experience, do not cause significant environmental effects. If this technique is adopted, it would be helpful for the agency to offer several examples of activities frequently performed by that agency's personnel which would normally fall in these categories. Agencies also need to consider whether the cumulative effects of several small actions would cause sufficient environmental impact to take the actions out of the categorically excluded class.**

**The Council also encourages agencies to examine the manner in which they use the environmental assessment process in relation to their process for identifying projects that meet the categorical exclusion definition. A report(1 ) to the Council indicated that some agencies have a very high ratio of findings of no significant impact to environmental assessments each year while producing only a handful of EIS's. Agencies should examine their decisionmaking process to ascertain if some of these actions do not, in fact, fall within the categorical exclusion definition, or, conversely, if they deserve full EIS treatment.**

**As previously noted, the Council received a number of comments that agencies require an excessive amount of environmental documentation for projects that meet the categorical exclusion definition. The Council believes that sufficient information will usually be available during the course of normal project development to determine the need for an EIS and further that the agency's administrative record will clearly document the basis for its decision. Accordingly, the Council strongly discourages procedures that would require the preparation of additional paperwork to document that an activity has been categorically excluded.**

**Categorical exclusions promulgated by an agency should be reviewed by the Council at the draft stage. After reviewing comments received during the review period and prior to publication in final form, the Council will determine whether the categorical exclusions are consistent with the NEPA regulations.**

**Adoption Procedures**

**During the recent effort undertaken by the Council to review the current NEPA regulations, several participants indicated federal agencies were not utilizing the adoption procedures as authorized by the CEQ regulations. The concept of adoption was incorporated into the Council's NEPA Regulations (40 CFR 1506.3) to reduce duplicative EISs prepared by Federal agencies. The experiences gained during the 1970's revealed situations in which two or more agencies had an action relating to the same project; however, the timing of the actions was different. In the early years of NEPA implementation, agencies independently approached their activities and decisions. This procedure lent itself to two or even three EISs on the same project. In response to this situation the CEQ regulations authorized agencies, in certain instances, to adopt environmental impact statements prepared by other agencies.**

**In general terms, the regulations recognize three possible situations in which adoption is appropriate. One is where the federal agency participated in the process as a cooperating agency. (40 CFR 1506.3(c)). In this case, the cooperating agency may adopt a final EIS and simply issue its record of decision.(2) However, the cooperating agency must independently review the EIS and determine that its own NEPA procedures have been satisfied.**

**A second case concerns the federal agency which was not a cooperating agency, but is, nevertheless, undertaking an activity which was the subject of an EIS. (40 CFR 1506.3(b)). This situation would arise because an agency did not anticipate that it would be involved in a project which was the subject of another agency's EIS. In this instance where the proposed action is substantially the same as that action described in the EIS, the agency may adopt the EIS and recirculate (file with EPA and distribute to agencies and the public) it as a final EIS. However, the agency must independently review the EIS to determine that it is current and that its own NEPA procedures have been satisfied. When recirculating the final EIS the agency should provide information which identifies what federal action is involved.**

**The third situation is one in which the proposed action is not substantially the same as that covered by the EIS. In this case, any agency may adopt an EIS or a portion thereof by circulating the EIS as a draft or as a portion of the agency's draft and preparing a final EIS. (40 CFR 1506.3(a)). Repetitious analysis and time consuming data collection can be easily eliminated utilizing this procedure.**

**The CEQ regulations specifically address the question of adoption only in terms of preparing EIS's. However, the objectives that underlie this portion of the regulations -- i.e., reducing delays and eliminating duplication -- apply with equal force to the issue of adopting other environmental documents. Consequently, the Council encourages agencies to put in place a mechanism for [48 FR 34266] adopting environmental assessments prepared by other agencies. Under such procedures the agency could adopt the environmental assessment and prepare a Finding of No Significant Impact based on that assessment. In doing so, the agency should be guided by several principles:**

- First, when an agency adopts such an analysis it must independently evaluate the information contained therein and take full responsibility for its scope and**

content.

- **Second, if the proposed action meets the criteria set out in 40 CFR 1501.4(e)(2), a Finding of No Significant Impact would be published for 30 days of public review before a final determination is made by the agency on whether to prepare an environmental impact statement.**

### **Contracting Provisions**

**Section 1506.5(c) of the NEPA regulations contains the basic rules for agencies which choose to have an environmental impact statement prepared by a contractor. That section requires the lead or cooperating agency to select the contractor, to furnish guidance and to participate in the preparation of the environmental impact statement. The regulation requires contractors who are employed to prepare an environmental impact statement to sign a disclosure statement stating that they have no financial or other interest in the outcome of the project. The responsible federal official must independently evaluate the statement prior to its approval and take responsibility for its scope and contents.**

**During the recent evaluation of comments regarding agency implementation of the NEPA process, the Council became aware of confusion and criticism about the provisions of Section 1506.5(c). It appears that a great deal of misunderstanding exists regarding the interpretation of the conflict of interest provision. There is also some feeling that the conflict of interest provision should be completely eliminated.(3)**

### **Applicability of §1506.5(c)**

**This provision is only applicable when a federal lead agency determines that it needs contractor assistance in preparing an EIS. Under such circumstances, the lead agency or a cooperating agency should select the contractor to prepare the EIS.(4)**

**This provision does not apply when the lead agency is preparing the EIS based on information provided by a private applicant. In this situation, the private applicant can obtain its information from any source. Such sources could include a contractor hired by the private applicant to do environmental, engineering, or other studies necessary to provide sufficient information to the lead agency to prepare an EIS. The agency must independently evaluate the information and is responsible for its accuracy.**

### **Conflict of Interest Provisions**

**The purpose of the disclosure statement requirement is to avoid situations in which the contractor preparing the environmental impact statement has an interest in the outcome of the proposal. Avoidance of this situation should, in the Council's opinion, ensure a better and more defensible statement for the federal agencies. This requirement also serves to assure the public that the analysis in the environmental impact statement has been prepared free of subjective, self-serving research and analysis.**

**Some persons believe these restrictions are motivated by undue and unwarranted suspicion about the bias of contractors. The Council is aware that many contractors would conduct their studies in a professional and unbiased manner. However, the Council has the responsibility of overseeing the administration of the National Environmental Policy Act in a manner most consistent with the statute's directives and the public's expectations of sound government. The legal responsibilities for carrying out NEPA's objectives rest solely with federal agencies. Thus, if any delegation of work is to occur, it should be arranged to be performed in as objective a manner as possible.**

**Preparation of environmental impact statements by parties who would suffer financial losses if, for example, a "no action" alternative were selected, could easily lead to a public perception of bias. It is important to maintain the public's faith in the integrity of the EIS process, and avoidance of conflicts in the preparation of environmental impact statements is an important means of achieving this goal.**

**The Council has discovered that some agencies have been interpreting the conflicts provision in an overly burdensome manner. In some instances, multidisciplinary firms are being excluded from environmental impact statements preparation contracts because of links to a parent company which has design and/or construction capabilities. Some qualified contractors are not bidding on environmental impact statement contracts because of fears that their firm may be excluded from future design or construction contracts. Agencies have also applied the selection and disclosure provisions to project proponents who wish to have their own contractor for providing environmental information. The result of these misunderstandings has been reduced competition in bidding for EIS preparation contracts, unnecessary delays in selecting a contractor and preparing the EIS, and confusion and resentment about the requirement. The Council believes that a better understanding of the scope of §1506.5(c) by agencies, contractors and project proponents will eliminate these problems.**

**Section 1506.5(c) prohibits a person or entity entering into a contract with a federal agency to prepare an EIS when that party has at that time and during the life of the contract pecuniary or other interests in the outcomes of the proposal. Thus, a firm which has an agreement to prepare an EIS for a construction project cannot, at the same time, have an agreement to perform the construction, nor could it be the owner of the construction site. However, if there are no such separate interests or arrangements, and if the contract for EIS preparation does not contain any incentive clauses or guarantees of any future work on the project, it is doubtful that an inherent conflict of interest will exist. Further, §1506.5(c) does not prevent an applicant from submitting information to an agency. The lead federal agency should evaluate potential conflicts of interest prior to entering into any contract for the preparation of environmental documents.**

#### **Selection of Alternatives in Licensing and Permitting Situations**

**Numerous comments have been received questioning an agency's obligation, under the**

**National Environmental Policy Act, to evaluate alternatives to a proposed action developed by an applicant for a federal permit or license. This concern arises from a belief that projects conceived and developed by private parties should not be questioned or second-guessed by the government. There has been discussion of developing two standards to determining the range of alternatives to be evaluated: The "traditional" standard for projects which are initiated and developed by a Federal agency, and a second standard of evaluating only those alternatives presented by an applicant for a permit or license.**

**Neither NEPA nor the CEQ regulations make a distinction between actions initiated by a Federal agency and by applicants. Early NEPA case law, while emphasizing the need for a rigorous examination of alternatives, did [48 FR 34267] not specifically address this issue. In 1981, the Council addressed the question in its document, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations".(5 ) The answer indicated that the emphasis in determining the scope of alternatives should be on what is "reasonable". The Council said that, "Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense rather than simply desirable from the standpoint of the applicant."**

**Since issuance of that guidance, the Council has continued to receive requests for further clarification of this question. Additional interest has been generated by a recent appellate court decision. *Roosevelt Campobello International Park Commission v. E.P.A.* (6) dealt with EPA's decision of whether to grant a permit under the National Pollutant Discharge Elimination System to a company proposing a refinery and deep-water terminal in Maine. The court discussed both the criteria used by EPA in its selecting of alternative sites to evaluate, and the substantive standard used to evaluate the sites. The court determined that EPA's choice of alternative sites was "focused by the primary objectives of the permit applicant . . ." and that EPA had limited its consideration of sites to only those sites which were considered feasible, given the applicant's stated goals. The court found that EPA's criteria for selection of alternative sites was sufficient to meet its NEPA responsibilities.**

**This decision is in keeping with the concept that an agency's responsibilities to examine alternative sites has always been "bounded by some notion of feasibility" to avoid NEPA from becoming "an exercise in frivolous boilerplate".(7 ) NEPA has never been interpreted to require examination of purely conjectural possibilities whose implementation is deemed remote and speculative. Rather, the agency's duty is to consider "alternatives as they exist and are likely to exist."(8 ) In the *Roosevelt Campobello* case, for example, EPA examined three alternative sites and two alternative modifications of the project at the preferred alternative site. Other factors to be developed during the scoping process -- comments received from the public, other government agencies and institutions, and development of the agency's own environmental data -- should certainly be incorporated into the decision of which alternatives to seriously evaluate in the EIS. There is, however, no need to disregard the applicant's purposes and needs and the common sense realities of a given situation in the development of alternatives.**

## **Tiering**

**Tiering of environmental impact statements refers to the process of addressing a broad, general program, policy or proposal in an initial environmental impact statement (EIS), and analyzing a narrower site-specific proposal, related to the initial program, plan or policy in a subsequent EIS. The concept of tiering was promulgated in the 1978 CEQ regulations; the preceding CEQ guidelines had not addressed the concept. The Council's intent in formalizing the tiering concept was to encourage agencies, "to eliminate repetitive discussions and to focus on the actual issues ripe for decisions at each level of environmental review."(9)**

**Despite these intentions, the Council perceives that the concept of tiering has caused a certain amount of confusion and uncertainty among individuals involved in the NEPA process. This confusion is by no means universal; indeed, approximately half of those commenting in response to our question about tiering (10 ) indicated that tiering is effective and should be used more frequently. Approximately one-third of the commentators responded that they had no experience with tiering upon which to base their comments. The remaining commentators were critical of tiering. Some commentators believed that tiering added an additional layer of paperwork to the process and encouraged, rather than discouraged, duplication. Some commentators thought that the inclusion of tiering in the CEQ regulations added an extra legal requirement to the NEPA process. Other commentators said that an initial EIS could be prepared when issues were too broad to analyze properly for any meaningful consideration. Some commentators believed that the concept was simply not applicable to the types of projects with which they worked; others were concerned about the need to supplement a tiered EIS. Finally, some who responded to our inquiry questioned the courts' acceptance of tiered EISs.**

**The Council believes that misunderstanding of tiering and its place in the NEPA process is the cause of much of this criticism. Tiering, of course, is by no means the best way to handle all proposals which are subject to NEPA analysis and documentation. The regulations do not require tiering; rather, they authorize its use when an agency determines it is appropriate. It is an option for an agency to use when the nature of the proposal lends itself to tiered EIS(s).**

**Tiering does not add an additional legal requirement to the NEPA process. An environmental impact statement is required for proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. In the context of NEPA, "major Federal actions" include adoption of official policy, formal plans, and programs as well as approval of specific projects, such as construction activities in a particular location or approval of permits to an outside applicant. Thus, where a Federal agency adopts a formal plan which will be executed throughout a particular region, and later proposes a specific activity to implement that plan in the same region, both actions need to be analyzed under NEPA to determine whether they are major actions which will significantly affect the environment. If the answer is yes in both cases, both actions will be subject to the EIS requirement, whether**

tiering is used or not. The agency then has one of two alternatives: Either preparation of two environmental impact statements, with the second repeating much of the analysis and information found in the first environmental impact statement, or tiering the two documents. If tiering is utilized, the site-specific EIS contains a summary of the issues discussed in the first statement and the agency will incorporate by reference discussions from the first statement. Thus, the second, or site-specific statement, would focus primarily on the issues relevant to the specific proposal, and would not duplicate material found in the first EIS. It is difficult to understand, given this scenario, how tiering can be criticized for adding an unnecessary layer to the NEPA process; rather, it is intended to streamline the existing process.

The Council agrees with commentators who stated that there are stages in the development of a proposal for a program, plan or policy when the issues are too broad to lend themselves to meaningful analysis in the framework of an EIS. The CEQ regulations specifically define a "proposal" as existing 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 the goal and the effects can be meaningfully evaluated." (11) Tiering is not intended to force an agency to prepare an EIS before this stage is reached; rather, it is a technique to be used once meaningful analysis can [48 FR 34268] be performed. An EIS is not required before that stage in the development of a proposal, whether tiering is used or not.

The Council also realizes that tiering is not well suited to all agency programs. Again, this is why tiering has been established as an option for the agency to use, as opposed to a requirement.

A supplemental EIS is required when an agency makes substantial changes in the proposed action relevant to environmental concerns, or when there are significant new circumstances or information relevant to environmental concerns bearing on the proposed action, and is optional when an agency otherwise determines to supplement an EIS.(12) The standard for supplementing an EIS is not changed by the use of tiering; there will no doubt be occasions when a supplement is needed, but the use of tiering should reduce the number of those occasions.

Finally, some commentators raised the question of courts' acceptability of tiering. This concern is understandable, given several cases which have reversed agency decisions in regard to a particular programmatic EIS. However, these decisions have never invalidated the concept of tiering, as stated in the CEQ regulations and discussed above. Indeed, the courts recognized the usefulness of the tiering approach in case law before the promulgation of the tiering regulation. Rather, the problems appear when an agency determines not to prepare a site-specific EIS based on the fact that a programmatic EIS was prepared. In this situation, the courts carefully examine the analysis contained in the programmatic EIS. A court may or may not find that the programmatic EIS contains appropriate analysis of impacts and alternatives to meet the adequacy test for the site-specific proposal. A recent decision by the Ninth Circuit Court of Appeals (13) invalidated an attempt by the Forest Service to make a determination regarding wilderness and non-wilderness designations on the basis of a

**programmatic EIS for this reason. However, it should be stressed that this and other decisions are not a repudiation of the tiering concept. In these instances, in fact, tiering has not been used; rather, the agencies have attempted to rely exclusively on programmatic or "first level" EISs which did not have site-specific information. No court has found that the tiering process as provided for in the CEQ regulations is an improper manner of implementing the NEPA process.**

**In summary, the Council believes that tiering can be a useful method of reducing paperwork and duplication when used carefully for appropriate types of plans, programs and policies which will later be translated into site-specific projects. Tiering should not be viewed as an additional substantive requirement, but rather a means of accomplishing the NEPA requirements in an efficient manner as possible.**

#### **Footnotes**

- 1. Environmental Law Institute, NEPA In Action Environmental Offices in Nineteen Federal Agencies, A Report To the Council on Environmental Quality, October 1981.**
- 2. Records of decision must be prepared by each agency responsible for making a decision, and cannot be adopted by another agency.**
- 3. The Council also received requests for guidance on effective management of the third-party environmental impact statement approach. However, the Council determined that further study regarding the policies behind this technique is warranted, and plans to undertake that task in the future.**
- 4. There is no bar against the agency considering candidates suggested by the applicant, although the Federal agency must retain its independence. If the applicant is seen as having a major role in the selection of the contractor, contractors may feel the need to please both the agency and the applicant. An applicant's suggestion, if any, to the agency regarding the choice of contractors should be one of many factors involved in the selection process.**
- 5. 46 FR 18026 (1981).**
- 6. 684 F.2d 1041 (1st Cir. 1982).**
- 7. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 551 (1978).**
- 8. Monarch Chemical Works, Inc. v. Exon, 466 F.Supp. 639, 650 (1979), quoting Carolina Environmental Study Group v. U.S., 510 F.2d 796, 801 (1975).**
- 9. Preamble, FR, Vol. 43, No. 230, p. 55984, 11/29/78.**
- 10. "Is tiering being used to minimize repetition in an environmental assessment and in environmental impact statements?", 46 FR 41131, August 14, 1981.**
- 11. 40 CFR 1508.23 (emphasis added).**

~~12. 40 CFR 1502.9(c).~~

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**13. California v. Block, 18 ERC 1149 (1982).**

a[48 FR 34264] indicates that the subsequent text may be cited to 48 Fed. Reg. 34264 (1983). Ed. Note.

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## **Index to 40 CFR 1500**

- 1500** Purpose, Policy, and Mandate
- 1501** NEPA and Agency Planning
- 1502** Environmental Impact Statement
- 1503** Commenting
- 1504** Predecision Referrals to the Council of Proposed Federal Actions  
Determined to be Environmentally Unsatisfactory
- 1505** NEPA and Agency Decisionmaking
- 1506** Other Requirements of NEPA
- 1507** Agency Compliance
- 1508** Terminology and Index

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THE SECRETARY OF THE INTERIOR

WASHINGTON

March 1, 1993

Memorandum

To: Assistant Secretaries and Bureau  
Directors

From: Secretary

Subject: The Department of the Interior and the National Environmental Policy  
Act

The National Environmental Policy Act of 1969 (NEPA) (P.L. 91-190, as amended) is a national charter for protection of the environment. Since its passage, NEPA has been a strong tool in protecting public resources and controlling external threats to Interior resources and programs, while allowing environmentally sound development. It has created a balanced forum for early identification, avoidance, and resolution of potential conflicts.

The President is committed to conservation and environmental protection. In that vein we need to refresh and rededicate the Department's activities to the spirit of NEPA. Two major NEPA compliance requirements for effective implementation demand that 0 bureaus focus attention on: (1) compliance with the spirit of the Act in the development and execution of our own proposals and (2) careful scrutiny of other agencies' proposals during external program reviews.

NEPA requires all Federal agencies to be aware of the potential environmental effects of their actions. Analyses prepared under NEPA are the primary tool for determining such environmental effects. The primary instrument reflecting the results of such analyses, of course, is the environmental impact statement. Environmental impact statements inform decision-makers about alternatives and their impacts. I strongly urge you to focus bureau attention on preparing and assisting others to prepare factual, reliable, and clear analytical statements, when they are required, to assist us all. The process should be managed to -ensure that all relevant alternatives are carefully examined and precisely analyzed before final decisions are made and that such decisions are rendered only after the final statement is issued and the public waiting period observed.

I view the public trust to carry out our stewardship of Interior's resources and responsibilities to be the very essence of the policy set forth by NEPA and call upon you to join me in renewed attention to using NEPA effectively in the business of the Department.

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## **Index to 516 DM 1-7**

- Chapter 1** Protection and Enhancement of Environmental Quality
- Chapter 2** Initiating the NEPA Process
- Chapter 3** Environmental Assessments
- Chapter 4** Environmental Impact Statements
- Chapter 5** Relationship to Decisionmaking
- Chapter 6** Managing the NEPA Process
- Chapter 7** Review of Environmental Statements Prepared by Other  
Federal Agencies

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**PEP - ENVIRONMENTAL STATEMENT MEMORANDUM NO. ESM95-2**

To: Heads of Bureaus and Offices

From: Willie R. Taylor, Director  
Office of Environmental Policy and Compliance

Subject: Procedures for Approving and Filing Environmental Impact Statements

1. Purpose and Scope

This memorandum prescribes procedures for filing environmental impact statements (EIS) with the Environmental Protection Agency (EPA). It pertains to both draft and final EIS's and both delegated and non-delegated EISs. This memorandum is issued pursuant to 516 DM 4.22. It replaces ESM94-12.

2. Delegated and Non-Delegated EIS's

- a. A delegated EIS is one for which the decision authority on the proposed action rests by delegation with a single Assistant Secretary or below except in certain cases where the Secretary retains authority over the EIS. (See Attachments 1 and 2).
- b. A non-delegated EIS is one for which the decision authority on the proposed action requires the approval of more than one Assistant Secretary (or bureaus under more than one Assistant Secretary),

or

Is an EIS reserved or elevated to the Secretary (or Office of the Secretary) by expressed interest of the Secretary, the Chief of Staff, the Solicitor or the Assistant Secretary for Policy, Management and Budget,

or

The proposed action is of a highly controversial nature or one in which the Secretary has taken a prominent public position in a highly controversial issue,

or

The proposed action faces a high probability of judicial challenge to the Secretary.

3. Notification

- a. As early as possible in the NEPA compliance process for all proposed Departmental programs and projects, bureaus will notify the Office of Environmental Policy and Compliance (OEPC) when non-delegated EISs are required for proposals, as specified in Section 2. Bureaus will also notify OEPC when EISs are required for proposals where the determination of delegation vs. non-delegation is unclear.
- b. Bureaus are to consult OEPC on any questions regarding delegation or non-delegation and seek Departmental advice before filing a Notice of Intent (NOI) in such cases. All Federal Register NOIs will contain a statement as to the delegated or non-delegated nature of the proposed EIS unless a memorandum setting forth the Bureau's position is submitted to OEPC at the time the NOI is issued.

4. Procedures for Delegated EISs

- a. Assistant Secretaries, bureaus or offices, upon approval of a delegated EIS, before its release to EPA and the public, are to contact the OEPC by telephone and inform it of the title of the EIS and the date of its transmittal. The OEPC will assign the document a control number and log it.
- b. At the time of transmittal to EPA, Assistant Secretaries, bureaus and offices will file delegated EISs directly with EPA and publish bureau notices of availability in the Federal Register for all draft, final and supplemental EISs. Five (5) copies of the EIS are required by EPA. The EPA will not accept the EIS without the DOI control number.
- c. Upon transmittal, the responsible official will promptly provide one (1) copy of the EIS to the Office of Public Affairs, three (3) copies to the Natural Resources Library, and five (5) copies to OEPC. In addition, OEPC will be furnished a copy of the transmittal letter to EPA and the bureau Federal Register notice.

5. Procedures for Non-Delegated EISs

- a. Non-delegated EISs must be approved and filed with EPA by the Assistant Secretary for Policy, Management and Budget (AS/PMB). The AS/PMB has assigned this responsibility to OEPC.
- b. Bureaus are encouraged to consult early with OEPC in scheduling and preparing these documents to avoid delays in their approval. The OEPC is available for guidance and associated review of preliminary drafts at bureau head-quarters and subject to the availability of resources, at field levels. This advance consultation and coordination with OEPC will facilitate granting clearances to print documents without formal correspondence and associated processing and mailing delays. A clearance to print is OEPC's informal, but substantive, approval of non-delegated EISs.
- c. Where adequate early consultation and coordination is not achieved, bureaus will transmit proposed EISs to OEPC for review and approval. This should be done concurrently with any bureau headquarters review to avoid sequential review. Bureaus should allow at least 2-4 weeks for OEPC's review, informal approval and/or comment. In such cases, bureaus will also provide in their preparation schedules sufficient time to accommodate comments by OEPC.
- d. In order to file non-delegated EISs with EPA, bureaus will forward, through their Assistant Secretaries to OEPC:
  - a transmittal letter (Attachment 3)
  - a notice of availability (Attachment 4)
  - a draft press release (if required by the Office of Public Affairs), and
  - five (5) printed copies of the EIS.

The transmittal letter, upon signature by the Director of OEPC, is the official document signifying AS/PMB approval. After signature, a bureau may hand carry it and five (5) of the copies of the EIS to EPA and the notice of availability to the Federal Register if it so chooses; otherwise OEPC will mail them.

- e. Concurrent with the filing of an EIS with EPA, bureaus are to distribute the document to Federal agencies with jurisdiction by law or special environmental expertise and to State and local agencies, including Indian Tribes, that are authorized to set and enforce related environmental standards, and to make it available to the public. In addition, they will provide one (1) copy to the Office of Public Affairs and three (3) copies to the Natural Resources Library.

Attachments

<p>Signed: July 12, 1995 By: Willie R. Taylor Director, Office of Environmental Policy and Compliance</p>	<p>Authenticated: July 17, 1997 By: Terence N. Martin Team Leader, Office of Environmental Policy and Compliance</p>
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Exceptions to Delegated EIS's

Although program actions may be delegated to the Assistant Secretaries or subordinate bureaus for the following activities, the EISs for these actions will remain Non-Delegated and follow the procedures outlined in Section 5:

Wilderness proposal EISs

Wild and Scenic River EISs

EISs for proposals that result from study processes required by statute.

EISs for major bureau legislative proposals with significant environmental impact.

Major bureau comprehensive program proposal EISs

Guidelines for OCS Lease Sale EISs

- As early as possible, and as appropriate throughout the NEPA compliance process for all OCS lease sale EISs, MMS and OEPC will coordinate on all appropriate matters including scheduling and integrating review and comment periods for administrative efficiency.
- Opportunity for substantive review and comment by OEPC will be provided at major intervals during NEPA document development including reviews at scoping, preliminary draft EIS, and preliminary final EIS stages. The MMS and OEPC will coordinate these reviews.
- Prior to the publication of draft and final EISs, MMS will obtain surnames from the Office of the Solicitor and the Office of Environmental Policy and Compliance.
- In addition to the guidelines listed above, the procedures listed in item 4 of ESM95-2, i.e., Procedures for Delegated EISs will also apply.

Mr. Richard E. Sanderson  
Director  
Office of Federal Activities (A-104)  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, D.C. 20460

Dear Mr. Sanderson:

In compliance with Section 102(2)(C) of the National  
Environmental Policy Act of 1969 and in accordance with 40 CFR  
1506.9, we are enclosing five (5) copies of a (draft/final)  
environmental impact statement for (title of proposal). This  
statement was prepared by the (bureau).

\* Additional copies are included for your (review/information).

Sincerely,

Willie R. Taylor  
Director, Office of Environmental  
Policy and Compliance

Enclosures

\* Include only if EPA's review will occur at headquarters rather than at a region.

DEPARTMENT OF THE INTERIOR  
(BUREAU)

Notice of Availability of (Draft/Final) Environmental Impact Statement

AGENCY: (Bureau), Department of the Interior

ACTION: Notice of availability of a (draft/final) environmental impact statement (EIS) for the proposed (title)

\*DATE: Comments will be accepted until (date)

\*ADDRESS: Comments should be sent to (office and address)

FOR FURTHER INFORMATION CONTACT: (office and address)

SUPPLEMENTAL INFORMATION: A limited number of individual copies of the EIS may be obtained from (the above contact or wherever).

Copies are also available for inspection at the following locations:

\*\* A public (hearing/meeting) will be held on the proposal on (dates and locations).

_____	_____
Date	Willie R. Taylor Director, Office of Environmental Policy and Compliance

\* Include only for draft EIS

\*\* Include if appropriate to this notice

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PEP - ENVIRONMENTAL STATEMENT MEMORANDUM NO. ESM96-2

To: Heads of Bureaus and Offices

From: Willie R. Taylor, Director  
Office of Environmental Policy and Compliance

Subject: EIS Filing Address Information for EPA

1. The Environmental Protection Agency's Office of Federal Activities has recently relocated. OFA has furnished the attached information on their new location.
2. Please circulate this information to all within your bureau who routinely file EISs with EPA.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE  
WASHINGTON, DC 20460

Dear Sir/Madame:

I am writing to provide you with information needed to file federal environmental impact statements (EIS) with the Environmental Protection Agency's (EPA) Office of Federal Activities (OFA). As you know, OFA has the responsibility for the environmental impact statement filing process. As of December 4, 1995, OFA has relocated to the Ariel Rios Building located at 1200 Pennsylvania Avenue, NW, Washington, DC 20044. This move requires the following changes to your delivery procedures:

When mailing your EISs to OFA using the regular United States mail service send your EISs to:

US Environmental Protection Agency  
Office of Federal Activities  
NEPA Compliance Division  
EIS Filing Section  
Mail Code 2252-A  
401 M Street, SW  
Washington, DC 20460.

When sending your EISs by special delivery (Federal Express, United Parcel Service, etc.) Or hand carrying EISs to the OFA the documents should be taken to the guard station at the South Oval lobby. The address is:

US Environmental Protection Agency  
Office of Federal Activities  
NEPA Compliance Division  
EIS Filing Section  
Ariel Rios Building (South Oval Lobby)  
Mail Code 2252-A, Room 7241  
1200 Pennsylvania Avenue, NW  
Washington, DC 20044.

The guard on duty will ask the delivery person to call our office to verify access to the building. The telephone number for verification to gain access to the building is 564-2410 or 564-2400.

We would appreciate you providing this information to your regional offices. If you have any questions concerning the above information please contact Pearl Young on 202-564-7167 or Marilyn Henderson on 202-564-7153.

Sincerely,

Richard E. Sanderson  
Director  
Office of Federal Activities

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# United States Department of the Interior

FISH AND WILDLIFE SERVICE

WASHI

NGTON, D.C. 20240

ADDRESS ONLY THE DIRECTOR.  
FISH AND WILDLIFE SERVICE

In Reply Refer To:  
FWS/DHC/BFA

APR

6 1993

Memorandum

To: Service Directorate

From: Deputy Director

Subject: The Fish and Wildlife Service and the National  
Environmental Policy Act

On March 1, 1993, Secretary Babbitt asked all bureaus in the Department of the Interior (Department) to rededicate their commitment to the policy set forth in the National Environmental Policy Act of 1969 (NEPA), with a view toward effective conservation and environmental protection (copy attached). I strongly support the Secretary's commitment.

The Fish and Wildlife Service (Service) leads the Department in providing careful scrutiny and review of other Federal agency proposals during external reviews. The purpose of these reviews by Service field and Regional offices is to assist other agencies to adequately consider fish and wildlife resources in their proposals and to incorporate measures to protect and enhance resources under our stewardship. I strongly urge you to provide your comments to other agencies early in their scoping process to seek avoidance and potential resolution of conflicts. By providing clear, concise, and detailed comments on agency "notices of intents," we can be instrumental in the early resolution of important concerns on wetlands, endangered species, migratory birds, and anadromous fish.

I strongly urge you to effectively utilize the planning and decision making functions of NEPA in the execution of Service proposals. Your plans should reflect the Service's commitment to meeting the twin objectives of NEPA: (1) the careful consideration of detailed information on significant environmental impacts before decision making; and (2) recognition of the important role of the public in both the decision making process and the implementation of that decision. These objectives embody the principles of NEPA to make better environmental decisions.

Our renewed attention to making effective use of NEPA will further the resource programs of the Service and of the Department.

Attachment IN-9

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## **Index to 550 FW 3**

- 1.** 550 FW 3
- 2.** Exhibit 1 - Record of Decision - South Point Land Exchange and Marine Industrial Park Development Program
- 3.** Exhibit 2 - Record of Decision - Black-Footed Ferret Reintroduction Conata Basin/Badlands, SD
- 4.** Exhibit 3 - Revised Finding of No Significant Impact; Proposed Land Acquisition for National Education and Training Center
- 5.** Exhibit 4 - Environmental Impact Statement Checklist

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[Federal Register: January 16, 1997 (Volume 62, Number 11)]  
[Notices]  
[Page 2375-2382]  
From the Federal Register Online via GPO Access [wais.access.gpo.gov]  
[DOCID:fr16ja97-40]

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DEPARTMENT OF THE INTERIOR

**National Environmental Policy Act** Revised Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of Final Revised Procedures for the Fish and Wildlife Service (Service).

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SUMMARY: This notice announces final revised procedures for implementing the **National Environmental Policy Act** (NEPA) for actions implemented by the Fish and Wildlife Service in Appendix 1 in the Department of the Interior's **(Departmental) Manual (516 DM 6)**. The revisions update the agency's procedures, originally published in 1984, based on changing trends, laws, and consideration of public comments. Most importantly, the revisions reflect new initiatives and Congressional mandates for the Service, particularly involving new authorities for land acquisition activities, expansion of grant programs and other private land activities, and increased Endangered Species **Act** (ESA) permit and recovery activities. The revisions promote cooperating agency arrangements with other Federal agencies; early coordination techniques for streamlining the NEPA process with other Federal agencies, Tribes, the States, and the private sector; and integrating the NEPA process with other **environmental** laws and executive orders.

EFFECTIVE DATE: January 16, 1997.

FOR FURTHER INFORMATION CONTACT: Don Peterson, **Environmental** Coordinator, Fish and Wildlife Service, at (703) 358-2183.

**Departmental Manual**

## 516 DM 6 Appendix 1

### Fish and Wildlife Service

#### 1.1 NEPA Responsibility

A. The Director is responsible for NEPA compliance for Fish and Wildlife Service (Service) activities, including approving recommendations to the Assistant Secretary (FW) for proposed referrals to the Council on **Environmental** Quality (CEQ) of other agency actions under 40 CFR 1504.

B. Each Assistant Director (Refuges and Wildlife, Fisheries, International Affairs, External Affairs, and Ecological Services) is responsible for general guidance and compliance in their respective areas of responsibility.

C. The Assistant Director for Ecological Services has been delegated oversight responsibility for Service NEPA compliance.

D. The Division of Habitat Conservation (DHC--Washington), which reports to the Assistant Director for Ecological Services, is responsible for internal control of the **environmental** review and analysis of documents prepared by other agencies and **environmental** statements prepared by the various Service Divisions. This office is also responsible for preparing Service NEPA procedures, guidelines, and instructions, and for supplying technical assistance and specialized training in NEPA compliance, in cooperation with the Service Office of Training and Education, to Service entities. The Washington Office **Environmental** Coordinator, who reports to DHC, provides staff assistance on NEPA matters to the Director, Assistant Directors, and their divisions and offices, and serves as the Service NEPA liaison to the CEQ, the Department's Office of **Environmental Policy** and Compliance (OEPC), and NEPA liaisons in other Federal agencies, in accordance with **516 DM 6.2**.

E. Each Regional Director is responsible for NEPA compliance in his/her area of responsibility. The Regional Director should ensure that Service decisionmakers in his/her area of responsibility contact affected Federal agencies and State, Tribal and local governments when initiating an action subject to an EA or EIS. An individual in each Regional Office, named by title and reporting to the Assistant Regional Director for Ecological Services, other appropriate Assistant Regional Director, or the Regional Director, will have NEPA coordination duties with all program areas at the Regional level similar to those of the Washington Office **Environmental** Coordinator, in accordance with **516 DM 6.2**.

#### 1.2 General Service Guidance

Service guidance on internal NEPA matters is found in 30 AM 2-3 (organizational structure and internal NEPA compliance), 550 FW1-3 (in preparation), 550 FW 3 (documenting and implementing Service decisions on Service actions), and 550 FW 1-2 (replacement to 30 AM 2-3 in preparation). These guidance documents encourage Service participation as a cooperating agency with other Federal agencies, 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 the NEPA process with other Service programs, **environmental** laws, and executive orders. Some Service programs have additional NEPA compliance information related to specific program planning and decisionmaking activities. Service program guidance on NEPA matters must be consistent with the Service **Manual** on NEPA guidance and **Departmental** NEPA procedures. For example, additional NEPA guidance is found in the Federal Aid Handbook (521-523 FW), refuge planning guidance (602 FW 1-3), Handbook for Habitat Conservation Planning and Incidental Take Processing, and North American Wetlands Conservation **Act** Grant Application Instructions.

### 1.3 Guidance to Applicants

A. Service Permits. The Service has responsibility for issuing permits to Federal and State agencies and private parties for actions which would involve certain wildlife species and/or use of Service-administered lands. When applicable, the Service may require permit applicants to provide additional information on the proposal and on its **environmental** effects as may be necessary to satisfy the Service's requirements to comply with NEPA, other Federal laws, and executive orders.

(1) Permits for the Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, or Importation of Certain Wildlife Species. The Code of Federal Regulations, Part 13, Title 50 (50 CFR 13) contains regulations for General Permit Procedures. Section 13.3 lists types of permits and the pertinent Parts of 50 CFR. These include: Importation, Exportation, and Transportation of Wildlife (Part 14); Exotic Wild Bird Conservation (Part 15); Injurious Wildlife (Part 16); Endangered and Threatened Wildlife and Plants (Part 17); Marine Mammals (Part 18); Migratory Bird Hunting (Part 20); Migratory Bird Permits (Part 21); Eagle Permits (Part 22); Endangered Species Convention (Part 23); and Importation and Exportation of Plants (Part 24). Potential permit applicants should request information from the appropriate Regional Director, or the Office of Management Authority, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, as outlined in the applicable regulation.

(2) Federal Lands Managed by the Service. Service lands are administered under the **National Wildlife Refuge System Administration Act** of 1966 (16 U.S.C. 668dd-668ee), the **Refuge Recreation Act** of 1962 (16 U.S.C. 460k-460k-4), and the Alaska **National Interest Lands Conservation Act** of 1980 (16 U.S.C. 410hh-3233, 43 U.S.C. 1602-1784). Inherent in these acts is the requirement that only those uses that are compatible with the purposes of the refuge system unit may be allowed on Service lands. The Service also complies with Executive Order 12996, signed March 25, 1996, entitled "Management and General Public Use of the **National Wildlife Refuge System**." This Executive Order identifies general public uses that will be given priority consideration in refuge planning and management, subject to meeting the compatibility requirement and if adequate funding is available to administer the use. Detailed procedures regarding comprehensive management planning and integration with NEPA are found in the Service **Manual** (602 FW 1-3). Reference to this and other **National Wildlife Refuge System** requirements are found in the Code of Federal Regulations, Title 50 parts 25-29, 31-36, 60, and 70-71. Under these regulations, these protections are extended to all Service-administered lands, including the **National Fish Hatchery System**.

B. Federal Assistance to States, Local or Private Entities.

(1) Federal Assistance Programs. The Service administers financial assistance (grants and/or cooperative agreements) to State, local, and private entities under the **Anadromous Fish Conservation Act** (CFDA #15.600); **North American Wetlands Conservation Act**; **Fish and Wildlife Act** of 1956; **Migratory Bird Conservation Act**; **Food Security Act** of

[[Page 2381]]

1985; **Food, Agriculture, Conservation and Trade Act** of 1990; **Partnerships for Wildlife Act** of 1992; and **Consolidated Farm and Rural Development Act**. The Service administers financial assistance to States under the **Sport Fish Restoration Act** (CFDA #15.605), **Wildlife Restoration Act** (CFDA #15.611), **Endangered Species Act** (CFDA #15.612 and 15.615), **Coastal Wetlands Planning Protection and Restoration Act** (CFDA #15.614), and **Clean Vessel Act** of 1992 (CFDA #15.616).

(2) Program Information and NEPA Compliance. Information on how State, local, and private entities may request funds and assist the Service in NEPA compliance relative to the **Anadromous Fish Conservation Act** may be obtained through the Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 840, Washington, D.C. 20240. Similar information regarding the **North American Wetlands Conservation Act** may be obtained through the North American Waterfowl and Wetlands Office, U.S. Fish and Wildlife Service, Department of the

Interior, Arlington Square Building, Room 110, Washington, D.C. 20240. All other requests for information on how funds may be obtained and guidance on how to assist the Service in NEPA compliance may be obtained through the Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, Department of the Interior, Arlington Square Building, Room 140, Washington, D.C. 20240.

#### 1.4 Categorical Exclusions

Categorical exclusions are classes of actions which do not individually or cumulatively have a significant effect on the human environment. Categorical exclusions are not the equivalent of statutory exemptions. If exceptions to categorical exclusions apply, under **516 DM 2**, Appendix 2 of the **Departmental Manual**, the **departmental** categorical exclusions cannot be used. In addition to the actions listed in the **departmental** categorical exclusions outlined in Appendix 1 of **516 DM 2**, the following Service actions are designated categorical exclusions unless the action is an exception to the categorical exclusion.

##### A. General.

(1) Changes or amendments to an approved action when such changes have no or minor potential **environmental** impact.

(2) Personnel training, **environmental** interpretation, public safety efforts, and other educational activities, which do not involve new construction or major additions to existing facilities.

(3) The issuance and modification of procedures, including manuals, orders, guidelines, and field instructions, when the impacts are limited to administrative effects.

(4) The acquisition of real property obtained either through discretionary acts or when acquired by law, whether by way of condemnation, donation, escheat, right-of-entry, escrow, exchange, lapses, purchase, or transfer and that will be under the jurisdiction or control of the United States. Such acquisition of real property shall be in accordance with 602 **DM 2** and the Service's procedures, when the acquisition is from a willing seller, continuance of or minor modification to the existing land use is planned, and the acquisition planning process has been performed in coordination with the affected public.

B. Resource Management. Prior to carrying out these actions, the Service should coordinate with affected Federal agencies and State, Tribal, and local governments.

(1) Research, inventory, and information collection activities directly related to the conservation of fish and wildlife resources which involve negligible animal mortality or habitat destruction, no introduction of contaminants, or no introduction of organisms not indigenous to the affected ecosystem.

(2) The operation, maintenance, and management of existing facilities and routine recurring management activities and improvements, including renovations and replacements which result in no or only minor changes in the use, and have no or negligible **environmental** effects on-site or in the vicinity of the site.

(3) The construction of new, or the addition of, small structures or improvements, including structures and improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no or only minor changes in the use of the affected local area. The following are examples of activities that may be included.

- i. The installation of fences.
- ii. The construction of small water control structures.
- iii. The planting of seeds or seedlings and other minor revegetation actions.
- iv. The construction of small berms or dikes.
- v. The development of limited access for routine maintenance and management purposes.

(4) The use of prescribed burning for habitat improvement purposes, when conducted in accordance with local and State ordinances and laws.

(5) Fire management activities, including prevention and restoration measures, when conducted in accordance with **departmental** and Service procedures.

(6) The reintroduction or supplementation (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historic or established range, where no or negligible **environmental** disturbances are anticipated.

(7) Minor changes in the amounts or types of public use on Service or State-managed lands, in accordance with existing regulations, management plans, and procedures.

(8) Consultation and technical assistance activities directly related to the conservation of fish and wildlife resources.

(9) Minor changes in existing master plans, comprehensive conservation plans, or operations, when no or minor effects are anticipated. Examples could include minor changes in the type and location of compatible public use activities and land management practices.

(10) The issuance of new or revised site, unit, or activity-specific management plans for public use, land use, or other management activities when only minor changes are planned. Examples could include an amended public use plan or fire management plan.

(11) Natural resource damage assessment restoration plans, prepared under sections 107, 111, and 122(j) of the Comprehensive **Environmental** Response Compensation and Liability **Act** (CERCLA); section 311(f)(4) of the Clean Water **Act**; and the Oil Pollution **Act**; when only minor or negligible change in the use of the affected areas is planned.

### C. Permit and Regulatory Functions.

(1) The issuance, denial, suspension, and revocation of permits for activities involving fish, wildlife, or plants regulated under 50 CFR Chapter 1, Subsection B, when such permits cause no or negligible **environmental** disturbance. These permits involve endangered and threatened species, species listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), marine mammals, exotic birds, migratory birds, eagles, and injurious wildlife.

(2) The issuance of ESA section 10(a)(1)(B) "low-effect" incidental take permits that, individually or cumulatively, have a minor or negligible

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effect on the species covered in the habitat conservation plan.

(3) The issuance of special regulations for public use of Service-managed land, which maintain essentially the permitted level of use and do not continue a level of use that has resulted in adverse **environmental** effects.

(4) The issuance or reissuance of permits for limited additional use of an existing right-of-way for underground or above ground power, telephone, or pipelines, where no new structures (i.e., facilities) or major improvement to those facilities are required; and for permitting a new right-of-way, where no or negligible **environmental** disturbances are anticipated.

(5) The issuance or reissuance of special use permits for the administration of specialized uses, including agricultural uses, or other economic uses for management purposes, when such uses are compatible, contribute to the purposes of the refuge system unit, and result in no or negligible **environmental** effects.

(6) The denial of special use permit applications, either initially or when permits are reviewed for renewal, when the proposed action is determined not compatible with the purposes of the refuge system unit.

(7) Activities directly related to the enforcement of fish and wildlife laws, not included in **516 DM** 2, Appendix 1.4. These activities include:

(a) Assessment of civil penalties.

(b) Forfeiture of property seized or subject to forfeiture.

(C) The issuance or reissuance of rules, procedures, standards, and permits for the designation of ports, inspection, clearance, marking, and license requirements pertaining to wildlife and wildlife products, and for the humane and healthful transportation of wildlife.

(8) Actions where the Service has concurrence or coapproval with another agency and the action is a categorical exclusion for that agency. This would normally involve one Federal action or connected

actions where the Service is a cooperating agency.

D. Recovery Plans.

Issuance of recovery plans under section 4(f) of the ESA.

E. Financial Assistance.

(1) State, local, or private financial assistance (grants and/or cooperative agreements), including State planning grants and private land restorations, where the **environmental** effects are minor or negligible.

(2) Grants for categorically excluded actions in paragraphs A, B, and C, above; and categorically excluded actions in Appendix 1 of **516 DM 2**.

### 1.5 Actions Normally Requiring an EA

A. Proposals to establish most new refuges and fish hatcheries; and most additions and rehabilitations to existing installations.

B. Any habitat conservation plan that does not meet the definition of "low-effect" in the Section 10(a)(1)(B) Handbook.

C. If, for any of the above proposals, the EA determines that the proposal is a major Federal action significantly affecting the quality of the human environment, an EIS will be prepared. The determination to prepare an EIS will be made by a notice of intent in the Federal Register and by other appropriate means to notify the affected public.

### 1.6 Major Actions Normally Requiring an EIS

A. The following Service proposals, when determined to be a major Federal action significantly affecting the quality of the human environment, will normally require the preparation of an EIS.

(1) Major proposals establishing new refuge system units, fish hatcheries, or major additions to existing installations, which involve substantive conflicts over existing State and local land use, significant controversy over the **environmental** effects of the proposal, or the remediation of major on-site sources of contamination.

(2) Master or comprehensive conservation plans for major new installations, or for established installations, where major new developments or substantial changes in management practices are proposed.

B. If, for any of the above proposals it is initially determined that the proposal is not a major Federal action significantly affecting the quality of the human environment, an EA will be prepared and handled in accordance with 40 CFR 1501.4(e)(2). If the EA subsequently indicates the proposed action will cause significant impacts, an EIS will be prepared.

Dated: January 13, 1997.

Willie Taylor,  
Director, Office of **Environmental Policy** and Compliance, Office of the  
Secretary, U.S. Department of the Interior.  
[FR Doc. 97-1071 Filed 11-15-97; 8:45 am]  
BILLING CODE 4310-55-M

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## **Index to 505 FW**

**Chapter 1** Policy and Responsibilities

**Chapter 2** NEPA Assistance

**Chapter 3** Review of Environmental Documents

**Chapter 4** Other Related Reviews

**Chapter 5** CEQ Referrals

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CHECKLIST FOR THE CONTENTS OF A  
RECORD OF DECISION (ROD)

Record of Decision Title: \_\_\_\_\_

Final EIS Title (if different from the above ROD title): \_\_\_\_\_

Reviewer: \_\_\_\_\_

Date of Final EIS: \_\_\_\_\_ Date of ROD: \_\_\_\_\_

DECISION

1. Does the ROD state what the decision was? 1505.2(a)  
yes/no page(s)\_\_\_\_
2. Does the ROD identify all alternatives considered by BPA in reaching its decision? 1505.2(b)  
yes/no page(s)\_\_\_\_
3. Does the ROD specify which alternative or alternatives were considered to be environmentally preferable and why? 1505.2(b)  
yes/no page(s)\_\_\_\_
4. Does the ROD (i)identify and (ii) discuss all relevant factors including any essential considerations of national policy which were balanced by the agency in making its decision? 1505.2(b)  
yes/no page(s)\_\_\_\_
5. Does the ROD state how those factors identified and discussed in question 4 entered into BPA's decision? 1505.2(b)  
yes/no page(s)\_\_\_\_
6. If the chosen alternative was not environmentally preferable alternative, does the ROD state why an environmentally preferable alternative was not chosen? 1505.2(b): 15500.2(f)  
yes/no page(s)\_\_\_\_

MITIGATION

7. Does the ROD state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted? 1505.2(c)  
yes/no page(s)\_\_\_\_
8. Does the ROD identify all practicable means to avoid or minimize environmental harm for the

alternative selected which were identified in the EIS but which were not adopted? 1505.2 (c)  
yes/no page(s)\_\_\_

9. Does the ROD state the reasons why the mitigation measures identified in question 8 were not adopted? 1505.2(c)

yes/no page(s)\_\_\_

#### MONITORING AND ENFORCEMENT

10. Does the ROD state whether a monitoring and enforcement program is applicable for any mitigation? 1505.2(c)

yes/no page(s)\_\_\_

11. Does the ROD state whether any applicable monitoring and enforcement program has been adopted? 1505.2(c)

yes/no page(s)\_\_\_

12. Does the ROD summarize monitoring and enforcement programs which have been adopted? 1505.2(c)

yes/no pages(s)\_\_\_

#### MISCELLANEOUS

13. Is the ROD concise? 1505.2

yes/no page(s)\_\_\_

14. Does the ROD state on its face how it will be made publically available? 1505.2

yes/no page(s)\_\_\_

15. Does the ROD state on its face that no decision has been made until the later of the following dates: (1) ninety (90) days after publication of the notice for a draft EIS: (2) thirty (30) days after publication of the notice for a final EIS? 1506.10(b)

yes/no page(s)\_\_\_

16. (a) Endangered and threatened species and critical habitat. If any of the alternatives have been the subject of an FWS biological opinion (which means it has been determined that one or more alternatives may or will affect an endangered or threatened species or critical habitat either adversely or beneficially), does the ROD state that the FWS will be notified of the final determination on whether to proceed with the proposed activity or program? (Proposed) 50 CFR 402.16(a)

yes/no page(s)\_\_\_

(b) Heritage Conservation. If the decision is or includes taking an action which would adversely affect a property on or eligible for the National Register of Historic Places, does the ROD state (1) that a memorandum of agreement has been prepared between (i) the Federal

agency, (ii) the State Historic Preservation Officer and (iii) the Executive Director of the Advisory Council on Historic Preservation, and (2) that the terms of the memorandum of agreement will be carried out? 36 CFR 800.6(c)(3)

yes/no page(s)\_\_\_

(c) A-95. If any of the alternatives include taking an action which is direct Federal development and/or Federal assistance, does the ROD (1) state how clearinghouse will be notified of actions taken (implementing, timing, postponement, abandonment, etc.), and (2) explain any actions taken contrary to Clearinghouse recommendations? OMB Circular A-95. Part II. Section 5(b)(4)

yes/no page(s)\_\_\_

(d) Coastal zones. If the decision is or includes taking an action which (1) is a development project in the coastal zone, (2) directly affects the coastal zone, (3) is listed in an approved coastal management program as requiring a consistency determination, (5) is the same as or similar to actions for which a consistency determination has been prepared in the past, or (6) has been subject to a thorough consistency assessment, does the ROD state that State coastal management agencies have been provided with consistency information at least 90 days prior to the date of the decision, or that both the Federal agency and the State agency have agreed to an alternative period. 15 CFR 930.34(b) and 930.41(c)

yes/no page(s)\_\_\_

(e) Flood plains. If the decision is or includes taking an action in a flood plain, does the ROD include (1) an explanation of why the only practicable alternative consistent with the law and with the policies set forth in (the flood plains Executive Order) requires siting in a flood plain, and (2) a statement that the action is designed or modified to minimize potential harm to or within the flood plain (consistent with agencies implementing procedures)? Executive Order 11988, Flood plain Management, Section 2(a)(2)(42 FR 26951, May 25, 1977)

yes/no page(s)\_\_\_

(f) Wetlands. If the decision is or includes undertaking or providing assistance for new construction located in wetlands, does the ROD include a finding (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use (taking into account economic, environmental and other pertinent factors)? Executive Order 11990, Protection of Wetlands, Section 3(a) (42 FR 26961, May 25, 1977)

yes/no page(s)\_\_\_

(g) Farmlands. If the decision is or includes taking an action which converts prime or unique farmlands to other uses, does the ROD include a finding that there was no practicable alternative to such conversion (taking into account economic, environmental and other pertinent factors such as the agency mission)? NEPA Section 101(b)(4): August 11, 1980 (45 FR 59189, September 8, 1980)

yes/no page(s)\_\_\_

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CHECKLIST FOR THE CONTENTS OF A  
FINDING OF NO SIGNIFICANT IMPACT (FONSI)

FONSI Title: \_\_\_\_\_  
\_\_\_\_\_

Environmental Assessment (EA) Title: \_\_\_\_\_  
\_\_\_\_\_

Reviewer: \_\_\_\_\_

Date of EA; \_\_\_\_\_ Date of FONSI \_\_\_\_\_

**PART 1: CEQ REGULATIONS, 1508.13**

1. Does the FONSI include the EA, or a summary of the EA? 1508.13  
yes/no page(s)
2. If the FONSI includes the EA, does the FONSI incorporate by reference discussions in the EA rather than repeat those discussions? 1508.13  
yes/no page(s)
3. Does the FONSI present the reasons why an action will not have a significant effect on the human environment? 1508.13  
yes/no page(s)
4. Does the FONSI state whether any other documents are relate to it? 1508.13  
yes/no page(s)

**PART 2: PUBLIC AVAILABILITY**

5. Does the FONSI indicate how it will be made available to the affected public? 1501.4(e)(1)  
yes/no page(s)
6. Does the FONSI state whether it has been prepared on an action which  
- is, or is similar to, one which normally requires the preparation of an EIS, or  
yes/no page(s)  
- is without precedent? 1501.4(e)(2)  
yes/no page(s)
7. If the action is or is similar to one which normally require-s an EIS, or is one without

precedent, does the FONSI state whether it will be available for public review for 30 days before the agency makes its final determination whether to prepare an EIS? 1501.4(e)(2)

yes/no page(s)

### PART 3: SUBJECTIVE FONSI STANDARDS

8. Does the FONSI include only brief discussion of other than significant issues, with only enough discussion to show why more study is not warranted? 1502.2(b)

yes/no page(s)

9. Is the FONSI brief? 1508.13

yes/no page(s)

### PART 4: LEGAL STANDARD OF REVIEW

10. Does the FONSI show that the agency reasonably concluded that the project will have no significant adverse environmental consequences? City of Davis v. Coleman, 521 F.2d 661, 673 (9<sup>th</sup> Cir. 1975)(emphasis original). Does the FONSI show that the alternatives including the proposed action will not significantly degrade some human environmental factor?

yes/no page(s)

11. An EIS is required whenever a proposed action may cause significant degradation of some human environmental factors. @ City of Davis v. Coleman, 521 F.2d 661, 673 (9<sup>th</sup> Cir. 1975) (emphasis original). Does the FONSI show that the alternative including the proposed action will not significantly degrade some human environmental factor?

yes/no page(s)

12. Is the FONSI prepared according to the agency's own guidelines? Portela v. Pierce, 650 F.2d 210, 213 (9<sup>th</sup> Cir. 1981).

yes/no page(s)

13. Does the FONSI show that it precedes the agency's final decision on the proposed action? (FONSI pitfall #1)

yes/no page(s)

14. Neutral facts do not support a FONSI. Do facts stated in the FONSI show how they support a finding of no significance? (FONSI pitfall #4)

yes/no page(s)

15. Mitigation measures.

-A(C)hanges in the project are not legally adequate to avoid an impact statement unless they permit a determination that such impact as remains, after the change, is not significant. @ Cabinet Mountains Wilderness/Scotchman's Peak Grizzly Bears v. Peterson, 685 F.2d 678 (D.C. Cir. 1982). Does the FONSI show that the agency is committed to the mitigation measures reduce

impacts below the threshold of significance?

yes/no page(s)

-Agencies should not rely on the possibility of mitigation as an excuse to avoid the EIS requirement. @ Cabinet Mountains Wilderness/Scotchman's Peak Grizzly Bears v. Peterson, 685 F. 2d 678 (D.C. Cir. 1982)(emphasis added). Does the FONSI show that the agency is committed to the mitigation measures (i.e. that proposed action will not be taken without measures)? (FONSI pitfall #3)

yes/no page(s)

16. Are all alternatives which were discussed in the EA appear in the FONSI? (FONSI pitfall #2).

yes/no page(s)

17. Impacts 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. 40 C.F.R. \* 1508.27(b)(1). Does the FONSI show that beneficial, as well as adverse impacts will not be significant? (FONSI pitfall #6)

yes/no page(s)

18. Does the FONSI present the reasons why the action will not have a significant effect on the human environment? 40 C.F.R. \* 1508.13. (FONSI pitfall #5)

yes/no page(s)

19. Are all effects described in the EA taken into account in the FONSI? (FONSI pitfall #7)

yes/no page(s)

20. Are all environmental standards the sole evidence of non-significance? (FONSI pitfall #8)

yes/no page(s)

END

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FEDERAL AID  
NEPA WORKSHEET

NOTE: THIS IS A WORKSHEET TO BE FILLED IN DURING  
PROJECT PLANNING. THIS IS NOT AN EA. BECAUSE  
THIS IS A PLANNING TOOL, YOU SHOULD HANDWRITE  
AND ATTACH INFORMATION.

Section	(Applicable  of EA Outline in which to use information)	
1. What need is causing you to act? (Why do anything?) What is the purpose?	(IA)	
2. What is the context for any action(s)? Background, laws, goals, directives, interrelationships which affect or force your action?	(IB, ID)	
3. Provide a map and general vicinity description.	(IC)	
4. Who cares about this kind of action? Who can help give information? Who can answer questions? What public involvement is needed? Who (groups or individuals) has expressed an interest so far?	(IE)	
5. What are alternative ways of accomplishing the purpose? What are all of my options.	(IIB)	
6. What alternatives can be eliminated? Why?	(IIA)	
7. What, in some detail, are the actions (activities or cause agents) of each remaining viable alternative?		
8. Which resources will be affected by the specific activities of the alternatives? Answer each Yes or No	(IIIA)	
Wildlife_____	Air Quality_____	Economy_____
Vegetation_____	Topography_____	Cultural/Historical Resources _____
Soils_____	Geology_____	Aesthetics_____
Water Quality_____	Sociology_____	Land Use_____

9. For each alternative, list the activities which would have no important effect on the environment. (IIA)

10. Will this project: (IV A, B, C)

(Yes or No)

- (A) be performed in any area in which threatened or endangered species are present? \_\_\_\_\_ May it affect the endangered or threatened species. \_\_\_\_\_
- (B) potentially affect flood plain or wetland area through development, modification or destruction of these areas? \_\_\_\_\_
- (C) be expected to have organized opposition or generate substantial public controversy? \_\_\_\_\_
- (D) include the introduction or exportation of any species not presently or historically occurring in the receiving location? \_\_\_\_\_
- (E) affect any known archaeological, historical or cultural site or alter the aesthetics of subject area? \_\_\_\_\_
- (F) include use of any chemical toxicant? \_\_\_\_\_
- (G) impact on any designated or proposed wild or scenic rivers, trails, or wilderness areas? \_\_\_\_\_
- (H) result in any discharge which will conflict with Federal or State air or water quality regulations? \_\_\_\_\_
- (I) affect any prime or unique farmland, forest land or ecologically critical areas as designated by Federal, State, or local authorities \_\_\_\_\_
- (J) require any Federal or State permits? \_\_\_\_\_

11. If all the answers are **No** in the column above, and if the alternatives are entirely within the categorical exclusions, cease the assessment and prepare a categorical exclusions statement identifying the exclusions which apply.

12. If you marked **Yes** to any of the above, what public involvement is required? (ID)

13. What is your public involvement plan? What are state processes for obtaining public input?

14. Describe in detail the resources that would be affected in important ways by the

actions of each alternative (all marked **Ayes** in question 8). Consider only those features of each resource which would be affected by the actions. (IIIB)

15. Describe in detail the impacts on the resources which would result from the important activities under each alternative. (IVB)

Altern. A	Altern. B	Altern. C
1. activity & consequences	1.	1.
2. activity & consequences	2.	2.
3. activity & consequences	3.	3.

16. DECIDE IF ANY OF THESE CONSEQUENCES ARE IMPORTANT ENOUGH TO require an EIS. If so, consult with your Federal Aid Coordinator. If not, continue with this assesment.

17. Prepare a consequence table. This will summarize (in quantified form) the impacts which you described under question 15. (IVC)

EXAMPLE

ALTERNATIVES

---

	<u>Vegetation</u>	<u>Water Soils</u>	<u>Wildlife</u>	<u>Historic</u>
Altern. A	_____	_____	_____	_____
Altern. B	_____	_____	_____	_____
Altern. C	_____	_____	_____	_____

---

18. List the standards or criteria you will use to make your selection among the alternatives. Standards could be such things as detrimental effects, beneficial results, technologic and economic feasibility, compatibility with goals, directives, laws, etc. (IIC)

19. Based on the standards used above, prepare a comparative matrix showing how the various alternatives will meet your chosen standards. Use the following rating system:

- ++exceeds standards
  - +meets standards
  - 0 neutral
  - does not meet standards
  - B**serious deficit
-

ALTERNATIVES

Environmental Technological  
effects feasibility

State needs  
or goals

- Alternative A
- Alternative B
- Alternative C
- Alternative D

20. Discuss which alternative best meets the standards, and select your proposed action or preferred alternative.

THIS COMPLETES YOUR NEPA PLANNING WORK. TO PREPARE YOUR EA, PLACE THIS INFORMATION INTO THE EA FORMAT AS INDICATED BY THE EA OUTLINE SECTION NUMBER ON THE RIGHT-HAND SIDE OF THESE PAGES. IF ALL ACTIVITIES ASSOCIATED WITH THE ALTERNATIVE SELECTED ARE ELIGIBLE FOR CATEGORICAL EXCLUSION, NO EA IS REQUIRED.

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# REFUGES

## ENVIRONMENTAL CHECKLIST

Proposed action: \_\_\_\_\_

Submitted by: \_\_\_\_\_

Field Station or Office: \_\_\_\_\_

ACTIONS	EFFECTS SHORT TERM	EFFECTS LONG TERM	EFFECTS QUANTIFIED
Wetlands			
Uplands			
T&E Species			
Other Wildlife			
Cultural Resources			
Historical Resources			
Water Quality			
Water Quantity			
Air Quality			
Social			
Economic			
Cumulative			
Controversial			

\*Quantify the effects

### NEPA COMPLIANCE DECISION

\_\_\_\_\_ Action categorically excluded from NEPA  
\_\_\_\_\_ Start environmental Assessment (EA)

By: \_\_\_\_\_  
Project Leader Date

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**ENVIRONMENTAL IMPACT CHECKLIST  
FOR  
SOME OF THE MORE COMMON SOCIAL CONCERNS**

SOCIAL CONCERN	EFFECT		COMMENTS
	POS	NEG	
Impacts to minority and low income populations			
Changes in ethnic or racial composition			
Influx or outflow of temporary workers			
Community disruption or disintegration			
Changes in land use patterns			
Changes in lifestyles			
Changes in social interactions, family ties, kinship patterns			
Displacement/relocation of business			
Changes in the ability to provide and deliver social services			
Changes in aesthetics or perceived environmental quality			
Changes in public health, safety, or perceived well-being			
Displacement of community facilities			
Changes in public vehicular access			
Changes in public pedestrian access			
Changes in recreation			
Changes in leisure-time activities			
Changes in local employment opportunities			
Changes in community tax base			
Changes in commerce, recreation, or related services			
Impacts to Native American Trust Resources			

Other			
-------	--	--	--

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**Fish and Wildlife Service  
Department of Transportation Project  
Section 4 (f) Review Checklist**

**YES      NO**

**A. Transportation Project Impacts on 4(f) Resources**

1. Will recreational resources be significantly impacted?
2. Will historic/archeological on resources be significantly impacted?
3. Does the project involve segmentation of actions?
4. Will secondary development be promoted by the project and affect section 4(f) resources?
5. Will secondary development impacts on section 4(f) resources be environmentally adverse?
6. Will there be Aconstructive use@of any section 4(f) resources?
7. Will the project affect FWCA mitigated lands/waters?
8. Will the project affect National Wildlife Refuge System lands?
9. Will the project affect National Fish Hatchery System lands?
10. Is there segmentation of transportation projects?
11. Are there other projects now in the area, or planned, that may affect section 4(f) resources?
12. Will Scenic Byways be affected?
13. Will National Recreational Trails be affected?
14. Will the project affect Federal Aid acquired or managed lands?

## B. General Comments

YES      NO

1. Do the Service comments identify that feasible and prudent alternatives to the use of section 4(f) resources have been identified and evaluated by FHWA?
2. Do the Service comments indicate the adequacy of the section 4(f) statement?
3. Do the Service comments indicate whether FHWA has identified proper mitigation measures for the project?
4. Do the Service comments identify existing planning inadequacies and provide additional mitigating measures, if needed?
5. Do the Service comments address inadequacies in the FHWA's document?
6. Are all section 4(f) resources in the project area identified by FHWA?
7. Has the project's significance on section 4(f) resources been properly determined?
8. Has FHWA consulted/coordinated with the Service to minimize harm to any affected Service property?
9. Is a Presidential Permit required?
10. If required, has the Presidential Permit been issued?
11. Has compliance with section 106 of the National Historic Preservation Act been completed?
12. Has compliance with E.O.13007 concerning Indian Sacred Sites been completed?

### **C. Summary Comments Concerning Section 4(f) Approval**

1. Service concurs that there are no feasible and prudent alternatives to the use of section 4(f) resources [or the converse].
2. Service concurs that the project includes all possible measures to minimize harm to the use of section 4(f) resources [or the converse].

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**ENVIRONMENTAL IMPACT CHECKLIST  
FOR  
ECONOMIC CONCERNS**

ECONOMIC VALUE	EFFECT		COMMENTS
	YES	NO	
Recreation Value			
Ecological Value			
Commercial Value			
Subsistence Value			
Intangible Value			
Economic Impact Values			
Employment			
Consumer Income			
Business Income/costs			
Private Property Values			
Tax Revenues			
Distribution of Effects			
Types of Businesses			
Population Affected			
Tribal Governments			
Other Affected Agencies			
Local			
County			
State			
Federal			

Other			
-------	--	--	--

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ENVIRONMENTAL ASSESSMENT

\_\_\_\_\_  
(Descriptive Title for Proposed Action)

\_\_\_\_\_  
(Location of Action)

\_\_\_\_\_  
(Author of Document)

\_\_\_\_\_  
(Date Prepared)

## Section I: PURPOSE AND NEED FOR ACTION

### A. Purpose for Taking Action:

Explain what you hope to accomplish by taking action. By explaining what you hope to accomplish by taking action, you can then determine the appropriate range of actions to satisfy your need and purposes.

### B. Need for Taking Action:

This section must describe the situation (problem or opportunity) compelling the agency to take action. Now that a need is identified, describe what action you are proposing to take to address the stated need and accomplish your stated goal(s). This is the proposed action.

### C. Identify the decision to be made by the responsible official.

Usually the responsible official decision is to select one of the action alternatives. In situations involving a permit decision (i.e. special use permit), typically the responsible official must decide whether to issue or deny the permit.

### D. Identify issues raised during project planning or public scoping (also refer to App. B and C).

Identify all the issues raised. For those issues which will obviously not result in significant impacts or are outside the scope of the project, the EA should identify them and explain why they will not be analyzed in detail. Those actions and/or alternatives which have the potential to result in significant impacts must be analyzed in detail in the EA.

## Section II: ALTERNATIVES INCLUDING THE PROPOSED ACTION

(Add alternatives as necessary.)

In this section, the EA must describe all of the various courses of action which could satisfy the stated purpose and need. This is not a description of goals or concepts but descriptions of actions which are proposed for implementation (e.g. use levels, facilities developed, miles of roads, management prescriptions, etc.) Alternatives which were considered but determined to be infeasible (that is, not meet the stated purpose and need) should be identified with an explanation as to why it is considered infeasible. Typically alternatives are found to be infeasible due to economic, technological, and legal considerations not consistent with satisfying the purpose and need for which the EA is being prepared.

### Alternative A. (No Action Alternative)

**Describe this alternative.** (Describe the actions which would continue to occur if the agency decided not to pursue one of the proposed alternative actions) **Describe the extent to which this alternative would or would not satisfy the problems, opportunities or needs identified in Section I. Briefly describe the principal environmental (biophysical, social and economic effects associated with implementation of this alternative? (Summarize effects from Section IV.)**

### Alternative B. \_\_\_\_\_ (Descriptive title for alternative)

**Describe the action elements of this alternative. Describe the extent to which this alternative would or would not satisfy the problems, opportunities or needs identified in Section I. Briefly describe the principal environmental (biophysical), social and economic effects associated with implementation of this alternative? (Summarize effects from Section IV.)**

Alternative C. \_\_\_\_\_ (Descriptive title for alternative)

Describe the action elements of this alternative. Describe the extent to which this alternative would or would not satisfy the problems, opportunities or needs identified in Section I. Briefly describe the principal environmental (biophysical), social and economic effects associated with implementation of this alternative? (Summarize effects from Section IV.)

Alternative D. \_\_\_\_\_ (Descriptive title for alternative)

Describe the action elements of this alternative. Describe the extent to which this alternative would or would not satisfy the problems, opportunities or needs identified in Section I. Briefly describe the principal environmental (biophysical), social and economic effects associated with implementation of this alternative? (Summarize effects from Section IV.)

### Section III: AFFECTED ENVIRONMENT

Briefly describe the area in which the proposed action is to occur. If the action will occur on a National Wildlife Refuge or National Fish Hatchery, attach the Refuge/Hatchery public information leaflet to help orient the reader to the general vicinity. For site-specific proposals, include page-sized maps of the general area and the project site. This section should focus on those resources which would be affected through implementation of the proposed action or its alternatives; it should not be a detailed description of the environment at large. The EA need only supply as much information as is needed for the reader to understand the discussion in section IV pertaining to the anticipated changes in the affected resources from implementation of the various alternatives. Particular mention should be made of the presence (or absence) of any endangered or threatened species or their critical habitat, historic or cultural resources, parklands, prime or unique farmlands, wetlands, 100-year floodplains, wild and scenic rivers, or other ecologically critical areas (e.g., wilderness areas, research natural areas, etc.)

### Section IV: ENVIRONMENTAL CONSEQUENCES

Develop the analysis for this section by referring to the checklists in Appendices A and B. For each alternative, discuss any item answered "Yes" in either the Significance Checklist or the General Environmental Checklist. From this list identify impact topics to be addressed under each of the alternatives. Typically there would be approximately three to five impact topics. Where adverse effects are identified, discuss any proposed mitigating measures. (Add pages to this section as necessary.) Discuss effects in relation to issues identified in Section I. Describe the severity or magnitude of the expected effects and their significance, for each impact topic, as compared to the No Action scenario.

#### Alternative A (No Action):

Describe the impacts expected from not implementing any of the action alternatives. How would biological, physical, social, or economic conditions change in the event the Service did not implement the action alternatives? This description constitutes your environmental baseline to which all effects of implementing the action alternatives will be compared.

#### Alternative B:

Describe how biological, physical, social, or economic conditions would change in the event the Service implemented this alternative. Explain whether any of the anticipated changes in resources conditions constitute a significant effect (either positive or negative) for each impact topic and provide a rationale for your conclusion.

#### Alternative C:

Describe how biological, physical, social, or economic conditions would change in the event the Service implemented this alternative. Explain whether any of the anticipated changes in resources conditions constitute a significant effect (either positive or negative) for each impact topic and provide a rationale for your conclusion.

**Alternative D:**

Describe how biological, physical, social, or economic conditions would change in the event the Service implemented this alternative. Explain whether any of the anticipated changes in resources conditions constitute a significant effect (either positive or negative) for each impact topic and provide a rationale for your conclusion.

Once all the effects and their significance for each impact topic have been described, display a summary of the environmental effects in table format.

**SUMMARY of IMPACTS BY ALTERNATIVE**  
(Expand table as necessary)

<b>Impact Topics</b>	<b>Alternative A. No Action</b>	<b>Alternative B. (Title)</b>	<b>Alternative C. (Title)</b>
<b>Physical Resources</b> (air, soil, water, etc)	(briefly summarize effects)	(briefly summarize effects)	(briefly summarize effects)
<b>Biological Resources</b> (T&E species, wildlife, habitat, vegetation)	(briefly summarize effects)	(briefly summarize effects)	(briefly summarize effects)
<b>Cultural Resources</b>	(briefly summarize effects)	(briefly summarize effects)	(briefly summarize effects)
<b>Recreation</b>	(briefly summarize effects)	(briefly summarize effects)	(briefly summarize effects)
<b>Social or Economic issues</b>	(briefly summarize effects)	(briefly summarize effects)	(briefly summarize effects)
[other issues/ resources]	(briefly summarize effects)	(briefly summarize effects)	(briefly summarize effects)

**Section V: COMPLIANCE, CONSULTATION AND COORDINATION WITH OTHERS**

**A. List parties contacted during the planning process. Summarize results of consultation or coordination with these parties. If the EA was circulated for public comment, also provide a summary of any significant issues raised and how they were resolved.**

**B. List pertinent laws, executive orders and regulations, and state how these have been complied with.**



FINDING OF NO SIGNIFICANT IMPACT

---

(Title of Project)

*[complete in a narrative format, this is not fill-in-the blanks]*

**The U.S. Fish and Wildlife Service proposes to** (briefly describe alternatives or combination of selected alternatives and/or actions)

**FWS has analyzed a number of alternatives to the proposal, including the following:** (List and refer to EA)

**The proposal was selected over the other alternatives because:**

**Implementation of the agency's decision would be expected to result in the following environmental, social, and economic effects:** (List)

Measures to mitigate and/or minimize adverse effects have been incorporated into the proposal. These measures include: (List)

The proposal is not expected to have any significant adverse effects on wetlands and floodplains, pursuant to Executive Orders 11990 and 11988 because:

The proposal is not expected to have any significant effects on the human environment because:

The proposal has been thoroughly coordinated with all interested and/or affected parties. Parties contacted include: (List)

Therefore, it is my determination that the proposal does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). As such, an environmental impact statement is not required. An environmental assessment has been prepared in support of this finding and is available upon request to the FWS facility identified above.

References: (List title of EA, and any other pertinent references)

\_\_\_\_\_  
Assistant Regional Director      Date      \_\_\_\_\_

Appendix A  
General Environmental Checklist

This checklist is intended to facilitate effect analysis for the various alternatives under consideration. The list of physical, biological and social considerations can be answered with a "yes" or "no" response. For any item answered "yes," discuss under the appropriate alternative in Section IV.

**Would implementation of the alternative be expected to affect any of the physical, biological or social consideration listed below?**

Physical Considerations

- A. Climate
- B. Air Quality
- C. Topography
  - 1. Relief
  - 2. Cuts/Fills
- D. Geology
  - 1. Earthquake/Landslide
  - 2. Minerals
  - 3. Energy Resource Depletion/Conservation
  - 4. Radioactive and Toxic Substances/Heavy Metals
  - 5. Erosion/Deposition
  - 6. Siltation
  - 7. Soil Quality
- E. Hydrology
  - 1. Surface and Ground Water Quality/Quantity
  - 2. Absorption/Drainage
  - 3. Flooding
  - 4. Hydro/Geothermal Energy Source

Biological Considerations

- A. Vegetation
  - 1. Species of Special Concern
  - 2. Critical Wildlife Habitat
  - 3. Species Diversity/Abundance
  - 4. Noxious Weeds/Exotic Plants/Pathogens
- B. Wildlife
  - 1. Species of Special Concern
  - 2. Species Diversity/Abundance
  - 3. Game/Non-Game Species
  - 4. Pests/Pathogens/Vectors/Predators/Feral or Exotic Animals

Social Considerations

- A. Cultural

1. Archaeologic/Historic Sites
  2. Educational/Recreational Opportunities
  3. Public Access
- B. Economic
1. Cost
  2. Employment
  3. Commercial/Industrial Buildings
  4. Taxes/Property Values
- C. Land Use
1. Plans/Policies/Controls
  2. Development/Growth
  3. Farmland/Open Space, Natural Areas
  4. Transportation Facilities/Public Utilities
- D. Social
1. Quality of Life
  2. Community Cohesion
  3. Residents/Residences
  4. Population Change
  5. Human Health/Safety
  6. Public Services
  7. National Defense
- E. Aesthetics
1. Scenery
  2. Noise
  3. Odor

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## U.S. Fish and Wildlife Service

# INFORMATION AND ACKNOWLEDGEMENTS

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