



# EPA's Unique Role in NEPA

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# National Environmental Policy Act 1969

“NEPA is our basic national charter for protection of the environment.” 40CFR1500.1(a)

- ▶ Establishes National Environmental Policy
- ▶ Establishes Procedures for:
  - ▶ *Informed decision making*
  - ▶ *Public process*
  - ▶ *Opportunity for stakeholder involvement*
  - ▶ *Interdisciplinary/multi-agency approach*
- ▶ Establishes the Council on Environmental Quality



# Council on Environmental Quality



- ▶ Located in the Executive Office of the President
- ▶ Environmental policy development
- ▶ Oversight of federal agency NEPA compliance
- ▶ Mediate interagency disputes over environmental policy & project impacts
- ▶ Training and advice on NEPA compliance to other agencies





# Application of NEPA

- ▶ **Applies to major Federal actions that may have a significant impact on the environment**
- ▶ **Federal Actions include:**
  - ▶ **Actions on Federal Land (mines, forestry, National Parks)**
  - ▶ **Federal Permits (gas pipelines, offshore oil and gas)**
  - ▶ **Federal Grants (water treatment, infrastructure)**

# Lead and Cooperating Agencies

## Lead Agency

- ▶ The agency carrying out the federal action is responsible for complying with the requirements of NEPA. If there are multiple agencies involved in the action, one is designated as “lead agency.”
- ▶ Federal agencies, together with state, tribal or local agencies, may act as joint lead agencies.

## Cooperating Agency

- ▶ A federal, state, tribal or local agency having special expertise with respect to an environmental issue or jurisdiction by law may be a cooperating agency.
- ▶ **Responsibilities:**
  - ▶ participate in the scoping process, provide staff support
  - ▶ develop information and prepare environmental analysis based on agency special expertise

# Application of NEPA

- ▶ Requires that environmental information be available to public officials and citizens before decisions are made and before actions are taken.
- ▶ Requires public officials to make informed decisions that disclose and consider the environmental effects of the action
- ▶ NEPA does not approve or deny projects.



# Types of NEPA Analysis

Three levels of NEPA analysis based upon potential for significant impact:

## **Categorical Exclusions**

Projects that do not have a significant effect on the environment

Decision Memorandum

## **Environmental Assessments**

The significance of the impact is not clearly established

Finding of No Significant Impact (FONSI)

## **Environmental Impact Statements**

It is known that the action will have a significant effect on the environment

Record of Decision (ROD)

# Scoping Process

NEPA allows for an early public process to determine the scope of the issues to be addressed in an EIS:

- ▶ Notice of Intent published in the Federal Register.
- ▶ Public, federal, tribal, state and local agencies invited to identify concerns, potential impacts, and possible alternative actions for analysis in the EIS.
- ▶ Provides opportunity to bring agencies together to lay groundwork for setting schedule, expediting reviews, integrating other environmental reviews, and identifying any major obstacles that could delay the process.



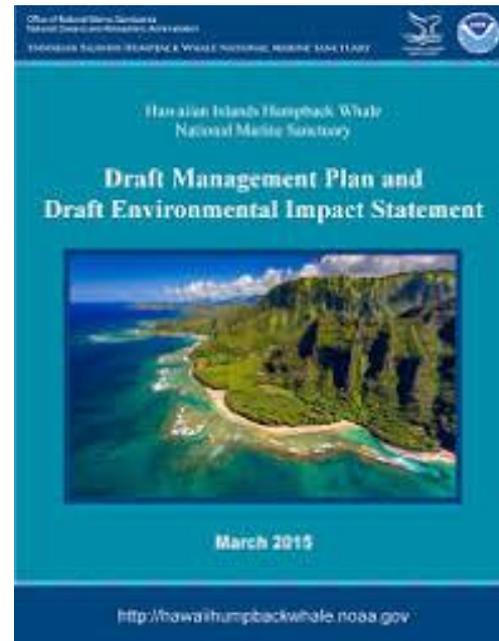
# Draft and Final EISs

Draft EIS - fully evaluates the impacts of the action and reasonable alternatives

- ▶ Must be circulated for public review and comment for a minimum of 45 days

Final EIS - responds to comments, including any changes to proposed action

- ▶ Must be circulated for public review and comment for a minimum of 30 days
- ▶ Record of Decision



# Important Elements of an EIS

Purpose and Need

Alternatives Analysis

Affected Environment

Environmental Impacts

Mitigation

# Alternatives – “Heart of the EIS”

- ▶ Considers a reasonable range of alternatives that could accomplish the proposed action’s purpose and need.
- ▶ Includes reasonable alternatives not within the jurisdiction of the lead agency, if applicable.
- ▶ Includes a no action alternative.
- ▶ Identifies the agency's preferred alternative.
- ▶ Explains the reasons for elimination of any alternatives.

40 CFR 1502.14

# EPA's Unique Role in the NEPA Process

## Legislative History, Section 309 of the Clean Air Act:

“It is essential that mission-oriented Federal agencies have access to environmental information and expertise [under NEPA] in order to give adequate consideration to environmental factors.”

Under section 309 EPA reviews and comments on draft EISs, coordinates the public notice of availability and publishes its comment letters on a public database.



# EPA's Unique Role in the NEPA Process

## Section 309 of the Clean Air Act - Statutory Requirements:

- ▶ EPA must review and comment in writing on the environmental impact of other federal agency proposals.
- ▶ The EPA Administrator shall refer (very rare) any proposal deemed unsatisfactory from the standpoint of public health, welfare, or environmental quality to CEQ.



# EPA Provides Subject Matter Expertise on:

Water quality, (wetlands, drinking water and aquifer protection, groundwater remediation)

Air quality

Human health protection, environmental justice

Solid and hazardous waste management, oil and chemical spill prevention and response

Pollution prevention, storm water management, toxic substances, soil contamination and noise.



# EPA's Review Policy

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EPA considers the substantive impacts and the quality of analysis.

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In the rare cases where EPA determines that the potential impacts are environmentally unsatisfactory, the proposed action may be a candidate for referral to CEQ.



# Process and Involvement

## **EPA does not “approve” or “deny” projects**

## **EPA can improve decisions and outcomes:**

- Collaborates with agencies, in advance of EIS publication, to identify and address environmental issues as early as possible
- Serves as “cooperating agency” assisting action agencies with drafting EISs
- Provides comments and recommended remedies to strengthen NEPA analyses
  - ▶ Identifies areas for additional consideration, potentially high impacts, and practicable mitigation



# EPA works closely with Federal agencies to obtain adequate effective mitigation measures

- ▶ Reduce or avoid impacts altogether by not taking a certain action or parts of an action.
- ▶ Minimize impacts by limiting the degree or magnitude of the proposed project and its implementation.
- ▶ Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the proposed project.
- ▶ Correct the impact by repairing, rehabilitating, or restoring the existing environment.
- ▶ Compensate for the impact by replacing or providing substitute resources or environments.
- ▶ Required mitigation – Clean Water Act Section 404: For unavoidable impacts, compensatory mitigation is required to replace the loss of wetland, stream, and/or other aquatic resource functions.



# Environmental Justice

- ▶ Federal agencies have an affirmative obligation to include counties, states and tribes as cooperating agencies during the NEPA/EIA.
- ▶ Environmental Justice relates to the disparate environmental impacts felt by minority and low-income populations in the United States.
- ▶ Presidential Executive Order 12898 and guidance from the CEQ assist Federal agencies to address environmental justice issues in the NEPA/EIA process.- EPA oversees
- ▶ This order asks that “each Federal agency shall analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities, when such analysis is required by the National Environmental Policy Act.”

