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National Environmental Policy Act

CEQ NEPA Regulations and the MSA NEPA Procedure Revisions

Presented by

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NEPA and Rulemaking History

- 1970: January 1 - NEPA enacted
- 1978: November 29 - First NEPA implementing regulations
- 2020: July 16 - 2020 Rule (new implementing regulations)
- 2022: April 20 - Phase 1 Rule (new implementing regulations)
- 2023:
 - June 3 - NEPA amended by the Fiscal Responsibility Act of 2023 (FRA)
 - July 31 - Bipartisan Permitting Reform Implementation (BPRI)/Phase 2 Proposed Rule
- 2024:
 - May 1 - BPRI/Phase 2 Final Rule ([89 FR 35442](#); new implementing regulations)
 - July 1 - Phase 2 Final Rule became effective



2024 Phase 2 Final Rule Major Goals

- Implements the Fiscal Responsibility Act's NEPA amendments
- Improves efficiency and effectiveness
- Improves agency coordination and collaboration
- Encourages better environmental and climate change outcomes
- Promotes early and robust public and governmental engagement
- Addresses environmental justice
- Addresses legal issues



Implements the FRA's NEPA Amendments

Including these major amendments:

- Sets deadlines and page limits for environmental reviews
- Expands use of programmatic environmental reviews
- Requires analysis of the adverse effects of no action
- Updates definitions, including *major Federal action*

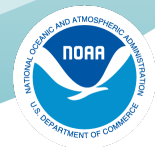
Note: Because these are mandated amendments to NEPA, they became effective immediately for all actions underway as well as new actions.



Deadlines

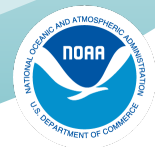


- Imposed by the FRA amendments to the NEPA mandate
- Environmental Assessment (EA): 1 year (42 U.S.C. 4336a.(g)(1)(B))
- Environmental Impact Statement (EIS): 2 years (42 U.S.C. 4336a.(g)(1)(A))
- Starting:
 - When the agency determines that NEPA requires an EA or EIS
 - When the agency issues a notice of intent (NOI) for the proposed action
- Ending:
 - For EAs, when the EA is published or an NOI for an EIS is published
 - For EISs, when the EPA publishes a notice of availability for the final EIS
- Exceeding a deadline requires a report to Congress



Deadline Extensions

- Prior to the 1-year or 2-year deadline:
 - May establish a new deadline that “provides only so much additional time as is necessary” to complete the review (40 CFR 1501.10(b)(1), (2))
 - If there is an applicant, the decision maker must consult with the applicant. *Applicant* is defined as a non-Federal entity, including a project sponsor, that seeks an action by a Federal agency such as granting a permit, license, or financial assistance. 40 CFR 1508.1(c)
- Decision maker must document the new deadline and provide rationale, such as public engagement obligations, consultation obligations, requirement to obtain information or input from outside entities and parties, or required engagement in other statutory processes
- Can repeat this process as necessary



Page Limits

- Imposed by the FRA amendments to the NEPA mandate
- Environmental Assessments
 - 75 pages (42 U.S.C. 4336a (e)(2))
- Environmental Impact Statements
 - 150 pages (42 U.S.C. 4336a (e)(1)(A)), or
 - 300 pages for proposals of extraordinary complexity (42 U.S.C. 4336a (e)(1)(B))
- *Page* is defined as 500 words and does not include citations, explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information (40 CFR 1508.1(bb))



Environmental Outcomes

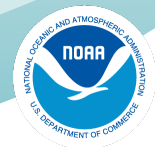
- Ensures evaluation of a reasonable range of alternatives
- Requires identification of preferable alternative in the draft EIS vs Record of Decision (40 CFR 1502.14(f))
- Clarifies analysis of reasonably foreseeable environmental effects
- Clarifies process for determining significance
 - Restores context and intensity factors
 - Confirms only adverse effects can be significant
 - Clarifies that agencies cannot offset adverse effects with other beneficial effects to determine significance
- Clarifies when monitoring and compliance plans are needed



Climate Change



- Requires quantification of reasonably foreseeable greenhouse gas emissions (40 CFR 1502.16(a)(6))
- Streamlined approach for determining long-term greenhouse gas emissions impacts



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Environmental Justice (EJ)

- Requires agencies to consider the needs of affected communities when developing outreach and notification strategies
- Defines *environmental justice* (40 CFR 1508.1(m)) and *communities with environmental justice concerns* (40 CFR 1508.1(f))
- Incorporates EJ considerations during the NEPA process including:
 - *Context*: evaluate characteristics of the geographic area
 - *Intensity*: how action may adversely affect communities with EJ concerns
 - *Environmental consequences*: analysis of any reasonably foreseeable disproportionate and adverse human health and environmental effects on communities with EJ concerns
 - *Mitigation*: encourages measures that address or ameliorate significant human health and environmental effects of proposed actions that disproportionately and adversely affect communities with EJ concerns



Public Commenting

- Removed a section in the 2020 CEQ regulations that laid out detailed and onerous requirements on what public comments must contain to be considered by agencies
- Requires a public comment period on all published draft EAs (40 CFR 1501.5(e))



Public Engagement

Clarifies the purpose of and agency responsibility for conducting public and governmental engagement including:

- Requires agencies to conduct early engagement where appropriate
- Connects the relationship between determining scope of an action; conducting scoping for an EIS; and conducting public and governmental engagement
- Requires agencies to identify Chief Public Engagement Officers, who facilitate community engagement in environmental reviews across the agency and, where appropriate, the provision of technical assistance to communities (40 CFR 1507.2(a))
- Adds provisions related to making documents available to the public



Phase 2 Final Rule Key Dates

Effective Date: July 1, 2024

- Applies to new actions as of this date
- Actions started prior to this date can follow previous versions of the regulations* (e.g., Amendment 16)



Agencies to Propose Procedures to CEQ: July 1, 2025

- Both NOAA and NMFS will need to update procedures
 - NAO 216-6A's Companion Manual
 - MSA NEPA Procedures

*Note again that the FRA amendments to NEPA (including those listed on slide 4, like time and page limits) were immediately effective and must be adhered to for all actions now.

MSA NEPA Procedures

Purpose:

- Clarifies roles and responsibilities
- Provides guidance on timing of NEPA compliance including documentation of extensions
- Describes a procedural nexus with the MSA fishery management process
- Provides guidance on certain issues pertaining to NEPA documentation, including the statement of purpose and need, identifying alternatives, content of records of decision, page limits, and the use of integrated documents
- Provides guidance on techniques for improving partnerships and efficiencies



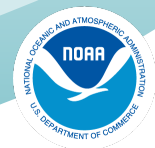
MSA NEPA Procedures

Regional Fishery Management Councils

- Council members vote to approve/disapprove proposals to submit to NMFS
- Council staff generally prepare NEPA analyses and are therefore affected by the regulatory changes

Highly Migratory Species Process

- HMS Advisory Panel recommendations advisory in nature
- Secretary (delegated to NMFS) decides what actions to consider and implement
- HMS staff prepare NEPA analyses and are therefore the ones affected by the regulatory changes



Timeline for Revision of Procedures

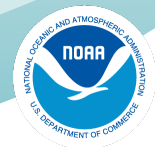
- October 2024: draft MSA NEPA Procedures provided to the Council Coordination Committee (publically available draft)
- July 2025: MSA NEPA Procedures delivered to CEQ for review
- Timeline undetermined from here:
 - Address CEQ comments
 - Publish draft procedures in *Federal Register* for public comment
 - Address public comments
 - Deliver final procedures to CEQ
 - Address CEQ comments
 - Publish final procedures in the *Federal Register*



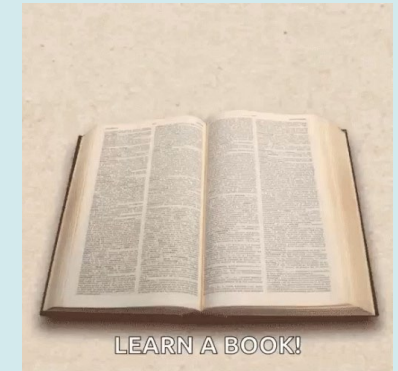
NEPA Procedures for MSA Actions

Notable upcoming structural changes:

- Remove MSA NEPA Procedures from Companion Manual (Appendix C)
- Add to NMFS Policy Directive System and update structure
- **Policy Directive 09-103: NEPA Compliance for Actions Taken Under the MSA**
 - States and explains directions and objectives
- **Procedural Directive 09-103-01: NEPA Procedures for Actions Taken Under the MSA**
 - Provides guidance and best practices for how to apply the policy



References



- Council on Environmental Quality
 - [2024 Desk Reference \(including Phase 2 Final Rule and FRA amendments to NEPA\)](#)
 - [Phase 2 Final Rule presentation slides](#)
- National Oceanic and Atmospheric Administration
 - [NOAA Administrative Order \(NAO\) 216-6A](#)
 - [NAO 216-6A's Companion Manual \(including Appendix C - MSA NEPA Procedures\)](#)



Acronyms

- BPRI: Bipartisan Permitting Reform Implementation
- CEQ: Council on Environmental Quality
- CFR: Code of Federal Regulations
- EA: Environmental Assessment
- EIS: Environmental Impact Statement
- EJ: Environmental justice
- EPA: Environmental Protection Agency
- FR: *Federal Register*
- FRA: Fiscal Responsibility Act of 2023
- HMS: Highly Migratory Species
- MSA: Magnuson-Stevens Fishery Conservation and Management Act
- NAO: NOAA Administrative Order
- NEPA: National Environmental Policy Act
- NOI: Notice of Intent
- U.S.C.: United States Code

