



UNITED STATES DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION



# Introduction to the National Environmental Policy Act (NEPA): Compliance at NOAA

## Program Planning & Integration

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## Seminar Format

- What is the National Environmental Policy Act (NEPA)?
- What kinds of NOAA actions trigger NEPA?
- Who at NOAA can help me comply with NEPA?
- Overview of how NEPA analysis is documented
  - Categorical Exclusion (CE) Memoranda
  - Environmental Assessments (EA)
  - Environmental Impact Statements (EIS)

*Ask questions at any time!*



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# What is the National Environmental Policy Act (NEPA)?

- Signed into law on January 1, 1970, NEPA:
  - Established a national policy for considering environmental effects during Federal decision-making
  - A procedural, not substantive, statute
  - Established a White House Council on Environmental Quality (*next week's brown bag: Mr. Horst Greczmiel, CEQ Associate Director for NEPA Oversight*)



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# What is the National Environmental Policy Act (NEPA)?

- NEPA requires all federal agencies, when proposing an action (such as implementing a program, project, or issuing a permit), to understand the environmental impacts of that action before making a **decision**.



## Who must conduct NEPA?

- ONLY federal agencies are required to comply with NEPA.
- Other actors, such as state and local governments, universities, and private individuals DO NOT need to comply with NEPA - *even when their actions* (such as applying for a permit or requesting financial assistance) *trigger a NEPA requirement for NOAA.*



# How does NEPA affect NOAA?

- NEPA touches all of NOAA in conducting its daily operations, fulfilling its regulatory mandates, and meeting its strategic goals.





# Regulations and Guidance

- The NEPA process to be followed by all federal agencies is specified in the CEQ regulations at 40 CFR 1500-1508. These regulations also require each federal agency to develop their own NEPA policies and procedures.  
(<http://energy.gov/nepa/downloads/regulations-implementing-procedural-provisions-nepa>)
- NOAA's NEPA policies and procedures are contained in NOAA Administrative Order (NAO) 216-6, *Environmental Review Procedures for Implementing the National Environmental Policy Act*. ([http://www.nepa.noaa.gov/NAO216\\_6.pdf](http://www.nepa.noaa.gov/NAO216_6.pdf))
- PPI has also published NEPA guidance in the *NOAA NEPA Handbook*. ([http://www.nepa.noaa.gov/NEPA\\_HANDBOOK.pdf](http://www.nepa.noaa.gov/NEPA_HANDBOOK.pdf))





## When is NEPA triggered?

- *This Order [NAO 216-6] addresses any federal action whose effects may be major and is potentially subject to NOAA's control and responsibility. (NAO 216-6 § 1.02b.3.)*



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## When is NEPA triggered?

- A proposed action, in conceptual stages, does not require an environmental review until it has an established goal and is preparing to make a **decision** on how to [achieve] that goal. At that stage, the proposed action is subject to environmental review. (NAO 216-6 § 1.02b.2.)*



## When is NEPA triggered?

- KEY POINT - NEPA starts with the need to make a **decision**. In the course of the NEPA process, NOAA determines the environmental consequences of that **decision**. It ends when NOAA has made a **decision**.
- NEPA, through its implementing regulations, specifies how NOAA will conduct, share, and document the analysis of those environmental consequences.



## Are there any exceptions?

- In very limited cases, NEPA review is not required.
  - Regulatory exemptions
    - Judicial and Administrative Enforcement Actions
    - General Revenue Sharing
  - Statutory exemptions
    - Clean Air Act
    - Clean Water Act
  - Functional equivalence (i.e., CERCLA, RCRA)
  - Emergency actions (i.e., Stafford Act)
  - Ministerial actions (those without discretion)
- There must be a statutory legal basis for an exemption.
- *Consultation with PPI and OGC is critical!*



Credit: NOAA



## NEPA Assistance at NOAA

- Line Offices (and OCAO, OMAO) have NEPA Coordinators / NEPA Points of Contact to assist with NEPA Compliance. Visit <https://www.intranet.nepa.noaa.gov/poc.html> for your NEPA Coordinator's contact information.
- If your NEPA Coordinator is not available, PPI NEPA staff can help you understand how NEPA may apply to your project or program. Contact us at [ppi.nepa@noaa.gov](mailto:ppi.nepa@noaa.gov).
- Federal agencies commonly use experienced NEPA contractors to assist them with NEPA compliance.



## How is NEPA analysis documented?

### 1) Categorical Exclusion Documents (CEs)

- Used when the environmental impacts of an action have been documented to have no potential to be significant.

### 2) Environmental Assessments (EAs)

- Used when a Categorical Exclusion does not apply. Helps NOAA determine if the environmental effects of the action will be significant.

### 3) Environmental Impact Statements (EISs)

- Used when the environmental effects of an action are expected to be significant.



## What is a Categorical Exclusion?

- A Categorical Exclusion (CE) is the most common form of NEPA compliance. A CE is a category of actions that NOAA has determined has no potential to significantly affect the environment, because (1) the action is of a type that has been determined to have insignificant effects, **and (2) specific “extraordinary circumstances” are not present.**



## More on CEs

- Examples of actions that may be covered by NOAA's CEs include minor changes to fishery management plans, in-kind restoration actions, changes in radar coverage patterns, and minor construction projects.
- If a CE applies to your action and no extraordinary circumstances are present, then documentation is minimal. At most, a short memorandum or similar document is all that is required to comply with NEPA.
- CEs do not require PPI review or clearance.





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# Extraordinary Circumstances!

**A CE cannot be used if one or more extraordinary circumstance pertains to the action!** NOAA's extraordinary circumstances are:

- 1) Actions involving a geographic area with unique characteristics (*examples: historic properties, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas*);
- 2) Actions subject to public controversy based on potential environmental consequences;
- 3) Actions with uncertain environmental impacts or unique or unknown risks;
- 4) Actions that establish a precedent or decision in principle about future proposals;
- 5) Actions that may result in cumulatively significant impacts; or
- 6) Actions that may have any adverse effects upon endangered or threatened species or their habitats

(NAO 216-6 § 5.05c)



# Beginning the EA/EIS Process

- Tell PPI that you are preparing an EA or an EIS!
  - Go to <https://www.intranet.nepa.noaa.gov/NEPA.html> (provide your username and email password to get access) and complete the online form. This will also notify your Line Office NEPA Coordinator/Point of Contact.
- Additional notifications are required for an EIS - contact your Line Office NEPA Coordinator for details.
- Perform “scoping” - either public or internal (public scoping required for EISs).



## Environmental Assessments (EA)

- NOAA must prepare an EIS if a proposed action will have significant effects on the human environment. Otherwise, NOAA may prepare an EA.
- What is a significant effect? (40 CFR 1508.27)
  - context
  - intensity
- EAs require PPI review and clearance.
- The EA process ends in either a Finding of No Significant Impact (FONSI) or a determination that an EIS is required.



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# Environmental Impact Statements

- Prepared for actions with significant effects on the environment.
- Requires PPI review and clearance.
- More strict requirements than an Environmental Assessment, such as mandatory scoping periods, public comment periods, notices in the Federal Register, and EPA review.



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## Integrating Other Environmental Requirements

- The NEPA process should run concurrently with other statutory responsibilities, rather than consecutively.
- Identify the requirements of other statutes (Such as consultations) early in the NEPA process.
- Other laws that may apply:
  - Fish and Wildlife Coordination Act
  - National Historic Preservation Act
  - Coastal Zone Management Act
  - Clean Water Act



Credit: NOAA





## PPI's role in EAs and EISs

- An EA must be provided to PPI in electronic form for review
  - 10 working days
- EISs must be provided to PPI in electronic form for a 10-day review at both the Draft and Final stages
- Both EAs and EISs must receive PPI concurrence
  - 3 working days for EAs
  - 5 working days for EISs



## Finalizing the EA/EIS Process

- If an EA determines that a proposed action will not have a significant effect on the environment, then a Finding of No Significant Impact (FONSI) is prepared.
  - If the action would have a significant effect, then no FONSI is possible - the agency must prepare an EIS
- Following an EIS, a Record of Decision (ROD) states the final decision, any alternatives, and the practicable means adopted to avoid or minimize impacts.





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## Where can I get more information?

- The NOAA NEPA Intranet:  
<https://www.intranet.nepa.noaa.gov/>
- CEQ's NEPA Website:  
[www.nepa.gov](http://www.nepa.gov)





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# Additional Materials

## Preparing Environmental Assessments and Environmental Impact Statements



# Purpose and Need

- Determine the *Purpose and Need* of your proposed action.
  - The *Purpose and Need* is a concise discussion of the problem that would be addressed by the proposed action.
  - Typically the *Purpose* is the objective of the proposed action, while the *Need* represents the underlying problem or concern that NOAA proposes to address with the proposed action.

Ex: “A jetty located at the Woods Hole Research Center has been damaged by Hurricane Sandy. [Need/problem] NOAA proposes to repair this jetty.” [Purpose/objective]



## Purpose and Need (cont.)

The Purpose (objective) should be specific enough to be “actionable,” but not so specific that it simply rationalizes the proposed action.

**Too Broad:** “*Right whales are endangered. Let’s help them.*”

**Too Narrow:** “*Right whales are endangered. Let’s stick a dart tag into this one.*”



# Alternatives Development

- The purpose and need statement defines the range of alternatives to be evaluated.
  - That is, only those alternatives that will achieve the purpose of and need for the proposed action should be evaluated in detail.
- Reasonable Alternatives:
  - Support the purpose and need
  - Relevant to the decision
  - Implementable
  - Technically feasible



## Alternatives (cont.)

- NEPA requires analysis of a “No Action” alternative
  - The no action alternative is one under which the agency takes no action to address the purpose and need.
  - It is used to compare against the effects of the other alternatives.
  - Does not need to (and rarely will!) meet the Purpose and Need, or otherwise be “reasonable” (as defined above).
- There are two distinct concepts of “no action”
  - “Do nothing” concept, in which the agency declines to take a discrete action.
  - “Change nothing” concept, in which the agency declines to alter an ongoing action.



## Alternatives (cont.)

- An analytic comparison of the alternatives is the heart of the NEPA process.
- Consider the objective attributes of the alternatives
  - Size, proximity, function, timing, environment, special features
- There are many techniques and methodologies that can be used to analyze alternatives.
  - Trend analysis, qualitative comparison, quantitative modeling, landscape evaluation, checklists, matrices, etc.





# Determining Impacts

- Identify the direct, indirect, and cumulative impacts.
- The affected environment serves as the analytic baseline for resource-based analysis.
- Examples include, but are not limited to:
  - Land Use
  - Biological Resources (i.e. critters)
  - Water Quality/Air Quality
  - Geology and the Physical Environment
  - Human Health and Safety





## What is the public comment period?

- CEQ requires that certain NEPA documents be released to the public for review and comment.
  - Environmental Assessments - *may* be released, although not mandatory. Release depends on context and public interest. A typical time period is 30 calendar days.
  - Environmental Impact Statements - *must* be released for a *minimum* of 45 calendar days.
- Agencies must assess and consider comments both individually and collectively.
- Agencies shall respond to public comments, which must be disclosed in Final EISs.



# Lead and Cooperating Agencies

- In some cases, two or more federal agencies are involved in the NEPA process.
- The Lead Agency:
  - Is determined by factors including the magnitude, duration of involvement
  - Is ultimately responsible for the NEPA document
  - Is expected to request the participation of cooperating agencies at earliest time
- Cooperating Agencies:
  - May be involved in the proposed action, or simply have special expertise in the action or the resources affected
  - May assist by providing studies, analyses, or personnel to assist



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# Programmatic NEPA Documents

- Address broad actions such as policy decisions or program-level decisions.
- Can specify mitigation and monitoring measures to be used throughout the program's implementation.
- Analysis in a programmatic document can be "incorporated by reference" into later documents.
- Does not necessarily replace the need for project-specific NEPA analysis!



# Tiering

- *"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as **national program** or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. (40 CFR 1508.28)*
- *Incorporation by reference: Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement **and its content briefly described**. No material may be incorporated by reference unless it is **reasonably available for inspection** by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference. (40 CFR 1502.21)*



## Tiering (cont.)

### Scope of a NOAA Program and its Effects

