

National Environmental Policy Act

What is the National Environmental Policy Act?

The National Environmental Policy Act (NEPA) is considered the “Magna Carta” of environmental law; it not only provides a basic foundation for the protection of the environment in the United States, but also creates a process with transparency in which the public can participate.¹ Congress passed NEPA with overwhelming bipartisan support, and President Richard Nixon signed it into law in January 1970.² NEPA promotes informed federal decision-making regarding the environmental impacts of every major action, and encourages actions that protect, enhance and restore the environment.

NEPA often comes under attack by industries and agencies that do not want to undergo the public process or analyze and disclose the negative environmental impacts of their planned actions. But NEPA is an invaluable procedural safeguard that must remain in place. The law requires agencies to consider environmental impacts, and in the process, inform the public of these impacts and allow citizens to voice their concerns. NEPA is a fundamental environmental law in the United States that fosters well-informed, environmentally conscious federal decision-making and must be protected from attacks in Congress or by the administration.

Why does NEPA matter?

The NEPA process protects the public by requiring the government to be open and transparent about the environmental impacts of its decisions. NEPA requires federal agencies to take a “hard look” at the environmental consequences of significant actions before they take them.³

Central to the NEPA review process is the effects and alternatives analysis. Under NEPA, agencies must evaluate proposed actions and their alternatives, and include a detailed statement of environmental impacts “in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.”⁴ Federal agencies must fully analyze the effects of the proposed action, as well as alternatives to the action, on the physical, biological, economic and social environment.

NEPA also includes a public comment process, which provides an opportunity for citizens to express their views on the proposed action and contribute to the planning process. NEPA ensures that agencies make their decisions with high quality information, while engaging and informing the public throughout the planning process.⁵

NEPA also established the Council on Environmental Quality (CEQ).⁶ CEQ oversees the implementation of NEPA by federal agencies, and develops guidelines to help agencies achieve the purpose of NEPA: to make decisions based on an understanding of the environmental consequences and take actions that “protect, restore, and enhance the environment.”⁷ CEQ plays an important role in environmental policy by ensuring federal agencies comply with NEPA and by providing agencies with the guidance they need to carry out environmental reviews.⁸

How does NEPA work?

Federal agencies must produce an Environmental Impact Statement (EIS) for major federal actions that significantly affect the quality of the human environment.⁹ If agencies are unsure of the significance of an action, they may first produce an Environmental Assessment (EA).¹⁰

An EA is a simpler form of environmental review that briefly discusses the needs of the proposal, alternatives to the proposed action, and the environmental impacts of the proposal and alternatives.¹¹ The purpose of an EA is to determine whether the proposed action will have significant impacts on the environment, and if it does, then the agency must produce an EIS.¹²

In the EIS, the agency must describe the proposed action as well as the purpose and need for the action. The agency must also describe the affected environment, which includes the physical, biological, economic and social environment. The agency must fully describe the direct and indirect environmental impact of the action, including cumulative impacts and unavoidable adverse environmental effects.¹³ The agency must also analyze and compare all reasonable alternatives to the action, including a no-action alternative.¹⁴ The alternatives section forms the heart of an EIS. Agencies must “rigorously explore and objectively evaluate all reasonable alternatives.”¹⁵ NEPA does not dictate which alternative the agency ultimately selects; the agency still retains the discretion to select its preferred alternative.

Public comment in NEPA

NEPA regulations require federal agencies to publish a draft EIS and solicit comments from individuals, businesses or organizations that are interested in or affected by the proposal. The public comment process allows citizens to offer their thoughts on the adequacy of the EIS, the merits of the alternatives, or both.¹⁶ The agency must respond to comments in the final EIS. Possible responses include modifying the alternatives, developing and evaluating new alternatives, improving the analysis, or explaining why the comments do not warrant further response.¹⁷ The public comment process ensures government accountability, which leads to more informed government actions.

NEPA and U.S. Oceans

For federal activities affecting the oceans of the United States, such as decisions on recreational and commercial fishing in federal waters, offshore oil and gas exploration and development, offshore wind development, and endangered species protection, NEPA requires agencies to disclose potential impacts, consider alternatives and engage citizens in the public planning process. Agencies like the National Oceanic and Atmospheric Administration and the Bureau of Ocean Energy Management must solicit public input when they are authorizing an activity that will significantly affect the oceans, and they must rigorously analyze alternatives to the proposed activity.

¹ National Environmental Policy Act, [42 U.S.C. §§ 4331–4347](#); [40 C.F.R. 1500.1 \(a\)](#)

² Environmental Law Institute (2010) NEPA Success Stories: Celebrating 40 Years of Transparency and Open Government. In: *Council on Environmental Quality*. 34p. Available: https://ceq.doe.gov/docs/get-involved/NEPA_Success_Stories.pdf.

³ Mandelker D, Glicksman R, Aughey A, McGillivray D, Doelle M (2016) NEPA Law and Litigation. New York, New York: Thomson Reuters. 108p.

⁴ [42 U.S.C. § 4332\(2\)\(c\)](#)

⁵ [40 C.F.R. § 1500.1\(b\)](#)

⁶ [42 U.S.C. §§ 4321, 4342–4347](#)

⁷ [40 C.F.R. § 1500.1\(c\)](#)

⁸ Council on Environmental Quality (1981) Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations. In: *Executive Office of the President*. 29p. Available: <https://energy.gov/sites/prod/files/G-CEQ-40Questions.pdf>.

⁹ [42 U.S.C. § 4332\(2\)\(c\)](#)

¹⁰ [40 C.F.R. § 1508.9](#)

¹¹ [40 C.F.R. § 1508.9\(b\)](#)

¹² [40 C.F.R. § 1508.9\(a\)](#)

¹³ [40 CFR § 1508.7](#); [42 U.S.C. § 4332\(2\)\(C\)\(ii\)](#)

¹⁴ [42 U.S.C. § 4332\(2\)\(C\)\(iii\)](#)

¹⁵ [40 C.F.R. § 1502.14\(a\)](#); [42 U.S.C. § 4332\(2\)\(e\)](#)

¹⁶ [40 C.F.R. § 1503.3\(a\)](#)

¹⁷ [40 C.F.R. § 1503.4\(a\)](#)