

550 FW 3, Documenting and Implementing Decisions

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3.1 Purpose. Fish and Wildlife Service (Service) personnel involved in making and implementing decisions on an action are to establish an appropriate administrative record of the Service's decision. This chapter establishes procedures to ensure that decisions and their implementation are made in accordance with the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act (NEPA) (40 CFR 1505) and Department of the Interior (Department) NEPA procedures (516 DM 1-6).

3.2 Scope. This chapter addresses the Service's preparation of the record of decision (ROD), finding of no significant impact (FONSI), and environmental action statement (EAS); and the implementation and monitoring of the Service's decision. Refer to the NEPA Reference Handbook, authorized in 550 FW 1.7, for full texts of various NEPA authorities and checklists and samples for the preparation of environmental documents; and 550 FW 2, for public review procedures for the notice of intent (NOI) to prepare an environmental impact statement (EIS), the EIS, and environmental assessment (EA).

3.3 NEPA Decision Documents.

A. Record of Decision (ROD).

(1) Making the Decision. Following completion of an EIS (see 550 FW 2), the Service shall prepare a ROD. The ROD is a concise public record of the decision, which may be integrated into any other record prepared by the Service.

(2) Content of the ROD. The content of the ROD is to be the same as described in

40 CFR 1505.2. Any conditions adopted for monitoring or enforcement must be addressed in the ROD (40 CFR 1505.3). Exhibit 1 is an example of a ROD. Exhibit 2 is an example of a notice of availability (NOA) of the ROD in the Federal Register.

(3) Processing and Distributing the ROD. The decision to implement an action cannot be made sooner than 30 days following publication by the Environmental Protection Agency of the notice of availability of the final EIS in the Federal Register. After 30 days, the ROD, signed by the Service decisionmaker (see 550 FW 1.6), shall be made available to the affected public by appropriate public notice. Appropriate public notice can include publication in the Federal Register, or by other means to ensure that the ROD is made available to the affected public [40 CFR 1506.6(b)].

(4) Implementing the Action in the ROD. The action may be initiated immediately upon signature of the ROD by the appropriate Service decisionmaker. The Service must substantially comply with the decision made in the ROD. The actions, terms, and conditions stated in the ROD are enforceable by Federal agencies and private parties. The ROD can be used to compel compliance with or execution of mitigation, monitoring, and enforcement measures identified therein (40 CFR 1505.3). The Service should make a diligent effort to involve the public in the implementation of the action (40 CFR 1506.6).

B. Finding of No Significant Impact (FONSI).

(1) Making the Decision. The EA serves as the basis for determining whether implementation of the proposed action would constitute a major Federal action significantly affecting the quality of the human environment. If a positive finding is made, an EIS is required. If a negative finding is made, a FONSI is prepared and signed. Either finding will be based on the information presented in the text of the EA. The text of the EA should provide sufficient factual material to support the finding. Determinations of major Federal actions and significant effects on the human environment are subject to varying interpretation, and no hard-and-fast rules are available to label an action conclusively one way or the other. The need to prepare an EIS is a matter of professional judgment requiring consideration of all issues in question, particularly all information documented in the EA.

(2) Criteria to Assist in Determining the Need to Prepare an EIS. It is important to be as objective as possible when making a determination on whether to prepare an EIS. For general guidance on what may constitute a "major Federal action" and "significant effect," refer to 40 CFR 1508.18 and 1508.27, respectively. In addition, one or more of the following criteria, depending on the severity and duration of effects, may trigger the preparation of an EIS.

- (a) Controversy over environmental effects (e.g., major scientific or technical disputes or inconsistencies over one or more environmental effects).
 - (b) Change in Service policy having a major positive or negative environmental effect.
 - (c) Precedent-setting actions with wide-reaching or long-term implications (e.g., special use permits for off-road vehicles, mineral extraction, new road construction).
 - (d) Major alterations of natural environmental quality, that may exceed either local, State, or Federal environmental standards.
 - (e) Exposing existing or future generations to increased safety or health hazards.
 - (f) Conflicts with substantially proposed or adopted local, regional, State, interstate, or Federal land use plans or policies, that may result in adverse environmental effects.
 - (g) Adverse effects on designated or proposed natural or recreation areas, such as wilderness areas, parks, research natural areas, wild and scenic rivers, estuarine sanctuaries, national recreation areas, habitat conservation plan areas, threatened and endangered species, fish hatcheries, wildlife refuges, lands acquired or managed with Dingell-Johnson/Pittman-Robertson funds, unique or major wetland areas, and lands within a 100-year floodplain.
 - (h) Removal from production of prime and unique agricultural lands, as designated by local, regional, State, or Federal authorities; in accordance with the Department's Environmental Statement Memorandum No. ESM 94-7.
 - (i) Adverse effects on municipal, industrial, or agricultural water supply or quality; or major consumptive use or other long-term commitment of water.
 - (j) Condemnation of property rights or fee title to land; or large-scale relocation of people, homes, commercial, industrial, or major public facilities.
- (3) Content of the FONSI.** The content of the FONSI is to be the same as discussed in 40 CFR 1508.13. Also refer to 516 DM 2.3C. Exhibit 3 is an example of a FONSI.

(4) Processing and Public Availability/Review of the FONSI.

- (a) The FONSI, signed by the Service decisionmaker, is an "environmental document" under 40 CFR 1506.6(b) and, therefore, must be made available to the

affected public. A combination of methods may be used to provide notice, tailored to the needs of the particular case. Local mailings, publication in newspapers, radio announcements, and other means, including publication in the Federal Register, may be used.

(b) The FONSI must be made available for public review if the proposed action would be located in a floodplain or wetland, pursuant to Executive Orders 11988 and 11990, respectively.

(c) In certain cases, the Service must make the FONSI available for public review for 30 days before the action can be implemented, in accordance with 40 CFR 1501.4(e)(2). If the EA was not previously made available for public review, it should be made available for public review at the same time the FONSI is circulated. The criteria for circulating the FONSI are as follows.

(i) The proposal is a borderline case (i.e., there is a reasonable argument for preparation of an EIS).

(ii) The proposal is an unusual case, a new kind of action, or a precedent-setting case.

(iii) There is either scientific or public controversy over the proposal.

(iv) When the FONSI involves a proposal which is or is closely similar to one which normally requires preparation of an EIS. Refer to 516 DM 6, Appendix 1.5B. See 550 FW 3.3B(6).

(5) Implementing the Action in the FONSI.

(a) The action may be initiated immediately following completion of 550 FW 3(B)(4). The Service must substantially comply with the decision made in the FONSI. The Service should make a diligent effort to involve the public in the implementation of the action (40 CFR 1506.6).

(b) When the initial proposed action in the EA integrates mitigation measures, without which the proposed action would cause significant effects, those mitigation measures are enforceable, thereby precluding the preparation of an EIS or reevaluation of the proposal. If those mitigation measures are not implemented, an EIS or reevaluation of the proposal would be required (40 CFR 1508.8 and 1508.27).

C. Environmental Action Statement (EAS).

(1) Purposes of the EAS. The purposes of the EAS are:

(a) to establish a process for internal review of Service NEPA-related decision documents at the Regional and Washington Office level to ensure inter-program coordination, and

(b) to provide an appropriate administrative record of NEPA-related decisions at all management levels of the Service.

(2) Actions for which an EAS should be Prepared. An EAS should be initiated by the Service office responsible for preparation of the NEPA documents. An EAS should be prepared when the following circumstances occur.

(a) To facilitate internal inter-program review and final approval when a FONSI is to be signed at the Service Washington or Regional Office level.

(b) To document a normally categorically excluded action that may be controversial.

(c) To document emergency NEPA actions pursuant to 40 CFR 1506.11.

(d) When, after the review of an EA, a decision is made to publish an NOI in the Federal Register announcing the decision to prepare an EIS.

(e) When a proposed action is not approved because of unacceptable environmental damage, or violation of Service mandates, policy, regulations, or procedures.

(f) Whenever additional internal review and/or documentation of the NEPA administrative record is desirable.

(3) Content of the EAS. The EAS will consist of a one-page document indicating the proposal, the Service decision, references to supporting documents (if any), and a signature block. The format of the EAS should be in accordance with Exhibit 4.

(4) Processing the EAS. The EAS will accompany the decision documents for the action through the surname and signature process. The EAS will be signed no sooner than when the decision is made on a categorical exclusion, or when the ROD or FONSI is signed.

(5) Signature Approval of the EAS. The signature approval blocks (Exhibit 4) may be modified to accommodate the Service office where final signature approval occurs.

(a) At the field office level, the signature block would normally include the signature and date of the originator and the field office supervisor.

(b) At the Regional Office level, the signature block would normally include the signature and date of the originator, the Regional Environmental Coordinator, appropriate Assistant Regional Director(s) or their designees, and the Regional Director.

(c) At the Washington Office level, the signature block would normally include the signature and date of the originator, the Washington Office Environmental Coordinator, the appropriate Assistant Director(s) or their designees, and the Director.

(6) Distribution of the EAS

(a) The EAS is part of the Service's NEPA administrative record for an action. Although it is not normally distributed to the public, the Service shall provide a copy of the EAS to the public whenever requested in the same manner as other NEPA environmental documents [40 CFR 1506.6(f)].

(b) The original EAS should be maintained by the Service office originating the action.

(c) A copy of the EAS should be provided to each Service office indicated on the signature block; the Washington Office or Regional Office Environmental Coordinator, as appropriate; and other affected Service offices.

3.4 Implementing and Monitoring the Decision. Until the Service issues the ROD or FONSI, as appropriate, no action concerning the proposal shall be taken (40 CFR 1506.1). When the Service implements an action, that action must be carried out in substantially the same manner as addressed in the ROD or FONSI. Mitigation and other conditions committed as part of the decision should be implemented. The Service may provide for monitoring to assure that decisions are carried out, and should do so in important cases (40 CFR 1505.3).