

National Environmental Policy Act Outline

- I. Overview of NEPA
 - A. Purpose of NEPA
 - 1. Policy not Protection (National Environmental Policy Act)
 - 2. Foster good decision making
 - B. Requirements: mostly procedural
 - 1. Procedural (do EIS)
 - a. Consider environmental impacts
 - b. Consider alternatives
 - c. Involve the public
 - d. Comply with timelines
 - e. Document final decision (ROD)
 - 2. Substantive: only apply if no EIS
 - a. EA/FONSI
 - b. CE
 - c. Require justification in the record
- II. NEPA's application to MSA actions
 - A. EIS is default requirement
 - 1. Content
 - a. Environmental impacts
 - i. Direct and indirect
 - ii. Ecological, historic, aesthetic, cultural, economic, social, health-related
 - iii. Cumulative impacts
 - a) Incremental impacts when adding past, present and "reasonably foreseeable" future actions
 - b) Regardless of who the actor is
 - c) Includes individually minor, but collectively significant over time
 - iv. Includes beneficial impacts as well as detrimental
 - b. Describe unavoidable adverse impacts
 - c. Alternatives to proposed action
 - 2. Timing and Procedure
 - a. Scoping and NOI
 - i. Early open process
 - ii. Begins with NOI
 - a) State proposed action and possible alternatives
 - b) State proposed scoping process
 - c) Identify contact person
 - d) At least 30 days (agency guidance)

- b. DEIS
 - i. Timing
 - a) Minimum 45 day comment period
 - b) Cannot make final decision earlier than 90 days after DEIS
 - ii. Content – as close to final as possible
 - iii. Supplement: necessary to address significant new info or substantial changes
 - c. FEIS
 - i. Timing – at least 30 days before ROD
 - ii. Contents
 - a) Discuss opposing views
 - b) Respond to comment
 - d. ROD
 - i. Timing: with final decision
 - ii. Contents
 - a) State the decision
 - b) Describe alternatives
 - c) Identify environmentally preferable alternative
 - d) Describe the factors considered
 - e) Have all practicable means to avoid harm been taken?
 - f) If not, explain.
 - g) Monitoring and enforcement
- B. Trigger for EIS: “Major Federal action” “significantly affecting” “the quality of the human environment”
- 1. Major Federal Action
 - a. Case law interprets broadly
 - b. Assume it applies to all fishery management actions
 - 2. Human Environment
 - a. Very broad
 - b. Assume it applies
 - 3. “Significantly affecting”
 - a. Some actions may not have “significant effects.”
 - b. If not significant, there is an alternative to the EIS requirement
 - c. Criteria for determining significance include:
 - i. Context
 - a) Society as a whole, regionally, and locally
 - b) Both long-term and short-term effects
 - ii. And intensity
 - a) Beneficial and adverse
 - b) Public health and safety
 - c) Unique characteristics
 - d) Controversy
 - e) Unknown/uncertain risks
 - f) Precedence
 - g) Related actions/cumulative impacts
 - h) National Register of Historic Places

- i) ESA species
 - j) Consistency with environmental laws
- C. Exceptions to EIS: EA and CE
 - 1. EA
 - a. The analysis
 - i. A concise public document
 - ii. Provides basis to assess significance
 - iii. Contains
 - a) Statement of need
 - b) Alternatives: How many are enough? Key = reasonableness. AOC v. Daley; CLF, PMCC
 - c) Environmental impacts of alternatives
 - d) List of agencies/people consulted
 - b. FONSI
 - i. Must be supported by facts in the record
 - ii. No EIS needs be prepared
 - c. Timing
 - i. Logically linked to having complete info on ESA and socio-economic impacts
 - 2. CE
 - a. NOAA Fisheries may establish categories of actions that are
 - b. "Not likely to individually or cumulatively have a significant effect.
 - c. Put a memo in the file