

Chapter 1 National Environmental Policy Act - Policy and Responsibilities – 550 FW 1

1.1 What is the purpose of this Manual Chapter? This chapter establishes policy and provides uniform guidance to Fish and Wildlife Service (Service, we, or our) personnel on responsibilities for implementing the National Environmental Policy Act of 1969, as amended, and related authorities (550 FW 1.4) in planning and implementing our actions and preparing NEPA.

1.2 What is the scope of this Manual Chapter? This chapter applies to all of our divisions and offices involved in planning and implementing our actions and preparing documents in accordance with NEPA. This chapter is to be read in conjunction with documents cited in 550 FW 1.5, which are included in full text in the NEPA Reference Handbook. This chapter does not address our review of actions proposed by other Federal agencies and other related reviews, which are addressed in 505 FW 1-5.

1.3 What are the purposes of NEPA? The purposes of NEPA are stated in section 2 of the preamble of NEPA: “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.” Two of the purposes have special meaning to us. NEPA’s purpose, “to enrich the understanding of the ecological systems and natural resources important to the Nation,” is only one of a few such purposes in law that recognizes the

importance of ecological systems to Federal planning and decision making. Further, NEPA's purpose, "to promote efforts which will prevent or eliminate damage to the environment," complements our mission (550 FW 1.4).

1.4 What are our policies regarding NEPA?

(A) We will strive to implement the policy in section 101(a) of NEPA, that is: ". . . 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) We shall integrate, in an efficient and reasonable manner, the NEPA purposes (section 2 of NEPA), the NEPA policy (section 101 of NEPA), and the NEPA decisionmaking process (section 102 of NEPA) into the planning and implementation of our actions. Our NEPA goal is to make better environmental decisions in a cost and time-efficient manner to further our mission to conserve, protect, and enhance fish and wildlife and their habitats for the continued benefit of the American people.

1.5 What are the authorities for complying with NEPA? Major authorities, regulations,

procedures, and guidance that establish and promulgate the above purpose are listed below.

A. 42 U.S.C. 4321-4347, National Environmental Policy Act of 1969, as amended.

B. 40 CFR 1500-1508, Council on Environmental Quality Regulations for Implementing the Procedural Requirements of NEPA, July 1, 1986.

C. 48 FR 34263, CEQ's Guidance Regarding NEPA Regulations, July 28, 1983.

D. 46 FR 18026, CEQ's Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981.

E. 516 DM 1-6, Department of the Interior's (Departmental) Manual, particularly Chapter 6, Appendix 1.

F. Environmental Memoranda Series, Department of the Interior, Office of Environmental Policy and Compliance (Environmental Statement and Environmental Compliance Memoranda).

G. Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act, CEQ Memorandum, July 28, 1999.

H. Environmental Justice Guidance Under the National Environmental Policy Act, CEQ, 1998.

I. Application of the National Environmental Policy Act to Proposed Federal Actions in the United States with Transboundary Effects, CEQ, July 1, 1997.

J. Considering Cumulative Effects Under the National Environmental Policy Act, CEQ, January 1997.

K. Incorporating Biodiversity Considerations Into Environmental Impact Analysis Under the National Environmental Policy Act, CEQ, January 1993.

1.6 Where can you find the definitions of terms used in this Manual Chapter? Terms associated with the NEPA process are defined in the Council on Environmental Quality's NEPA regulations in 40 CFR 1508.

1.7 What are our organizational responsibilities for complying with NEPA?

40 CFR 1507.2(a) and 516 DM 6.2B. Overall NEPA responsibilities for the Director, Assistant Director - Fisheries and Habitat Conservation; other Assistant Directors; Regional Directors; Chief, Division of Federal Program Activities; and Washington and Regional Office Environmental Coordinators are defined in 516 DM 6, Appendix 1.1 and 032 FW 5. We have listed additional specific responsibilities relative to 550 FW 1-2 below.

A. Assistant Director - Fisheries and Habitat Conservation. Responsible to the Director for overall management and guidance of Service NEPA-related involvement.

B. Chief, Division of Federal Program Activities.

(1) Carries out the responsibilities for the Assistant Director for Fisheries and Habitat Conservation for providing management and guidance of Service NEPA-related involvement.

(2) Informs the Department's Office of Environmental Policy and Compliance of agreements to assume cooperating status or any declinations pursuant to 40 CFR 1501.6(c) and 516 DM 2.5.

(3) Maintains a record of our notices for the preparation and public review of each environmental impact statement, the record of decision, and a copy of each draft and final EIS.

C. Washington Office Environmental Coordinator.

(1) Provides staff support to ensure NEPA responsibilities delegated to the Assistant Director - Fisheries and Habitat Conservation, and Chief, Division of Federal Program Activities, are carried out in accordance with CEQ's NEPA regulations, DOI's NEPA procedures, and our NEPA guidance.

(2) Serves as our liaison to CEQ, OEPC, and other Federal agency NEPA staff on NEPA

matters, pursuant to 516 DM 6.2 and 516 DM 6, Appendix 1.1D.

(3) Conducts training and ensures quality control of technical input into NEPA-related training materials for Washington, Regional, and field office personnel, including the Regional Environmental Coordinators, on NEPA compliance matters, in coordination with our National Conservation Training Center.

(4) Obtains the statement control number from OEPC for Washington and Regional Office personnel preparing to release draft and final EISs for the purpose of filing with the Environmental Protection Agency and for intra-Departmental distribution.

(5) Prepares the Quarterly Report on EISs, with input from the Regional Environmental Coordinators, in accordance with Departmental procedures in ESM96-3.

(6) Provides technical assistance, quality control, and overview regarding Servicewide compliance with NEPA for our proposals.

D. Regional Director.

(1) Designates an individual in the Regional Office, pursuant to 516 DM 6.2 and Appendix 1.1E, who provides staff assistance to the Regional Director, Assistant Regional Directors, divisions and field offices on NEPA compliance matters.

(2) Ensures quality control of all Service environmental documents submitted by offices and divisions under his/her control.

(3) Ensures that our Regional and field office personnel are adequately trained in NEPA compliance matters.

(4) Submits notices of intent to prepare an EIS to the Federal Register for actions under his/her authority. Provides a copy of the notice to OEPC in accordance with DOI ESM98-2, and a copy to our Washington Office Environmental Coordinator.

(5) Has signature authority to file EISs with EPA in accordance with Departmental procedures in ESM98-2. This responsibility cannot be delegated below the Regional Director or Acting Regional Director level. Non-delegated EISs must be coordinated with OEPC, and cannot be printed, numbered, or distributed until approved for printing by OEPC.

(6) Designates the EIS Team Leader and approves membership on the interdisciplinary planning team to prepare an EIS.

E. Regional Environmental Coordinator.

(1) Provides staff support to the Regional Director by providing technical assistance to the Assistant Regional Directors, divisions, and field offices on NEPA-related matters, including

internal compliance and coordinating environmental reviews. Provides technical assistance in accordance with CEQ's NEPA regulations, DOI's NEPA procedures, and our NEPA guidance.

(2) Coordinates significant Regional NEPA-related issues on an interagency and intra-Service level. This includes assuring that all of our affected or interested offices are advised of our proposals and their need to provide technical input and assistance.

(3) Coordinates with counterparts in other agencies to resolve Regional NEPA-related conflicts.

(4) Serves as liaison to OEPC on non-delegated EISs, pursuant to Departmental procedures (ESM98-2).

(5) Requests statement control number from our Washington Office Environmental Coordinator prior to filing draft and final EISs with EPA and prior to intra-Departmental distribution.

(6) Participates in conducting training of Regional and field office personnel on NEPA compliance matters, in coordination with the Regional Training Officer and our National Conservation Training Center.

(7) Tracks and logs EISs prepared at the Regional level and provides input on a quarterly basis to our Washington Environmental Coordinator for the preparation of the Quarterly Report of EISs, pursuant to Departmental procedures in ESM96-3. To the extent practical, tracks and logs

environmental assessments prepared at the Regional and field office level.

F. Service Divisions and Offices.

(1) Obtains training on NEPA compliance matters whenever involved in the planning of our proposals requiring the preparation of environmental documents. Contacts the Washington or Regional Environmental Coordinator or the National Conservation Training Center for available courses.

(2) Advises our Washington or Regional Environmental Coordinator, as appropriate, whenever an EIS is proposed, and whenever an EA or EIS is prepared. Consults with the Washington or Regional Environmental Coordinator, as appropriate, for guidance and technical assistance on the scoping, preparation, and public review of environmental documents.

1.8 What is the Departmental Quarterly EIS Report, and how do we prepare it? OEPC's ESM96-3 requires each bureau to prepare and submit a quarterly report on EISs to OEPC on January 1, April 1, July 1, and October 1. The Regional Environmental Coordinators will provide input to our Washington Office Environmental Coordinator no later than one week before the above dates. The Washington Office Environmental Coordinator will prepare and submit the report to OEPC through appropriate channels.

1.9 What is the Service NEPA Reference Handbook? The Service NEPA Reference

Handbook, which includes the full texts of various NEPA authorities and related documents cited in this part and in 505 FW 1-3 (Interagency Activities - Environmental Review), is an integral part of and will be read in conjunction with this guidance. Also refer to 505 FW 1.7. You can obtain our NEPA Reference Handbook by accessing <http://www.fws.gov/r9esnepa>.

Chapter 2 National Environmental Policy Act - Compliance Guidance – 550 FW 2

2.1 What is the purpose of this Chapter? This chapter provides uniform guidance to Fish and Wildlife Service (Service, we, or our) personnel on complying with the procedural requirements for preparing environmental impact statements and environmental assessments and for making categorical exclusion determinations in accordance with the National Environmental Policy Act and pertinent regulations, policy, procedures, and guidance.

A. Service NEPA Goal. Refer to 550 FW 1.4.

B. You can find the objectives of the procedural requirements of NEPA in section 102 of the Act. These objectives were reconfirmed in the Supreme Court Decision, Robertson vs. Methow Valley Citizens Council (1989), which stated:

(1) In reaching its decision, the agency shall carefully consider detailed information concerning every significant environmental impact on the human environment.

(2) The public shall play a role in the decisionmaking process and the implementation of that decision, such as ensuring that monitoring and mitigation plans are executed as prescribed.

C. Relationship to the Council on Environmental Quality’s NEPA Regulations and Department of the Interior’s NEPA Procedures. This chapter is consistent with CEQ’s NEPA regulations (40 CFR 1500-1508) and Departmental NEPA procedures (516 DM 1-6). This guidance supplements and clarifies, but does not duplicate, the aforementioned regulations and procedures as they relate to our activities.

D. Total Service Internal NEPA Compliance Guidance. For a full understanding of NEPA compliance matters for internal Service activities, use this guidance in conjunction with the CEQ NEPA regulations, Departmental NEPA procedures, references cited in the Service’s Manual in 550 FW 1.5 and 550 FW 1 and 3. Refer to our NEPA Reference Handbook, authorized in 550 FW 1.9, for full texts of various NEPA authorities and related documents.

2.2 How does the NEPA process apply to the Service?

A. Initial Service Planning and NEPA Decisions. The NEPA process focuses on our decisionmaking process. We must make several critical early and mid-course decisions at the beginning of our NEPA decisionmaking process. Making early NEPA decisions can be critical to our success and efficiency in implementing an action and can reduce delays and costs. Our major decision points are listed below.

(1) Develop the Proposed Action. 40 CFR 1501.2 and 516 DM 2.2. Developing the proposed action is an early planning activity that precedes the initiation of the NEPA process. Before we can make a determination whether or not an action is categorically excluded, requires the preparation of an EIS, or requires an EA, we must develop a proposed action. The proposed action is not a list of goals, strategies, or objectives. The proposed action is a plan of action, identifying specific actions to be taken and decisions to be made. Quantify the specific actions (e.g., location of facilities, size of facilities, capacity projections, etc.). When developed, our proposed action will be considered in the NEPA process (40 CFR 1508.23). When permits or grants are proposed by applicants, we should coordinate early with them to develop the purpose, needs, and proposed action. As a result of the public scoping process (550 FW 2.3), revise the proposed action, as appropriate.

(2) Determine Type of NEPA Compliance. The basic question under NEPA is: “Is the action a major Federal action significantly affecting the quality of the human environment?” If the answer is “yes,” then we must prepare an EIS. If the action is covered by a Service/Departmental categorical exclusion, we require no documentation under NEPA, except as required by our NEPA guidance in 550 FW 3.3C. If the action does not require the preparation of an EIS, and is not covered by a Service/Departmental categorical exclusion, or if the impacts of the action are uncertain, you must prepare an EA. **Exhibit 1** is a NEPA decisionmaking flowchart showing the options and pathways for NEPA compliance for an action.

(a) Categorical Exclusion. 40 CFR 1508.4 and 516 DM 2.3A. Actions that are categorically

excluded do not require the preparation of an EA or EIS. Our actions that are categorically excluded are found in the Departmental Manual in 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1.4. If circumstances exist in which a normally categorically excluded action may result in significant impacts on the human environment, or if the action is covered by an exception under 516 DM 2.3A(3) and 516 DM 2, Appendix 2, we must prepare an EA or EIS. If a determination is made that our proposed action is a categorical exclusion and the exceptions to the categorical exclusions do not apply, we can implement the action immediately. Refer to 550 FW 3.3C for guidance on establishing an administrative record of a decision to categorically exclude an action and how to prepare an environmental action statement that documents that decision.

(b) Environmental Impact Statement. 40 CFR 1508.11 and 516 DM 4. Our proposed actions that normally require the preparation of an EIS prior to their implementation are listed in 516 DM 6, Appendix 1.6. Also refer to 550 FW 3.3B for criteria to assist in determining when to prepare an EIS for purposes of NEPA compliance, such as when the original proposed action contains mitigation measures to reach a finding of no significant impact that would otherwise require the preparation of an EIS. Circumstances may exist in which an action normally requiring the preparation of an EIS would not require one. In such circumstances, prepare an EA in accordance with 40 CFR 1501.4(e)(2) and will circulate the FONSI to the affected public for a minimum of 30 days before we sign it and implement the action (516 DM 6, Appendix 1.6B). Normally, we will circulate the final EA with the unsigned FONSI at the same time. Refer to 550 FW 3.3A for guidance on preparing and distributing the record of decision (ROD).

(c) Environmental Assessment. 40 CFR 1508.9 and 516 DM 3. The purposes of the EA are to determine if the action will have significant impacts, address unresolved environmental issues, and to provide a basis for a decision on the proposal. Any Service action not fitting (a) or (b) above, or when the impacts of the action are uncertain, or when there are unresolved environmental issues, requires the preparation of an EA. In addition, you may prepare an EA if you determine that it would aid in the planning or decisionmaking, serve as a vehicle to gain public input or to facilitate interagency coordination, simplify permit approval, or gain other necessary legal clearances. Examples of our actions normally requiring preparation of an EA are also listed in 516 DM 6, Appendix 1.5. If an EA determines that the proposal is a major Federal action significantly affecting the quality of the human environment, we must prepare an EIS. Refer to 550 FW 3.3B for guidance on preparing and distributing the FONSI.

(d) Programmatic Document. 40 CFR 1500.4(I) and 1502.20. A programmatic EIS or EA addresses a group of similar or related actions as a whole, rather than one at a time in separate EISs or EAs. A programmatic document can be an effective means for addressing broad cumulative issues and impacts. These documents can address a group of different actions occurring in the same place, or a single action occurring in many different places. Addressing programs, policies, or plans of broad scope, rather than those of narrow scope, can eliminate repetitive discussions of the same issues. Programmatic NEPA documents do not relieve us of our responsibility to prepare site-specific NEPA documents.

B. Lead and Joint Agency. Refer to 40 CFR 1501.5, 1506.2(c), and 516 DM 2.4. A State or

local agency shall be a joint lead agency with the Service if it has State laws or local ordinances promulgating environmental requirements comparable and not in conflict with NEPA and CEQ's NEPA regulations.

C. What are the Benefits and Requirements of a Cooperating Agency? 40 CFR 1501.6 and 1608.5, 550 FW 1.4D and G, and 516 DM 2.5. Also refer to 032 FW and 505 FW 2.2.

(1) Benefit to the Service. The benefits of early coordination in our planning cannot be over-emphasized. A cooperating agency, in the case when we prepare an EIS, can provide meaningful assistance to us through early coordination and cooperation in the planning and implementation of our proposals. A cooperating agency may have jurisdiction by law (40 CFR 1508.15) that requires it to approve, veto, or finance all or part of the proposal; or it may have special expertise (40 CFR 1508.26) that may benefit our planning and implementation of the proposal. Any Federal agency with jurisdiction by law that requests, or is asked by us, to be a cooperating agency, shall be a cooperating agency (40 CFR 1501.6). We encourage our personnel to request other agencies to be a cooperating agency on our proposals to expedite the planning and implementation process by reducing time and costs when other Federal, State, or local planning and decisions are required. The participation of a cooperating agency does not affect our responsibilities as a lead agency or our review and consultation responsibilities, pursuant to other environmental requirements.

(2) Applicability and Eligibility. This guidance applies when we request another agency to be

a cooperating agency on the planning and implementation of our proposal, or when another agency makes a request to us to be a cooperating agency on our proposal. Cooperating agencies should be made aware of our role as lead agency and the role of a cooperating agency, as defined in 40 CFR 1501.5 and 1501.6, respectively. CEQ's NEPA regulations in 40 CFR 1501.6 allow State and local agencies and Indian tribes to be cooperating agencies when such entities have "jurisdiction by law" or "special expertise" on environmental issues addressed in the EA/EIS. These terms are defined in 40 CFR 1508.15 and 1508.26, respectively. We will consider any requests from State and local agencies and Indian tribes to be a cooperating agency, subject to these regulations.

(3) Cooperating Agency Agreements. An agreement should be established in writing between the cooperating agencies and us that specifically states the role of the cooperating agency, including specific tasks to be accomplished, time schedules for completing the tasks, and funds available to the cooperating agency, if appropriate, for the agreed upon product. CEQ's regulations in 40 CFR 1501.6(b)(5) encourage, but do not require, Federal agencies to fund part or all activities performed by a cooperating agency under the agreement. Service funds used for cooperative agency involvement should normally be expended during the scoping stage and not during review and subsequent stages. Refer to 550 FW 1.5G for CEQ's guidance on non-Federal agencies as cooperating agencies.

(4) Reporting. Copies of approved cooperating agreements are maintained by our Regional and Washington Office Environmental Coordinators.

D. Interdisciplinary Planning Team. 40 CFR 1502.6 and 1502.17; and 550 FW 1.7D(6). We will prepare EISs and EAs (if necessary) using an inter-disciplinary approach. Preparers of the document should represent appropriate biological, physical, and economic disciplines necessary to adequately address the key issues and impact analysis. Determine the composition of the team on the basis of significant issues and impacts identified in the early scoping process. The team members can include Federal, State, or other persons with expertise necessary to assist us prepare the EIS or EA.

2.3 What is scoping and how is it used? 40 CFR 1501.7 and 1508.25, and 516 DM 2.6.

Scoping is a crucial step in the early planning stage of an environmental document. The objectives of scoping are to identify significant issues and to translate these into the purpose for the action, the needs for the action, the action or actions to be taken, alternatives to be considered in detail, alternatives not to be considered in detail, and impacts to be addressed. Use scoping to design the EIS or EA. Effective scoping should reduce paperwork, delays, and costs; and improve the effectiveness of the NEPA process.

A. Scoping Process. Scoping is a public participation process that begins with the publication in the Federal Register of our notice of intent to prepare an EIS. The scoping process ends with the publication of the Environmental Protection Agency's notice of availability of the draft EIS in the Federal Register. Scoping can be informal or formal, as in the case of an EIS. Scoping is required for an EIS. We encourage public scoping for an EA since it helps satisfy NEPA's purposes in section 101(b). The result of scoping is to streamline our analysis and

decisionmaking process by ensuring that we address all important issues are that unimportant issues are eliminated from analysis. Among the issues to consider, our EISs and EAs should also address Indian trust resources and environmental justice concerns, when appropriate. The result of scoping is to focus and streamline the NEPA process. Scoping ends when we issue the draft EIS or EA.

B. Public Participation in Scoping. Initiate public participation in scoping through a number of techniques, such as notices in local newspapers, direct mailings, Federal Register notices, etc. We should carefully consider the affected public and provide reasonable advance notice of public meetings and comment due dates to facilitate effective public participation in our proposal. Include preliminary scoping information in the notice and at the scoping meeting to solicit meaningful public participation. The scoping information should state the objectives of scoping, our proposal (actions), the purpose and needs for the action, and list preliminary alternatives and impacts. We should strive to understand the public concerns, accurately record their comments, and allow adequate time for involvement by the affected public.

C. Scoping Results. The results of scoping shall be available to the affected public. Include a report of the scoping process and results as an appendix to the EIS or EA. Include a summary of the scoping process and results as a separate section at the beginning of our EIS or EA. We should briefly explain in the scoping results any issues and alternatives raised during the scoping process, but eliminated from detailed analysis in the EIS or EA, should briefly be explained in the scoping results. Most importantly, we should incorporate the results of scoping into the design of and analysis in the EIS or EA.

2.4 What is the content of environmental documents?

A. Content of EA and EIS. 40 CFR 1502.10 and 1508.9, and 516 DM 3 and 4. **Exhibit 2** is a sample outline of an EA/EIS. Additional guidance on selected components of the outline is provided below.

(1) Purpose. 40 CFR 1502.13 and 516 DM 4.9. We define purpose as a goal or end to be obtained.

(2) Needs. 40 CFR 1502.13 and 516 DM 4.9. We define need as a lack of something required, desirable, or useful. Needs can be identified as our needs, as well as the needs of other Federal agencies, States, or private parties. Needs help define and design alternatives. Thus, needs help our decisionmakers achieve our NEPA goal in 550 FW 1.4 by encouraging the selection of the alternative that best satisfies the identified needs.

(3) Scoping/Public Participation. Summarize the results of scoping and public participation in a separate section in the EA/EIS. We should attach a full report of scoping as an appendix to the EA/EIS. Although we do not require public scoping for the preparation of an EA, we encourage it.

(4) Alternatives, Including the Proposed Action. 40 CFR 1502.14 and 1508.23, and 516 DM 4.10. The CEQ NEPA regulations state that this section is the heart of the EIS. Ensure

that the alternatives selected for detailed analysis are reasonable and implementable, are given equal treatment, and provide clear choices for the decisionmaker. Each alternative, including the proposed action, must identify the specific actions, operations, and measures to be taken by the Service, the permit applicant, or grantee. Avoid describing alternatives solely on the basis of strategies, goals, or objectives, unless they identify specific actions, operations, and measures. Develop alternatives in consideration of scoping comments, purpose, and needs. The EIS and EA shall include an alternative comprising the proposed action, a no action alternative, and reasonable alternatives that satisfy the purpose and need(s), to the extent practicable.

(a) No Action Alternative. Describe in detail the specific actions that would take place as a result of not taking the proposed action. The actions can be projected linearly to the planning (future) target date or, the actions can be projected non-linearly to the target date based on reasonably-anticipated projects and activities planned or proposed without the proposed action. In unusual circumstances, we may consider a no-action alternative that is not reasonable when its implementation is otherwise restricted or prohibited by a court decision or legislative statute. In such unusual cases, the no action alternative may still be used as the baseline for comparing the proposed action and other alternatives. Explain the basis for the no action alternative in the EA/EIS.

(b) Preferred Alternative. To avoid confusion, we should normally use the term “preferred” alternative in conjunction with applicant-driven permit or grant actions. For example, we normally consider the applicant’s proposal as the proposed action. However, in some instances,

we may identify our “preferred” alternative in the draft/final EA or EIS, to distinguish it from the proposed action and other alternatives. For other than applicant-driven permit and grant actions, the recommended approach is that the final EA or EIS should identify our “proposed” decision. In some cases, the proposed decision could include components of one or more alternatives and/or a combination of several alternatives. This term should not be confused with the requirement to identify the “environmentally-preferable” alternative in the record of decision in 40 CFR 1505.2(b).

(c) Mitigation and Monitoring Measures. Include mitigation and monitoring measures, as appropriate, in each alternative, except the no action alternative.

(d) Summary of Actions by Alternative. Include a brief, concise table at the end of the Alternatives chapter that summarizes the actions by alternative. The table allows the decisionmaker and the affected public to compare changes in the level of actions between alternatives with the no action alternative. Consider differences in actions when you conduct the analysis of impacts in the subsequent Environmental Consequences chapter of the EIS or EA.

(5) Affected Environment. 40 CFR 1502.15. The description of the affected environment establishes the current environmental conditions we consider to be affected or created by the alternatives, including the proposed action. Focus on the biophysical, social, and economic environments pertinent to the actions addressed in the proposed action and alternatives, and on those impacts addressed in the Environmental Consequences chapter in the EIS or EA, as

determined through the scoping process. Although an Affected Environment chapter is not required by CEQ's regulations as a separate chapter in the EA, we suggest that it be included in our EAs. The Affected Environment chapter should include enough information relative to the proposed actions to assist us to develop the analysis contained in the Environmental Consequences chapter. If necessary, lengthy information or data should be included in an appendix, although you should summarize the results in this chapter.

(6) Environmental Consequences. 40 CFR 1502.15 and 1508.8. This chapter addresses the net difference between the environmental impact of the alternatives, including the proposed action, to the no action alternative. An environmental impact is an effect, not a cause (action). For the purposes of NEPA, the terms "impact" and "effect" mean the same. Address both beneficial and adverse direct and indirect (secondary) impacts in the analysis. We should present the analysis in specific terms, such as number of ducks produced reflected as an increase or decrease, number of fishing visits increased or decreased, tons of soil lost or saved per year, etc. Use the best available science in the analysis of impacts. A conclusion should follow the analysis of each impact topic, particularly when the analysis is extensive or complex. The scope and depth of information in the EA must be sufficient for the decisionmaker to reach a conclusion based on the significance of the impacts. Address all significant impacts in detail in the EIS, even if we do not have the in-house expertise to conduct the analysis. In such cases, we may obtain additional expertise from other Federal, State, or local government agencies or from the private sector to adequately address significant impacts. Refer to 550 FW 2.2D regarding necessary expertise on the interdisciplinary planning team.

(a) Impacts to be Addressed. Address direct, indirect, and cumulative impacts, as appropriate. Determine the extent and breadth of impacts to be addressed through formal or informal public scoping, as appropriate. Through scoping, identify impact topics for analysis in each of the alternatives, including the proposed action, and the rationale for their selection should be described. Examples of impact topics are impacts on white-tailed deer, impacts on wetlands habitat, etc. When applicable, other impacts to consider may include minority and low-income populations (ECM95-3 and ECM98-2), Indian trust resources and sacred Indian sites (ECM97-2), transboundary environmental impacts (ESM97-2), and CEQ's guidance on biological diversity cited in 550 FW 1.4K.

(b) Scope of Analysis of Impacts. The scope of analysis of impacts to be addressed in the EIS or EA should be dependent upon whether or not a reasonable, significant link can be established between our proposed action and the impact. This determination should be made during the scoping process and analyzed in the Environmental Consequences chapter.

(c) Cumulative Impact Analysis. In an EIS, prepare a cumulative impact analysis that addresses the proposed action, and a separate analysis for each alternative (if possible). This analysis can be included within each alternative or as a separate analysis at the end of the Environmental Consequences chapter. In an EA, a cumulative impact assessment should be conducted if it is deemed necessary through scoping to make a determination of significance of the proposed action. Refer to CEQ's guidance on considering cumulative effects cited in 550 FW 1.5J.

(d) Impacts of Mitigation. Mitigation measures may also cause impacts, both positive and negative. Analyze any impacts resulting from the mitigation measures in the Environmental Consequences chapter.

(e) Summary of Impacts by Alternative. Insert a brief, concise table should be inserted at the end of the Environmental Consequences chapter that summarizes the impacts by alternative. The table allows the decision maker and the affected public to compare changes in the level of impacts between alternatives with the no action alternative. This table may be useful when making presentations to the decisionmaker and the public.

B. What are the differences Between an EA and EIS? 40 CFR 1501.3 and .4, 516 DM 3.2, 516 DM 6 Appendix 1.5 and 1.6, and 550 FW 3.3B(2). The purposes of an EA are described in 550 FW 2.2A(2)(c). We encourage, but do not require, public scoping for an EA. The content of the EA is reduced by design. The Affected Environment chapter in an EA is suggested, but not required. Otherwise, the format of an EA is similar to that of an EIS. Normally, the text of a final EIS will be less than 150 pages, and for proposals of unusual scope or complexity, will normally be less than 300 pages (40 CFR 1502.7). The text of an EA should normally be 10-15 pages, unless we combine the EA with other planning requirements. The scope and depth of the EA should be “sufficient” for the decisionmaker to reach a conclusion on the significance of impacts in order to determine if the preparation of an EIS is required. It is not necessary for the EA to address the “relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity” and “irreversible or irretrievable

commitments of resources” required in an EIS, as long as the content of the EA can lead to an informed conclusion regarding significance of impacts. Include an assessment of cumulative impacts, if applicable, in the Environmental Consequences chapter of the EA, consistent in scope and depth with the “sufficiency” requirement stated above. If the analysis of impacts in the EA leads us to an informed conclusion that the proposal may significantly affect the quality of the human environment, do not sign the FONSI. No further detailed analysis of alternatives and impacts is required in the EA. At that point, the EA can be made available to the public. We should then prepare and publish a notice of intent to prepare an EIS in the Federal Register (refer to 550 FW 2.5C).

2.5 How do we process and conduct public review of environmental documents?

40 CFR 1508.10 and 550 FW 3. This section addresses the processing and public review of EAs, NOIs, and EISs. The level of public participation can vary substantially between an EA and EIS. Coordination procedures for intra-Departmental review of environmental documents prepared by Departmental bureaus and offices are addressed in DOI ESM98-3.

A. How do we Process the EA?

(1) Our internal approval of an EA should normally be done at the same time the accompanying plan, permit, or rule is approved. If an environmental action statement is prepared, include it with the signature package for approval (refer to 550 FW 3.1C). The approval responsibilities for EAs are in accordance with 032 FW.

(2) The conclusions in the EA and subsequent FONSI or NOI to prepare an EIS should accompany the decisionmaking package for review and approval by the decision maker for our action. For example, for an EA that accompanies a document for an action to be approved at the Washington Office level, the approval of the EA, FONSI, or NOI to prepare an EIS will occur at the Washington Office level. For an EA that accompanies a document for an action to be approved at the Regional Office level, the approval of the EA, FONSI, or NOI to prepare an EIS will occur at the Regional Office level. The Regional Director may delegate the approval of our actions requiring an EA to the field office level, subject to the coordination provisions in 550 FW 1.7E and F. When finalized, the EA and FONSI are part of our administrative record for the action.

(3) We normally do not require Departmental clearances or coordination for processing our EAs. Coordinate the preparation of EAs with our Regional or Washington Office Environmental Coordinator, as appropriate.

B. What are the Requirements for Public Review of the EA? 40 CFR 1501.4(e)(1) and (2) and 1506.6(b), and 516 DM 2.2 and 3.3.

(1) CEQ NEPA regulations and Departmental NEPA procedures require public notification, where appropriate, to allow the affected public to be involved in the EA process. However, no time periods are specified in the CEQ NEPA regulations or Departmental NEPA procedures for the review of the EA. Determine specific time periods for the public review of the EA, as

appropriate.

(2) The EA shall be made available by appropriate notice and/or be circulated to the affected public. In most cases, we will prepare and circulate a draft and final EA. In such cases, the final EA should address the comments of the public, and other Federal, State and local agencies. In cases where an EA is expected to generate few if any comments, we may circulate a single EA to the affected public. In such cases, the EA would normally be referred to as an “EA,” rather than a “Final EA.” We should circulate the draft and final EA to the public with the accompanying draft and final project documents, such as the plan, permit, or rule. For example, circulate the draft EA with the draft plan, and the final EA with the final plan. Attach all substantive public comments and our response to those comments to the final EA.

(3) The length of the public review period for the EA should normally be the same as the public review period for the accompanying planning and/or decision document, as appropriate. For example, the Endangered Species Act requires a notice in the Federal Register, which initiates a 30-day public review of the draft habitat conservation plan. It is Service policy that this generally applies to all EAs prepared for HCPs that are not large-scale, regional, or exceptionally complex [refer to 550 FW 2.5D(3)]. If an EA was prepared for the action, the notice would also announce the availability of the EA for review in the same review period. In another example, 602 FW 2 requires a 30-day public comment period for a draft refuge comprehensive conservation plan. If we prepare an EA for the CCP, it should be circulated for public review in the same manner and time as the draft CCP, and with the final CCP if substantive changes to the

final EA are made. The public review of the EA should be integrated and concurrent with the public review requirements of the planning documents for the Service proposal. Service personnel should include public participation in the preparation, review, and implementation of the EA in parallel with other Service requirements to reduce delays, reduce costs, and to make a better environmental decision.

(4) CEQ NEPA regulations in 40 CFR 1501.4(e)(2) and subsequent CEQ NEPA guidance require a 30-day review of the FONSI under certain circumstances. Refer to 550 FW 3.3B(4) for a list of the criteria for circulating the FONSI. If an EA was not previously made available for public review, we should make it available for public review at the same time the FONSI is circulated, subject to the 30-day review period.

(5) Public notice of the EA can be made using any appropriate media means to reach the affected public. If an EA is prepared for an action having nationwide implications, you must publish a notice of availability in the Federal Register.

C. How do we Process and Provide Public Notification of the NOI? 40 CFR 1501.7, 1508.22, and 516 DM 2.3D. The NOI to prepare an EIS shall be published in the Federal Register by the Service Washington or Regional Office, as appropriate. Provide a copy of the notice to OEPC, in accordance with DOI ESM98-2, and a copy to the Washington Office Environmental Coordinator. The NOI initiates the scoping process for the EIS, which ends upon issuance of the draft EIS. The notice for the NOI in the Federal Register should indicate the

approximate release date of the draft EIS for public review. The Federal Register notice can also indicate a closing date for comments to be considered in the preparation of the draft EIS.

Normally, this would be 30 to 60 days following publication of the notice. We shall consider any comments received in writing or verbally from any public scoping meetings for the EA in the preparation of the draft EIS. We will make every effort to consider comments received after the comment due date given in the NOI, depending upon the schedule for preparing the draft EIS.

Where applicable, these procedures may also apply to the public notification for preparing an EA, as appropriate. **Exhibit 3** is an example of an NOI to prepare an EIS in the Federal Register.

D. What are the Requirements for Processing and Providing Public Review of the EIS? 40

CFR 1506.6, 1506.9, 1506.10, and DOI ESM94-8, 95-3, 96-2, and 98-2.

(1) Service and Departmental Clearance. DOI ESM98-2. Regional Offices and Washington Office divisions preparing EISs should contact the Washington Office Environmental Coordinator to obtain additional guidance on whether an EIS is delegated or non-delegated, and to obtain Departmental clearance for publication. Most of our EISs are delegated, meaning that signature authority for the proposed action rests by delegation only with the Assistant Secretary for Fish and Wildlife and Parks or the Service. Refer to DOI ESM98-2 for the criteria by which an EIS is non-delegated, and additional requirements, including restrictions on obtaining a control number. Non-delegated EISs must be approved and filed with EPA by the Assistant Secretary for Policy, Management and Budget. The AS/PMB has assigned this responsibility to OEPC. Evidence of Departmental clearance is required by EPA before EPA will publish their

notice of availability in the Federal Register. The Department will not provide clearance to us until we have indicated that our document has been approved by the Regional Director or Director, and has been printed or is being distributed. Clearance means that you must obtain a “DES” number for a draft EIS, and a separate “FES” number for a final EIS. Write or stamp the clearance number (it does not need to be printed) on the front outside cover of all draft and final EISs sent to EPA for filing, OEPC, and affected or interested offices or bureaus in the Department of the Interior. You are not required to mark the clearance number on EISs distributed to other Federal agencies and the public.

(2) Filing EISs with EPA. DOI ESM95-3, 96-2, and 98-2. Once the EIS has received Departmental clearance, file the EIS as soon as possible with EPA. EPA requires five copies of the EIS. File the five copies of the EIS with EPA by Express Mail to avoid any delays in the publication of the notice. EPA will prepare a notice of availability, which contains the name of the agency, name of the project, location, comment due date, and agency contact person and telephone number. The notice will appear in the Federal Register under EPA’s “Environmental Statements, Availability, etc. - Weekly Receipts.” EPA will publish the notice on Friday of the week following the week the notice is received. The date of EPA’s notice of availability in the Federal Register is counted as the official first day of the comment period. Unless a longer due date is requested in the Service’s or Department’s letter to EPA, the due date EPA will list in the Federal Register will be a minimum of 45 days for a draft EIS, and a minimum of 30 days for a final EIS, respectively, from the date of publication in the Federal Register. If the last day falls on a weekend or holiday, EPA will select the next working day as the closing date. Do not

delegate the responsibility for filing an EIS below the Regional Director or Director level, as appropriate (550 FW 1.7C). Departmental statement control numbers for draft and final EISs are obtained through the Washington Office Environmental Coordinator (550 FW 1.7D). **Exhibit 4** is an example of a letter for filing a draft/final EIS with EPA.

(3) EIS Review Time Period. 40 CFR 1506.10, 516 DM 4.24, and DOI ESM94-8. This guidance incorporates Departmental procedures and CEQ NEPA regulations regarding the time period for public and agency review of a draft EIS. The time period for public and agency review of the draft EIS will be a minimum of 60 days from the date of transmittal of the draft EIS to EPA, or a minimum of 45 days from the date of EPA's notice of the draft EIS in the Federal Register, whichever is less; and a minimum of 30 days for a final EIS. Normally, EPA will indicate a 45-day time period (minimum required in the CEQ NEPA regulations) in the EPA notice, unless requested by us in writing to be longer. In some cases, the public review period may be longer than the minimal time period prescribed in the CEQ NEPA regulations. For example, a draft EIS for an HCP normally requires a minimal public review period of 90 days. This is consistent with Service policy that requires a 90-day review of a draft HCP which is large-scale, regional, or exceptionally complex.

(4) Service Notice of Availability of Supplemental Information. DOI ESM98-2. We may publish an additional, but separate, notice in the Federal Register containing supplementary information on the proposal. The due date for comments indicated in that notice must be the same as indicated in the EPA notice. **Exhibit 5** is an example of a Service NOA in the Federal

Register for a draft/final EIS.

(5) Intra-Departmental Distribution and Review of EISs. DOI ESM98-3. **Exhibit 6** is an example of a memorandum seeking intra-departmental review of an EIS. The memorandum should be addressed to any bureau in the Department of the Interior that may be affected by the proposal. The number of copies of the EIS to be sent to each bureau will be in accordance with DOI ESM98-3.

E. Who Can Prepare the EIS or EA? 40 CFR 1506.2, 1506.3, 1506.5(c), and 516 DM 4.18 and Appendix 1. An EIS can be prepared by us or a contractor, but not normally by the applicant who is seeking to receive a permit, grant, or approval from us. When a contractor prepares an EIS for us, the contractor shall prepare a disclosure statement for inclusion in the draft and final EIS to ensure the avoidance of any conflict of interest (550 FW 2.5F). Under certain circumstances, an applicant, who is a State agency or official, can be the primary preparer of an EIS if they meet the requirements of section 102(2)(D) of NEPA. Refer to 516 DM 4, Appendix 1 for a list of Department of Interior programs of grants to States in which agencies having statewide jurisdiction may prepare EISs. An EA can be prepared by us, a contractor, or the applicant.

F. What are the Requirements for Contractors who Prepare EISs? 40 CFR 1506.5(c). The Service should provide technical assistance to applicants and contractors on NEPA compliance matters. When a contractor prepares an EIS, the contractor shall prepare a disclosure statement

prepared by the Service, or where appropriate the cooperating agency, specifying that the contractor has no financial or other interest in the outcome of the project. **Exhibit 7** is an example of a disclosure statement from a contractor to be included in a draft and final EIS.

G. When should a Supplement be Prepared for an EIS? 40 CFR 1502.6 and 516 DM 4.5.

Prepare a supplement for draft or final EISs if: (1) substantial changes are made to the proposed action that materially and substantially affect the analysis of impacts, and (2) significant new circumstances or information becomes available that materially and substantially affect the analysis of impacts. In such cases, you will prepare a supplement when you have determined that the changes will have a material affect on the decisionmakers choice. We can also prepare a supplement to further the purposes of NEPA.

H. What Additional Requirements should you be Aware of when Conducting Public Participation? 40 CFR 1501.7 (Scoping), 1503 (Commenting), and 1506.6 (Public

Involvement). Also refer to 516 DM 1.6 and 1.7, 301 DM 2; and 550 FW 2.3 and 2.4A(3).

Public participation is to be an integral and required part of the NEPA process. We shall make a reasonable and concerted effort to involve affected Federal agencies, States, government officials and agencies, non-governmental organizations, and the public in the NEPA planning, decision making, and implementation process. All substantive public comments to the draft EIS and our response to those comments shall be addressed in the final EIS and attached to the final EIS in accordance with 40 CFR 1503.4. Refer to the referenced CEQ NEPA regulations for guidance on techniques and procedures for public participation in the NEPA process.

I. How should we Handle Public Comments? Each public comment letter or electronic transmission should be numbered and logged (name of originator, date of letter or electronic transmission, and date received). Maintain the original letter and attachments, if any, in a clean manner (without pen and ink markings or marginal comments). The disposition of public comment letters on environmental documents will be in accordance with our records disposition procedures in 283 FW 1-4.

J. What are our Requirements for Addressing Freedom of Information Act Requests? 203 FW 1-2. Environmental documents, defined in 40 CFR 1508.10, should be made available to the public without cost, to the extent practical. Requests for copies of the public comments received by the Service on EAs and EISs, commenter names, home addresses, and other information will be consistent with current Service and Departmental policy. If public requests for public comments on our documents pose unusual circumstances that may outweigh the balance of the privacy interest vs. the public interest, consult the Regional Service FOIA Officer and the Regional Solicitor for advice. Insert the following language in notices of availability of environmental documents for public review.

All comments received from individuals become part of the official public record.

We will handle all requests for such comments in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations in 40 CFR 1506.6(f). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business

hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments.

K. What are our Requirements for Ensuring Intra-Service Coordination? Preparers of EAs and EISs should ensure that all potentially affected Service programs and offices are coordinated with during the preparation and processing of environmental documents prior to release of such documents for public review.

L. How do we Establish and Maintain the Administrative Record for NEPA Documents?

The office originating the NEPA documents for an action should at a minimum maintain the following permanent administrative record of NEPA compliance: draft and final EA, FONSI, NOI to prepare an EIS, draft and final EIS, and ROD. Also refer to 550 FW 1.7B.

2.6 How can we Improve the Effectiveness of NEPA?

A. Reducing Paperwork and Delays. 40 CFR 1500.4 and 1500.5. During the scoping process (550 FW 2.3), make every effort to reduce paperwork and delays by addressing only important or significant issues, not addressing insignificant issues, integrating the NEPA requirements with other consultation and review requirements, using incorporation by reference (40 CFR 1502.21), tiering (40 CFR 1502.20), adoption (40 CFR 1506.3, and 550 FW 2.6B), joint processing with

other Federal and State requirements, combining NEPA documents with other planning documents, and parallel processing of environmental requirements (550 FW 2.6C).

B. Adoption. 40 CFR 1506.3 and 516 DM 3.6. We can adopt another Federal agency's EA or EIS, or another Federal agency can adopt a Service EA or EIS to streamline the NEPA compliance process. The key components to streamlining the NEPA process when we adopt another agency's NEPA document are: (1) the document to be adopted must adequately comply with Departmental/Service NEPA procedures/guidance; (2) we should be a cooperating agency with the other Federal agencies in the preparation of their EA/EIS, in accordance with 40 CFR 1501.6; (3) the other Federal agency's EA/EIS must adequately address our actions and alternatives being considered; and (4) the other agency's EA/EIS must meet the NEPA standards prescribed in 40 CFR 1506.3. This requires close coordination between the involved agencies.

Exhibit 8 is a flowchart of the adoption process.

C. Parallel Processing and Integration of the NEPA Process with Other Environmental Requirements. 40 CFR 1502.25. To the fullest extent possible, the Service shall prepare environmental documents concurrently with and integrated with other environmental impact analyses, related surveys and studies, and planning and decision making requirements. For many Service proposals, parallel processing should ensure concurrent processing of the planning process for the proposal with the requirements under section 404 of the Clean Water Act, section 7 of the Endangered Species Act, NEPA, section 106 of the National Historic Preservation Act, and other requirements.

D. Assistance and Guidance to Applicants. 40 CFR 1506.5(a); 516 DM 6, Appendix 1.3; and 550 FW 2.5D(5). You should assist applicants for permits, grants, and approvals in the preparation of environmental documents for our proposals. When applicable, we may require applicants for permits, grants, and approvals to provide additional information on the proposal and on its environmental effects as may be necessary to satisfy our requirements to comply with NEPA, other Federal laws, and executive orders.

2.7 What Other NEPA-Related Guidance should we be Aware of?

A. Record of Compliance. 318 DM 1. The issuance of regulations and policy normally requires the preparation of a Record of Compliance. The ROC contains a section on NEPA compliance for the action. This section of the ROC will summarize compliance with NEPA. When a Service action is categorically excluded, the ROC should state which categorical exclusion(s) applies.

B. Emergency Actions. 40 CFR 1506.11, 516 DM 5.8, DOI ESM97-3. CEQ's NEPA regulations allow agencies to take emergency actions that would have significant environmental impact without NEPA compliance so long as the agency consults with CEQ. The use of an emergency action is very limited by design, is rarely taken by the Service, and applies only in cases where an EIS would otherwise have been prepared. The process is not applicable to an action covered by an EA.