

CQ568



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(INSTALLATIONS AND ENVIRONMENT)
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

SEP 23 2002

NEPA Task Force
P.O. Box 221150
Salt Lake City, UT 84122

Dear Sir or Madam:

The enclosure responds to the Council on Environmental Quality (CEQ) invitation for comments on the proposed nature and scope of the NEPA Task Force activities pursuant to the Federal Register notice of July 9, 2002. As requested, we have identified each question by number to facilitate managing the comments.

We recommend that the Task Force be required by CEQ to submit any recommendations concerning NEPA guidance or regulatory changes for review and comment. We further recommend that the Task Force be required to respond to comments on recommended guidance or regulatory changes prior to their being finalized, or otherwise formally disseminated by the Task Force or CEQ.

My point of contact for this matter is Mr. Thomas Egeland at (703) 588-6671. Please feel free to contact him if you have any questions concerning the enclosed response.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donald R. Schregardus".

Donald R. Schregardus
Deputy Assistant Secretary
(Environment)

Enclosure

Department of the Navy Comments to the CEQ NEPA Task Force

A. Technology, Information Management, and Information Security.

Question 1: Where do you find data and background studies to either prepare NEPA analyses or to provide input or to review and prepare comments on NEPA analyses? The information may include scientific and statistical information in printed or electronic form.

A variety of sources are used to assist with data collection for NEPA analyses. The first step is usually an internal search for previously published documents that may be related to our proposed action. This search would be accomplished by using knowledge of previous NEPA actions, web home pages, etc. Other resources utilized are included in the following list.

- Defense Environmental Network and Information Exchange (DENIX)
- United States (US) Census Bureau
- National Oceanic and Atmospheric Administration
- US Geological Survey
- Environmental Protection Agency
- Local environmental coordinator at the military site
- State Coastal Management Programs websites
- Occupational Safety and Health
- NOAA Fisheries Service
- Library of Congress
- U.S. Fish and Wildlife Service
- State EPA websites
- Naval Oceanographic Office
- NASA
- University of Rhode Island
- State of Rhode Island's GIS program
- Woods Hole and Scripps Institute
- NEPA Net as a link to other Federal Agency NEPA web sites
- Technical information from system manufacturer
- Peer reviewed scientific studies

The Navy also utilizes information generated from Navy funded research, particularly on the subject of marine mammals and acoustics.

Question 2: What are the barriers or challenges faced in using information technologies in the NEPA process? What factors should be considered in assessing and validating the quality of the information?

Data used for NEPA analysis often has been collected for a different purpose than environmental impact analysis. Also, long term monitoring data may not be

collected in an area in which the proposed action will occur. Analysts often base the existing conditions on reasonable assumptions and extrapolations.

The accuracy of data found on the internet cannot always be validated, and resolution of contradictions resulting from analyses conducted using different, but equally valid approaches, is not always assured. This results in an increased level of effort to validate the data to ensure accurate analysis in NEPA documents

Question 3: Do you maintain databases and other sources of environmental information for environmental analyses? Are these information sources standing or project specific? Please describe any protocols or standardization efforts that you feel should be utilized in the development and maintenance of these systems.

Installations conducting NEPA analyses and documentation develop databases for specific projects. Consolidation of these databases may be useful, but keeping them current would require extensive resources because of the constant evolution of scientific methodologies and technology. The Navy operates in a wide variety of environments such as in the air, on surface water, underwater, on land, near the beach, etc. These diverse activities require the Navy to consider each action in context with specific environmental conditions. In areas where commonality exists, previous NEPA analyses are reviewed for applicability to the current action and are incorporated as appropriate.

Question 4: What information management and retrieval tools do you use to access, query, and manipulate data when preparing analyses or reviewing analyses? What are the key functions and characteristics of these systems?

The tools used include internet browsers and search engines. Preferred search engines run specific, sensitive queries and locate credible sources of information. Credible data sources come from peer-reviewed, reputable sources (e.g. public, private, or academic).

At some locations, the Navy also utilizes a Geographic Information System for database management, data query, and data manipulation. The benefit for NEPA analysis is the data may be displayed in a visual format for easy viewing by the action proponent and environmental planner.

Question 5: What are your preferred methods of conveying or receiving information about proposed actions and NEPA analyses and for receiving NEPA documents (e.g., paper, CD-ROM, web-site, public meeting, radio, television)?

A combination of paper, electronic messaging, CD-ROM, and websites are preferable for distributing NEPA documents; however, the method is dependent upon the size of the document. Large documents do not lend themselves well to electronic messaging since many organizations have set limits on the size of electronic mail attachments. Likewise, the use of websites may offer a challenge

for those individuals who telecommute and do not necessarily have access to broadband internet services. Websites may also pose information security threats. As a result, mailing CD-ROM copies of the NEPA document may be the best transmittal method, with a second preference being hard copy transmittal. With regard to conveying or receiving other information, websites and e-mail along with newspapers and other media are very effective methods to provide notice of availability. The transmission of any related data should also take into account the technological capabilities of the affected or interested public.

Question 6. What information management technologies have been particularly effective in communicating with stakeholders about environmental issues and incorporating environmental values into agency planning and decision-making (e.g., web sites to gather public input or inform the public about a proposed action or technological tools to manage public comments)? What objections or concerns have been raised concerning the use of tools (e.g., concerns about broad public access)?

Email is the predominant information management tool used. Stakeholders and team members may be located around the world and email overcomes time zone issues. Web sites are useful to post environmental analyses and documents; although, some websites have limited access, firewalls, and other security measures that can be limiting to broad research. Security of email or websites is the biggest concern.

Question 7: What factors should be considered in balancing public involvement and information security?

As it pertains to the military, the detailed analysis of proposed actions, whether a single action or a combination of multiple actions, is not always appropriate to post in the public domain because of national security concerns. Information regarding public health and safety should be given the highest priority for release. Public involvement should be based on need to know relative to public health and safety.

The sensitive nature of historic resources, archeological sites and traditional cultural properties, and endangered species, specifically locations of easily collected species are factors that also need to be taken into consideration, as are force protection measures and the security of critical infrastructure.

B. Federal and Inter-governmental Collaboration.

Question 1: What are the characteristics of an effective joint-lead or cooperating agency relationship/process? Provide example(s) and describe the issues resolved and benefits gained, as well as unresolved issues and obstacles.

An effective collaboration depends on trust. Also, collaborations should include a mutual understanding of the scope of the proposed action and approach, the

ability to directly and openly share information, and the capability to resolve issues or risks to meet the objectives of the project. The process for resolving issues should be agreed upon before any issues arise. The cooperating agencies should identify the best overall resolution of issues. Those resolutions should always be based on factual and scientific data that would stand up to subject matter expert review. An example of good collaboration was the cooperating agency relationship between the Navy and NOAA Fisheries Service (NFS) for the Shock Trial of the USS Winston S. Churchill (DDG-81). Working cooperatively, Navy and NFS were able to leverage the expertise that resides in each agency. For example, the Navy has years of experience identifying explosive propagation fields, while NFS has expertise in the effects of energy on marine mammals.

Effective inter-agency coordination depends on prompt turnaround times of comments and/or actions by all agencies involved. Any potential problems responding within a specified timeframe should be communicated up front and early so a resolution can be obtained. No cooperating agency should fail to meet mutually agreed upon response timelines.

Question 2: What barriers or challenges preclude or hinder the ability to enter into effective collaborative agreements that establish joint-lead or cooperating agency status?

Several Federal agencies operate on a decentralized/regional basis, with each regional office having its own interpretation on regulations. This makes it difficult to achieve an effective collaboration on projects or programs that are national in scope or involve several different regions. Another possible hindrance is the concern that cooperating agencies may become co-defendants in lawsuits.

There is a significant difference between "cooperating" agency and "participating" agency. To have an effective "cooperating" agency relationship, those involved agencies must agree to *cooperate* in achieving the purpose and need of the project.

Question 3: What specific areas should be emphasized during training to facilitate joint-lead and cooperating agency status?

Training should include scientific methodology and its use in environmental effect analysis, environmental law, and the merging of regulatory processes with the NEPA process. Team building, effective negotiation skills, and communications should be included. Any differences in internal regulations for participating agencies should also be highlighted to promote understanding of other agencies' issues.

C. Programmatic Analysis and Tiering.

Question 1: What type of issues best lend themselves to programmatic review, and how can they best be addressed in a programmatic analysis to avoid duplication in subsequent

tiered analysis? Please provide examples with brief descriptions of the nature of the action or program, decisions made, factors used to evaluate the appropriate depth of analyses, and the efficiencies realized by the analysis or in subsequent tiers.

The Marine Corps encourages programmatic approaches to achieve compliance with various resource conservation laws through permits and biological opinions.

Routine, repetitive exercises and their associated training areas should be considered for programmatic review. The review would cover the full anticipated range and typical annual workload of that activity. This type of analysis would evaluate the cumulative impacts better than reviewing individual events. For example, the U.S. Pacific Fleet has adopted a programmatic approach with their bi-annual Navy exercise near the Hawaiian Islands. The programmatic document approach further ensures that required mitigation measures are standardized and adopted in individual exercises.

Question 2: Please provide examples of how programmatic analyses have been used to develop, maintain and strengthen environmental management systems, and examples of how an existing environmental management system can facilitate and strengthen NEPA analyses.

Example 1:

A Programmatic Environmental, Safety, and Health Evaluation (PESHE) document for weapons deployment is designed to identify, assess, and mitigate risks in six environmental and occupational safety/health categories: NEPA, Compliance, Safety and Health, Hazardous Materials Management, Pollution Prevention (P2), and Explosives Safety. The processes used in support of the PESHE (e.g., development of a specific NEPA Strategy to identify requirements throughout the life cycle, screening candidate materials for potential impacts, specific pollution prevention initiatives, etc.) provide a solid mechanism to identify potential concerns and specific program related data necessary for supporting NEPA analyses.

Example 2:

In 1995, the Commander-in-Chief, U.S. Pacific Command (USCINCPAC) identified a need to evaluate the environmental impacts of ongoing and proposed military training land uses concerning military training in the Marianas. Adopting a programmatic approach, the EIS for all future proposed military training in the Marianas was completed in May 1999. Under this approach, covered future training events would not need to be re-analyzed before each exercise; however, new or substantially different events would have to be examined to determine whether there was a need to supplement the EIS.

Efficiencies gained were:

- (a) incorporating site-specific training orders
- (b) streamlining the process of planning training exercises
- (c) ensuring that necessary mitigation would be implemented

- (d) identifying whether or not to continue to use certain lands for future training
- (e) identifying whether or not to adopt new training proposals
- (f) identifying specific training activities which are suitable for specific lands
- (g) mitigation required to offset training impacts on specific training lands

An environmental management system evolved from this effort. A Marianas Training Plan (MTP) was then developed covering five bi-annual training evolutions over a 10-year period. The EIS then assessed the environmental impacts of the proposed training in the MTP. After publication of the EIS, Commander U.S. Naval Forces, Marianas developed the Marianas Training Handbook (MTH). The MTH integrated certain operational training constraints with other training requirements that were set forth in the EIS, and specified the training activities and training sites that had been determined suitable and feasible in terms of mission requirements and the environment. The MTH also addresses environmental monitoring and support, along with an Environmental Awareness Program consisting of a training video and brochures provided to each exercise land participant.

Navy has also prepared four EISs for its test and evaluation ranges. Although the NEPA effort took several years, these programmatic EISs provided Navy and the interested public with valuable information on weapons testing impacts on the local environments.

D. Adaptive Management/Monitoring and Evaluation Plans.

Question 1: What factors are considered when deciding to use an adaptive management approach?

The Navy believes NEPA should not evolve into an adaptive management process. See response to question 2.

Question 2: How can environmental impact analyses be structured to consider adaptive management?

NEPA documents do not lend themselves well to adaptive management. The National Environmental Policy Act requires a definite ending of either a Finding of No Significant Impact or Record of Decision in order to proceed with the proposed action. Other follow-on adaptive management systems can result from mitigation committed to in the NEPA process, but the NEPA process itself should not be continuous.

Question 3: What aspects of adaptive management may, or may not, require subsequent NEPA analyses?

The Navy believes NEPA should not evolve into an adaptive management process. See response to question 2.

Question 4: What factors should be considered (e.g. cost, timing, staffing needs, environmental risks) when determining what monitoring techniques and levels of monitoring intensity are appropriate during the implementation of an adaptive management regime? How does this differ from current monitoring activities?

The Navy believes NEPA should not evolve into an adaptive management process. See response to question 2.

E. Categorical Exclusions.

Question 1: What information, data studies, etc., should be required as the basis for establishing a categorical exclusion?

The establishment of a categorical exclusion (CATEX) should be based on the premise that an action does not result in a permanent and significant change to the existing environment and that an action-related environmental baseline has already been established. The results of a Federal agency EA or EIS addressing similar actions should be used as a basis for establishing a new CATEX. In addition, other CATEXs administered by Federal agencies should be reviewed to determine if any are applicable for use by another agency.

For example, the US Coast Guard (CG) recently identified new CATEXs using the Navy's CATEXs as a benchmark because many of the Navy's actions are similar. The following three examples highlight how the Navy is attempting to use previously approved CATEX from the Air Force to create more environmentally conservative CATEXs for the Navy's use.

Example 1:

Navy Proposed CATEX: "Short-term increases in air operations rate up to 50 percent of the typical operation rate or increases of 50 operations per day, whichever is less." Air Force Approved CATEX: "Temporary (for less than 30 days) increases in air operations up to 50 percent of the typical installation aircraft operation rate or increases of 50 operations a day, whichever is greater. Repetitive use of this CATEX at an installation requires further analysis to determine there are no cumulative impacts."

Example 2:

Navy Proposed CATEX: "Hosting or participating in public events (e.g., air shows, open houses, Earth Day events, and athletic events) where no permanent changes to existing infrastructure (e.g., road systems, parking and sanitation systems) are required to accommodate all aspects of the event." Air Force Approved CATEXs: "Participating in air shows and fly-overs by Air Force aircraft at non-Air Force public events after obtaining FAA coordination and approval," and "Conducting Air Force open houses and similar events, including air shows, golf tournaments, home shows, and the like, where crowds gather at an

Air Force installation, so long as crowd and traffic control, etc. have not in the past presented significant safety or environmental impacts.”

Example 3:

Navy Proposed CATEX: “Actions similar in type, intensity and setting (including physical location and, where pertinent, time of year) to other actions for which it has been determined, in a DON EA or EIS, that there were no significant environmental impacts.” Air Force Approved CATEX: “Actions similar to other actions which have been determined to have an insignificant impact in a similar setting as established in an EIS or an EA resulting in a FONSI. The EPF must document application of this CATEX on AF Form 813, specifically identifying the previous Air Force approved environmental document which provides the basis for this determination.”

Question 2: What points of comparison could an agency use when reviewing another agency's use of a similar categorical exclusion in order to establish a new categorical exclusion?

An agency should be permitted to use identical or directly applicable points from another agency's categorical exclusion to justify its own CATEX. For example, several services and agencies currently operate Unmanned Aerial Vehicles (UAVs) in public and restricted airspace; but, not all of the agencies have a CATEX for UAVs. To ensure applicability, the new CATEX should possibly compare one or more of the following items: location and timing, biological environment, state and local laws and regulations.

Question 3: Are improvements needed in the process that agencies use to establish a new categorical exclusion?

The process for amending an agency's NEPA procedures to include additional categorical exclusions often requires a lengthy period of time. In many cases, it has become more effective to prepare EAs on projects that clearly have no significant impact rather than to amend an agency's implementing procedures. CEQ should consider the following change. When an agency believes that an action clearly has no significant impacts, but lacks an appropriate categorical exclusion, an agency should be allowed to publish in the Federal Register its finding and basis for its finding that the action will clearly not have significant environmental impacts.

F. Additional Areas for Consideration.

The Navy prefers the flexibility the current regulations give on how to prepare an Environmental Assessment. No changes to the current regulations and guidance are recommended for how to develop and prepare an EA.

EIS and EA documents have gotten longer over the past three decades. However, a document's quality is not related to its length. Concise information about areas that could potentially be affected is all that should be extensively analyzed. Areas that have minor environmental impact should receive only a cursory overview. This expansion of NEPA analyses is largely driven by opponents seeking to forestall an action without specific environmental concerns.

Many references to early planning are in the rules, yet more and more regulatory processes are being wrapped into the NEPA process. The regulatory processes require design level information, thus push the "planning" effort into the design effort. CEQ should consider whether this trend should be reversed, and should determine if NEPA should be used as an early planning effort, or a compliance effort.

The Navy recommends that the Task Force evaluate the impact that litigation has had on the NEPA process. Making NEPA documentation "bullet-proof" runs counter to obtaining higher levels of efficiency, clarity, and ease of the agency decision-making process.

During the last decade, several environmental statutes have been enacted and revised procedures/regulations issued regarding consultations and their relationship to the preparation and finalization of NEPA documentation. Many of these consultation processes are open ended in regard to the timely completion of NEPA documentation. Major projects are delayed, and additional, unplanned resources must be expended to maintain expertise and continuity until such processes are completed. While some consultation processes have worked well, such as those with State Historical Preservation Officers, others have not. Recommend CEQ and its Task Force address open-ended consultation processes with a goal of either setting mandatory time periods or issuing guidance on conditional Findings of No Significant Impacts and Records of Decision.

CA568

FAX COVER SHEET

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Pages: 10 Excluding this cover sheet

From: Tom Egeland, Director, Environmental Planning and Conservation Policy

Telephone: (703) 588-6671

You may return a fax to me at (703) 588-8428

Notes: Attached please find the Department of the Navy's response to CEQ's FR notice and request for comments on the NEPA Task Force. Regards, Tom