



Waterways Management (WWM): Sector Environmental Planning Tactics, Techniques, and Procedures (TTP)



This page intentionally left blank.



CGTTP 3-71.8
7 JAN 2016

COAST GUARD TACTICS, TECHNIQUES, AND PROCEDURES 3-71.8

Subj: WATERWAYS MANAGEMENT (WWM): SECTOR ENVIRONMENTAL
PLANNING

- Ref:
- (a) Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), 40 CFR Parts 1500-1508
 - (b) National Environmental Policy Act, 42 U.S.C. 4321, et seq.
 - (c) National Environmental Policy Act Implementing Procedure and Policy for Considering Environmental Impacts, COMDTINST M16475.1 (series)
 - (d) DHS Instruction Manual 023-01-001-01 (series), Implementation of the National Environmental Policy Act (NEPA)
 - (e) DHS Directive 023-01 (series), Implementation of National Environmental Policy Act
 - (f) Permitting of Regattas and Marine Parades, COMDTINST M16751.3 (series).
 - (g) Coastal Zone Management, Federal Consistency Procedures, COMDTINST M16004.2 (series)
 - (h) Apply NEPA early in the process, 40 CFR 1501.2

1. PURPOSE. To provide sector and marine safety units (MSU) with Coast Guard tactics, techniques, and procedures (CGTTP) on how to effectively and efficiently meet environmental planning requirements within their area of responsibility, including fundamental principles, considerations, processes and documentation.
2. ACTION. This CGTTP publication applies to sector and MSU waterways management staff, but can be leveraged by anyone responsible for environmental planning. Internet release is authorized.
3. DIRECTIVES/TTP AFFECTED. None.
4. DISCUSSION. Environmental planning can be a very challenging process with complex laws and regulations to consider, yet its success is vital to protecting the marine environment and preventing negative impacts from Coast Guard and waterways user activities. Sector commanders and commanding officers of MSUs are responsible for coordinating with Federal, state, and local agency, industry, and public stakeholders to accomplish this. This CGTTP provides novice users with foundational and practical knowledge necessary to understand and implement the environmental planning process. It also provides experienced personnel with a means of referencing current best practices, and standardizes common environmental planning principles across the Coast Guard.
5. DISCLAIMER. This guidance is not a substitute for applicable legal requirements, nor is itself a rule. It provides guidance for Coast Guard personnel and does not impose legally binding requirements on any party outside the Coast Guard.

6. ENVIRONMENTAL IMPACT CONSIDERATIONS.
 - a. The development of this TTP and the information contained within it have been thoroughly reviewed by the originating office, and the Office of Environmental Management (CG-47), and it is categorically excluded under current USCG categorical exclusion #33 per COMDTINST M16475.1D. Because this TTP contains guidance on, and provisions for, compliance with applicable environmental mandates, USCG CATEX #33 is appropriate.
 - b. This TTP will not have any of the following significant cumulative impacts on the human environment: substantial controversy or substantial change to existing environmental conditions or inconsistencies with any Federal, state, or local laws or administrative determinations relating to the environment. All future specific actions resulting from the general policies in this manual must be individually evaluated for compliance with National Environmental Policy Act (NEPA), DHS and USCG NEPA policy, and with all other environmental guidance provided within it for compliance with all applicable environmental laws prior to promulgating any directive. All applicable environmental considerations are addressed appropriately in this TTP.
7. DISTRIBUTION. FORCECOM TTP Division posts an electronic version of this TTP publication to the CGTTP Library on CGPortal. In CGPortal, navigate to the CGTTP Library by selecting **References > Tactics, Techniques, and Procedures (TTP)**. FORCECOM TTP Division does not provide paper distribution of this publication.
8. RECORDS MANAGEMENT CONSIDERATIONS. Integrated Process Team (IPT) members thoroughly reviewed this publication during the TTP coordinated approval process and determined there are no further records scheduling requirements per Federal Records Act, 44 U.S.C. Chapter 31 § 3101 et seq., NARA requirements, and Information and Life Cycle Management Manual, COMDTINST M5212.12 (series). This publication does not have any significant or substantial change to existing records management requirements.
9. FORMS/REPORTS. None.
10. REQUEST FOR CHANGES. Submit recommendations for TTP improvements or corrections via email to FORCECOM-PI@uscg.mil or through the TTP Request form on CGPortal. In CGPortal, navigate to the TTP Request form by selecting **References > Tactics, Techniques, and Procedures (TTP) > TTP Request**.

Info COMCOGARD FORCECOM NORFOLK VA//FC-P// on message traffic containing lessons learned applicable to this TTP publication.

PATRICK J. SHAW
Commander, U.S. Coast Guard
Acting Chief, FORCECOM TTP Division (FC-P)
By Direction of Commander,
Force Readiness Command

Table of Contents

CHAPTER 1: INTRODUCTION.....	1-1
Section A: Introduction.....	1-2
Section B: Notes, Cautions, and Warnings.....	1-5
CHAPTER 2: FUNDAMENTAL PRINCIPLES.....	2-1
Section A: NEPA Laws and Regulations	2-2
Section B: Unit Area of Responsibility	2-3
Section C: Waterways Management Environmental Planning Roles	2-6
Section D: Environmental Planning Compliance Documentation and Administrative Record Keeping	2-8
Section E: Environmental Planning Compliance Relevant Terms	2-13
CHAPTER 3: MARINE EVENT AND LIMITED ACCESS AREA ENVIRONMENTAL REVIEW PROCESS.....	3-1
Section A: Overview	3-2
Section B: Assemble Proposed Federal Action Information	3-3
Section C: Conduct Initial Internal Review.....	3-4
Section D: Conduct External Stakeholder Outreach	3-5
Section E: Analyze Federal Actions and Documents.....	3-7
Section F: Address Environmental Concern Findings.....	3-9
Section G: Complete a DSS Environmental Review Project Entry	3-10
Section H: Address CE Applicability.....	3-12
Section I: Sign the Record of Environmental Consideration	3-13
Section J: Consult With Environmental Reviewer	3-14
Section K: Complete Administrative Record	3-17
Section L: Summary	3-18

APPENDIX A: ACRONYMS	A-1
APPENDIX B: KEY LAWS AND REGULATIONS.....	B-1
APPENDIX C: ENVIRONMENTAL PLANNING AND HISTORIC PRESERVATION DECISION SUPPORT SYSTEM (DSS) USER AID	C-1
APPENDIX D: RECORD OF ENVIRONMENTAL CONSIDERATION WORKSHEET.....	D-1
APPENDIX E: SAMPLE RECORD OF ENVIRONMENTAL CONSIDERATION.....	E-1
APPENDIX F: ENDANGERED SPECIES ACT SECTION 7 CONSULTATION PROCESS AND OVERVIEW .	F-1
APPENDIX G: DHS EPHP DSS OVERVIEW	G-1
APPENDIX H: CG-LGL MEMO ENVIRONMENTAL CONSIDERATIONS FOR EXCLUSIONARY ZONES AND MARINE EVENT PERMITS	H-1
APPENDIX I: NEPA PROCESS MAP	I-1
APPENDIX J: PROJECT DETAILS	J-1
APPENDIX K: ENDANGERED SPECIES ACT SECTION 7 EFFECTS DETERMINATION GUIDANCE.....	K-1
APPENDIX L: MMPA INCIDENTAL TAKE AUTHORIZATION PROCESS	L-1
APPENDIX M: MBTA AND NEPA	M-1
APPENDIX N: CZMA FEDERAL CONSISTENCY PROVISIONS AND PROCESS MAP.....	N-1
APPENDIX O: HISTORIC PRESERVATION ACT SECTION 106 REGULATIONS PROCESS MAP	O-1
APPENDIX P: NEPA PROPONENT SAMPLE DELEGATION LETTER.....	P-1
APPENDIX Q: TEMPLATE FOR CONSULTATION REQUEST COVER LETTER	Q-1
APPENDIX R: TEMPLATE FOR BIOLOGICAL ASSESSMENTS & BIOLOGICAL EVALUATIONS	R-1
APPENDIX S: ENDANGERED SPECIES ACT TECHNICAL ASSISTANCE TEMPLATE	S-1
APPENDIX T: ENDANGERED SPECIES ACT SECTION 7 CONSULT TEMPLATE	T-1

Chapter 1: Introduction

Introduction

This chapter overviews the content of this tactics, techniques, and procedures (TTP) publication. It also defines the use of notes, cautions, and warnings in this publication.

This TTP publication provides actionable, systematic procedures and background on field-level waterways management environmental planning and historic preservation compliance.

In This Chapter

This chapter contains the following sections:

Section	Title	Page
A	Introduction	1-2
B	Notes, Cautions, and Warnings	1-5

Section A: Introduction

A.1. Overview

The National Environmental Policy Act (NEPA) promotes productive harmony between humans and our environment through regulation of Federal actions. Congress intended that NEPA and other related environmental planning and historic preservation mandates would guide USCG agency decisions to protect, restore, and enhance the environment.

NEPA and environmental and historic preservation planning result from systematic, concurrent, and thorough review of proposed actions, analysis and mitigation of significant or potentially significant impacts, and documentation of findings.

The NEPA process helps public officials make decisions based on an understanding of environmental consequences. NEPA procedures require that environmental information is available to the public before the USCG makes decisions and takes actions.

A.2. Environmental Planning Compliance Defined

USCG Federal actions are subject to, and must be consistent with, the procedures and intent of NEPA and related environmental planning and historic preservation mandates. Reference (a) establishes policy requirements that are binding for all Federal agencies implementing NEPA and related statutory requirements.

Before making decisions and taking action, every Federal agency must determine risk to humans and the natural environment. Sector or other field-level waterways managers should review and determine potential impacts of the specific action (e.g., permitting a high-speed boat race).

The depth of environmental analysis on USCG actions depends on the degree of potential impacts associated with the action. Waterways staff can complete three different levels of analysis:

- Categorical exclusions (CE) – most common. See [Chapter 2, Section D](#) for more information.
- Detailed environmental assessments (EA) – rare cases. See [Chapter 2, Section D](#) for more information.
- Environmental impact statements (EIS) – extremely rare cases. See [Chapter 2, Section D](#) for more information.

Although most Federal actions are categorically excluded from further environmental analysis, we cannot assume all situations are CE. Regardless of analysis level required, support findings with a decision document.

A.3. NEPA Compliance

Reference (b), the National Environmental Policy Act (NEPA) requires compliance for all U.S. Coast Guard (USCG) actions deemed “major Federal actions.”

The Council on Environmental Quality (CEQ) regulations in reference (a), Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), 40 CFR Parts 1500-1508, define Federal actions.

The following references also cover Federal actions:

- Reference (c), National Environmental Policy Act Implementing Procedure and Policy for Considering Environmental Impacts, COMDTINST M16475.1 (series).
- Reference (d), DHS Instruction Manual 023-01-001-01 (series), Implementation of the National Environmental Policy Act (NEPA).
- Reference (e), DHS Directive 023-01 (series), Implementation of National Environmental Policy Act.
- Reference (f), Permitting of Regattas and Marine Parades, COMDTINST M16751.3 (series).

Marine event permits and promulgation of field regulations are considered Federal actions.

A.4. District Level Waterways Action

This TTP does not cover district level waterways actions warranting environmental compliance, such as establishing regulated navigation areas, aids to navigation work, or bridge administration. As a best practice, district and sector waterways staff must closely work together on related waterways activities and associated environmental planning and regulatory action paperwork.

NOTE:

To comply with NEPA, waterways managers review systematic environmental checklists and categorical exclusions. Department of Homeland Security (DHS) Environmental Planning and Historic Preservation Decision Support System (EHP DSS, commonly called DSS) is the online tool used by the USCG to document NEPA analyses and decisions. If the system is not available, prepare a hardcopy [record of environmental consideration \(REC\)](#) and enter it into DSS when possible.

A.5. Importance of Environmental Planning and Historic Preservation

Waterways managers play a key role as stewards of the environment by ensuring complete and accurate compliance with NEPA and other related mandates. To ensure the USCG meets its responsibilities under NEPA, perform a thorough NEPA review and take into account all environmental statutes triggered by issuing marine event permits or establishing limited access areas.

NOTE:

Incomplete, or dismissal of, environmental analysis before taking a USCG Federal action could lead to litigation or other issues that hinder operational effectiveness.

A.6. NEPA/ Environmental Planning Review Process

NEPA assists public officials with making informed decisions on Federal actions based on an understanding of environmental consequences. To issue a marine event permit, the environmental planning process must occur concurrently and seamlessly with the early drafting of a regulation or a review.

Chapter 3 has step-by-step instructions for waterways managers on NEPA and environmental planning and historic preservation compliance.

A.7. Scope and Audience

The instruction covers the interval from when waterways managers identify a need for Federal action and ends with a completed environmental analysis. The intended audience is waterways managers.

Section B: Notes, Cautions, and Warnings

B.1. Overview The following definitions apply to notes, cautions, and warnings found in this publication.

NOTE: **An emphasized statement, procedure, or technique.**

CAUTION: **A procedure, technique, or action that, if not followed, results in risk to the safety or security of the port, waterways users, marine environment, or the facilitation of commerce.**

WARNING: *A procedure, technique, or action that, if not followed, carries significant risk to the safety or security of the port, waterways users, marine environment, or the facilitation of commerce, as well as damage to potential or actual prosecutions, defenses, or other litigation involving the USCG.*

This page intentionally left blank.

Chapter 2: Fundamental Principles

Introduction

This chapter describes fundamental and applicable NEPA principles, environmental planning and historic preservation laws, waterways management environmental concerns and roles, and required documentation.

In This Chapter

This chapter contains the following sections:

Section	Title	Page
A	NEPA Laws and Regulations	2-2
B	Unit Area of Responsibility	2-3
C	Waterways Management Environmental Planning Roles	2-6
D	Environmental Planning Compliance Documentation and Administrative Record Keeping	2-8
E	Environmental Planning Compliance Relevant Terms	2-13

Section A: NEPA Laws and Regulations

A.1. Overview To be NEPA compliant, familiarize yourself with environmental planning and historic preservation agencies and compliance laws and regulations that relate to the waterway and the Federal action proposed.

Laws and regulations frequently applicable to waterways actions include, but are not limited to:

- Endangered Species Act (ESA).
- Marine Mammal Protection Act (MMPA).
- Migratory Bird Treaty Act (MBTA).
- Magnuson-Stevens Act-Essential Fish Habitat.
- National Historic Preservation Act (NHPA).
- Coastal Zone Management Act (CZMA).
- Archeological Resource Protection Act (ARPA).
- National Marine Sanctuaries Act (NMSA).

Additional summary information on key laws and regulations are in [Appendix B: Key Laws and Regulations](#).

NOTE:

Waterways managers maintain a strong and current working relationship with their state and local government agencies to comply with applicable federal, state, and local environmental laws and regulations.

Section B: Unit Area of Responsibility

B.1. Overview

Waterways managers should be aware of the different waterways found throughout their area of responsibility (AOR) and how a permit or regulatory action might affect the waterway, a protected species, or a critical habitat.

B.2. Environmentally Sensitive Areas

In order to fully understand a waterway, review available information, such as [U.S. Fish and Wildlife Service \(FWS\)](#), [National Marine Fisheries Service \(NMFS\)](#), and [National Oceanic and Atmospheric Administration \(NOAA\) Environmental Sensitivity Index \(ESI\)](#) web sites describing listed environmentally sensitive sites. Information to help with decision-making is available from your regional FWS and NMFS protected resources office and in unit area contingency plans, past approved NEPA documentation, area site visits, agency meetings, and lessons learned from previous events or exercises.

Understanding waterway concerns within the AOR is critical. Some waterways are less sensitive and busy year-round with commercial and recreational traffic. Others might contain endangered species, historical elements, or critical habitat. No two waterways are exactly alike nor do waterways adjacent to one another have the same environmental concerns.

Specifically, the following is a list of issues to review your AOR for:

- Environmentally sensitive areas.
- Critical habitats.
- Sanctuaries and refuges.
- Marine protected areas.
- Essential fish habitats.
- Migratory routes.
- Presence of ESA listed species.
- Pre-existing environmental guidance for a waterway.
- State coastal zone management plans.
- Historic features or landmarks.

NOTE:

Maintain records of waterway environmental nuances to assist with completing NEPA requirements accurately and in a timely manner. Communicate with environmental agencies, through email, phone calls, and online research to ensure you use the latest guidance.

**B.3.
Stakeholders**

Successful environmental planning compliance includes keeping in contact with various federal, state, and local stakeholders. Work with partners and maintain open communication during event outreach, consulting, analysis, and post-Federal action follow up.

NOTE:

Many field offices maintain email distribution lists for alerting stakeholders of possible waterways actions and for requesting their input. Ensure that the office and point of contact are current.

B.3.a. Federal
Environmental
Regulatory
Agencies

Key Federal environmental regulatory agencies include, but not limited to:

- National Oceanic and Atmospheric Administration (NOAA).
- National Marine Fisheries Service (NMFS).
- U.S. Fish and Wildlife Service (FWS).
- Environmental Protection Agency (EPA).
- U.S. Army Corp of Engineers (USACE).
- Marine sanctuary staff.

B.3.b.
State and Local
Environmental
Regulatory
Agencies

Key state and local environmental regulatory agencies include:

- Coastal Zone Management Program.
- State and Tribal Historic Preservation Officers (SHPO/THPO).
- State Fish and Game or Wildlife staff.
- State Environmental Protection Department.

B.3.c. Non-
Governmental
Organizations

Non-government agencies are another source of information:

- Audubon (for migratory bird information).
- Environmental water quality groups, such as Surfrider Foundation's Blue Water Taskforce, or regional or local area bay/marsh "Keepers."
- Centers for biological diversity or environmental preservation.
- Privately owned marine reserves or parks.
- Recreational boating groups, organizations, and associations.

B.3.d.
Tribal Councils

For some sectors, working with Native American tribal councils is a required part of environmental planning and historic preservation, with region specific guidance and established policies. Consult your servicing legal office for additional guidance regarding compliance with applicable treaties.

B.3.e. Other Non-Regulatory Agencies

Other non-regulatory agencies could include a variety of local government environmental offices.

B.4. Event Factors that Trigger Potential Environmental Impacts

It is important to understand event types and their associated environmental or historical impact. Review marine event permits or vessel traffic associated with a safety zone for the following impacts:

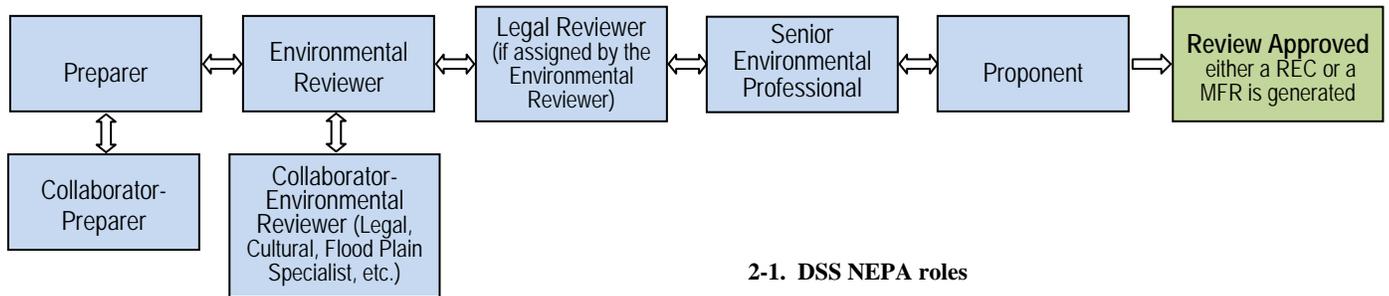
- Location (near marine protected areas, sanctuaries, wetlands, reserves).
 - Motorized vs. non-motorized activity (for water quality pollution).
 - Time of the year (breeding season, migration routes).
 - Speed (shoreline wake damage, pier damage, other water activity collateral damage, collisions with living marine resources).
 - Underwater or above water noise (community, nesting birds, marine mammal haul outs, and other protected marine species).
 - Light (community, nesting birds, marine mammal haul outs, other protected marine species).
 - Duration.
 - Spectator numbers (on the water or onshore adjacent to the waterway).
 - Density (shoreline, on-water).
 - Intensity (severity of impact, direct or indirect impact).
 - Bottom or shoreline disturbing activities (i.e., temporary buoys).
 - Historical environmental controversy.
 - Political controversy.
 - Public concerns.
-

Section C: Waterways Management Environmental Planning Roles

C.1. Overview

Specific roles and responsibilities exist for completing accurate environmental planning and in some instances, historic preservation documents. USCG waterways managers complete the lowest level of NEPA analysis, a REC, or a memorandum of record and track and store EAs and EISs and related environmental compliance documentation in the DSS system, available in the USCG Portal.

The figure below provides an overview of key roles in the DSS, discussed in Section C and later in Chapter 3.



2-1. DSS NEPA roles

C.2. Environmental Preparer

The USCG official who prepares the NEPA documents is the preparer. The preparer is the writer, and is responsible for the quality of the environmental and technical analysis and documentation. The preparer has an initial responsibility to scope the event or activity and recommend the level of further environmental planning compliance. Scoping involves determining the range of actions, alternatives, and impacts to consider in the analysis. Waterways managers and staff serve as preparers.

C.3. Collaborator

The collaborator assists the document primary preparer with project setup or analysis support. In some situations, an outside party prepares the environmental documents. In those situations, the outside party will not show up on or sign the REC itself.

C.4. Environmental Reviewer/Senior Environmental Reviewer

The environmental reviewer and senior environmental professional (which often are the same) review the environmental content of the document to provide feedback to the proponent. The environmental reviewer determines if the analysis and documentation comply with USCG and DHS NEPA, historic resource management, and other environmental planning policies and procedures, and all executive orders.

The environmental reviewer for field-level waterways managers and staff comes from the USCG servicing environmental staff at Civil Engineering Unit (CEU) or Shore Infrastructure Logistics Command (SILC) Environmental Management Division. The servicing environmental staff member has the training and qualification to serve as reviewer and has a NEPA warrant designation, which is mandatory for personnel signing as environmental reviewer.

NOTE:

Sector staff cannot serve as a NEPA reviewer unless Commandant (CG-47) grants a NEPA warrant designation.

C.5. Legal Reviewer

In some situations, the environmental reviewer sends the environmental review to USCG legal staff for input and help before deciding which USCG action is appropriate.

C.6. Proponent

The proponent is the responsible official with authority to decide or develop the final recommendation for a decision on actions analyzed in the NEPA document. The proponent is responsible for NEPA compliance relating to the Federal action.

For most sectors and marine safety units (MSUs), the Captain of the Port performs this function. Proponent designation may be delegated. The individual signing the NEPA documentation must also be the person signing the decision-making document making the action (Marine Event Permit (MEP) or field regulation).

NOTE:

The preparer cannot also be the reviewer or the proponent.

Section D: Environmental Planning Compliance Documentation and Administrative Record Keeping

D.1. Overview For actions that do not have a significant or potentially significant impact, complete a REC to demonstrate compliance with NEPA and other environmental mandates before final action. Preserve all documentation. DSS serves as the USCG repository for NEPA compliance. Use of DSS is mandatory and required by USCG policy.

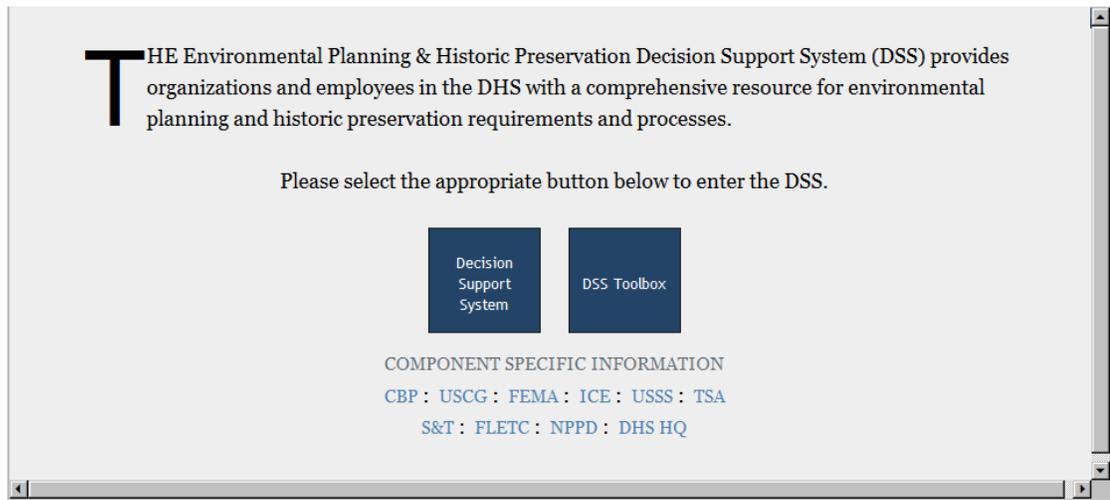
The administrative record is complete documentation of the environmental review process. It contains all correspondence, analyses, and documents.

D.2. DHS Environmental Protection and Historic Preservation – Decision Support System

DSS records all completed decision-making and proposed Federal action details. DSS is a searchable system that captures historical decision-making.

Based on your action, DSS provides NEPA, environmental compliance, and historic preservation related questions to help review the action for potential significant impacts to the environment.

While answering “yes” to one or more of the DSS environmental review questions does not require an EA or an EIS, the presence of any of these circumstances might warrant further evaluation to determine the need for an EA or EIS.



2-2. DSS Login Screen

NOTE:

A DSS job aid is in [Appendix C: Environmental Planning and Historic Preservation Decision Support System \(DSS\) User Aid](#).

D.3. Levels of Environmental Review

There are three levels of environmental reviews, and each creates an administrative record:

- CEs generate RECs or memorandums for record (MFRs).
- EAs generate a finding of no significant impact (FONSI) or indicate that an EIS is required.
- EISs generate a record of decision (ROD).

NOTE:

Chapter 3 describes steps taken that generally lead to a REC. [Chapter 3:J.5 Higher-level Steps for Completing an EA or EIS](#) is a simplified overview of steps in completing an EA or EIS.

D.4. Categorical Exclusions

CEs are a category of actions that do not individually or cumulatively have a significant effect on the human environment. They are not an exemption from NEPA. They are the most common level of paperwork completed by waterways management staff. The environmental reviewer assigns the appropriate CE.

Four CE levels are routinely used in waterways Federal action reviews:

- L60.
- L61.
- L63a.
- L63b*.

NOTE:

Categorical Exclusions with an asterisk require completion of a REC.

D.4.a. L60

An L60 CE establishes regulations, disestablishes regulations, or amends regulated navigational areas and security or safety zones.

- For actions that disestablish or reduce the size of the area or zone, a REC not required.
 - For actions that establish temporary areas and zones that deal with emergency situations that are less than one week in duration, a REC is not required.
 - For actions that establish temporary areas and zones to deal with emergency situations that are one week or longer, prepare a REC and submit after issuance or publication.
-

D.4.b. L61 An L61 CE establishes special local regulations for a regatta or marine parade, which can be in conjunction with a MEP. If a permit is required, the EA includes an analysis of the impact of the regulations. A REC is not required.

D.4.c. L63 An L63 CE issues permits for a regatta or marine parade event. There are two types of L63 events.

D.4.c.(1). L63a An L63a CE applies to events that are not located in, proximate to, or above an area designated environmentally sensitive by an environmental agency of the Federal, state or local government. For example, environmentally sensitive areas might include critical habitats, migration routes for endangered or threatened species, or important fish or shellfish nursery areas.

D.4.c.(2). L63b* An L63b* CE applies to events that are located in, proximate to, or above an area designated environmentally sensitive by an environmental agency of the Federal, state or local government. The USCG decides, based on consultation with the governmental agency, if the event is not expected to affect the environmentally sensitive area significantly.

NOTE:

Under certain circumstances, an action normally considered to be categorically excluded might require additional environmental review (e.g., a proposed marine event that would affect an endangered species). The environmental reviewer and senior environmental professional make the final decision, with a recommendation by the preparer.

D.5. Record of Environmental Consideration

For waterways Federal actions, CEs generate a REC determination. A REC is a brief yet concise summary to justify CE designation. RECs always have signatures of preparer, senior environmental professional, and proponent. If a legal review is requested, then a signature from the legal reviewer is included on the final REC.

The REC document is generated through DSS after unit completes the environmental analysis. The questions help the preparer, environmental reviewers, and proponent determine if the action might have a significant impact under NEPA. Specifically, the REC states that the Federal action is not expected to result in:

- Significant cumulative impacts on the human environment.
- Substantial controversy or substantial change to existing environmental conditions.
- Inconsistencies with Federal, state, or local laws or administrative environmental determinations.

D.5.a. REC Worksheet

Within DSS, there is a series of questions called the REC worksheet. Some of the sample questions include, but are not limited to:

- Is the proposed action associated with any other proposed actions?
- Is the action likely to have a potentially significant effect on public health or safety?
- Is the action likely to have a potentially significant effect on species or habitats protected by the ESA or MMPA?
- Is the action likely to have a potentially significant effect on an environmentally sensitive area?
- Is the action likely to have a potentially significant effect on a historic or cultural resource or traditional and sacred site?
- Is the action likely to have a potential or threatened violation of a Federal, state, or local law or administrative determination imposed for the protection of the environment? (e.g., noise control or hazardous substance handling).
- Is the action likely to be significantly greater in scope or size than normally experienced for this particular category of action?
- Is the action related to other actions with individually insignificant, but cumulatively significant impacts?

NOTE:

See [Appendix D](#): for a sample REC Worksheet and [Appendix E](#): for a sample completed REC.

**D.6.
Memorandum
for Record**

A memorandum for record (MFR) is generated for CEs that do normally require additional environmental analysis review or creation of a REC.

**D.7.
EAs and
Associated
FONSI**

EAs are the next level of analysis above a CE and REC. When the CE does not apply, initiate an EA if the proposed action is to continue.

EAs have three potential outcomes. EAs can generate:

- FONSI
- FONSI with a commitment to mitigate
- Decision to issue an EIS ending in a ROD.

EAs might indicate the need for an EIS. Although waterways managers are not trained to complete EISs, ultimately the field office ensures completion of all types of environmental analysis.

**D.8.
EIS and
Associated ROD**

When appropriate measures cannot mitigate significant impacts, the USCG must prepare an EIS. The EIS lists reasonable alternatives and includes all associated impacts. The EIS also discusses why the preferred alternative was selected.

An EIS generates an ROD.

**D.9.
Administrative
Record Keeping**

The administrative record is the entire documentation package that led to the final decision. All environmental reviews end with a decision document, whether it is an MFR, REC, FONSI, or ROD. The administrative record is your NEPA documentation, record of analysis and decision-making processes to justify the outcome.

Keep all supporting materials in the administrative record. Supporting materials include emails, list of phone conversations, research documentation or other past decision-making records.

The administrative record supports future decision makers by supplying historical information as well as legal proof of USCG compliance with applicable environmental mandates.

NOTE:

To retrieve your administrative record easily, it is important to have unique and consistent file extension names.

Section E: Environmental Planning Compliance Relevant Terms

- E.1. Overview** The waterways manager must understand relevant NEPA terminology to comply with environmental planning. Some terms are specific to a particular environmental planning mandate, and are considered a “Term of Art” as they are specific to an environmental regulatory agency or law. The following list is not comprehensive, but captures key terms and topics related to specific environmental planning laws.
-
- E.2. Human Environment** The term “human environment” is specific to NEPA, and is the natural and physical environment and the relationship of people within that environment. When preparing an environmental review, consider all economic, social, natural, or physical environmental effects if the economic and social effects relate to natural and physical environmental impacts.
- See CEQ regulations definition for more information.
-
- E.3. Significant** The term “significant” is specific to NEPA and means both context and intensity. Context refers to the overall relation of the action and significance to the greater situation, such as local or regional nuances. Intensity refers to the overall severity of the impact, whether historical or cumulative.
-
- E.4. Services** “Services” refers to FWS and NMFS.
-
- E.5. CZMA Consistency Determination** The CZMA protects the nation's coastal areas by authorizing states to develop and implement management programs that preserve, protect, and enhance resources of coastal waters and adjacent lands. Congress empowered states to ensure that Federal activities affecting use or natural resources are consistent, to the maximum extent practicable, with legally enforceable policies of a Federally-approved State Coastal Zone Management Plan (CZMP). This includes direct agency actions, development projects within the coastal zone, and the granting of any Federal license or permits for activities affecting land or water use in the coastal zone.
-

E.5.a. Direct
Federal Activity

For a direct Federal activity, the Federal agency determines if its action affects the state coastal zone even with an approved management plan. If an action affects the coastal zone, the agency must determine if the actions are legally enforceable policies of the state CZMP. At least 90 days before the activity, they submit a consistency determination to the state for concurrence.

The state has 60 days (plus any applicable and appropriate extensions) to concur or object to a USCG activity. If there is no response, concurrence is assumed. For other actions where the USCG might grant a permit, the state has 6 months to concur or object to USCG permitting.

E.5.b.
Consistency
Determination in
Federal Actions

Establishing a limited access area for a marine event, or to ensure safe navigation, is a direct Federal action that might constitute “use” of a state’s coastal resource. A consistency determination might be required. USCG must conduct a consistency determination for each use of a state’s coastal zone, ahead of the proposed Federal action.

E.5.c.
Coastal Zone

The term “coastal zone” means the coastal waters, including lands and adjacent shore lands (including waters), strongly influenced by each other and in proximity to the shorelines. Coastal zone includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches.

The zone extends in Great Lakes’ waters to the international boundary between the U.S. and Canada, and in other areas, seaward to the outer limit of state title and ownership. The zone extends inland from the shorelines only to the extent necessary to control shore lands, which have a direct and significant impact on the coastal waters. By the very nature of its mission, the USCG conducts nearly all activities in the coastal zone, and is potentially subject to the CZMA.

For more information on the CZMA and consistency determinations, see reference (g).

E.6. Take

The word “take” is a term of art in multiple environmental laws, each with a different definition, which can be confusing. Understand and use the appropriate definition of “take” when preparing compliance documents for specific laws. See below for the definition of take from several key environmental law perspectives.

E.6.a. ESA “Take”

Take under ESA means “To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct.”

- FWS defines “harm” to include significant habitat modifications or degradation that results in death or injury to species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering.
 - Harass is defined by FWS, but not NMFS, as actions that create the likelihood of injury to federally listed species as to significantly disrupt normal behavior patterns that include breeding, feeding, or sheltering.
-

E.6.b. MMPA “Take”

Take under the MMPA means to “harass, hunt, capture, kill, or attempt to harass, hunt, capture, or kill any marine mammal.”

Harassment is further defined and sub-divided into level A and level B harassment.

- Level A harassment is conduct that has the potential to injure a marine mammal or marine mammal stock in the wild.
 - Level B harassment is conduct that has the potential to disturb a marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.
 - In the case of a military readiness activity, level A harassment is defined as any act that injures, or has significant potential to injure, a marine mammal or marine mammal stock in the wild. Level B harassment is defined as any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild. These acts disrupt natural behavioral patterns, including, but not limited to migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered.
-

E.6.c. MBTA “Take”

Take under the MBTA means to “pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird, included in the terms of this convention... for the protection of migratory birds... or any part, nest, or egg of any such bird.”

**E.7. Formal
or Informal
Consultation**

ESA, NMSA, and NHPA Section 106 use the term consultation. Informal and formal consultation are “terms of art” specific to ESA. If a proposed activity “may affect” a federally listed species, the Federal agency must informally consult with FWS and NMFS.

Informal consultation is a process where FWS or NMFS concurs or does not concur with a “may affect,” but not likely to adversely affect determination. Informal consultation is not technical assistance.

“Technical assistance” is any discussion, correspondence, phone call, or meeting that occurs before consultation for technical expert information. The administrative record must document technical assistance.

Informal consultation might result in an early determination that the proposed activity is not likely to adversely affect a listed species or critical habitat, thus no formal consultation is needed. However, as part of the consultation process, the agency might conduct a biological evaluation (BE) for further determination. This assessment is not an EA.

**E.8.
ESA Section 7 -
Consulting and
Interagency
Cooperation**

[ESA Section 7](#) consultation requires all Federal agencies to consult with the FWS or NMFS, or both, depending on the potentially affected ESA-listed species. This ensures that the Federal agencies authorize, fund, or carry out actions that do not jeopardize the continued existence of any listed species.

The USCG initially determines whether its actions have any potential to affect listed species or adversely modify their critical habitat.

Consultation begins when:

- USCG notifies the services of proposed action and early pre-decisional determinations.
- USCG requests a species list from the services during technical assistance for the proposed location.

NOTE:

A request for technical assistance does not necessarily lead to informal or formal consultation. It is best if you wish to initiate informal or formal consultation that you always do so writing to the appropriate service.

E.8.a. “May Affect” a listed species

For every proposed action, a Federal agency must determine whether the action “may affect” a listed species or critical habitat. Any time an action “may affect” a listed species or critical habitat, the agency, organization, or individual taking the action is required to consult with the FWS or NMFS under the guidelines contained in Section 7 of the ESA or modify the project to remove the “may affect”.

If the Federal agency determines that the action is likely to adversely affect listed species or critical habitat, initiate formal consultation. Within 135 days from the initiation of formal consultation, FWS or NMFS provides a biological opinion (BO).

E.8.b. Formal Consultation

The formal consultation is conducted when the Federal agency determines that their action is likely to adversely affect a listed species, or adversely affect its critical habitat. A written request is submitted for formal consultation.

Formal consultation might begin if informal consultation does not result in written concurrence letter from FWS or NMFS.

For more information on ESA and Section 7 consultation, see [Appendix F: Endangered Species Act Section 7 Consultation Process and Overview](#).

E.9. Programmatic Consultation

Programmatic consultation provides comprehensive review of large programs or a recurring set of similar actions. Stakeholder agencies review programmatic actions ahead of time, saving the waterway manager time in scoping individual events for impacts to the environment.

The preparer leads programmatic consultation with reviewer assistance. Work closely with FWS and NMFS staff to address an area or type of event to streamline the review process and avoid redundant consultations.

Environmental reviews of annual marine events are done to document and re-comply every quarter, semi-annually, or annually. However, programmatic consultation can be initially time consuming and burdensome on limited staff resources. It is advisable that the reviewer staff and waterways staff examine where programmatic review would be most beneficial (e.g., all sailing events in Puget Sound). Approved programmatic consultations and received compliance can be identified in event scoping emails and documented in the administrative record.

E.10. Listed Species

A species, subspecies, or distinct vertebrate population segment on the Federal lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act.

Refer to general species lists for ESA-listed species and critical habitat under NMFS purview: <http://www.nmfs.noaa.gov/pr/species/esa/> and FWS: <http://www.fws.gov/endangered/>.

E.10.a.
Threatened Species

A threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Federal threatened species are officially designated by FWS or NMFS and added to the threatened species list.

E.10.b.
Endangered Species

An endangered species is a classification of animal or plant in danger of extinction within the foreseeable future, throughout all or a significant portion of its range. Endangered species are officially designated by FWS or NMFS and added to the endangered species list.

E.10.c. Biological Evaluation and Biological Opinion

A biological evaluation (BEs) is information prepared by or under the direction of a Federal agency to determine whether a proposed action is likely to adversely affect a listed species or designated critical habitat.

A BE results in a preparation of a biological opinion (BO) by the services. The BE is a document showing USCG conclusions and supporting rationale. The BE identifies listed or proposed species that “may be present,” describes current habitat conditions within the action area, or describes how the action might affect each protected resource.

Waterways managers rarely, if ever, have to deal with a BE or a BO. However, be aware that a BO addresses the proposed action and the status of the species or critical habitat. It provides analysis of the impact or species or critical habitat likely to be affected. The BO concludes with a jeopardy or no jeopardy decision, adverse or no adverse modification, or provides reasonable alternatives or measures.

A BO always provides an incidental take statement (even if the take is zero). An incidental take statement authorizes the action agency to take a specific number of endangered or threatened species. This is not a permit to take these species, but rather an estimation of how many individuals the service believes will be taken during the course of action.

Chapter 3: Marine Event and Limited Access Area Environmental Review Process

Introduction This chapter steps through the marine event and limited access area environmental review processes.

In This Chapter This chapter contains the following sections:

Section	Title	Page
A	Overview	3-2
B	Assemble Proposed Federal Action Information	3-3
C	Conduct Initial Internal Review	3-4
D	Conduct External Stakeholder Outreach	3-5
E	Analyze Federal Actions and Documents	3-7
F	Address Environmental Concern Findings	3-9
G	Complete a DSS Environmental Review Project Entry	3-10
H	Address CE Applicability	3-12
I	Sign the Record of Environmental Consideration	3-13
J	Consult With Environmental Reviewer	3-14
K	Complete Administrative Record	3-17
L	Summary	3-18

Section A: Overview

A.1. 10-Step Environmental Review Process

The 10-step environmental review process assists the waterways staff with required processing and documenting of NEPA and environmental compliance and historic preservation requirements. Consider each step; however, not all steps are always completed. DSS creates the final administrative record.

Step 1 – Assemble Proposed Federal Action Information

Step 2 – Conduct Initial Internal Review

Step 3 – Conduct External Stakeholder Outreach

Step 4 – Analyze Federal Actions and Documents

Step 5 – Address Environmental Concern Findings

Step 6 – Complete a DSS Environmental Review Project Entry

Step 7 – Address CE Applicability

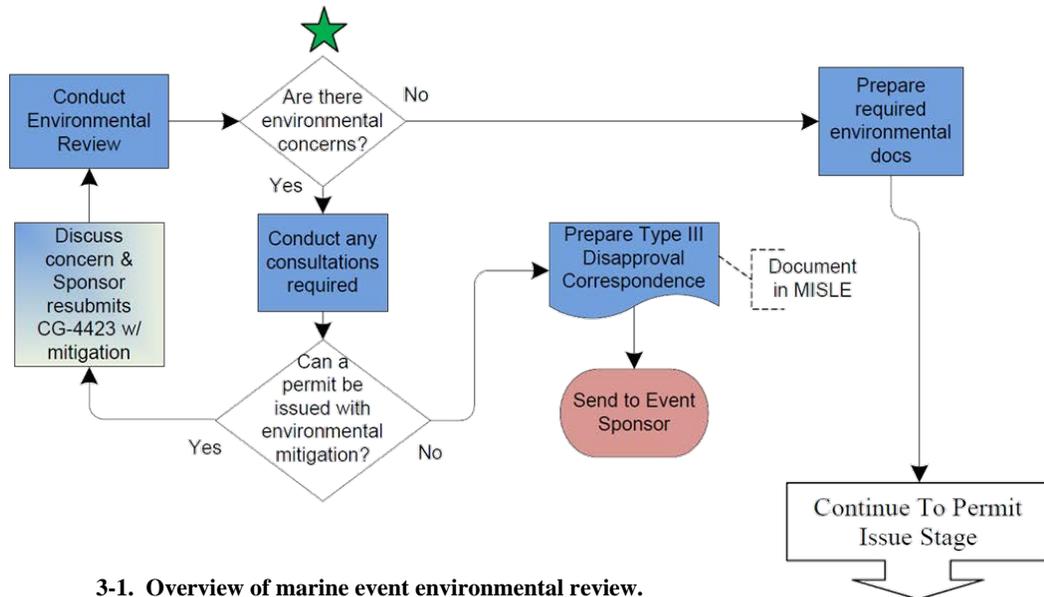
Step 8 – Sign the Record of Environmental Consideration

Step 9 – Consult With Environmental Reviewer

Step 10 – Complete Administrative Record

NOTE:

Do not assume that every waterway action is categorically excluded and results in a REC.



3-1. Overview of marine event environmental review.

NOTE:

Chapter 5 of reference (f) has additional overview of marine event environmental review.

Section B: Assemble Proposed Federal Action Information

B.1. Assemble

Before making any conclusions about the type of environmental impact of the proposed Federal action, compile all relevant information concerning the event. A full understanding of the event helps complete the process in an informed way. Relevant information includes, but is not limited to:

- Marine Event Permit (MEP) applications, including other similar (or past event) permits and related correspondence or unit file documentation.
- Local or state permits.
- Details on the need or desire for proposed safety or security zones.
- Event advertising information.
- Related media information or concerns.
- Related state, local or Federal environmental agency information or previous decision documents, including reports, studies or correspondence, including online resources, such as:
 - NOAA ESI maps (<http://response.restoration.noaa.gov/maps-and-spatial-data/download-esi-maps-and-gis-data.html>).
 - FWS Information, Planning, and Conservation System (IPAC) Web site. IPAC is an online tool that explores the landscape for preliminary FWS species list creation. (<https://ecos.fws.gov/ipac/>)
 - National Marine Sanctuary maps (<http://sanctuaries.noaa.gov/pgallery/atlasmaps/welcome.html>).
- Review unit area contingency plan.

Raise questions about potential environmental effects, for any proposed Federal action, as soon as possible after identifying the Federal action trigger.

Section C: Conduct Initial Internal Review

C.1. Review After assembling all available information in Step 1 (Assemble Proposed Federal Action Information), the preparer looks for immediate concerns, lessons learned from previous events, or best practices relating to the proposed Federal action under review. This review is concurrent to evaluation of the event or action for other navigation impacts or concerns.

NOTE:

Be familiar with the natural environment, operations, and waterway use in the AOR. For most sectors, waterways vary greatly throughout the AOR.

C.2. Data

Become familiar with the following data:

- Seasonal migratory routes.
 - Known sensitive areas or Essential Fish Habitats.
 - Threatened or endangered species.
 - Water level differences.
 - Impact to historic sites (lighthouse, shoreline buildings, shipwrecks).
-

Section D: Conduct External Stakeholder Outreach

D.1. Outreach Per reference (h), the environmental reviewer ensures external stakeholders can review proposed Federal actions to assist with decision-making. Robust external outreach is part of the scoping process to help identify potential concerns that the USCG might not identify.

When Federal, state, or local agencies are notified of the proposed action by the USCG, those agencies might also conduct their own actions or analysis. Sharing the proposed action information with other government agencies as soon as possible assists with timely reviews and feedback.

A sample outreach letter can be found in enclosure (7) of reference (d).

**D.2.
Correspondence
to External
Environmental
Reviewer**

To conduct the outreach, use email, business letters, phone calls, or in person meetings. Ensure the correspondence sent to the external environmental reviewer is clear on the scope of the event, dates, other adjacent events or related actions, and when or how feedback is provided. Verbiage can include:

- “Enclosed is a copy of an Application for Marine Event Permit and supporting documentation for your review. Our office has determined that a Marine Event Permit is not needed for this proposed event. However, we are forwarding the request for your agency review and potential action.”
- “Enclosed is a copy of an Application for Marine Event Permit and supporting documentation for your review. Our office has determined that a Marine Event Permit might be required for this proposed event. We are forwarding the request for your agency review and potential action. Furthermore, we propose to establish marine special local regulations to regulate spectator vessels.”
- “We will review all responses to help determine if our proposed Federal actions will have no significant impact on the human environment.”
- “Following your agency evaluation, advise our office either by fax, email, or letter if your findings concur or do not concur with this proposed event. If your findings do not agree, please include a brief statement describing your disagreement. No response indicates concurrence with the proposed action.”

D.3. NEPA and Environmental Compliance Review Limited to Federal Action

For limited access areas, NEPA and environmental compliance review is limited to the Federal action, not the activity occurring within the limited access areas.

- Example 1: A safety zone established for a boat crash with oil in the water does not need to factor in the pollution, only the actions of the USCG (i.e., patrolling and oversight of the rescue or clean up and the establishment of a safety zone). Based upon previous court decisions, the USCG does not have to consider the environmental impact of actions outside that zone.
- Example 2: For triggering events (i.e., air shows or fireworks events), where a waterways manager decides to permit a portion of the event (i.e., a temporary spectator anchorage viewing area that affects a Federal channel), NEPA only needs to address that specific action.

D.4. Best Practices

Best practices for stakeholder outreach include:

- Use email. Email is fast, thorough, and easy.
- Provide clear directions in correspondence. Share exactly what action we are doing and the extent of the impact.
- Keep in touch with environmental agencies/point of contacts (POCs). Maintain an up-to-date database of stakeholder contact information. Learn what concerns other agencies have.
- When given the opportunity, allow enough time for agencies or the public to respond before taking action.

D.4.a. Bundling Events

When conducting external outreach, bundle similar and less contentious events (e.g., all sailing events, or high-speed boat races with swimming events) or events in similar geographical areas into one email or letter. If bundling, a single environmental outreach project can be completed in the DSS (e.g., for multiple sailing events in Puget Sound between April and July).

Bundling is helpful in AORs when marine events are regularly submitted and managed, and not submitted last minute. Bundling also reduces scoping correspondence.

Section E: Analyze Federal Actions and Documents

E.1. Analyze

Analyze the proposed Federal action and associated documentation per appropriate environmental laws and regulations. For example, for ESA, determine if the action “may affect” ESA-listed species or critical habitat. Although ESA is a major concern, also consider other environmental and historical preservation laws. Determine if the action might affect historic landmarks or a nearby marine sanctuary.

Analyze the proposed Federal action and associated documentation and refer to appropriate environmental laws and regulations. Is there a potential to affect an ESA-listed species or critical habitat?

The analysis of actions and documents builds upon the previous steps. First, look at the proposed action to the waterway. Based on information gathered or previous events or studies, identify any known or ESA-listed or other protected critical species, critical habitat, or other significant impacts that “may affect” the environment.

E.2. Effects Determination

Specifically, under ESA Section 7, effects determination, waterways managers complete a preliminary determination with respect to threatened or endangered species or designated critical habitat. Determinations are:

- No effect.
- May affect, but is not likely to adversely affect.
- May affect, and is likely to adversely affect.

NOTE:

Additional information on environmental laws and their applicability can be found in multiple areas, including:

- DSS toolbox tab. Search “Laws & Regs”
- [Appendix B: Key Laws and Regulations](#)
- Online search

NOTE:

A Federal agency must determine whether an action “may affect” a listed species or its critical habitat. Any time an action “may affect” a listed species, USCG is required to consult with the FWS or NMFS under guidelines contained in Section 7 or Section 10 of the ESA. Alternatively, the project can be modified to remove the term “may affect.”

**E.3. ESA
Consultation**

If the Federal agency determines that the action is not likely to adversely affect listed species, and the appropriate service or services (FWS and NMFS) concur, no further consultation is required. If concerns exist, then further consult with the services. In the correspondence, provide:

- A description of the considered action.
 - A description of the specific area that might be affected by the action.
 - A description of any listed species or critical habitat that might be affected.
 - A description of the manner in which the action might affect a listed species or critical habitat, and an analysis of any cumulative effects.
 - Relevant reports, assessments or other analyses prepared on the proposal.
 - Any other relevant studies or other information available on the action, the affected listed species, or critical habitat.
-

Section F: Address Environmental Concern Findings

F.1. Address Concerns

Address environmental concern findings..

In this step, the environmental preparer addresses concerns identified in Steps 1-4 before adding an environmental administrative record in DSS. Concerns might come from external agencies, internal unit concerns, or an issue with a critical habitat or protected species.

The goal of this step is to correctly and efficiently resolve the issues, or further document in the administrative record. By resolving concerns at the lowest level, or documenting a shared issue, the environmental preparer can document the concern and adjudication actions in the administrative record (DSS narrative).

Miscommunication among the preparer and reviewing organizations is common during the scoping review period over the impact of the Federal action. Concerns might not be brought up immediately. Address concerns as they arise.

This step is repeated in different degrees throughout the process.

NOTE:

Per reference (d), do not include in your MEP what the USCG cannot mandate or enforce. Stipulations can include “not to harm marine animals” or wording like “an approved environmental plan must be provided by the sponsor to the USCG.”

Section G: Complete a DSS Environmental Review Project Entry

- G.1. DSS Access and Overview** Using your analysis findings, complete a DSS environmental review project entry. Access to DSS is at <http://ephdss.dhs.gov>.
- Completing a DSS environmental review project entry is the main section of the waterways environmental compliance and historical preservation requirement. This step covers entering environmental review data into DSS, the required tool for environmental reviews. The preparer uploads all pertinent documentation to facilitate environmental review, to include permit application, maps, pictures, and consultation materials. An entry is only complete when all data is properly entered and the project is forwarded to the environmental reviewer. When the DSS project is submitted, the servicing environmental staff starts a project review.
-
- G.2. DSS User Aid** [Appendix C: Environmental Planning and Historic Preservation Decision Support System \(DSS\) User Aid](#) is a Training Center Yorktown DSS job aid that walks a preparer through the steps required to “add a project.”
-
- G.3. Identifying Concerns** Depending on the answers you provide, a series of environmental resource and cultural resource questions emerges, as seen in [Chapter 2, D.5](#). DSS prompts the preparer to consider applicable environmental laws during the questionnaire portion. Depending on answers provided, the environmental reviewer identifies concerns before issuing a CE.
-
- G.4. DSS Requirement** If you issue a marine event permit and complete a safety, security zone, or a special local regulation, only one DSS project is required for NEPA and environmental compliance documentation. Be sure in your DSS project to include the marine event permit & limited access areas special local regulations (marine events).
-
- G.5. DSS Submission Follow-up** Completing a DSS environmental review project entry ends with two options. After the project is submitted for review:
- Go to the [Section H](#) (Address CE Applicability), if further analysis or documentation support is required by the preparer.
 - Assign a CE level once the DSS project is reviewed. The project is forwarded to the proponent for final signature; skip Section H: Address CE Applicability, and go to Section I: Sign the Record of Environmental Consideration. No further analysis is required unless directed by the proponent.
-

NOTE:

Enter the DSS unique identifier in Marine Information for Safety and Law Enforcement (MISLE), because it is easier to search completed DSS actions using a standardized name or unique number. Conversely, be sure to enter into MISLE your DSS unique identifier.

NOTE:

Do not forget to clearly document outreach actions and results conducted in DSS. DSS has up to 2,000 characters in the narrative portion to describe the waterway manager's actions. It is critical to document in DSS because it helps the environmental reviewer decide on CE applicability.

Section H: Address CE Applicability

H.1. Address Applicability

If additional analysis is required by a stakeholder (i.e., FWS/NMFS) or the reviewer, the preparer addresses CE applicability with further research.

Additional environmental concerns come from environmental reviewer feedback or follow-up concerns by a stakeholder (generally coming from FWS or NMFS). This can happen even after initial external scoping is complete. It is common for the preparer to learn new information or concerns after the DSS submission.

This step might not be necessary. New concerns or additional information required by the environmental reviewer does not always occur, especially with a timely and thorough DSS project submission. However, when concerns are brought up, they must be adjudicated.

To address CE applicability, consider the following options:

- Complete additional information requirements in DSS. Once the project is updated, return to [Section G](#) (completing a DSS environmental review project entry) and have the environmental reviewer resubmit to the proponent. In this sub-step, further understanding of the action is achieved; no further issues exist.
- Find alternatives, modifications, or concurrence to address or reduce potential environmental impact. Return to [Section G](#) (completing a DSS environmental review project entry). In this sub-step, the waterways manager finds potential alternatives to the action with the event sponsor. This could include the sponsor updating their marine event permit application to address certain conditions. Once concerns are addressed, no further issues exist.
- Fail to find modifications or alleviate stakeholder concerns. Go to [Section J](#) (Consult With Environmental Reviewer) for more analysis. A CE might not be applicable.
- For marine event applications, issue a Type III Marine Event Permit denial letter. Additional information on Type III denial letters can be found in reference (d). If a denial letter is issued, update the DSS project to “withdraw” or “put on hold.”

NOTE:

Mitigation measures cannot be added to an action after the fact by the USCG in order to reach a CE. Work with the sponsor to build mitigation into the event from the start, or the sponsor can voluntarily adjust their event to facilitate compliance.

Section I: Sign the Record of Environmental Consideration

I.1. Signing REC When the proponent signs the REC in DSS, the NEPA and environmental compliance review is complete.

NEPA and environmental and historic planning compliance for marine event permitting or Federal regulation promulgation is done when the decision document is complete. In most cases, that is the signed REC based upon applicability of a CE (CE L60, L61, L63a or L63b*). In rare cases, a CE is not applicable and the final decision document might be a FONSI or even a ROD.

For all signed documents, the proponent is ultimately responsible for the required NEPA review and documentation. The environmental preparer maintains good communications with the environmental reviewer, and tracks when the proponent has signed the REC.

Once the REC is signed, go to [Section K](#) (Complete Administrative Record) for the final step.

Section J: Consult With Environmental Reviewer

J.1. Work with Environmental Reviewer

If environmental concerns are identified in [Section H](#) (Address CE Applicability), continue to work with your environmental reviewer for recommended options. These concerns may be an ESA Section 7 effects determination that recommends “may affect, but is not likely (or is likely) to adversely affect”).

J.2. Type III Marine Event Permit Denial Letter

For marine event application denials, an option might be to draft and promulgate a Type III Marine Event Permit denial letter and update a DSS and MISLE administrative record.

- Go to [Section G](#) (Complete a DSS Environmental Review Project Entry) for DSS completion, then to [Section K](#) (Complete Administrative Record).
 - Environmental reasons for disapproval include, but are not limited to “Exposing a wildlife or waterfowl refuge, areas frequented by a threatened or endangered species or other environmentally sensitive areas to adverse impacts of noise, turbulence, or likelihood of physical injury to wildlife, or violating other federal/state laws.”
-

J.3. Environmental Assessment

As you consult with the environmental reviewer, you might need further analysis work beyond the steps involved with a REC and CE.

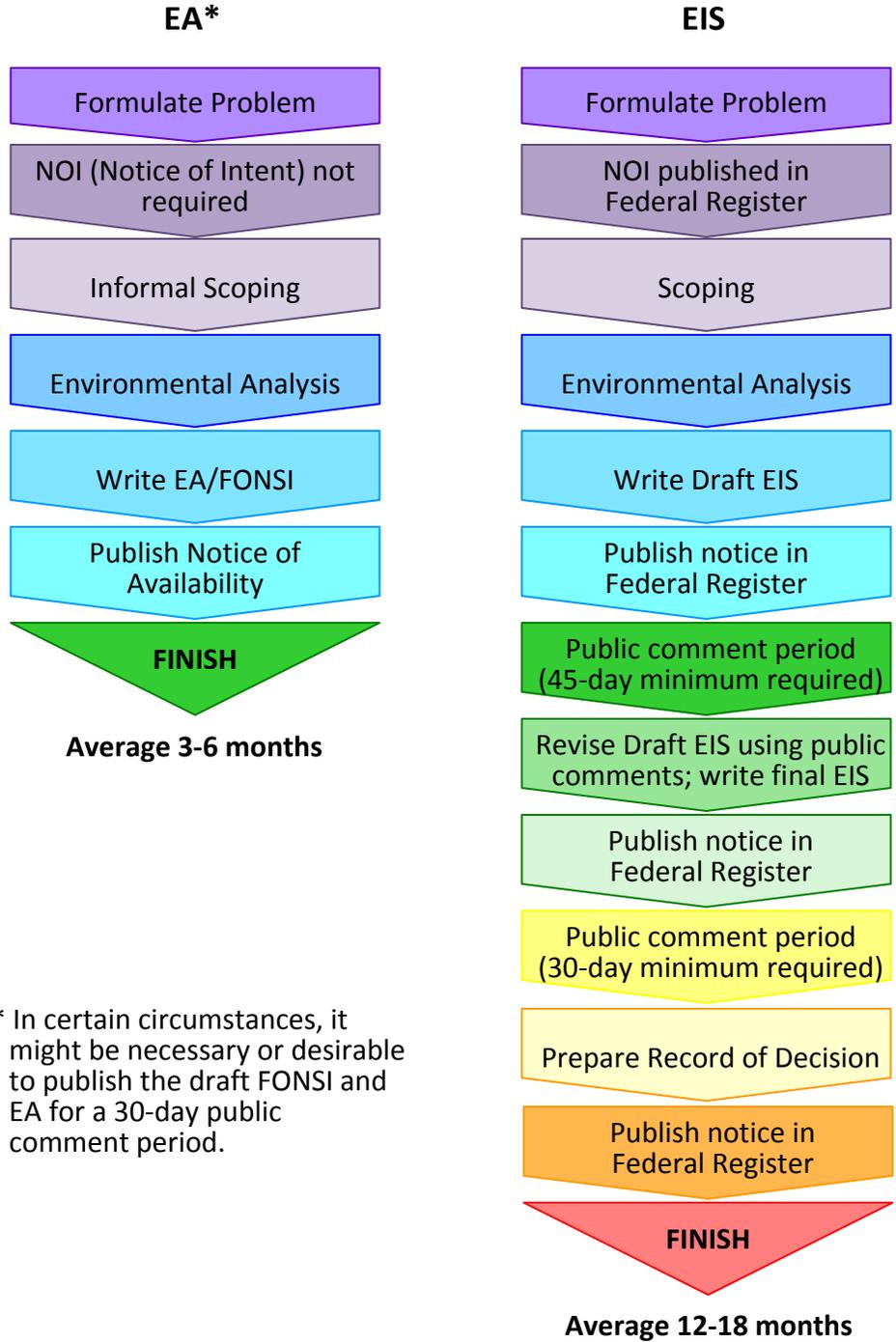
- Initiate planning and responsibilities for starting an EA. Continue until concerns addressed, and return to [Section G](#) (Complete a DSS Environmental Review Project Entry).
- Mitigate concerns and gain concurrence; return to [Section G](#) (Complete a DSS Environmental Review Project Entry).

Throughout your NEPA scoping, it might become apparent that a CE is not sufficient. Persons processing or approving applications for permits or regulations must recognize when you need additional environmental review and preparation of an EA or EIS.

J.4. Extraordinary Circumstance

If an extraordinary circumstance is present for a proposed action, but deemed not to have the potential for significant impact, the reviewer must explain why that circumstance does not have the potential for significant impacts.

J.5. Higher-level Steps for Completing an EA or EIS



* In certain circumstances, it might be necessary or desirable to publish the draft FONSI and EA for a 30-day public comment period.

**J.6. EA or EIS
Preparation**

If a CE is not appropriate, then mitigation is not an option, nor is cancelation of the action. An EA or an EIS must be prepared. The servicing environmental staff can recommend additional environmental review and commencement of an EA.

Work with the environmental reviewer to assist with options, including commencing an EA and discussing staffing, funding, and timelines. Responsibility for the EA remains the preparers or the unit taking the action.

Section K: Complete Administrative Record

K.1. Document Your Decisions

The administrative record documents the decision process. A paper copy of the REC can be printed once complete. Case files, email correspondence, and final paperwork are all part of the administrative record. Keep good records of your decision documents and document how you came up with your decisions. The best way to prove any of the steps described in this document is by inserting supporting materials in the administrative record at the time of the decision.

Once the environmental compliance decision document (majority of times this is the REC) is signed, verify the following:

- The MISLE case number is added to the narrative.
- All related environmental compliance documents are uploaded to the DSS project.
- MISLE includes the unique unit generated DSS project identifier name.

K.2. Litigation

Properly maintained administrative records help during controversies or litigation. Litigation can include finding of fault with the USCG, the unit, or even you personally.

NOTE:

The ESA is one of the laws that allows for finding personal liability.

Section L: Summary

L.1. Summary

You must complete an environmental review of a waterways Federal action. The time to complete an environmental review varies. No two environmental reviews are the same. Although most waterways actions are categorically excluded, in some instances a CE does not apply.

A successful waterways manager has a good relationship with the team, the environmental reviewer and external agencies, and exercises effective project management tracking to facilitate timely analysis.

It is common to enter hundreds of environmental review DSS projects each year for marine events and established limited access areas. Proficiency and professionalism reduces processing time without sacrificing our NEPA Federal responsibility.

NOTE:

The USCG cannot issue a permit or establish a field regulation before completing the NEPA process.

Appendices G through T provide additional information to assist in completing the environmental planning process.

Appendix A: Acronyms

ACHP Advisory Council on Historic Preservation.

AOR Area of responsibility.

APA Administrative Procedures Act.

ARPA Archeological Resources Protection Act.

BE Biological evaluation.

BGEPA Bald and Golden Eagle Protection Act.

BO Biological opinion.

CATEX Categorical exclusion.

CC Consistency certification.

CD Consistency determination.

CE Categorical exclusion (also shown as CATEX).

CEQ Council on Environmental Quality.

CEU Civil Engineering Unit.

CFR Code of Federal Regulations.

CMP Chemicals Management Plan.

CZMA Coastal Zone Management Act.

DEIS Draft environmental impact statement.

DHS Department of Homeland Security.

DSS	Department of Homeland Security (DHS) Environmental Planning and Historic Preservation Decision Support System.
EA	Environmental assessment.
EFH	Essential Fish Habitat.
EIS	Environmental impact statement (see also DEIS and FEIS).
EPA	Environmental Protection Agency.
EPHP DSS	Environmental Planning and Historic Preservation Decision Support System.
ESA	Endangered Species Act.
FEIS	Final environmental impact statement.
FONSI	Finding of no significant impact.
FWS	U. S. Fish and Wildlife Service.
IHA	Incidental harassment authorization.
IQA	Information Quality Act.
LOA	Letter of authorization.
MBTA	Migratory Bird Treaty Act.
MEP	Marine Event Permit.
MFR	Memorandum for record.
MFRs	Memorandums for record.
MISLE	Marine Information for Safety and Law Enforcement.
MMPA	Marine Mammal Protection Act.
MOA	Memorandum of Agreement.

MSU	Marine Safety Unit.
ND	Negative determination.
ND&I	Necessary data & information.
NEPA	National Environmental Policy Act.
NHPA	National Historic Preservation Act.
NMFS	National Marine Fisheries Service.
NMSA	National Marine Sanctuaries Act.
NOAA	National Oceanic and Atmospheric Administration.
OCRM	Ocean and Coastal Resource Management.
OCS	Outer Continental Shelf.
POC	Point of contact.
PRA	Paperwork Reduction Act.
REC	Record of environmental consideration.
ROD	Record of decision.
SHPO/THPO	State and Tribal Historic Preservation Officers.
SILC	Shore Infrastructure Logistics Command (SILC) Environmental Management Division.
TTP	Tactics, techniques, and procedures.
U.S.C.	United States Code.
USCG	United States Coast Guard.
WWM	Waterways management.

This page intentionally left blank.

Appendix B: Key Laws and Regulations

B.1. Marine Mammal Protection Act (MMPA)

The MMPA established a moratorium on the taking and importation of marine mammals and marine mammal products. Moratorium exceptions include scientific research, public display, enhancing survival or recovery of a species or stock, allowable incidental takings, subsistence and traditional activities by Alaskan natives, and hardship exemptions.

Except as specifically allowed under the act or an international agreement to which the United States is a party, it is unlawful for any person to take, possess, or trade a marine mammal or marine mammal product, or to use any method of commercial fishing in violation of regulations issued under the act. The act defines “take” to include harass, hunt, capture, or kill, or to attempt to do any of these things. Two types of authorizations can be obtained from NMFS by Federal agencies if they believe their actions might incidentally “take” marine mammals:

- A Letter of Authorization.
- An Incidental Harassment Authorization. (If there is no potential for serious injury or mortality, or if the potential is negated through mitigation already required under the authorization.)

Marine mammal consultation is often carried out in conjunction with the ESA Section 7 consultation.

B.2. The Migratory Bird Treaty Act of 1918 (MBTA)

MBTA is a [Federal law](#), first enacted in 1916. The statute makes it unlawful to pursue, hunt, take, capture, kill, or sell birds listed as “migratory birds.” The statute does not discriminate between live or dead birds and grants full protection to any bird parts including feathers, eggs, and nests. Over 800 species are on the list.

Currently, there is no allowance, permit, or exemption for incidental take of migratory birds. According to the MBTA, a person, association, partnership or corporation that violates the MBTA or its regulations is guilty of a misdemeanor and subject to a fine of up to \$500, jail up to six months, or both. Anyone who knowingly takes a migratory bird and intends to, offers to, sell, or barter the bird is guilty of a felony, with fines up to \$2,000, jail up to two years, or both. (Permissible fines are increased significantly by the Sentencing Reform Act of 1984, as amended in 1987).

B.3. Endangered Species Act (ESA)

The ESA and its regulations require the USCG, in consultation with the FWS or NMFS, to authorize, fund, or carry out actions that will not jeopardize the continued existence of any listed species or destroy or adversely modify designated critical habitat.

The law also prohibits any action that causes a “take” of any listed species of endangered fish or wildlife. Import, export, interstate, and foreign commerce of listed species are all generally prohibited.

The term “take” is defined by the ESA as: “to harass, harm, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.” “Harm” in the definition of “take” means an act that actually kills or injures protected wildlife. This might include significant habitat modification or degradation where it kills or injures wildlife by impairing essential behavior patterns, like breeding, feeding, or sheltering.

Sections 7 and 10 of the ESA allow the FWS and the NMFS to make exceptions. If the USCG-involved project or action might affect an endangered or threatened species, Section 7 of the Act requires the USCG to consult with FWS and or NMFS to minimize impacts to listed species. Agencies must consult with FWS and or NMFS if their proposed project or action (the term “action” means USCG permits, regulations, and approvals) might or will affect listed species. The FWS and NMFS have established a system of informal and formal consultation procedures.

This act requires Federal agencies to ensure that their activities (authorized, funded, or carried out) do not jeopardize the existence of any endangered or threatened species or destroys or adversely modifies critical habitats. Agencies, like the CG must conserve and not jeopardize listed species.

Under the law, species might be listed as either “endangered” or “threatened.” Endangered means “...any species which is in danger of extinction throughout all or a significant portion of its range...” Threatened means “...any species which is likely to become endangered within the foreseeable future...” All species of plants and animals are eligible for listing as endangered and threatened.

B.4. Magnuson-Stevens Act Compliance

This act governs U.S. marine fisheries management. In 1996, Congress added new habitat conservation provisions in recognition of the importance of U.S. marine fisheries. The act requires cooperation among NMFS, fishery management councils, fishing participants, Federal and state agencies, and others in achieving essential fish habitat protection, conservation, and enhancement.

B.5. Marine Protection, Research and Sanctuaries Act

This act authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries to promote comprehensive management of unique ecological, historical, recreational, and aesthetic resources.

B.6. National Historic Preservation Act (NHPA)

Congress passed the NHPA in 1966 to help prevent loss of irreplaceable historic properties. It created the Advisory Council on Historic Preservation (ACHP) to advise the president and congress on matters involving historic, archeological, and cultural preservation. The Council reviews and comments on all Federal undertakings that might have an effect upon properties listed in the National Register of Historic Places (NRHP). Eligibility criteria for listing in the NRHP determine whether a property is historically significant. Under direction of the Secretary of the Interior, the NRHP includes districts, sites, buildings, structures, and objects significant to America.

Federal managers must develop programs to locate, identify, and evaluate historic resources under their jurisdiction. In addition, submit Federal undertakings that might affect a property eligible for, or listed on, the NRHP to the appropriate State Historic Preservation Officer.

Consultation with the applicable Native American Tribal Historic Preservation Officer is required if historic or cultural resources on tribal land might be affected. A Memorandum of Agreement (MOA) between the Federal agency and ACHP must be adopted for all undertakings that adversely affect historic property eligible for or listed in the NRHP.

Section 106 of the NHPA requires that the USCG consider the impact of any Federal action or issuance of a permit on sites listed on the National Register of Historic Places, which might also include certain tribal lands. Specifically, it requires the USCG to “take into account” the effect a permit might have on historic properties. It allows interested parties an opportunity to comment on the potential impact permits might have on significant archaeological or historic sites.

The main purpose for the establishment of the Section 106 review process is to minimize potential harm and damage to historic properties. Some marine events could have an impact on a historic or archeological site, such as shipwrecks, vessels, bridges, or waterfront structures.

B.7. Salmon and Steelhead Conservation and Enhancement Act

This act provides for enhancement and conservation of salmon and steelhead resources of the U.S.

**B.8.
Coastal Zone
Management Act
(CZMA)**

CZMA encourages states and tribes to preserve, protect, develop, and where possible, restore or enhance valuable natural coastal resources such as wetlands, floodplains, estuaries, beaches, dunes, barrier islands, and coral reefs, as well as fish and wildlife using those habitats. A unique feature of this law is that participation by states and tribes is voluntary. To encourage states and tribes to participate, the act makes Federal financial assistance available to any coastal state, tribe, or territory that develops and implements a comprehensive coastal management program.

Section 307 of the CZMA contains the Federal consistency provision. Federal consistency is when Federal agency activities that have reasonably foreseeable effects on land, water, or natural resources of the coastal zone (also referred to as coastal uses or resources and coastal effects) must be consistent to the maximum extent practicable with the enforceable policies of a coastal state's Federally approved coastal zone management program.

A private individual or business, or a state or local government agency, or any other type of non-Federal entity, applying to the Federal government for a required permit or license or any other authorization, is subject to the CZMA. This includes American Indian and Alaska Native entities applying for Federal authorizations.

**B.9.
Clean Water Act**

This act establishes a national water pollution control program to restore and maintain the integrity of the nation's waters.

**B.10.
Fish and Wildlife
Conservation Act**

This act provides for conservation, protection, restoration, and propagation of certain species, including migratory birds threatened with extinction.

**B.11.
Fish and Wildlife
Coordination Act**

This act requires Federal agencies to consult with the FWS and NMFS, and with applicable state agencies, whenever water resource development plans result in alteration of a body of water.

**B.12.
Wild and Scenic
Rivers Act**

This act establishes the National Wild and Scenic Rivers System. It outlines criteria and procedures so free-flowing streams, or portions of them, could be added to the system.

**B.13.
Executive Order
11990, Protection
of Wetlands**

This order furthers NEPA by directing Federal agencies to avoid long- and short-term destruction or modification of wetlands. It is to avoid direct or indirect support of new construction in wetlands when there is a practicable alternative.

Appendix C: Environmental Planning and Historic Preservation Decision Support System (DSS) User Aid

C.1. EPHP DSS Overview

The EPHP DSS is a transactional data system that captures information for recording the environmental review of actions under a CE. It also serves as the electronic storage location for EAs and EISs.

The system asks questions about environmental impact similar to tax preparation software, where an answer determines the next posed question.

It is a web-based application accessed via the Internet Explorer browser on a standard workstation. The system is used for:

- Mandatory uploading of EAs and EISs.
- Generating a REC for CE action.
- Generating the administrative record for review.
- Generating a memorandum for record.

The authentication scheme used to access the system drafts documents that are electronically signed.

C.2. DSS User Interface

THE Environmental Planning & Historic Preservation Decision Support System (DSS) provides organizations and employees in the DHS with a comprehensive resource for environmental planning and historic preservation requirements and processes.

Please select the appropriate button below to enter the DSS.

Decision Support System DSS Toolbox

COMPONENT SPECIFIC INFORMATION
CBP : USCG : FEMA : ICE : USSS : TSA
S&T : FLETC : NPPD : DHS HQ

C.3. Roles

The system has six roles for reviews:

- **Document preparer** - enters the project into the system, invites project collaborators, and monitors its progress. For USCG CE reviews, the preparer cannot be the same individual as the environmental reviewer.
- **Collaborator-preparer** - prepares document and assists the document preparer with project setup.
- **Environmental reviewer** - performs an environmental review, invites collaborators and legal reviewer if necessary, and assigns the senior environmental professional.
- **Collaborator-environmental reviewer** - assists the environmental reviewer.
- **Legal reviewer** - performs a legal review of the project. Must be a military or Federal lawyer.
- **Senior environmental professional** - provides final signature on the environmental review of the project. Must be a military member or Federal employee.
- **Proponent** - provides final signature on the project. Must be a military member or Federal employee.

NOTE:

Collaborators cannot change the answers to the questions in DSS; they can only comment on preparation or review.

C.4. Individual Roles

An individual can have multiple roles.

Preparers and proponents could be anyone with access to the DHS network.

The following roles are assigned by the component administrators.

- Environmental reviewer (to include collaborators).
- Legal reviewers (must be a military government lawyer or Federal employee).
- Senior environmental professional (must be a military member or Federal employee).

The same individual might be the environmental reviewer and senior environmental professional.

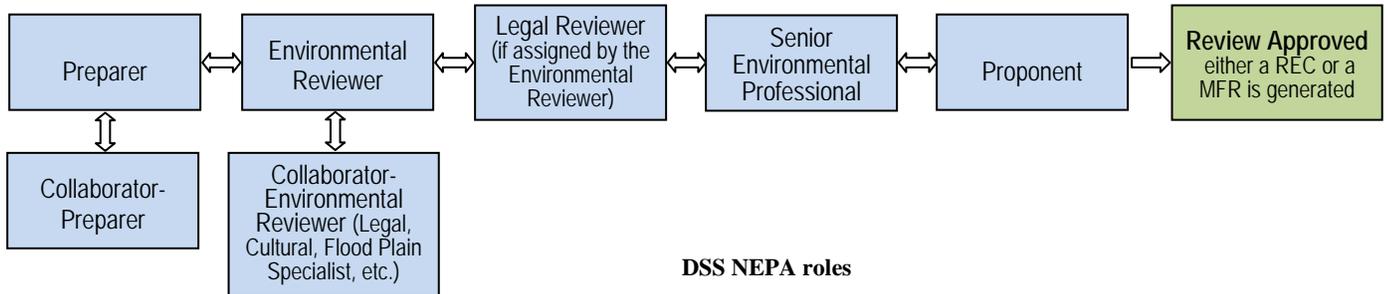
The proponent must be a different individual from the preparer, environmental reviewer or senior environmental professional.

C.5. Administrative Roles

There are administrative roles used in the system:

- DHS DSS Administrator.
- Component DSS Administrator.
- Environmental Manager.

These roles are not used in the review process, but rather they administer the workflow.



C.6. Record of Environmental Consideration

The following names are on the Record of Environmental Consideration:

- Document preparer.
- Senior environmental professional.
- Proponent.

C.7. User Authorization

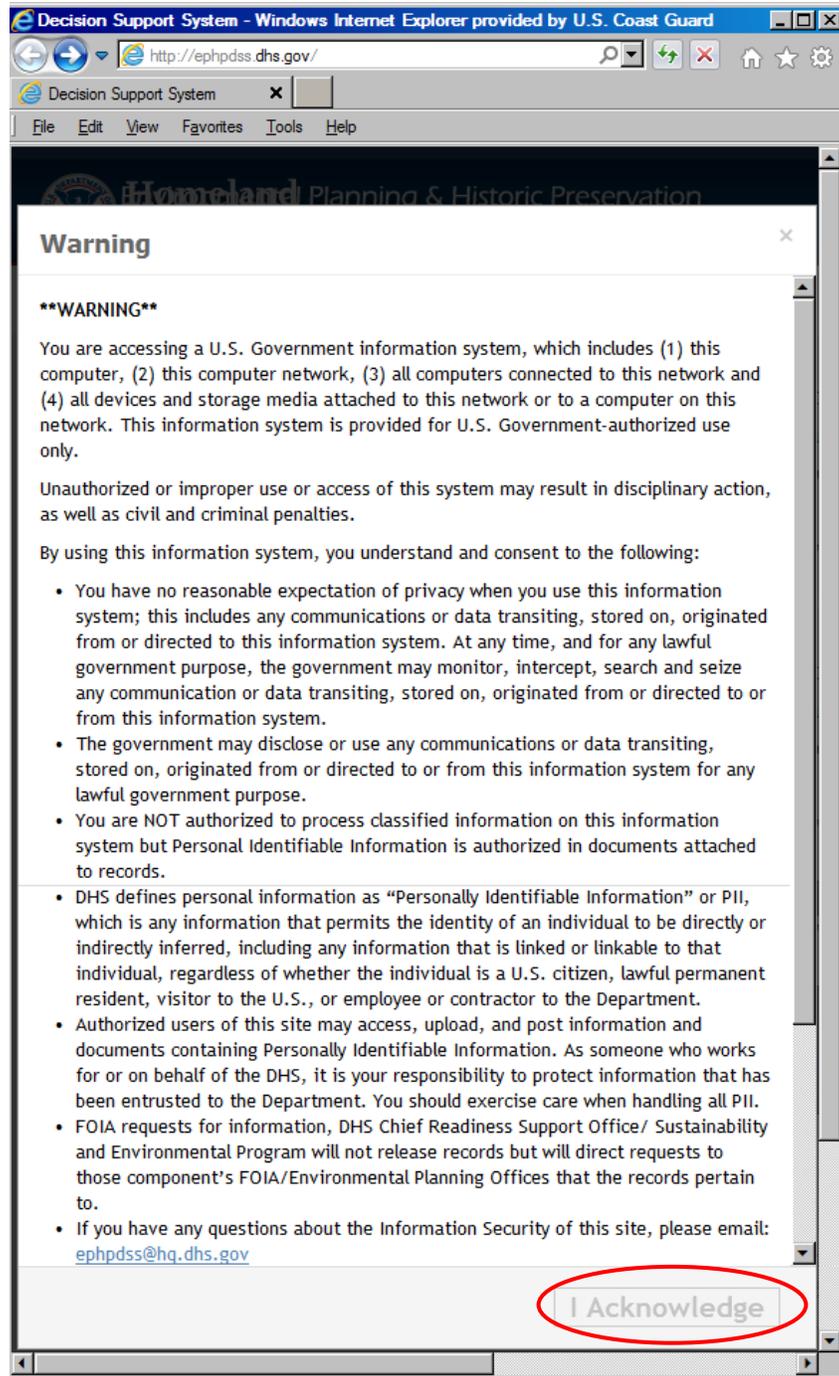
The system uses DHS HQ Office of the Chief Information Officer (OICO) authentication service to authorize users to the system. There are no user names and passwords used in the system. The system is accessible by anyone with DHS network access.

The system is an approved “System of Record” under the DHS Correspondence Records Schedule and is authorized to hold non-classified information as “For Official Use Only” information and “Personally Identifiable Information.”

C.8. Instructions on Adding an Account

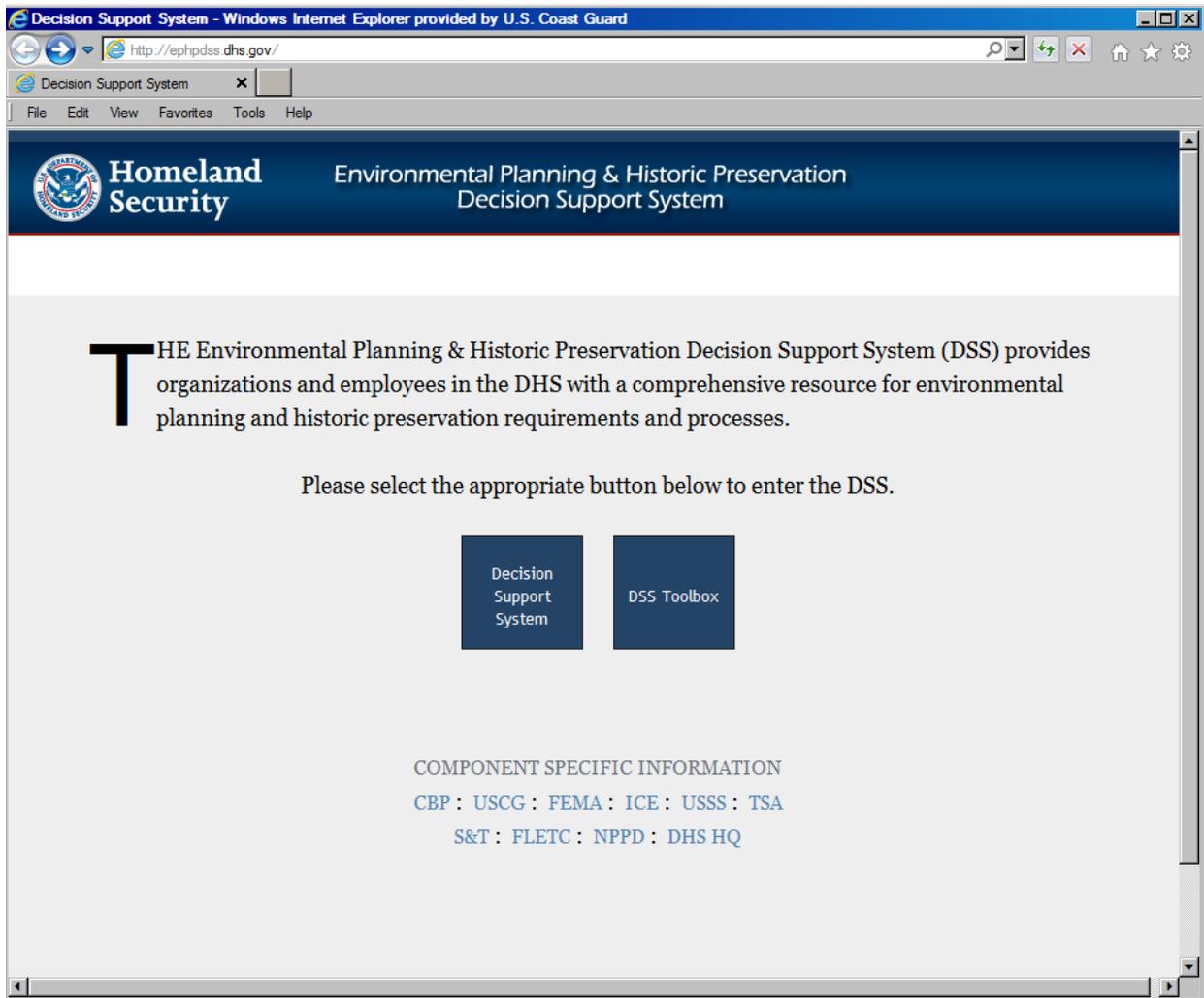
1. Start up the EPHP DSS System by using Web site:
<http://ephpdss.dhs.gov/>

A warning banner appears.



2. At the bottom of the banner, click **I Acknowledge**.

An introduction screen appears.



3. In the introduction screen, click on the box titled **“Decision Support System.”**

An **Accounts Add** screen appears.

Decision Support System - Windows Internet Explorer provided by U.S. Coast Guard

http://ephpdss.dhs.gov/dss_app/Account/New

DHS Connect Decision Support System

File Edit View Favorites Tools Help

Environmental Planning & Historic Preservation
Preservation Decision Support System

Accounts Add

* - denotes a required field

The DSS system requires the following account information in order to properly identify users of the system and their roles.

First Name*

Last Name*

Please make sure to use the internal DHS Email address, which can be found at the [DHS White Pages](#)

Email*

Component*

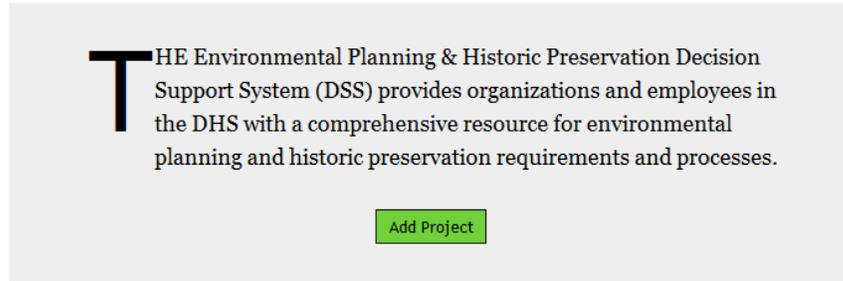
[Privacy](#) | [About](#) | [Support](#)

© U.S. Department of Homeland Security 2014
Release: 20141030

4. If this is your first time logging into the DSS system, enter your user information.
5. Enter first name, last name, and email.
6. In the “Component” drop-down menu, click **USCG – U.S. Coast Guard** as the component.
7. Click **Save**.

C.9. Entering an EA or EIS

After clicking Save, a DSS system explanatory dialog box appears:



1. In the dialog box, click **Add Project** to create a new project.

The Add Project window appears.

Add Project

* - denotes a required field

General

Name*

Security*

Timeframes

FY Funding*

Proposed Project Start*

Proposed Project End*

Not Applicable (project is on-going)

Details

Description*

1500 characters remaining

Optional Description Document

Critical Infrastructure

Project Covered by an Existing EA/EIS?

New EA or EIS is Required?

Project Priority

Federal Assistance?

Estimated Project Cost

Component

Component*

Region/Area

Tracking Number

Type of Permit*

or [Save and Exit](#)

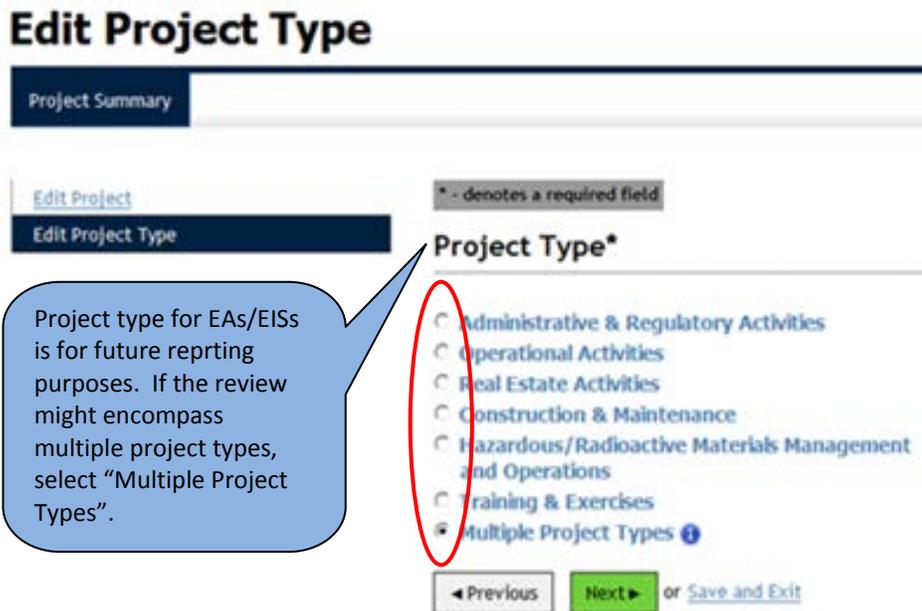
2. Fill in project information.

Fields with an * are mandatory entry fields. The  icons give you more information about the field.

- General (Name, Security).
- Timeframes (FY Funding, Proposed project start, and end date).
- Details (Descriptions, Upload Optional Description Documents).
- Select “New EA or EIS is required?”
- Select “EA.”
- Select “The input for EAs and EISs are the same.”
- Select the USCG Organization that provides DSS Admin Support.

3. After filling in all of the information, click **Next**.

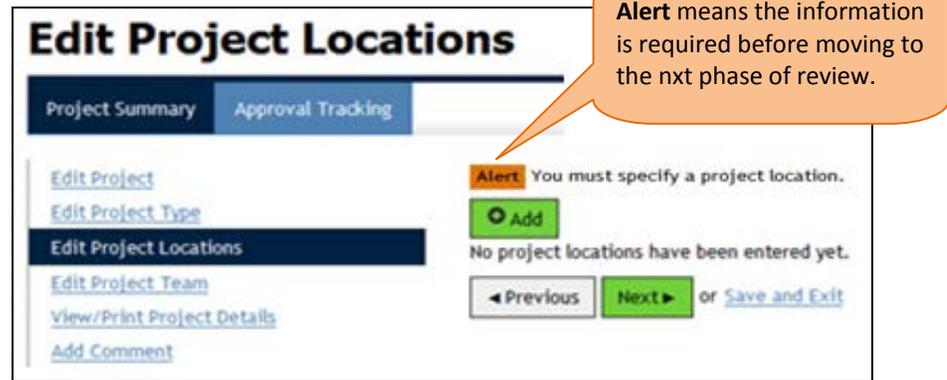
EPHP DSS creates a new review, and the Edit Project Type window appears.



4. Click the radio button for the project type.

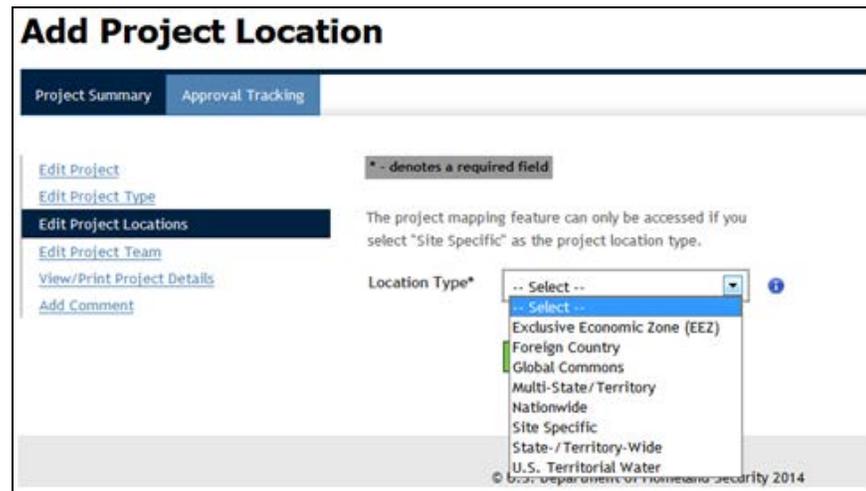
Project type for EAs/EISs is for future reporting. If the review might encompass multiple projects, click **Multiple Project Types**.

The Edit Project Locations window appears.



5. Click **Next**.

The Add Project Location window appears.



6. Use the Location Type drop-down menu to select a location type.

7. Click **Next**.

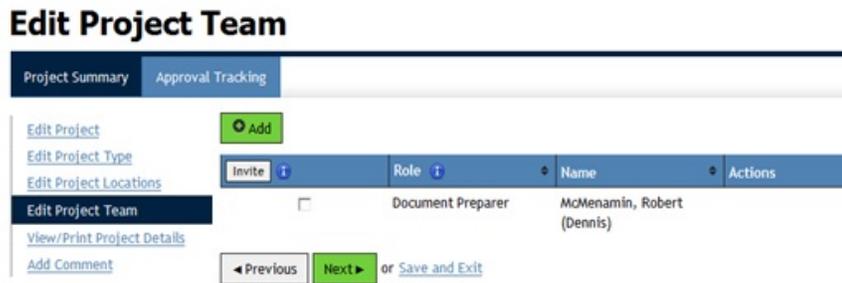
8. Fill in the information, then click **Save**.

The Edit Project Locations window appears.



9. Click **Next**.

The Edit Project Team window appears.



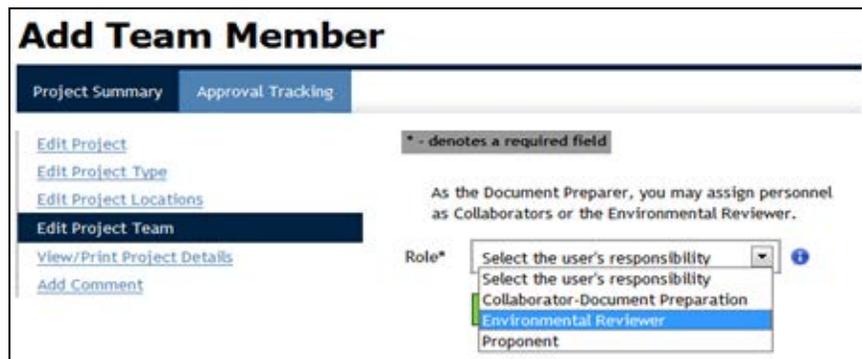
10. Click **Add**.

11. Select user role.

12. Use the drop-down list to select the assigned DSS User/Specialist.

13. Click **Next**.

The Add Team Member window appears.



14. Use the drop-down list to select and add any additional team members.

15. Click **Next**. The Approval Tracking window appears.

Approval Tracking

The screenshot shows the 'Approval Tracking' section of a software interface. At the top, there are two tabs: 'Project Summary' and 'Approval Tracking'. Below the tabs is a 'Project History' link. The main area is titled 'Approval Status' and shows a three-step process: 1. In Preparation, 2. Environmental Review, and 3. Approved. Below this is the 'Approval Actions' section, which contains three buttons: 'Put on Hold', 'Withdraw', and 'Env Review'. Three callout boxes provide definitions for these actions: 'Withdraw' (removes review from queue), 'Put on Hold' (turns off time recorder), and 'Env Review' (sends review to selected).

Withdraw: Removes the review from the queue. An administrator must reset the review before you can work on it again.

Put on Hold: Turns off the review's time recorder.

Env Review: Sends the review to the selected

16. In the Approval Tracking window, select one of the three following choices:

- **Withdraw**
- **Put on Hold**
- **Env Review**

NOTE:

Refer to Coast Guard component specific information on the DSS home page, or contact your servicing CEU or SILC for specific guidance on the process for submitting the document for environmental review.

This completes the EA/EIS preparer entry phase.

C.10.
Entering a CE

When entering a CE, all roles can be used, but the system requires a minimum of two individuals listed on the review.

Start by adding a new project.

1. In the DSS home screen, click **Add Project** on the DSS home screen. Any field with an * is a mandatory entry field. Click  for more information about the field.



2. Add Project appears.
3. Enter all information. Click **Next**.

Add Project

* - denotes a required field

General

Name*

Security* ⓘ

Timeframes

FY Funding* ⓘ

Proposed Project Start* (mm/dd/yyyy) ⓘ

Proposed Project End* (mm/dd/yyyy) ⓘ
 Not Applicable (project is on-going)

Details

Description*
1500 characters remaining

Optional Description Document ⓘ

Critical Infrastructure ⓘ

Project Covered by an Existing EA/EIS? ⓘ

New EA or EIS is Required? ⓘ

Project Priority ⓘ

Federal Assistance?

Estimated Project Cost ⓘ

Component

Component*

Region/Area

Tracking Number

Type of Permit*

or [Save and Exit](#)

A new project or review has been created in the EPHP DSS.

4. Select project type and click **Next**. If the review might include multiple project types, select **Multiple Project Types**.

Edit Project Type

Project Summary

[Edit Project](#)

[Edit Project Type](#)

* - denotes a required field

Project Type*

- Administrative & Regulatory Activities
- Operational Activities
- Real Estate Activities
- Construction & Maintenance
- Hazardous/Radioactive Materials Management and Operations
- Training & Exercises
- Multiple Project Types ⓘ

or [Save and Exit](#)

5. Click **Add** and then click **Next**.

Edit Project Locations

Project Summary | Approval Tracking

[Edit Project](#)

[Edit Project Type](#)

[Edit Project Locations](#)

[Edit Project Team](#)

[View/Print Project Details](#)

[Add Comment](#)

Alert You must specify a project location.

No project locations have been entered yet.

or [Save and Exit](#)

Alert means the information is required before moving to the next phase of review.

6. Select a location type and click **Next**.

Add Project Location

Project Summary | Approval Tracking

[Edit Project](#)

[Edit Project Type](#)

[Edit Project Locations](#)

[Edit Project Team](#)

[View/Print Project Details](#)

[Add Comment](#)

* - denotes a required field

The project mapping feature can only be accessed if you select "Site Specific" as the project location type.

Location Type*

- Select -- ⓘ
- Select --
- Exclusive Economic Zone (EEZ)
- Foreign Country
- Global Commons
- Multi-State/Territory
- Nationwide
- Site Specific
- State-/Territory-Wide
- U.S. Territorial Water

© 2014 Department of Homeland Security 2014

7. Enter in the information.
8. Click **Save** and then click **Next**.

Add Project Location

The screenshot shows the 'Add Project Location' form. At the top, there are two tabs: 'Project Summary' and 'Approval Tracking'. Below the tabs is a navigation menu with links: 'Edit Project', 'Edit Project Type', 'Edit Project Locations' (highlighted), 'Edit Project Team', 'View/Print Project Details', and 'Add Comment'. A note states: '* - denotes a required field'. A message reads: 'The project mapping feature can only be accessed if you select "Site Specific" as the project location type.' The form fields are: 'Location Type*' (dropdown menu with 'Site Specific' selected), 'Address*', 'City*', 'State*' (dropdown menu with 'Start typing a state...' selected), 'County*' (dropdown menu with '-- Select --' selected), and 'Postal Code*'. At the bottom are 'Save' and 'Cancel' buttons.

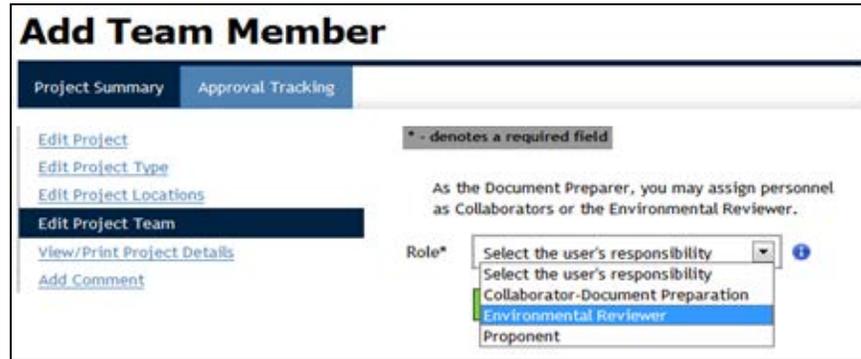
9. **Edit Project Team** appears.
10. Click **Add**.
11. Select the user role.
12. Select the Reviewer.

Edit Project Team

The screenshot shows the 'Edit Project Team' form. At the top, there are two tabs: 'Project Summary' and 'Approval Tracking'. Below the tabs is a navigation menu with links: 'Edit Project', 'Edit Project Type', 'Edit Project Locations', 'Edit Project Team' (highlighted), 'View/Print Project Details', and 'Add Comment'. A green 'Add' button is visible. Below it is a table with columns: 'Invite', 'Role', 'Name', and 'Actions'. The table contains one row with a checkbox, the role 'Document Preparer', and the name 'McMenamin, Robert (Dennis)'. At the bottom are 'Previous', 'Next', and 'Save and Exit' buttons.

Invite	Role	Name	Actions
<input type="checkbox"/>	Document Preparer	McMenamin, Robert (Dennis)	

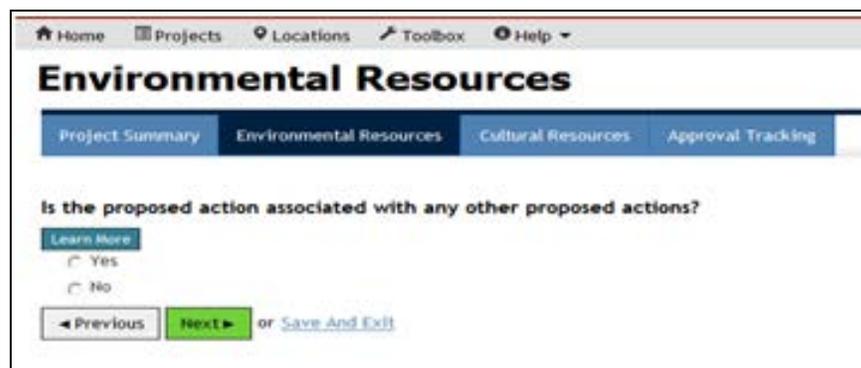
13. Add **Team Member** appears.
14. Select **Add** and add any additional team members.
15. Select user role.
16. Select the Reviewer.
17. Click **Next**.



NOTE:

For USCG CE Reviews, the Preparer cannot be the same individual as the Environmental Reviewer. The same individual might be the Environmental Reviewer and Senior Environmental Professional. In all cases, the Proponent must be a different individual from the Preparer, Environmental Reviewer or Senior Environmental Professional.

18. Click **Environmental Resources**.
19. Answer all of the questions, completing all additional information as necessary by explaining in the available box or uploading files.
20. Click **Next**, **Save and Exit**, or **Log Out**.
21. Review summary of all Environmental Resources questions and click **Next**.



22. Many questions require additional information. If there are pertinent documents such as maps, drawings, charts, and statements you wish to include, click **Upload** to browse your workstation and add these files.

The screenshot shows a web interface titled "Manage Files". At the top, there is a form with a "Name" field containing "FEMA Floodplain Map" and a "File*" field containing "C:\Users\Robert.McMe" with a "Browse..." button. Below the form is a green "Upload" button. Underneath is a table with columns "Name", "Size", and "Actions". The table contains one entry: "FEMA Floodplain Map" with a size of "14.23MB" and a "Delete" button. Below the table, it says "Showing 1 to 1 of 1 entries" and has "Previous" and "Next" navigation links. At the bottom right, there is a green "Done" button.

23. Click **Env Review** to send the review to the selected reviewer.

The screenshot shows a web interface titled "Approval Tracking" for a "Test - Class Project - In Preparation". Below the title is a navigation bar with tabs: "Project Summary", "Environmental Resources", "Cultural Resources", and "Approval Tracking". Under "Project History", there is an "Approval Status" section showing a flow: 1 In Preparation, 2 Environmental Review, 3 Environmental Approval, 4 Proponent Approval, and 5 Approved. Below this is an "Approval Actions" section with buttons for "Put on Hold", "Withdraw", and "Env Review".

**C.11. Tool Box
Functions**

The Environmental Planning and Historic Preservation Decision Support System (DSS) Toolbox is a content management system that complements the EP&HP DSS Web site.

In this toolbox, you can search for laws, regulations, templates, educational information, pre-existing EA and EIS documents, plus more.

Laws and Regulations: A list of environmental and historic preservation laws that you might need to comply with when working on behalf of DHS. The intent of this section is to provide you with the background and practical knowledge needed in the DHS environmental and historic preservation review process. In addition, this section provides you with resources to help conduct the review in a knowledgeable, expeditious, and thorough manner.

Education and Training: A list of educational and training resources.

Templates and Examples: A list of applicable electronic templates, environmental information forms, and example of completed documents.

Search for EA/EIS: A function that allows users to search for an EA/EIS by DHS component, location, document type, title, published date, point of contact, DSS number, or project name.

USCG CAC Card Login Procedures: A list of step-by-step login procedures.

Content for the toolbox is maintained by the EP&HP DSS administrators. If you see something that needs updating, please contact one of the department level system administrators, found in the help section of the EP&HP DSS site.

Appendix D: Record of Environmental Consideration Worksheet

USCG National Environmental Policy Act Record of Environmental Consideration for Categorically Excluded Actions

Introduction
<p>The purpose of this Record of Environmental Consideration (REC) is to provide a record that shows that the potential for impacts to the quality of the human environment has been considered in the decision to implement this proposed action, in compliance with the National Environmental Policy Act of 1969 (NEPA) and DHS Directive 023-01, Revision (Rev) 01, Environmental Planning Program and National Environmental Policy Act (NEPA) Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1D. The NEPA process takes into account other environmental planning and historic preservation (EP&HP) requirements. Signature of the U.S. Coast Guard proponent demonstrates that they have considered the potential for impacts to the human environment in their decision to implement the proposed action, including any conditions in Section II of this REC that may be relevant to the project.</p>
Section I - Description of Proposed Action
1. Title of proposed action:
2. Identifying Number of proposed action (if applicable):
3. Project Security Type:
4. Estimated Start Date:
5. Location of proposed action (e.g., Nationwide, Regional, Site-Specific. If site-specific, provide street address, city, county, state, and GIS coordinates where known):
6. Project Type:
7. Description of proposed action, including its purpose and need and any related or connected actions. You may include as attachments maps, photographs, diagrams, or other information that may assist with the description.
8. Document Preparer:
9. Senior Environmental Professional:
10. Project Proponent:

Section II – Environmental Analysis		
<p>11. CATEX activity. Select one:</p> <p><input type="checkbox"/> The entire proposed action clearly fits within the category of excludable actions set forth as CATEX numbers <Insert CATEX #> in DHS Instruction Manual 023-01-001-01, Rev 01.</p> <p style="text-align: center;">or</p> <p><input type="checkbox"/> The entire proposed action does not clearly fit within the category of excludable actions set forth in DHS Instruction Manual 023-01-001-01, Rev 01.</p> <p>Remarks:</p>		
<p>12. Larger action. Select one:</p> <p><input type="checkbox"/> The proposed action is NOT a piece of a larger action.</p> <p style="text-align: center;">or</p> <p><input type="checkbox"/> The proposed action IS a piece of a larger action.</p> <p>Remarks:</p>		
<p>13. Extraordinary circumstances. Select one:</p> <p><input type="checkbox"/> There are no extraordinary circumstances present that may cause significant environmental impacts.</p> <p style="text-align: center;">or</p> <p><input type="checkbox"/> Extraordinary circumstances are present that may cause significant environmental impacts.</p> <p>Remarks: (Complete sections A through J below.)</p>		
yes	no	For A through J below, check the appropriate box (Yes or No) and provide supporting remarks.
		<p>A. Will the proposed action have a potentially significant effect on public health or safety?</p> <p>Remarks:</p>
		<p>B. Will the proposed action significantly affect species or habitats protected by the Endangered Species Act, Marine Mammal Protection Act, the Migratory Bird Treaty Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other law protecting a species or habitat?</p> <p>Remarks:</p>

		<p>C. Will the proposed action significantly affect historic properties (e.g., district, sites, structures, or objects) that are listed or eligible for listing on the National Register of Historic Places, or will it significantly affect traditional cultural properties or sacred sites, or result in the loss or destruction of a significant scientific, cultural, or historic resource? Attach supporting National Historic Preservation Act Section 106 consultation documentation or justification regarding why it is not necessary for the proposed action.</p> <p>Remarks:</p>
		<p>D. Will the proposed action significantly affect an environmentally sensitive area defined by and DHS Instruction 023-01-001-01, Rev 01 such as prime or unique agricultural lands, coastal zones, designated wilderness or wilderness study areas, wild and scenic rivers, 100-year floodplains, wetlands, sole source aquifers, Marine Sanctuaries, National Wildlife Refuges, National Parks, National Monuments, and essential fish habitats? Attach FEMA floodplain map.</p> <p>Remarks:</p>
		<p>E. Will the proposed action result in a potential or threatened violation of an applicable federal, state, or local law or administrative determination imposed for protection of the environment?</p> <p>Remarks:</p>
		<p>F. Will the proposed action result in an effect on the quality of the human environment that is likely to be highly controversial, highly uncertain, or involve unique or unknown environmental risks? This also includes effects that may result from the use of new technology or unproven technology. Controversy over, including public opposition to, a proposed action absent any demonstrable potential for significant environmental impacts does not itself constitute an extraordinary circumstance.</p> <p>Remarks:</p>
		<p>G. Will the proposed action set a precedent for future actions that have significant effects?</p> <p>Remarks:</p>
		<p>H. Is the proposed action significantly greater in scope or size than is normally experienced for this particular category of action?</p> <p>Remarks:</p>

		<p>I. Will the proposed action significantly degrade an already poor environmental condition at or near the project area? Will the proposed action initiate a significantly environmental degrading influence, activity, or effect in an area not already significantly modified from their natural condition?</p> <p>Remarks:</p>
		<p>J. Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?</p> <p>Remarks:</p>
Section III – Summary of Required Conditions		
<ul style="list-style-type: none"> • Any change to the proposed action that may cause a physical interaction with the human environment will require re-evaluation for compliance with NEPA and other EP&HP requirements before the action can proceed. • This review addresses NEPA and other EP&HP requirements as described in DHS Directive 023-01, Rev 01 and National Environmental Policy Act (NEPA) Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1D. This review may identify the need for additional federal, state, and/or local permits, approvals, etc. required for the proposed action. However, this review may not satisfy all those requirements, and the Proponent is responsible for ensuring that all other applicable federal, state, and/or local permits, approvals, etc. have been obtained. • <Additional conditions as appropriate: 		
Section IV – Finding		
<p>This action is not expected to result in significant adverse environmental impacts as described in the National Environmental Policy Act of 1969 (NEPA). The proposed action has been thoroughly reviewed by the <component name> and it has been determined, by the undersigned, that this action is categorically excluded under current DHS CATEX <insert CATEX #> from further environmental documentation, in accordance with Appendix A of DHS Instruction Manual 023-01-001-01, Rev 01, <i>Implementation of the National Environmental Policy Act</i> since implementation of this action:</p> <ul style="list-style-type: none"> • Clearly fits within one or more of the categories of excludable actions listed in Appendix A of DHS Instruction Manual 023-01-001-01, Rev 01DHS; • Has not been segmented into smaller parts in order to avoid a more extensive evaluation of the potential for significant environmental impacts; • Does not involve any extraordinary circumstances, as defined in Instruction Manual 023-01-001-01 that would create the potential for a normally excluded action to have a significant environmental effect. 		
_____	_____	
Date	Document Preparer	
_____	_____	
Date	Senior Environmental Professional	
<p>In reaching my decision/recommendation on the Management Directorate's proposed action, I have considered.</p>		
_____	_____	
Date	Proponent	

Appendix E: Sample Record of Environmental Consideration

Test-Miami Holiday Boat Parade

DHS National Environmental Policy Act Record of Environmental Consideration for Categorically Excluded Actions

INTRODUCTION
<p>The purpose of this Record of Environmental Consideration (REC) is to provide a record that shows that the potential for impacts to the quality of the human environment has been considered in the decision to implement this Proposed Action, in compliance with the National Environmental Policy Act of 1969 (NEPA) and DHS Directive 023-01, Environmental Planning Program. The NEPA process takes into account other environmental planning and historic preservation (EP+HP) requirements. Signature of the DHS proponent demonstrates that they have considered the potential for impacts to the human environment in their decision to implement the Proposed Action, including any conditions in Section II of this REC that may be relevant to the project.</p>
SECTION I - Description of Proposed Action
<p>1. Title of Proposed Action: Test-Miami Holiday Boat Parade</p>
<p>2. Identifying Number of Proposed Action (if available): DSS-USCG-2015-1945, FY16-102</p>
<p>3. Project Security Type: Unclassified</p>
<p>4. Estimated Start Date: 12/24/2015</p>
<p>5. Location of Proposed Action (e.g., Nationwide, Regional, Site-Specific. If site-specific, provide street address, city, county and state): U.S. Territorial Water: Parade will occur on Miami River in Miami, FL. LAT: XX.XX.XXXX, LONG: XX.XX.XXXX</p>
<p>6. Project Type: Administrative & Regulatory Activities - Approvals of regatta and marine parade event permits for events that are located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal state, or local government and for which the USCG determines, based on consultation with the Governmental agency, that the event will not significantly affect the environmentally sensitive area.</p>
<p>7. Description of Proposed Action, including its purpose and need and any related or connected actions. You may include as attachments maps, photographs, diagrams, or other information that may assist with the description. Holiday boat parade on Miami River. Expect 100 participant vessels and numerous spectators.</p>
<p>8. Document Preparer: Benjamin Earling</p>
<p>9. Senior Environmental Professional: Andrew Haley</p>
<p>10. Project Proponent: Lindsey Braden</p>
SECTION II - Summary of Required Conditions
<ul style="list-style-type: none"> • Any change to the Proposed Action that may cause a physical interaction with the human environment will require re-evaluation for compliance with NEPA and other EP&HP requirements before the action can proceed. • This review addresses NEPA and other EP&HP requirements as described in DHS Directive 023-01. This review may identify the need for additional federal, state, and/or local permits, approvals, etc. required for the Proposed Action. However, this review may not satisfy those requirements and the Proponent is responsible for ensuring that all other appropriate federal, state, and/or local permits, approvals, etc. have been obtained.
SECTION III - Finding

Record of Environmental Consideration (Unclassified)

This action is not expected to result in any significant adverse environmental impacts as described in the National Environmental Policy Act of 1969 (NEPA). The proposed action has been thoroughly reviewed by the U.S. Coast Guard component and it has been determined, by the undersigned, that this action is categorically excluded under current DHS CATEX(L63*) from further environmental documentation, in accordance with Section 3 of DHS Directive 023-01, Environmental Planning Program since implementation of this action:

1. Clearly fits within one or more of the categories of excludable actions listed in Section 3.3 of DHS Directive 023-01;
2. Has not been segmented into smaller parts in order to avoid a more extensive evaluation of the potential for significant environmental impacts;
3. Does not involve any extraordinary circumstances, as defined in DHS Directive 023-01, Appendix A, Section 3 (B)(3), that would create the potential for a normally excluded action to have a significant environmental effect.

10/15/2015 Benjamin Earling

Date Document Preparer

10/15/2015 Andrew Haley

Date Senior Environmental Professional

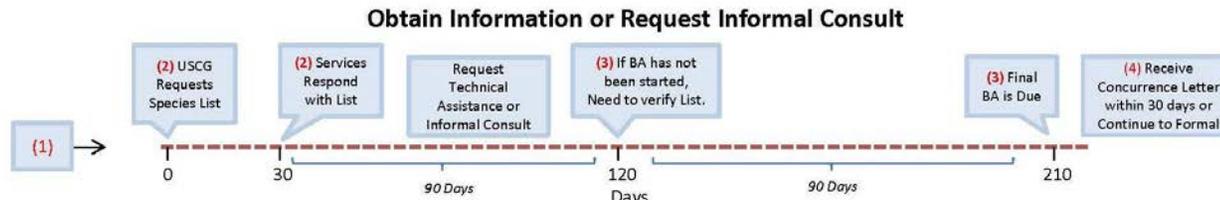
In reaching my decision/recommendation on the U.S. Coast Guard's proposed action, I have considered the information contained in this REC on the potential for environmental impacts.

10/15/2015 Lindsey Braden

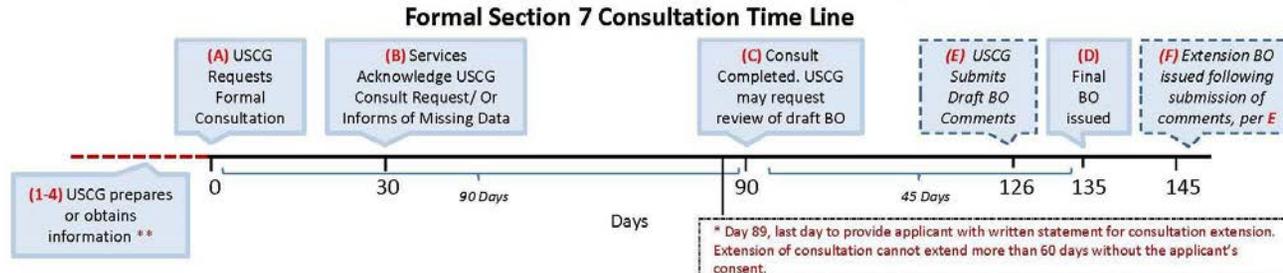
Date Proponent

Appendix F: Endangered Species Act Section 7 Consultation Process and Overview

ESA Section 7 Consultation Timeline



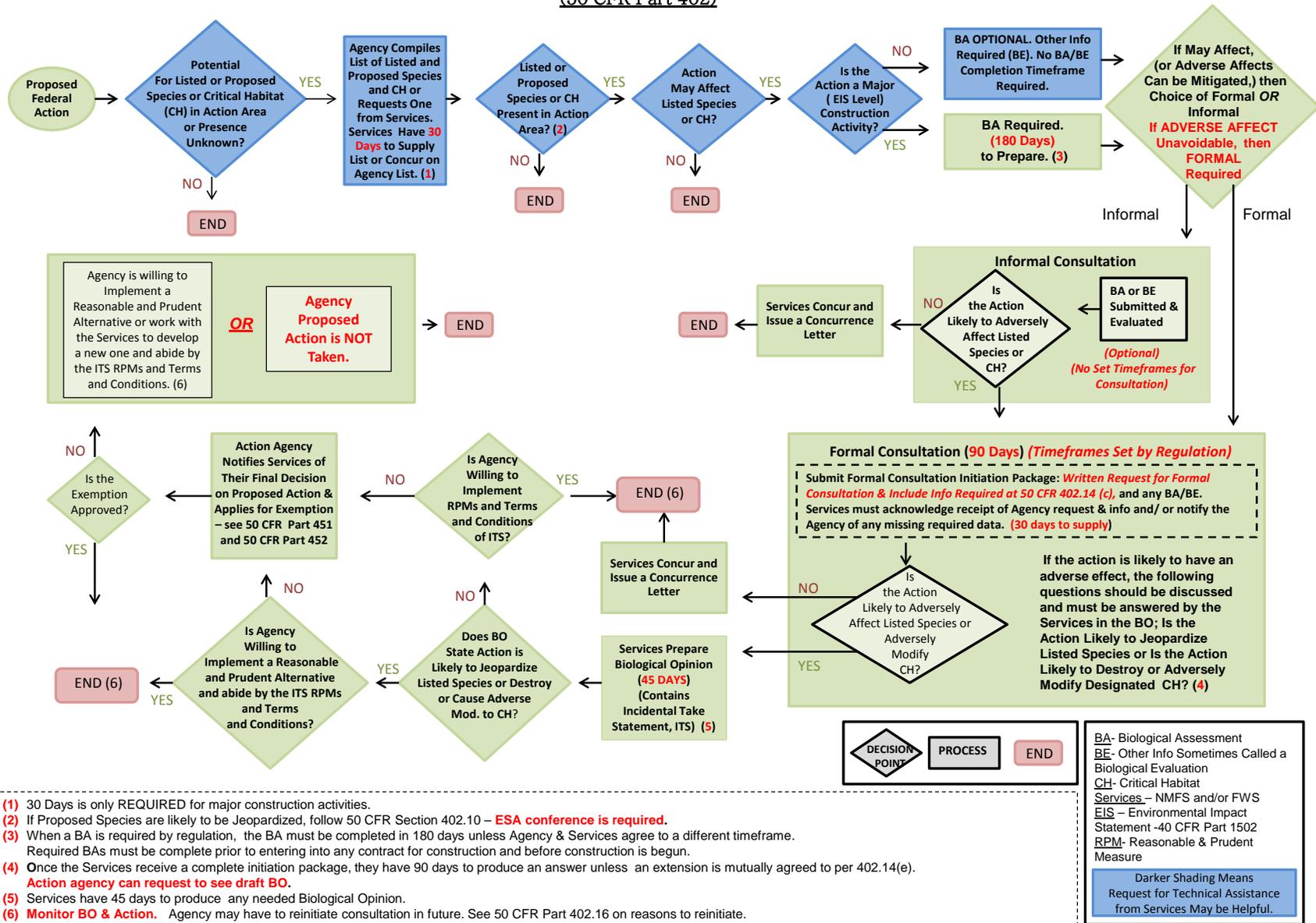
1. Request Technical Assistance – no required timeframes for FWS/NMFS (Services) to respond or conduct informal consultation.
2. Request Species List or concurrence on USCG-prepared species list-Service required to respond in 30 days when working with a major construction activity.
3. USCG prepares appropriate required information for submittal to Services. If a Biological Assessment (BA) is required by regulation, the USCG has 180 days* to complete the BA. If the USCG does not begin a required BA within 90 days of receiving the species list or concurrence on the USCG list from the Services, then the list must be verified as still accurate with the Services at the time the preparation of the BA is begun.
4. Finalize Informal Consultation with a Concurrence Letter from Services or continue to Formal if it is likely to Adversely Affect a species.



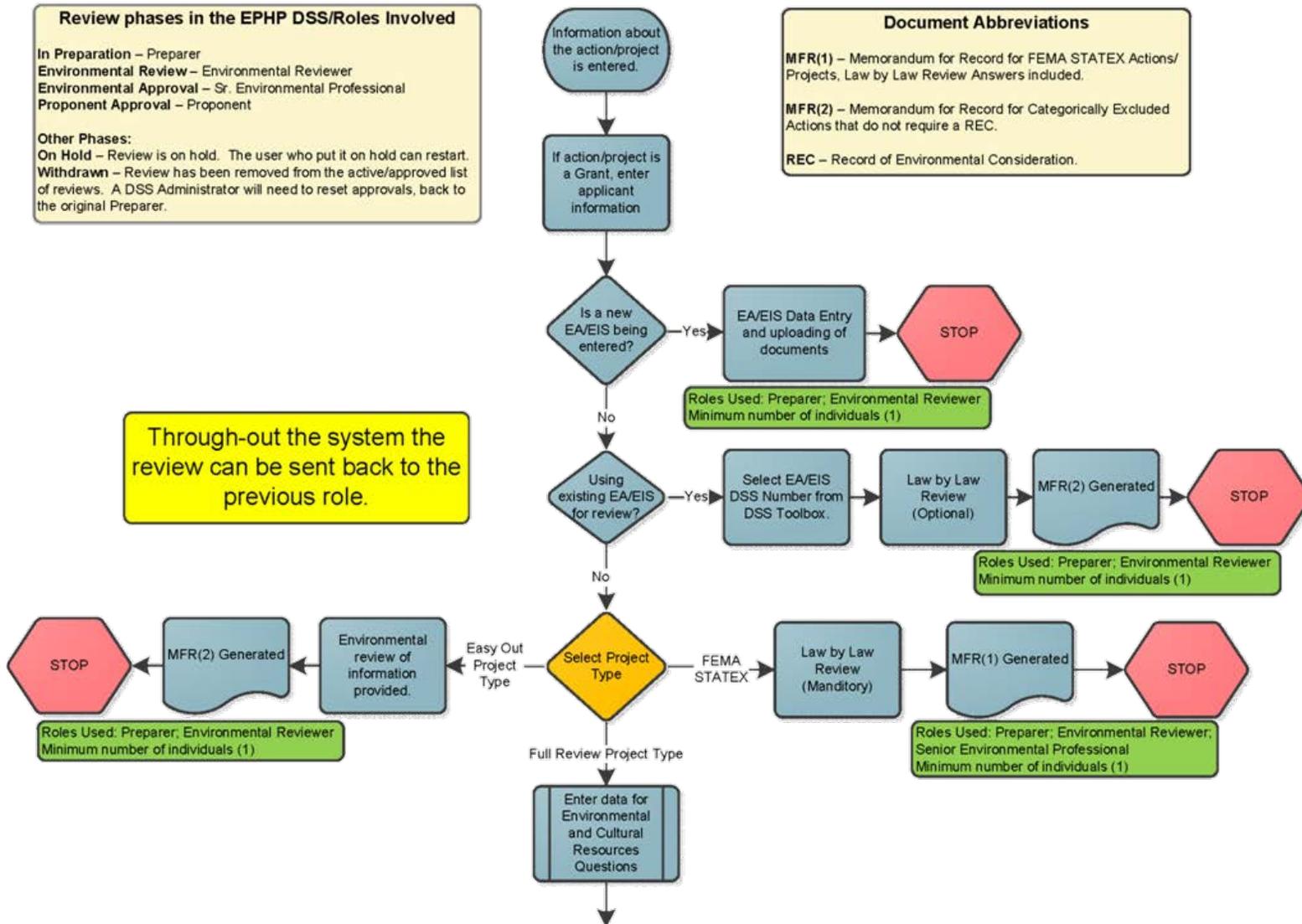
- A. Services receive **USCG request for formal consultation** (complete consultation package which includes information required at 50 CFR 402.14c and required BA if action is a “major construction activity.”) 90 day Consultation clock starts if package is complete.
- B. Deadline for Services to send **written acknowledgment of consultation request** and advise the USCG of any data deficiencies. (Consultation clock does NOT start until info is complete).
- C. Due date for **completion of consultation** initiated on Day A (90 days to complete consultation).
- D. Due date for Services to **complete a Biological Opinion (BO)** on the consultation initiated on Day A (Services have 45 days to prepare and complete BO).
- E. *Hypothetical Receipt of USCG draft BO comments, IF USCG requests to comment on draft BO.*
- F. **Extended due date for final BO, when USCG comments are received on Day E** (If USCG comments are received any time within 10 days of the deadline for completion of the BO, the Services are entitled to an automatic 10-day extension on the deadline.)

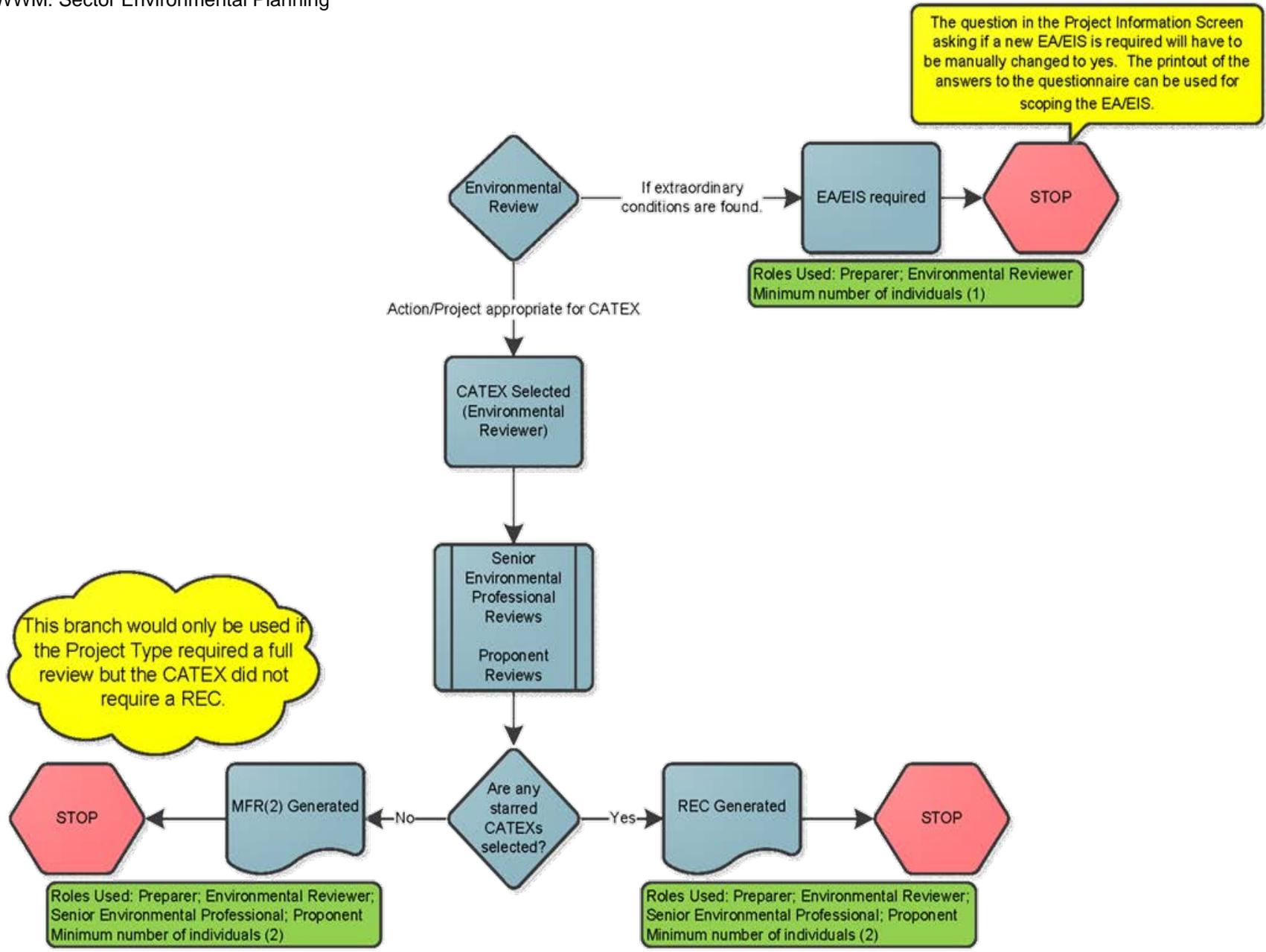
* No BA is required if the action is NOT a major construction activity and then there is also no timeframe for completion of BE. ** Informal consultation could also occur prior to initiation of formal consultation.

General Section 7 ESA Consultation Process (50 CFR Part 402)



Appendix G: DHS EPHP DSS Overview





Appendix H: CG-LGL Memo Environmental Considerations for Exclusionary Zones and Marine Event Permits



Commandant
United States Coast Guard

2703 Martin Luther King Jr. Ave
Stop 7213
Washington, DC 20583-7213
Staff Symbol: CG-0941e
Phone: 202 372-3749
email: Michaela.E.Noble@uscg.mil

16618

MEMORANDUM

JUN 09 2015

From: CAPT P.J. McGuire
Chief, 0941

Reply to Michaela Noble
Attn of: 2-3749

To: CG-47

Subj: ENVIRONMENTAL CONSIDERATIONS FOR EXCLUSIONARY ZONES AND MARINE
EVENT PERMITS

Ref: (a) CG-094 memo 16600 dated 20 APR 12
(b) CG Authority to Permit Regattas and Marine Parades, Memorandum dated
14Feb12 from CG-0941 (PLD) to COMDT (CG-55)
(c) Permitting Regattas and Marine Parades, COMDTINST M16751.3
(d) DHS Instruction Manual 023-01-001-01, Revision 01, Implementation of the
National Environmental Policy Act (NEPA)

A Coast Guard attorney prepared this document for INTERNAL GOVERNMENT USE ONLY. This document is pre-decisional in nature and qualifies as an inter-agency/intra-agency document containing deliberative process material. This document has been prepared in anticipation of litigation and contains confidential attorney-client communications relating to a legal matter for which the client has sought professional advice. Under exemption 5 of section (b) of 5 U.S.C. § 552 (Freedom of Information Act), this material is EXEMPT FROM RELEASE TO THE PUBLIC.

SUMMARY

I. This memo analyzes Coast Guard exclusionary zone and marine event permit environmental law compliance responsibilities. Establishing an exclusionary zone is a discretionary federal action subject to the requirements of the National Environmental Policy Act (NEPA)¹ and the Endangered Species Act (ESA)². The vast majority of these zones will be categorically excluded from further tiers of review under the Coast Guard's NEPA procedures³. Only impacts resulting from the establishment of the exclusionary zones that are within the control of the Coast Guard need to be evaluated, not impact from events prompting the zones. Similarly, the environmental analysis for granting a marine event permit is restricted to the *marine event* permitted and within the control of the Coast Guard. Adequate documentation to support the application of a categorical exclusion is important to ensure a strong administrative record.

¹ Pub. L. No. 91-190, 83 Stat. 852 (1970), as amended; classified as, 42 U.S.C. §§ 4321 - 4307h.

² Pub. L. No. 93-205, 87 Stat. 884 (1973), as amended; classified as, 16 U.S.C. §§ 1531 - 1544.

³ Reference (d) went into effect on March 26, 2015 and updates and re-numbers the Coast Guard's categorical exclusions. The Coast Guard's NEPA procedures are being updated to match the DHS numbering and other processes and so for the purposes of this memo references are to the requirements of reference (d).

Subj: ENVIRONMENTAL CONSIDERATIONS FOR EXCLUSIONARY ZONES AND MARINE EVENT PERMITS 16618

BACKGROUND

Statutory Authority for Safety and Security Zones

2. The Ports and Waterways Safety Act (PWSA)⁴ authorizes the Coast Guard, pursuant to authority delegated from the Secretary of the Department of Homeland Security (DHS), to “construct, operate, maintain, improve, or expand vessel traffic services”⁵ and to “control vessel traffic in areas subject to the jurisdiction of the United States” which are determined to be hazardous.⁶ Under the PWSA, the Coast Guard has the authority to control vessel and facility operations to ensure the safety of vessels, waterfront facilities, and to protect the navigable waters of the United States and the maritime resources therein.⁷ The PWSA also includes the authority to create limited access areas, such as safety zones. By regulation, a safety zone is specifically defined as “a water area, shore area, or water and shore area to which, for safety or environmental purposes, access is limited to authorized persons, vehicles, or vessels. It may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion.”⁸ The PWSA also provides for the creation of security zones to prevent or respond to acts of terrorism.⁹ Under the Magnuson Act¹⁰, the Coast Guard may also create security zones for a broad range of security threats beyond specific terrorism threats.¹¹ Generally, a security zone protects what is inside the zone from what is outside zone, while a safety zone protects those outside the zone from the threat contained in the zone.¹² As specific limited access areas – regardless of the statutory basis for the zone – safety and security zones are expected to have the same potential impact on the environment. See reference (a) for a more detailed discussion of safety and security zones.

Appropriate Uses of Safety and Security Zones

3. Congress passed the PWSA to prevent collisions, allisions, and groundings of oil tankers and hazardous material cargo carriers which could result in harmful discharges to the marine environment.¹³ The Coast Guard has interpreted the PWSA to authorize vessel and waterway control measures to protect maritime resources from harm caused by damage to a vessel or structure, but not to provide general or unlimited authority to regulate vessel operations to

⁴ Pub. L. No. 92-340 (H.R. 8140), §§ 2-15, 86 Stat. 424 (1972), as amended; classified as 33 U.S.C. §§ 1221 - 1232a, 1234 - 1236.

⁵ *Id.* at § 1223.

⁶ *Id.* at §§ 1221- 1236.

⁷ 33 C.F.R. § 160.101.

⁸ 33 C.F.R. § 165.20.

⁹ 33 U.S.C. § 1226. Coast Guard policy in implementing this provision is to adopt a definition of terrorism contained in Section 2 of the Homeland Security Act. 6 U.S.C. § 10(16).

¹⁰ c. 30, Title II, 40 Stat. 220 (1917), as amended; classified as 50 U.S.C. §§ 191 - 198.

¹¹ *Id.* at 191. Security threats include espionage, subversive activity, interruptions to marine navigation, and risks of explosions in the maritime domain.

¹² See COMDISNT M16000.11 (SERIES), MARINE SAFETY MANUAL, VOLUME VI, PORTS AND WATERWAYS ACTIVITIES, Ch 3, 4-a and Ch 3,5-a.

¹³ See Reference (b) CG Authority to Permit Regattas and Marine Parades, Memorandum dated 14Feb12 from CG-0941 (PLD) to COMDT (CG-55).

Subj: ENVIRONMENTAL CONSIDERATIONS FOR EXCLUSIONARY ZONES AND MARINE EVENT PERMITS 16618

protect against all forms of potential environmental concerns.¹⁴ The term “*environmental purposes*” contained within the definition of safety zones under the PWSA is interpreted to mean responding to oil pollution, and as described in reference (b), this interpretation is consistent with legislative history of the PWSA. A safety zone cannot therefore be used solely to protect a marine protected species (MPS) under the PWSA.¹⁵ Although not directly addressed in reference (c), the Magnuson Act does not create any authority to establish security zones for environmental purposes.¹⁶

Differences Between Exclusionary Zones and Marine Event Permits

4. The approval of a marine event permit does not automatically require or establish an exclusionary zone. Through a marine event permit, the Coast Guard may authorize certain events (e.g., regattas and marine parades) in waters subject to the jurisdiction of the United States.¹⁷ A marine event may occur in conjunction with the Coast Guard’s independent act to establish an exclusionary zone to ensure maritime safety and security in and around the area in which the marine event will take place. There may also be instances in which an exclusionary zone will be established during certain maritime activities, even though a Coast Guard marine event permit was not issued (e.g., a fireworks display for which no marine event permit is required). Coast Guard Captains of the Port (COTP) may independently exercise authority to address safety and security concerns under the PWSA whenever a maritime hazard is present – whether or not such hazard coincides with a marine event. While the environmental compliance analysis of a marine event permit application may require an analysis of how an exclusionary zone will be implemented, not every decision to establish an exclusionary zone will stem from an application for a marine event permit. It cannot, therefore, be assumed that all exclusionary zones will be analyzed in the same manner as a marine event permit.¹⁸ It is also important to note that actions cannot be divided up into smaller elements for purposes of analyzing the environmental impacts unless each action has independent utility, and none are dependent on the other.¹⁹ Thus, if a marine permit would not be granted without also establishing an exclusionary zone, then the impacts of granting the permit and establishing the exclusionary zone must be examined as a whole.

¹⁴ Congress was concerned about the effect of a major catastrophic oil spill on “*fish, water fowl, wildlife, and quality of [U.S.] waters and beaches...*” S. Rep. No. 92-724, *2769 (March 28, 1972).

¹⁵ There may be instances in which an MPS can create a hazard to navigation (e.g., blocking a channel) and the PWSA could be used to create an exclusionary zone which may encompass the MPS. Nothing prevents the Coast Guard from taking action pursuant to 14 U.S.C. § 89(a) to enforce federal law preventing the taking or harassment of a MPS. Absent a policy of non-enforcement, how the Coast Guard enforces protection statutes is in the discretion of the Coast Guard. See *Strahan v. Linnon*, 967 F.Supp. 581 (D.Mass 1997).

¹⁶ Vessel control measures are authorized under the Magnuson Act, “[w]henver the President finds that the security of the United States is endangered by reason of actual or threatened war, or invasion, or insurrection, or subversive activity, or of disturbances or threatened disturbances of the international relations of the United States ...” 50 U.S.C. § 191. See also, S. Rep. No. 2531, 1950 U.S. Code Cong. Service, p. 3926 (affirming the purpose of Magnuson Act control measures to combat espionage and subversive acts).

¹⁷ See 33 U.S.C. § 1233. The statutory authorities for the marine event permitting system and practical application are more fully discussed in Reference (b).

¹⁸ The environmental considerations of the marine event permitting system are also addressed in Reference (c), the Manual for Permitting Regattas and Marine Parades, COMDTINST M16751.3.

¹⁹ CEQ Guidance, Establish and Applying Categorical Exclusions Under the National Environmental Policy Act, Feb. 18, 2010.

Subj: ENVIRONMENTAL CONSIDERATIONS FOR EXCLUSIONARY ZONES AND MARINE EVENT PERMITS 16618

National Environmental Policy Act

5. NEPA requires that federal agencies “include in every recommendation or report on proposals for legislation and other major Federal Actions significantly affecting the quality of the human environment,” an analysis of the impact of the action on the environment.²⁰ A “major Federal action” includes actions with effects that may be major and that are potentially subject to the Federal agency’s control and responsibility.²¹ “Effects” include “direct effects, which are caused by the action and occur at the same time and place,” and (b) “indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”²² There must be a causal relationship between the proposed action and the effect in order for the impact of that effect to be required to be analyzed by the action agency under NEPA.²³ An agency is not required to discuss or analyze an indirect effect that is speculative and indefinite.²⁴ Further, where an agency has no ability to prevent an effect due to its limited legal authority over the relevant actions, the agency cannot be considered a legally relevant “cause” of the effect and therefore is not required to consider the effect of actions over which it has no discretion.²⁵ The causal relationship between the agency’s action and the effects is therefore one of “proximate cause” and not a “but for” causation where the agency “is considered a cause of an environmental effect even when the agency has no authority to prevent the effect.”²⁶ Putting these considerations together, an agency only needs to analyze effects under NEPA with a sufficient causal relationship to actions over which it has discretionary control. Therefore, possible indirect effects stemming from the activities of non-federal entities within the action area do not have to be considered for purposes of Coast Guard NEPA compliance.²⁷ The NEPA cumulative impact analysis, described below, does not change this analysis.

6. A “cumulative impact” is defined as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such

²⁰ 42 U.S.C. § 4332.

²¹ 40 C.F.R. § 1508.18.

²² *Id.* at § 1508.8.

²³ *Department of Transp. v. Public Citizen*, 541 U.S. 752, 767 (2004), citing *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983) (holding that NEPA requires “a reasonably close causal relationship” between the environmental effect and the alleged cause).

²⁴ See *Sierra Club v. Marsh*, 976 F.2d 763 (1st Cir. 1992); *Northwest Bypass Group v. United States Army Corps of Eng’rs*, 552 F.Supp. 2d 97 (D.N.H. 2008).

²⁵ *Public Citizen*, 541 U.S. 752, 770 (holding that an agency need not consider the effects of actions beyond the agency’s limited statutory authority); See *South Dakota v. Andrus*, 614 F.2d 1190 (8th Cir. 1980) (finding that issuance of a mineral patent was a ministerial act that did not come within NEPA).

²⁶ *Public Citizen*, 541 U.S. 752, 767.

²⁷ See e.g. *Public Citizen*, 541 U.S. 752, 770 (holding that scope of NEPA review properly restricted to not include effects of private trucking); *Wetlands Action Network v. United States Army Corps of Eng’rs*, 222 F.3d 1105, 1116 (9th Cir.2000) (upholding an agency’s decision to limit the scope of its NEPA review to the activities specifically authorized by the federal action where the private and federal portions of the project could exist independently of each other); *California Trout v. Schaefer*, 58 F.3d 469, 472–75 (9th Cir.1995) (upholding agency’s decision to limit the scope of its NEPA review to impacts associated with the fill of wetlands rather than considering the impact on downstream fisheries for an entire canal project); *Enos v. Marsh*, 769 F.2d 1363, 1371–72 (9th Cir.1985) (upholding agency’s decision to exclude from its NEPA analysis the impact of nonfederal shore facilities for a new deep draft harbor).

Subj: ENVIRONMENTAL CONSIDERATIONS FOR EXCLUSIONARY ZONES AND MARINE EVENT PERMITS 16618

*other actions.*²⁸ In *Department of Transportation v. Public Citizen*²⁹, an action was brought against the Federal Motor Carrier Safety Administration (FMCSA) for failing to analyze the air impacts of Mexican trucks entering the United States where the agency's only authorized action was to prescribe the safety regulations that must be met before a truck from Mexico could be permitted to operate in the United States.³⁰ The FMCSA had no statutory authority to impose or enforce emission controls, to establish environmental requirements unrelated to motor carrier safety, or to lift the presidential moratorium on Mexican motor carriers operating in the United States. The Supreme Court held that "*where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions, the agency cannot be considered a legally relevant 'cause' of the effect.*"³¹ The Court found that the "cumulative impact" regulation did not expand the scope of effects required to be examined under NEPA as the FMCSA only needed to consider the "incremental impact" of changes to the safety rules themselves (the Federal action), in the context of the President's lifting of the moratorium.³² The FMCSA was not required to examine the effects of the lifting of the moratorium itself as part of the cumulative impact analysis since the lifting of the moratorium was outside of the agency's statutory ability to control.³³

7. Environmental review under NEPA can take one of three forms: a categorical exclusion (CE); an environmental assessment (EA); or an environmental impact statement (EIS).³⁴ Council on Environmental Quality (CEQ) regulations define a categorical exclusion as "*a category of actions which do not individually or cumulatively have a significant effect on the human environment.*"³⁵ Agencies should not use CEs for extraordinary circumstances that may modify the impact of the underlying action.³⁶ For example, the presence of endangered species in an exclusionary zone may constitute an extraordinary circumstance requiring greater environmental analysis, such as an EA or EIS. Agencies may also not segment or divide an action into smaller elements unless each part has independent utility.³⁷ A CE is not an exemption from the requirements of NEPA, but rather an alternate form of an analysis for certain categories of actions based on an extended analysis of the action over a period of time, which is published for comment, and then adopted by an agency.³⁸

8. Coast Guard CE L60 applies to safety and security zones, and CE L63 applies to marine event permits.³⁹ Local regulations issued in conjunction with a regatta or marine event, but not necessarily requiring a marine event permit, may fall under CE L61.⁴⁰ DHS NEPA procedures

²⁸ 40 C.F.R. § 1508.7.

²⁹ 541 U.S. 752 (2004).

³⁰ *Id.* at 758-761.

³¹ *Id.* at 770.

³² *Id.*

³³ *Id.*

³⁴ 40 C.F.R. §§1500-1508.

³⁵ 40 C.F.R. § 1508.4.

³⁶ Factors limiting the applicability of a categorical exclusion are provided in Ref. (d).

³⁷ CEQ Guidance, Establish and Applying Categorical Exclusions Under the National Environmental Policy Act, Feb. 18, 2010.

³⁸ CEQ, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations," 46 Fed. Reg. 18026. 18028 (1980).

³⁹ Ref. (d).

⁴⁰ *Id.*

Subj: ENVIRONMENTAL CONSIDERATIONS FOR EXCLUSIONARY ZONES AND MARINE EVENT PERMITS 16618

require the use of the Environmental Planning and Historic Preservation Decision Support System (DSS) to confirm the applicability of a CE, and for the agency to prepare a Record of Environmental Consideration (REC) in the Federal Register in order to apply some of the CEs.⁴¹

9. Regulations establishing safety and security zones, those that disestablish or reduce the size of an area or zone, and special local regulations for regattas and marine parades, do not require a REC.⁴² Regulations noticing temporary areas and zones that are established to deal with emergency situations, and that are less than one week in duration, do require completion of a REC, but not prior to publication in the Federal Register.⁴³ Marine events located in proximity to an environmentally sensitive area require a REC, while all other marine events do not.⁴⁴ Note that the REC is a documentation requirement established for some CEs, and that the environmental impacts of an action should still be considered to check for extraordinary circumstances that may prevent the application of a CE (e.g., endangered species) using the DSS, even if a REC is not required pursuant to Coast Guard and DHS NEPA procedures. The REC become part of the administrative record supporting the decision to apply a CE to an action. Among the factors contributing to an extraordinary circumstance is consideration of the requirements under the ESA as to how the proposed action may affect a protected species or critical habitat. Therefore, to properly determine the applicability of a CE, the effect of an action must be considered with respect to the ESA – with an understanding of the legal scope of those effects under the ESA.

Endangered Species Act

10. Section 7 of the ESA⁴⁵ requires every Federal agency ensure that its discretionary actions⁴⁶ are not likely to jeopardize the continued existence of any species which has been listed as endangered or threatened.⁴⁷ Thus, the ESA is a substantive, and not a procedural requirement, since the Act requires that Federal agencies take steps to insure their actions do not jeopardize listed species and critical habitat.⁴⁸ In the context of the ESA, effects of actions are the direct and indirect effects on a species or critical habitat, together with the effects of other activities that are *interrelated or interdependent* with that action.⁴⁹ Direct effects are those effects that immediately result from an agency action. Indirect effects can be those that emerge later in time,

⁴¹ Ref.(d), Appendix C.

⁴² *Id.*, Coast Guard CEs L60 & L61.

⁴³ *Id.*, Coast Guard CE L60.

⁴⁴ *Id.*, Coast Guard CE L63. An area may be considered an environmentally sensitive area through consideration of several factors. These factors include: location on or near a wildlife refuge, a designated wilderness, a wild and scenic river, a National Natural Landmark, a National Historic Landmark, a National Monument designated under the Antiquities Act; a designated open space, or a designated conservation area; location on or near park lands, prime farm lands, floodplains or wetlands; location on or near a critical habitat as defined by the ESA.

⁴⁵ 16 U.S.C. § 1536.

⁴⁶ 50 C.F.R. § 402.02.

⁴⁷ 16 U.S.C. § 1536(a)(2) (to “insure that any action authorized, funded or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary ... to be critical”).

⁴⁸ *Nat'l Assoc. of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 647 & 667 (2007).

⁴⁹ 50 C.F.R. § 402.02

Subj: ENVIRONMENTAL CONSIDERATIONS FOR EXCLUSIONARY ZONES AND MARINE EVENT PERMITS 16618

13. A BiOp can have three possible conclusions: (a) jeopardy determination; (b) no-jeopardy determination; or (c) a determination that with reasonable and prudent measures, no jeopardy will result.⁶² An incidental take statement will specify the amount and extent of any incidental taking of an endangered species, reasonable and prudent measures (RPMs) to minimize impacts of the proposed federal action, and the terms and conditions that the agency must follow in implementing the RPMs.⁶³ RPMs should be developed by the Services in conjunction with the agency to ensure that the measures are reasonable with only minor changes to the proposed project, and that they are within the authority and jurisdiction of the agency.⁶⁴

ANALYSIS

14. In 2007, protesters opposing the Hawaii Super Ferry's (HSF) operation in Kauai, Hawaii, filed suit against the United States, asserting that a Coast Guard rule establishing a security zone to prevent a blockade in the harbor violated their free speech rights and NEPA.⁶⁵ On appeal, the Ninth Circuit held that the Coast Guard properly relied on a CE⁶⁶ to comply with NEPA in establishing a security zone in the harbor to allow passage of HSF. In upholding the Coast Guard's environmental analysis, the Ninth Circuit differentiated between the Coast Guard's act in creating an exclusionary zone and the actions of the HSF itself. The Court explained, that "[t]he rule establishing the security zone and the HSF are not so intertwined as to constitute one federal action ... and the Coast Guard was not required to consider the secondary environmental effects created by the HSF when it established the security zone."⁶⁷ The Coast Guard's NEPA review was therefore properly restricted to the activities specifically authorized by the federal action.⁶⁸

15. Following the Ninth Circuit's ruling in *Wong* (and similar cases cited herein), there is overwhelming support for the argument that the Coast Guard is not required to analyze the object of the exclusionary zone in its NEPA review (unless it was a Coast Guard action that permitted or created the need for the exclusionary zone). Similarly, in the context of the ESA, interrelated and interdependent actions, and cumulative effects, are those *related to the proposed action*, and should not encompass the safety or security threat which existed before the Coast Guard response. For example, in situations in which the Coast Guard establishes an exclusionary zone for a fireworks display, the Coast Guard is not required to consider the effects of the display itself in order to comply with NEPA or the ESA. The situation may become complicated when evaluating possible indirect effects caused by a Coast Guard action (e.g., congregation of spectator vessels).

⁶² 16 U.S.C. § 1536(3)(A).

⁶³ 50 C.F.R. § 402.14(g).

⁶⁴ Reasonable and prudent measures refer to "those actions the Director believes necessary or appropriate to minimize the impacts, i.e., amount or extent, of incidental take." 50 C.F.R. § 402.02. The "terms and conditions" of the incidental take statement set forth the manner in which the RPM's are to be implemented.

⁶⁵ *Wong v. Bush*, 542 F.3d 732 (9th Cir. 2008).

⁶⁶ Coast Guard CE L60 for safety and security zones was applied successfully.

⁶⁷ *Wong*, 542 F.3d at 737.

⁶⁸ Although ESA requirements were not considered, secondary effects under the ESA should be similarly restricted to those reasonably foreseeable from the zone itself, and not the object of the security zone.

Subj: ENVIRONMENTAL CONSIDERATIONS FOR EXCLUSIONARY ZONES AND MARINE EVENT PERMITS 16618

CONCLUSION

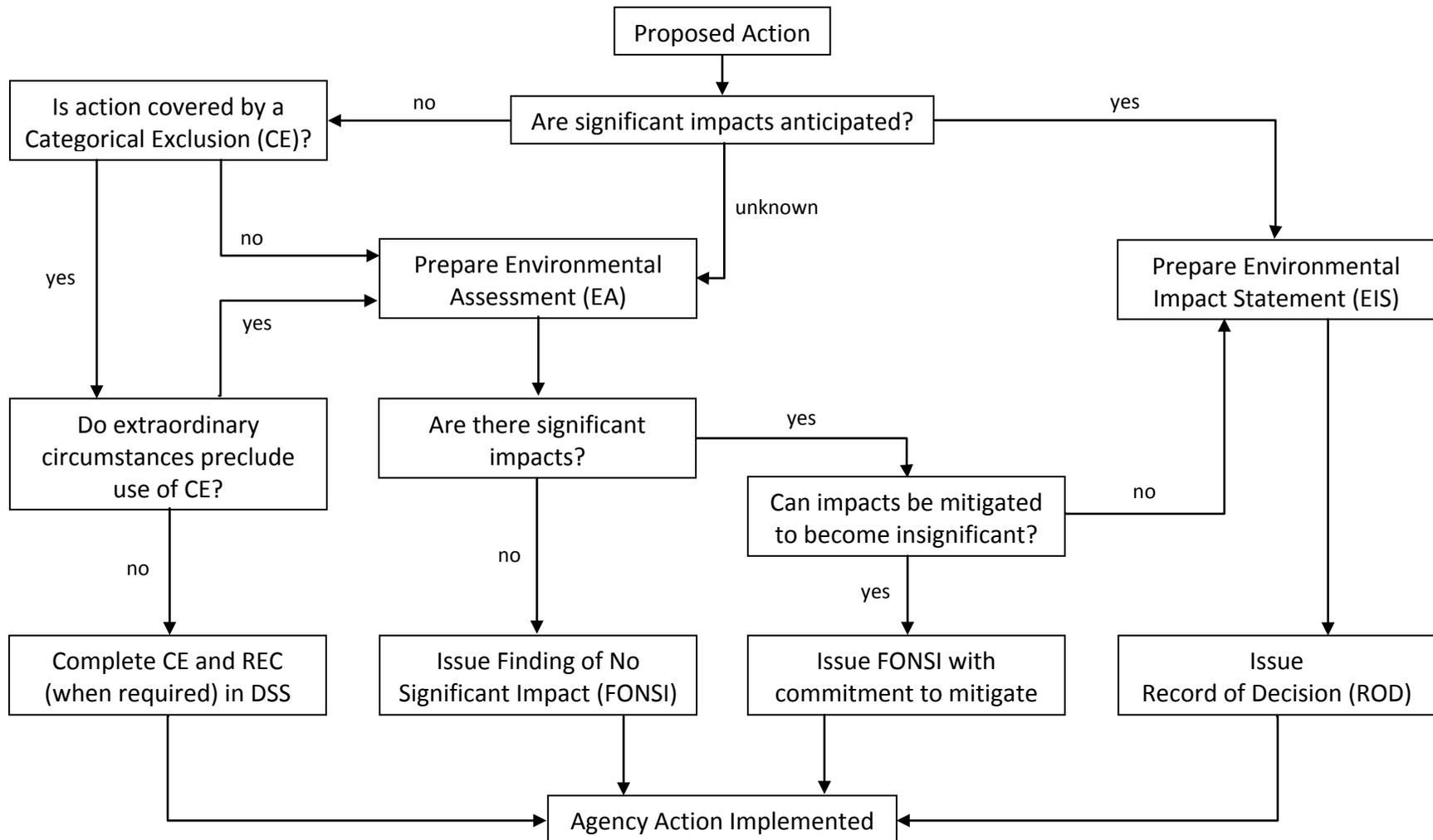
18. The PWSA and the Magnuson Act provide the Coast Guard with broad, distinct authority to ensure maritime safety and security, including the use of exclusionary zones. The Coast Guard also has broad authorities to grant or deny marine event permits. The creation of the vast majority of these exclusionary zones and granting of marine event permits, will be categorically excluded from further review under NEPA and will not have any direct or indirect effects under the ESA. In those instances in which the establishment of an exclusionary zone or granting of a marine event permit may impact a protected species or critical habitat, informal consultation and modification of the exclusionary zone should adequately address those impacts (as well as preserve the applicability of a CE from further tiers of NEPA review). In these cases, it is important to ensure sufficient documentation in the administrative record regarding the application of the CE. My office stands ready to assist you any further in this matter.

#

Enclosures: FAQs
NEPA Process
ESA Process

Copy: SJAs
DSJAs
LSC

Appendix I: NEPA Process Map



This page intentionally left blank.

Appendix J: Project Details



**Homeland
Security**

Environmental Planning & Historic Preservation
Decision Support System

Test-Miami Holiday Boat Parade - Approved

Status

- In Preparation (10/15/2015)
- Environmental Review (10/15/2015)
- Environmental Approval (10/15/2015)
- Proponent Approval (10/15/2015)
- Approved (10/15/2015)

Project Information

General

Name: Test-Miami Holiday Boat Parade

DSS ID: DSS-USCG-2015-1945

Security: Unclassified

Description: Holiday boat parade on Miami River. Expect 100 participant vessels and numerous spectators.

Critical Infrastructure?: No

Project Type: Administrative & Regulatory Activities - Approvals of regatta and marine parade event permits for events that are located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal state, or local government and for which the USCG determines, based on consultation with the Governmental agency, that the event will not significantly affect the environmentally sensitive area.

Existing EA/EIS?: No

Requires EA/EIS?: No

Project Priority: Normal

Federal Assistance?: No

Type of Permit: Marine Event Permit

Estimated Project Cost: (not entered)

Component

Component: USCG - U.S. Coast Guard

Region/Area: USCG Civil Engineering Unit – Miami FL.

Tracking Number: FY16-102

Dates

FY Funding: 2016

Proposed Project Start: 12/24/2015

Test-Miami Holiday Boat Parade (Unclassified)

Proposed Project End: 12/25/2015

Review Start: 10/15/2015

Project Location

- U.S. Territorial Water: Parade will occur on Miami River in Miami, FL. LAT: XX.XX.XXXX, LONG: XX.XX.XXXX

Team

- Document Preparer, Benjamin Earling, benjamin.w.earling@uscg.mil
- Environmental Reviewer, Andrew Haley, andrew.s.haley@uscg.mil
- Senior Environmental Professional, Andrew Haley, andrew.s.haley@uscg.mil
- Proponent, Lindsey Braden, lindsey.r.braden2@uscg.mil

Categorical Exclusions

- L63* - Approvals of regatta and marine parade event permits for the following events:
 - (a) Events that are not located in, proximate to, or above an area designated environmentally sensitive by an environmental agency of the Federal, state, or local government. For example, environmentally sensitive areas may include such areas as critical habitats or migration routes for endangered or threatened species or important fish or shellfish nursery areas.
 - (b) Events that are located in, proximate to, or above an area designated as environmentally sensitive by an environmental agency of the Federal state, or local government and for which the USCG determines, based on consultation with the Governmental agency, that the event will not significantly affect the environmentally sensitive area.

Required Conditions

1. Any change to the Proposed Action that may cause a physical interaction with the human environment will require re-evaluation for compliance with NEPA and other EP&HP requirements before the action can proceed.
1. Any change to the Proposed Action that may cause a physical interaction with the human environment will require re-evaluation for compliance with NEPA and other EP&HP requirements before the action can proceed.
2. This review addresses NEPA and other EP&HP requirements as described in DHS Directive 023-01. This review may identify the need for additional federal, state, and/or local permits, approvals, etc. required for the Proposed Action. However, this review may not satisfy those requirements and the Proponent is responsible for ensuring that all other appropriate federal, state, and/or local permits, approvals, etc. have been obtained.

Test-Miami Holiday Boat Parade (Unclassified)

Decision Documents

- Record of Environmental Consideration (REC), 4.75kB

Attachments

- There are no attachments.

Comments

- There are no comments.

EP+HP Review

Environmental Resources

- Is the proposed action associated with any other proposed actions? -- No
- Will the proposed action take place ENTIRELY WITHIN the interior of an existing building or structure? -- No
- Will the proposed action take place ENTIRELY ON an existing building/structure? -- No
- Will there be any ground disturbing activities? -- No
- Will the proposed action increase impervious surfaces (i.e., buildings, parking lots) or stormwater runoff? -- No
- Will any part of the proposed action involve creating, disturbing, and/or removing vegetated areas? -
- No
- Will elements of the proposed action occur on, in, or adjacent to bodies of water? -- Yes
Please Explain: Parade will occur on Miami River.
- Is there essential fish habitat in the vicinity of the proposed action? -- Yes
Please Explain: Participants will transit through Essential Fish Habitat for corals.
- Could the proposed action adversely affect essential fish habitat? -- No
Please Explain: Vessels will not impact bottom or discharge any waste.
- Are there any marine sanctuaries within the immediate vicinity of the proposed action? -- Yes
Please Explain: Parade will occur near Florida Keys National Marine Sanctuary.
** This question should be carefully checked by the Environmental Reviewer.
- Are there wetlands or waters of the U.S. on the project site or in the vicinity of the proposed action? -
- No
- Is the proposed action on or adjacent to a Wild and Scenic River? -- No
- Is there a Coastal Barrier Unit or otherwise protected area on or adjacent to the proposed action? --
No
Please Explain: No Coastal Barrier Unit or otherwise protected area present.
- Is the proposed action in or adjacent to a wilderness area? -- No

Test-Miami Holiday Boat Parade (Unclassified)

- Is the proposed action in or adjacent to a Wildlife Refuge? -- No
- Is the proposed action on or adjacent to a National Natural Landmark? -- No
- Is the proposed action in or adjacent to a National Park and/or Monument? -- Yes
- Could the proposed action impact the qualities that make the National Park or Monument important?
-- No
Please Explain: Parade will not impact Biscayne national park or resources within park.
- Could a state or federal listed threatened or endangered species and/or critical habitat be present in the area of the proposed action? -- Yes
Indicate source(s) of information and coordination and attach correspondence, if available.:
Manatees and Johnson's Sea Grass are present within Miami River.
Attachments: Threatened and Endangered Species Coordination: (No files uploaded yet.)
** This question should be carefully checked by the Environmental Reviewer.
- Will the proposed action directly/indirectly affect the species and/or critical habitat? -- No effect to species or designated critical habitat
Please Explain: Parade will have manatee spotters and event will incorporate standard BMPs from NMFS.
- Could any part of the proposed action have the potential to affect migratory birds, and/or their habitat? -- No
- Is the proposed action or any part located within the 100-year floodplain, also known as a Special Flood Hazard Area (SFHA)? -- No
Please indicate the the FEMA flood zone where your proposal is located. : Not located within floodplain.
Attachments: FEMA Flood Map: (No files uploaded yet.)
- Does the action involve a critical facility? -- No
- Will any part of the proposed action take place within the coastal zone and/or State's Coastal Management Area? -- Yes
- Is a Coastal Zone Consistency Determination needed? -- No
Please Explain: Permitting of Regatta is an exempted activity.
** This question should be carefully checked by the Environmental Reviewer.
- Will the proposed action require the use of or increased use of potable water? -- No
- Will noise levels be temporarily or permanently elevated by the proposed action? -- No
- Will the project generate air emissions?
-- No
- Will any part of the proposed action take place at an existing site where there is potential for environmental contamination? -- No
- Will any part of the proposed action involve the use of hazardous materials or substances or generate hazardous waste? -- No

Test-Miami Holiday Boat Parade (Unclassified)

- Are there low-income and/or minority populations in the vicinity of the proposed action? -- No
- Would the proposed action be consistent with the local master plan, existing zoning, surrounding land use, or the official land use plan for the specific site and/or the affected delineated areas? -- Yes
- Is there potential for controversy (public or scientific) regarding the environmental impacts associated with the proposed action? -- No
- Are there any other requirements for the protection of the environment that need to be considered for this proposed action? -- No
- Will the proposed action take place ENTIRELY WITHIN the interior of an existing building or structure? -- No
- Will the proposed action take place ENTIRELY ON an existing building or structure? -- No
- Does any part of the proposed project involve ground disturbing activities? -- No
- Is any portion of the proposed action located in, on, or in the vicinity of buildings or structures that are 45 years of age or older or have potential for historic significance? -- No

Appendix K: Endangered Species Act Section 7 Effects Determination Guidance

National Marine Fisheries Service
Southeast Regional Office, Protected Resources Division
March 2014

The purpose of this document is to provide general guidance on considerations for making effects determinations for Endangered Species Act (ESA) Section 7 consultations.

Effect Determination Definitions

In order to fulfill their ESA Section 7 duties for an action they propose to implement, fund or authorize, federal action agencies must make one of the following preliminary determinations with respect to threatened or endangered species¹ or designated critical habitat:

1. No effect;
2. May affect, but is not likely to adversely affect; or
3. May affect, and is likely to adversely affect

These effects determinations must be based on all direct and indirect effects of the agency action, as well as the effects of activities that are interrelated to or interdependent with the federal agency's proposed action.

- 1) “No effect” means ESA-listed species or critical habitat will not be affected, directly or indirectly. Generally, this means no ESA-listed species or critical habitat will be exposed to any potentially harmful/beneficial elements of the action
 - a) Some examples of when a “no effect” conclusion would be reached are:
 - i) The species doesn't occur at all in the action area, meaning not just the immediate project area but it will also be absent from all areas where the project will have direct or indirect environmental effects.
 - ii) The species occurs in the action area seasonally, and the project will be timed to avoid their presence. For example, a project in the South Atlantic that will be completed in the summertime and has no lasting environmental effects will not affect right whales, which would only potentially occur there from November – April.
 - iii) The species occurs in the action area and may be present at the time of the project, but there are no plausible (i.e., no credible) routes of effects (beneficial or adverse) to the species. A route of effect could be implausible if it would require a series of exceedingly rare events to occur in a particular sequence, in order to impact individuals of a listed species or habitats. A single event could also be in this category if the route of effect is so unrealistic its occurrence would be implausible.

¹ These determinations are at the individual scale, not the population or species scales.

- b) For critical habitat, some examples of reasons to reach a “no effect” conclusion would be:
- i) The project and its direct and indirect environmental effects don’t occur in any designated critical habitat area.
 - ii) The project occurs inside designated critical habitat, but no “essential features” of critical habitat are present or will be affected.
 - (1) *Important exception:* “Essential features” do not necessarily have to be present at the time of the project to be affected. Some essential features are seasonal or temporary (e.g., mobile prey) or are the product of certain natural processes. An action that would interrupt the natural development or occurrence of the essential feature is still adversely affecting that feature, even if the feature is not present. An example might be a fish that requires spawning habitat of a certain water depth and a project with water control features that is preventing those depths from periodically occurring, as they would from natural water level variations.
 - (2) While this example considers effects to the essential features of CH, effects to habitat in general could also result in harm to the species, if the habitat impacts result in actual injury or death of individuals of a listed species.
 - iii) The project occurs inside designated critical habitat, and the essential features are present, but the project presents no plausible route of effect (beneficial or adverse) to the features. For example, the essential feature of *unobstructed migratory pathways for sturgeon through a waterbody* would not be affected by a proposed seawall replacement project that is parallel to the shoreline. Or, the essential feature of *settlement substrate* for corals would not be affected by a project that only involves surface activities with no plausible routes of effects to the sea floor.
 - (1) *Important exception:* An adverse effect to (or prevention of) the conservation function the features provide to the species is an adverse effect on the critical habitat, even if the feature itself is not directly affected. For example, a project that creates a barrier that prevents species from accessing areas of critical habitat containing the features may eliminate the conservation value of those features to the species by preventing access.

The National Marine Fisheries Service (NMFS) is required to make its own determinations relative to the potential effects of all aspects of a proposed federal action subject to consultation, including aspects that are believed to have no effect. However, NMFS does not provide concurrence on an action agency’s no effect determination. It is prudent to document in project records the rationale behind your ‘no effect’ decisions as it will act as the official ESA consultation Agency’s no-effect determination.

“**May affect, but not likely to adversely affect**” means that all effects are *beneficial, insignificant, or discountable*. These conclusions are not made on the “net” effects of the action. Any adverse impact to an individual animal of an ESA-listed species, whether interim or short-term, regardless of any beneficial conservation measures or mitigation activities, requires ESA Section 7 consultation.

- a) *Beneficial* effects have an immediate positive effect without any adverse effects to the species or habitat. Beneficial effects are usually discussed when the project has a clear link to the listed species or its specific habitat needs and consultation is required because the species may be affected.
 - i) Example: Removing a man-made barrier that once blocked upstream spawning habitat, during a time of year when no ESA-listed species are likely to be present.
- b) *Discountable* effects are those that are extremely unlikely to occur. For an effect to be discountable, there must be a plausible adverse effect (i.e., a credible effect that could result from the action and that would be an adverse effect if it did impact a listed species), but it is very unlikely to occur.
 - i) Example: The risk of a slow-moving vessel, such as sailboats, striking a sea turtle is extremely unlikely to occur.
 - (1) One thing to keep in mind with discountable is that the chance of adverse effects increases with the frequency and duration of the action. Discountable may be the proper determination if the action is one-time or infrequent; it may not be if the action is frequent, or continuous.
 - (a) Example: If a military exercise with in-water explosions is repeated many times a year, the probability of an individual animal being injured will increase correspondingly. For this reason the action agency must not separate what is truly a single program or action into a series of individual actions for the purposes of consultation.
 - (2) Whether an effect is discountable is primarily a question of risk. Including well-thought-out risk management measures to avoid injuring listed species can be an effective way to ensure that an effect is discountable.
- c) *Insignificant* effects relate to the size or severity of the impact and include those effects that are undetectable, not measurable, or so minor that they cannot be meaningfully evaluated. Insignificant is the appropriate effect conclusion when plausible effects are going to happen, but will not rise to the level of constituting an adverse effect. That means the ESA-listed species may be expected to be affected, but not harmed or harassed.
 - i) Example: A sea turtle avoids an area because of construction, and thereby avoids being injured directly by project equipment. However, you have still predicted that sea turtles will be affected, by evidence of their avoidance. If the effect of the avoidance does not rise to the level of disturbance, and has no realistic potential to lead to harm or harassment of the animal, the effect is insignificant.
- d) For critical habitat, you need to first assess the potential effects to each of the essential features and determine whether the effects are beneficial, discountable, or insignificant. In the context of critical habitat, “take” is not an issue so we define insignificant effects slightly differently. Insignificant effects are when there is an actual possibility of an effect to the essential feature and the effect is temporary, minor, or both, so that there is

no discernible impact on the conservation function of that essential feature in that designated critical habitat unit.

- i) Example: The water and sediment quality essential feature of Gulf sturgeon critical habitat may be affected by a pile-installation project that temporarily increases turbidity. However, we would anticipate those effects to be temporary and minimal because suspended particles will settle out within a short time frame without measurable effects on water quality.

Action agencies must request and receive written concurrence from NMFS on a “not likely to adversely affect” determination. The request for concurrence should clearly identify the different potential effects that the project may pose to listed species or critical habitat. For each potentially adverse effect, you should explain why the effect is either discountable or insignificant. If there are no plausible routes of effect to listed species or critical habitat, “no effect” may be the proper conclusion.

- 2) **"May affect, and is likely to adversely affect"** means that one or more individuals of an ESA-listed species or one or more essential features of critical habitats are likely to be exposed to the actions and are likely to result in “take” or adverse effects, respectively (the definition of take is discussed below).

If you conclude that a listed species or its critical habitat is likely to be adversely affected, formal consultation will be required. NMFS issues a biological opinion at the conclusion of formal consultation. If we conclude in the opinion that the project is not likely to jeopardize the continued existence of any listed species or destroy or adversely modify critical habitat, we will include terms and conditions to minimize and monitor impacts to listed species. If we conclude in the opinion that the project is likely to jeopardize the continued existence of any listed species or destroy or adversely modify critical habitat, the project may not go forward unless we provide a “reasonable and prudent alternative” that would avoid jeopardy and destruction or adverse modification. (Note: “Adversely affect” and “destroy or adversely modify” critical habitat are two separate and very different standards, but they are sometimes confused because they sound similar.)

The Definition of Take

Take is defined as to harass, harm, pursue, hunt, shoot, wound, trap, capture, collect or attempt to engage in any such conduct. “Harm” includes any act that actually kills or injures fish or wildlife. This includes habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns such as breeding, spawning, rearing, migrating, feeding, or sheltering. The U.S. Fish and Wildlife Service defines “harass” as “an intentional or negligent act which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns....”

In general, “take” is a violation of the ESA, even when it’s unintentional. The Section 7 consultation process provides a way to exempt federal activities from the ESA’s take prohibitions, if the take is incidental to an otherwise lawful activity and it doesn’t jeopardize the species.

species likely to be absent at the time of the action? For example, your project is located in a bay that is used by Gulf sturgeon for feeding but the project will be completed during the summer when sturgeon have migrated up river. In this case you should also consider whether the project results in impacts to the habitat that could affect the species from using this area in the future.

3. After identifying which ESA-listed species or critical habitat may be present in or near the action area, determine how they may be affected by the project.

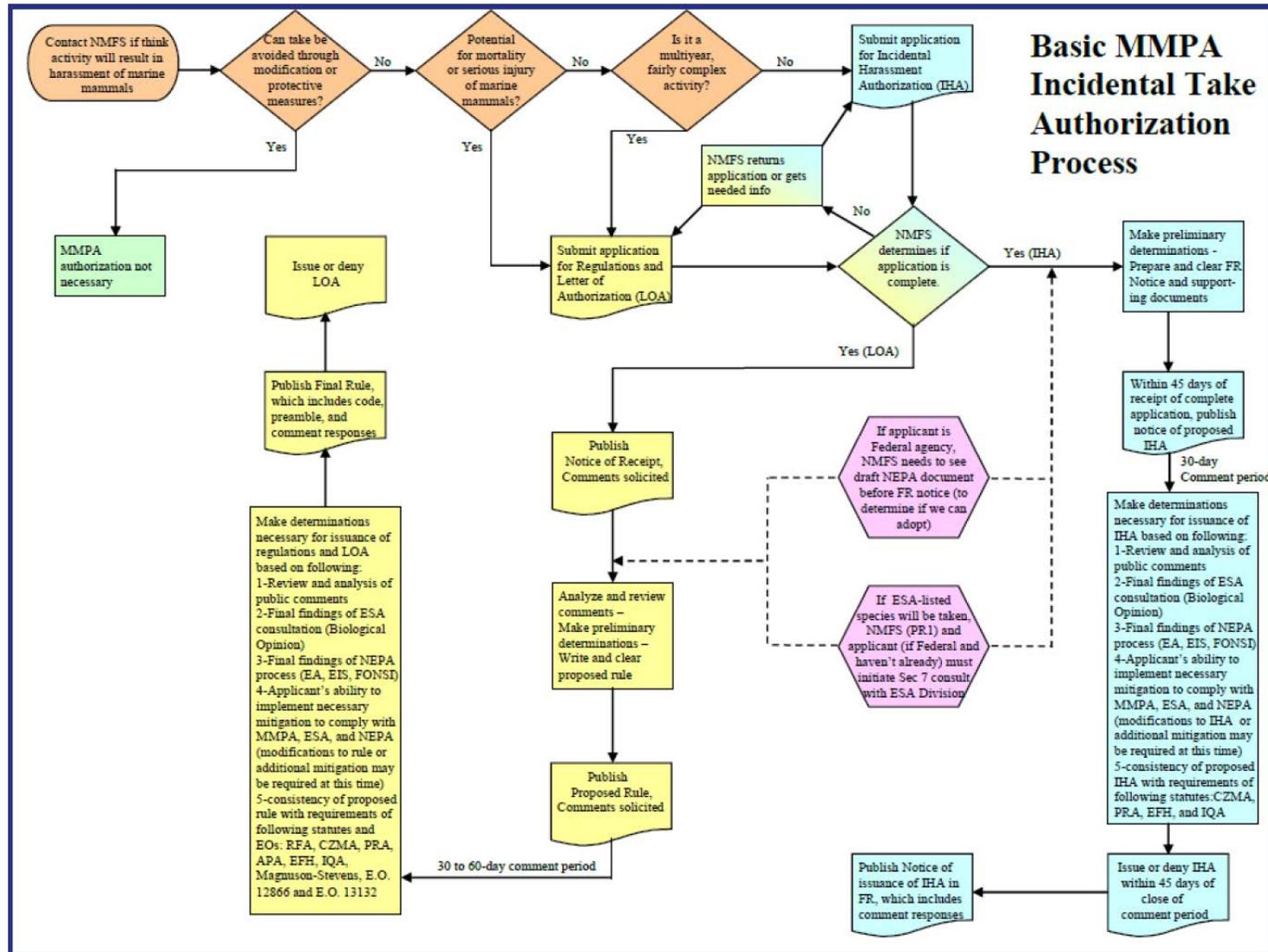
To conduct the analysis of your project's effects, consider these sorts of questions when determining potential routes of effects to ESA-listed species or habitat:

- What are the specific stressors (e.g., construction, dredging, blasting, vessel traffic, fishing activities, pile driving, noise, changes in water flow) that might impact each species or critical habitat?
- Are critical habitat essential features found in the action area?
- What are the life history patterns/behavior of the ESA-listed species that could be affected in relationship to the location of your project and timing of work associated with your project?
- Where, when, how frequently, for how long, and at what intensity will the stressors occur, and how will it impact the species or critical habitat?
- Will the project effects be permanent?
- Is there a way to minimize/avoid exposure? For example, can the work be carried out at low tide, behind a construction barrier, or when the species is not seasonally present? Can noise impacts be minimized/avoided by use of sound dampening equipment?
- Will the habitat in the action area or affected outside the action area still be beneficial to the species or converted to another type of habitat as a result of the project? For example, will mangroves (a habitat feature important to sawfish) be removed and replaced with a seawall?

Once you've thought through these questions, you should be able to make the appropriate effects determination and transmit your rationale to NMFS.

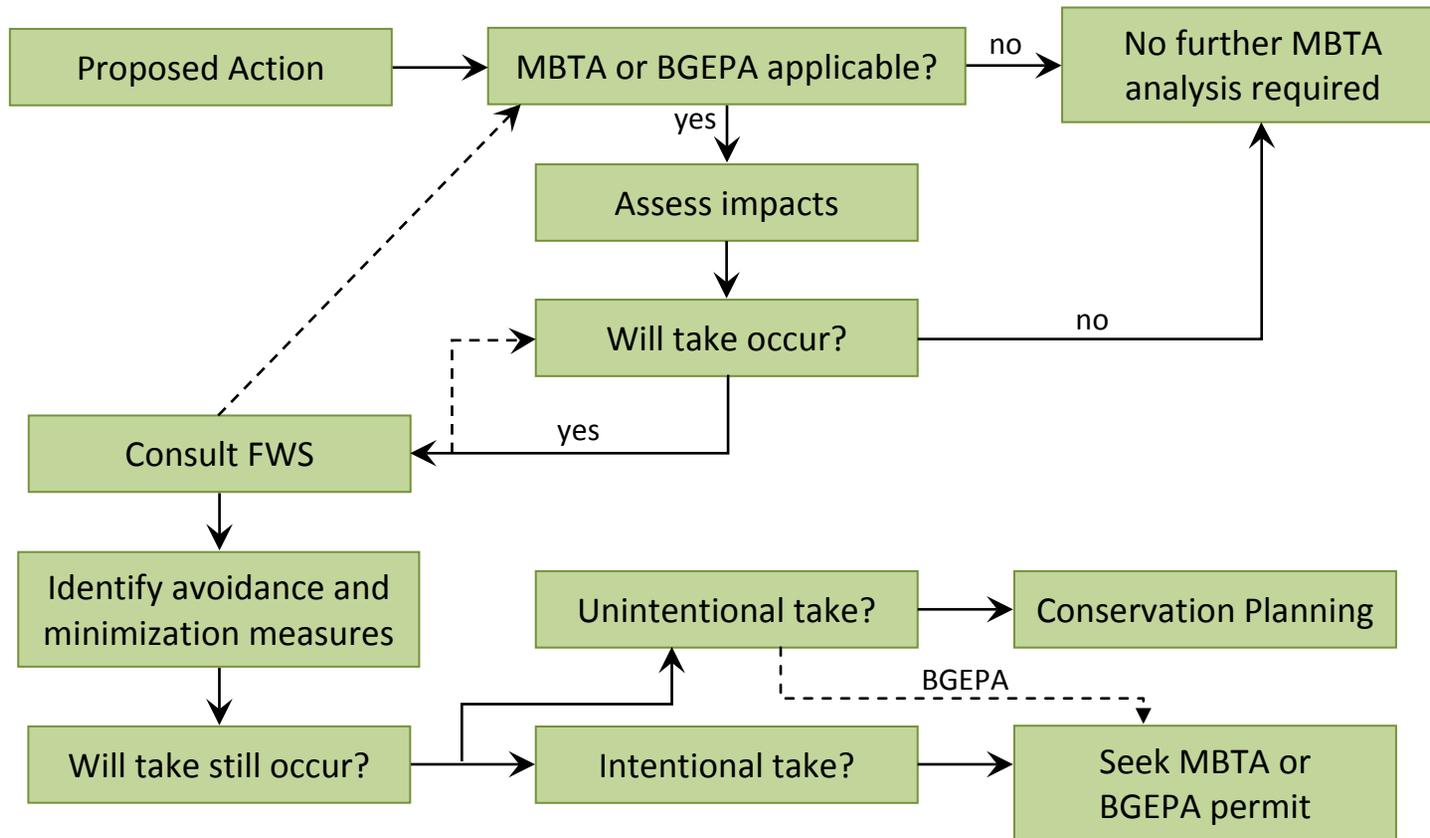
If you have any questions, please contact the Protected Resources Division at 727-824-5312 and ask for the Interagency Cooperation Branch Chief or Section 7 Coordinator.

Appendix L: MMPA Incidental Take Authorization Process



This page intentionally left blank.

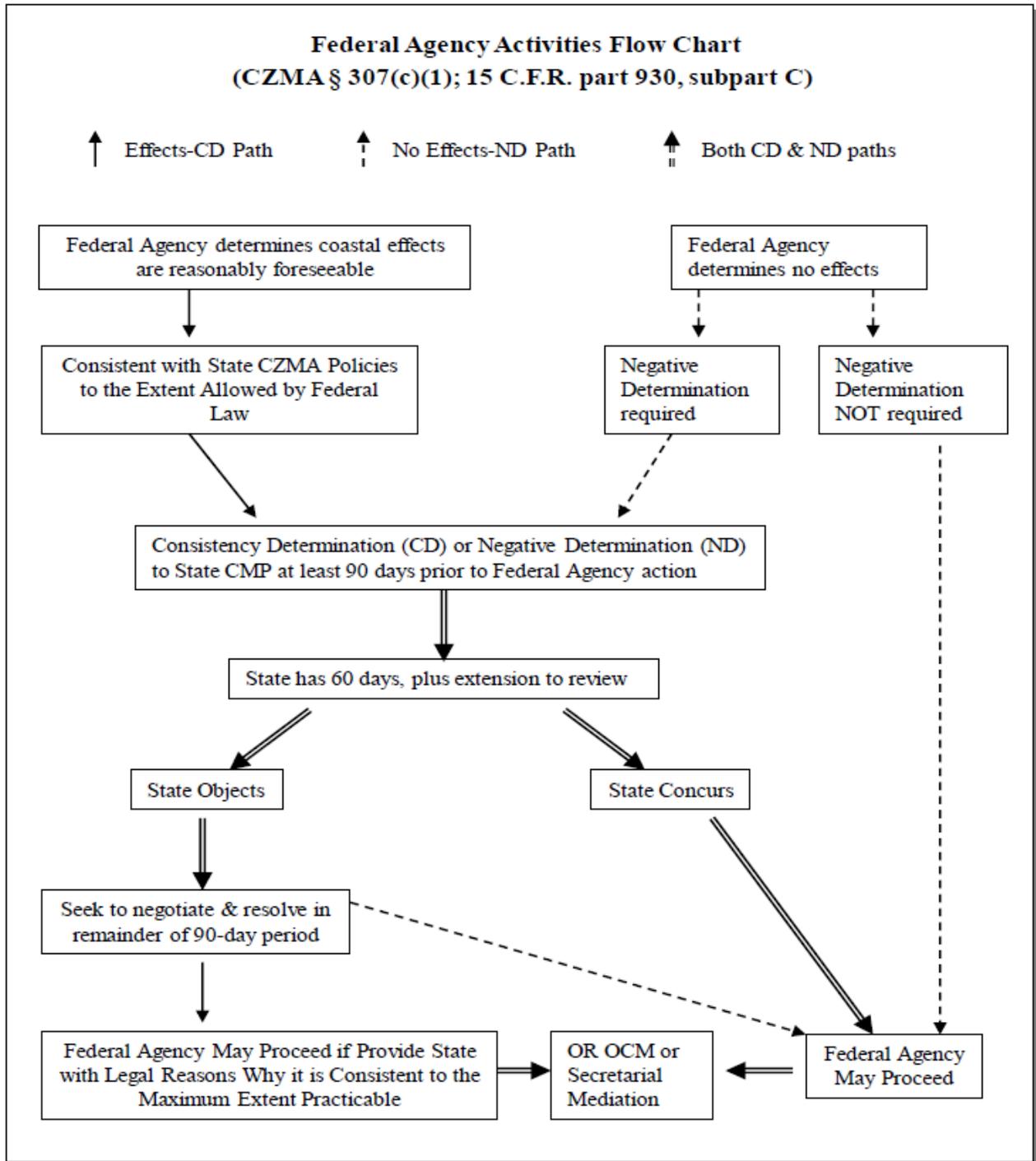
Appendix M: MBTA and NEPA

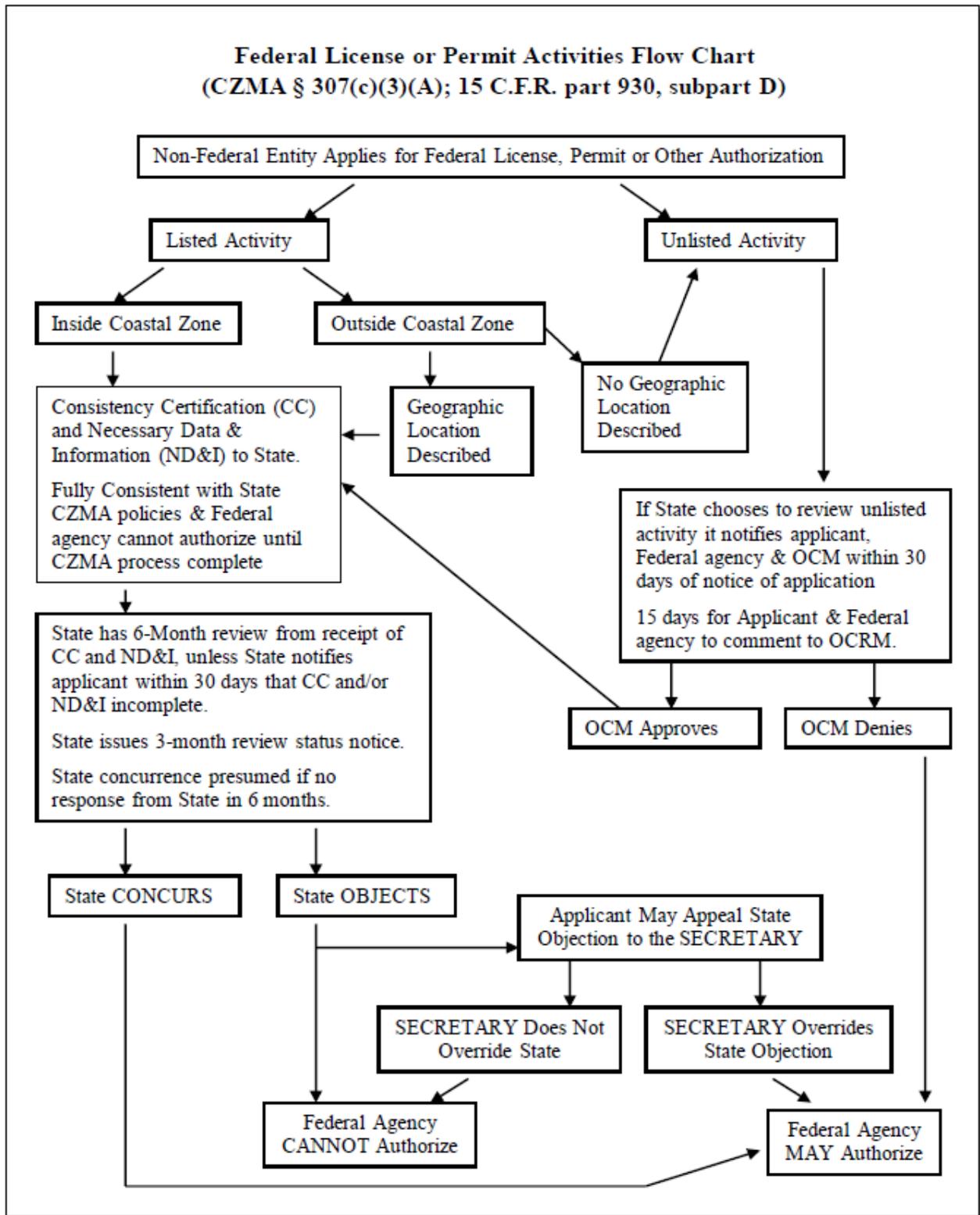


This page intentionally left blank.

Appendix N: CZMA Federal Consistency Provisions and Process Map

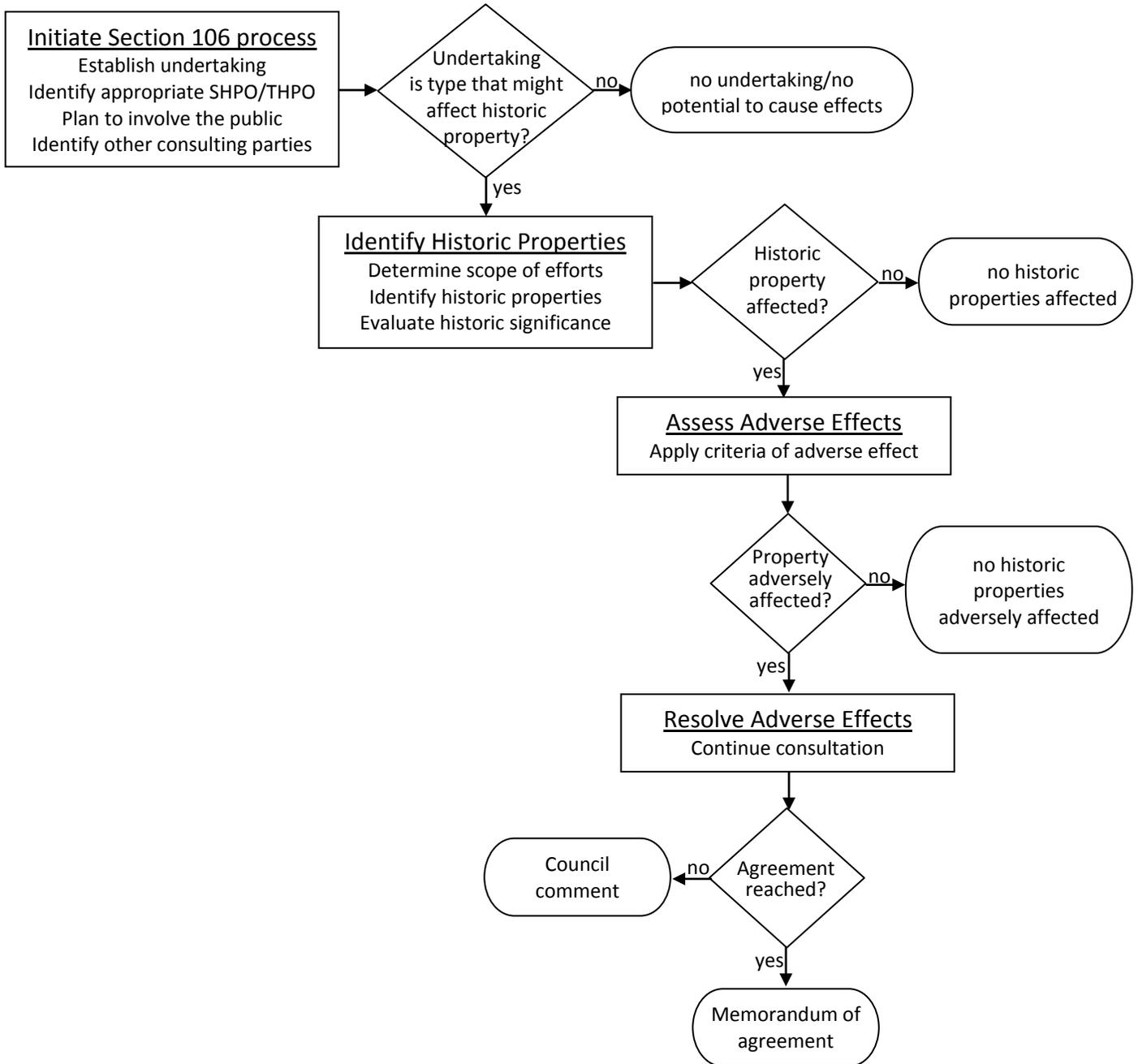
Summary of CZMA Federal Consistency Provisions				
	Federal Agency Activities & Development Projects	Federal License or Permit Activities	OCS Plans	Federal Assistance Activities (State & Local Governments)
CZMA § 307(16 U.S.C. § 1456)	(c)(1) & (2)	(c)(3)(A)	(c)(3)(B)	(d)
15 CFR part 930	Subpart C§§ 930.30 – 930.46	Subpart D§§ 930.50 – 930.66	Subpart E§§ 930.70 – 930.85	Subpart F§§ 930.90 – 930.101
Activity Subject to State Review if it ...	Affects any land or water use or natural resource of state coastal zone, regardless of location of activity	Affects any land or water use or natural resource of state coastal zone, and activity is listed in state’s CMP or OCRM approves review of unlisted review	Affects any land or water use or natural resource of state coastal zone	Affects any land or water use or natural resource of state coastal zone, and activity is listed in state’s CMP or state reviews unlisted activity
Consistency Requirement	Consistent to the maximum extent practicable with state CMP enforceable policies	Consistent with state CMP enforceable policies	Consistent with state CMP enforceable policies	Consistent with state CMP enforceable policies
Who Decides Effects?	Federal agency	State CMP and OCRM	State CMP and OCRM	State CMP and OCRM
State Review Period	60 days, plus 15 day extension (or alternative period agreed to by state and Federal agency)	6 months	3 months – state may extend to 6 months	State clearinghouse schedule
Impact of State Objection	Federal agency may proceed only if provide legal basis for being consistent to the maximum extent practicable	Federal agency may not authorize activity to commence	Federal agency may not authorize activity to commence	Federal agency may not authorize activity to commence
Administrative Conflict Resolution	Mediation by Secretary of Commerce or OCRM (voluntary, non-binding)	Applicant may appeal to Secretary of Commerce to override state objection	Applicant may appeal to Secretary of Commerce to override state objection	Applicant may appeal to Secretary of Commerce to override state objection





This page intentionally left blank.

Appendix O: Historic Preservation Act Section 106 Regulations Process Map



This page intentionally left blank.

Appendix P: NEPA Proponent Sample Delegation Letter

**U.S. Department of
Homeland Security**

**United States
Coast Guard**



Commandaner, Sector San Diego
United States Coast Guard

Street Address
City, State, Zip Code
Phone:
Fax:
Email:

16751
Day Month Year

MEMORANDUM

From: K. Kelley, CAPT
CG SECTOR San Diego

Reply to: LCDR WWM Divo
Attn of: Phone

To: J. E. Bannon, CDR
CG SECTOR Hiatusport

Subj: DELEGATION OF AUTHORITY AS NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)
PROONENT

Ref: (a) National Environmental Policy Act (NEPA), 42 U.S.C. 4321, et seq.
(b) 40 CFR Parts 1500-1508, Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the NEPA
(c) NEPA Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1 (series)
(d) DHS Instruction Manual 023-01-001-01 (series), Implementation of the NEPA
(e) DHS Directive 023-01 (series), Implementation of NEPA

1. You are hereby delegated the authority to serve as Proponent for documentation prepared pursuant to the National Environmental Policy Act (NEPA). In this capacity, you can approve or disapprove documentation prepared in the DHS Decision Support System and take other actions as you deem appropriate as a NEPA Proponent for Sector San Diego. In doing so, you shall be guided by references (a) through (e) and other applicable laws and regulations.

2. Cases that may require disapproval shall be immediately brought to my attention along with alternate recommendations and considerations. You shall inform me as appropriate of any cases with special issues or high levels of public or flag visibility.

ACKNOWLEDGEMENT ENDORSEMENT

From: J. E. Bannon, CDR
CG SECTOR Hiatusport

To: K. Kelley, CAPT
CG SECTOR San Diego

1. I understand and accept the duties associated with the above designation.

Appendix Q: Template for Consultation Request Cover Letter

Provided by NMFS Pacific Island Regional Office, Protected Resources Division

Revision Date: January 2009

INSTRUCTIONS

The following document is a template for letters from Federal action agencies (or their representatives) requesting consultation under Section 7 of the Endangered Species Act (ESA) on actions that might affect ESA-listed species.

COLOR KEY

Text coloring schemes:

- Black font (boilerplate)
- Blue font (*guidance & examples*)
- Red font (**places to insert information**)

As you complete sections, delete blue and red text.

[Letterhead for Federal action agency OR non-Federal representative]

[date]

Andrew S. Haley, Protected Resources
NMFS Pacific Islands Regional Office
1313 Disneyland Drive
Anaheim, CA 92802

Re: Request for Consultation under Section 7 of the Endangered Species Act

Dear Mr. Haley:

The [Federal action agency/non-Federal representative] proposes to [authorize/permit/fund/carry out] the [name, location and date of proposed project]. [*Non-Federal representatives must be designated as such in writing by the Federal action agency*]. Enclosed is a [Biological Assessment (BA)/Biological Evaluation (BE)/other document as explained in template for BAs-BEs] to initiate [formal/informal] consultation under Section 7(a)(2) of the Endangered Species Act (ESA).

As described in the enclosed [BA/BE/other document], [the proposed action will have no effect on the following ESA-listed marine species: list each species] [*no concurrence or other consultation with NMFS is required for 'no effect' actions*]. The proposed action may affect, but is not likely to adversely affect, the following ESA-listed marine species: [list each species]. [There is no designated critical habitat in the project area/Designated critical habitat for the Hawaiian monk seal occurs within the project area]. [The proposed action may affect, but is not likely to adversely affect, monk seal critical habitat.] We request your concurrence with our 'not likely to adversely affect' determinations, and hereby request informal consultation under Section 7 of the ESA.

[As described in the enclosed BA/BE/other document, the proposed action may affect, and is likely to adversely affect (list species) (monk seal critical habitat). Therefore, we request initiation of formal consultation under Section 7 of the ESA.]

[If the consultation request is for multiple projects, an entire program, or is otherwise more than a single discrete project, edit the above accordingly. E.g., provide more detail or attach tables showing the different projects and ESA determination for each, if applicable]

Please contact [person's name and contact info] of my staff regarding this consultation request.

Enclosure: [BA/BE/other document]
[action agency project tracking number]

Appendix R: Template for Biological Assessments & Biological Evaluations

Provided by U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office,
Consultation and Technical Assistance Program
Revision Date: July 25, 2008

INSTRUCTIONS

The following document is a template for Biological Assessments (BA) and Biological Evaluations (BE) submitted by Federal action agencies, or their non-Federal representatives, to the U.S. Fish and Wildlife Service (Service) for consultation as required by Section 7 of the Endangered Species Act (ESA). The purpose of the BA-BE is to describe proposed actions and their effects on ESA-listed species. Additional information is available in the Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act <http://www.fws.gov/endangered/consultations/s7hndbk/s7hndbk.htm>

COLOR KEY

Text coloring schemes:

- Black font (boilerplate)
- Blue font (*guidance & examples*)
- Red font (places to insert information)

As you complete sections, delete *blue* and *red* text.

[Biological Assessment or Biological Evaluation]

[use one term or the other, as explained below]

[PROJECT NAME]

[action agency tracking number, if appropriate]

*[A Biological Assessment (BA) is prepared for “major construction activities” considered to be Federal actions significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act of 1969 (NEPA). A BA is required if listed species or critical habitat may be present in the action area, and the contents for a BA are described in 50 CFR 402.12(f). “Biological Evaluation” (BE) is a generic term for all other types of analyses. Although agencies are not required to prepare a BA for non-construction activities, **if a listed species or critical habitat is likely to be affected, the agency must provide the Service with an evaluation on the likely effects of the action.** Often this information is referred to as a BE. The Service uses this documentation along with any other available information to decide if concurrence with the agency’s determination is warranted. Recommended contents are the same as for a BA, as referenced above. The BAs and BEs should not be confused with Environmental Assessments (EA) or Environmental Impact Statements (EIS) which may be required for NEPA projects. These EAs and EISs are designed to provide an analysis of multiple possible alternative actions on a variety of environmental, cultural, and social resources, and often use different definitions or standards.*

Prepared for:

[Federal action agency]

[Address of above agency]

Prepared by:

[insert your name and title]

[insert date]

1.0 BACKGROUND/HISTORY

The purpose of this [BA/BE] is to address the effect of the [insert project name] Project on ESA-listed species, listed as endangered or threatened under the Endangered Species Act (ESA), or their designated critical habitat. [name the Federal action agency, the Federal nexus for the proposed action, and the governing statute – i.e., Federal action agency X intends to authorize, permit, fund, or carry out the action described above, under section X of the Governing Act].

If there are multiple Federal action agencies involved, list each and identify which is the lead Federal action agency for the consultation.

The project involves [insert project primary function] in [location]. It has the potential to affect the following ESA-listed species that occur in the area: [insert common and scientific names of each species] and/or its/their critical habitat.

Early coordination and pre-consultation with the Service was conducted during a series of site visits, meetings, and phone conversation including: [Insert list of pre-consultation coordination and dates here].

This [BA/BE], prepared by the [Federal action agency, non-fed rep, or consultant], addresses the proposed action in compliance with Section 7 of the ESA. Section 7 assures that, through consultation (or conferencing for proposed species) with the Service, Federal actions do not jeopardize the continued existence of any threatened, endangered, or proposed species, or result in the destruction or adverse modification of critical habitat.

The purpose of the proposed action is to [insert purpose and need].

The project purpose and need statement should provide a clear purpose for the proposed project, as well as a brief description of proposed actions in relation to the needs discussed.

2.0 DESCRIPTION OF THE ACTION & ACTION AREA

The proposed action includes [list all project components here in a logical order].

Include a detailed description of what work will be done, and how it will be accomplished, particularly for components that are reasonably likely to have impacts on protected species and/or their habitats. Also include measures to be taken to reduce or eliminate potential impacts from the action, as well as any proposed beneficial components of the project intended as offsetting actions for unavoidable potential adverse effects or as enhancement opportunities; e.g., habitat protection, wetland creation, restoration or enhancements, etc.

The action area includes [describe the action area in terms of the geographic extent of all the project's potential effects – see definition below, and refer to attached maps or figures as appropriate].

Definitions from 50 CFR §402-02:

- **Action Area:** *All areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.*
- **Direct Effects:** *Direct or immediate effects of the project on the species or its habitat. Direct effects include those resulting from interdependent or interrelated actions.*
- **Indirect Effects:** *Those effects that are caused by or will result from the proposed action and are later in time, but still reasonably certain to occur.*

3.0 LISTED SPECIES & CRITICAL HABITAT IN THE ACTION AREA

A large number of ESA-listed species occur in the Pacific Islands Region (Hawaii, Guam, Northern Marianas, American Samoa, and Pacific Remote Island Area), including many widely-distributed marine species. The Service has ESA jurisdiction over terrestrial and freshwater species, including the terrestrial life history stages of sea turtles – see <http://www.fws.gov/pacificislands/wesa/endspindex.html> for a list of terrestrial and freshwater species protected under the ESA in the Pacific Islands. National Oceanic and Atmospheric Administration National Marine Fisheries Service (NMFS) has ESA jurisdiction over marine species - see <http://www.fpir.noaa.gov/> and click on ‘ESA Consultation’ for a list of marine species protected under the ESA in the Pacific Islands Region. A species list for the Action Area should be requested from the Service prior to action agency completion of the BA-BE.

ESA consultation is only necessary if ESA-listed species may be affected by the proposed project. However, the “not known to occur here” approach is a common but flawed way of arguing that a proposed project will not affect ESA-listed species. The operative word here is “known.” Unless adequate surveys have been conducted or adequate information sources have been referenced, this statement is difficult to interpret. It begs the questions “Has anyone looked?” and “How did they look?”. Remember that your evaluation of potential project effects does not end if ESA-listed are not found in the project area. You must still evaluate the effects of the proposed action on potential habitat for the species, even if it is not known to be occupied.

Once the listed species/critical habitat occurring in the action area have been identified, then this section should describe human activities and natural events that have led to the current status of the listed species/critical habitat. This section can rely extensively on cross-referencing existing documents, such as recent status reviews, recovery plans, biological opinions, Federal register notices, NEPA documents, etc. This section presents the biological or ecological information relevant to completing the biological assessment. Appropriate information on the species’ life history, its habitat and distribution, and other data on factors necessary to its survival should be included to provide background for analyses in later sections. When designated critical habitat is affected, a companion analysis should be done for that habitat.

The following ESA-listed species occur within the action area, or may be affected by the proposed action: [insert species names]. [also describe any designated critical habitat that may be affected by the proposed action].

4.0 ENVIRONMENTAL BASELINE CONDITIONS

This section identifies and describes all known human-induced sources of impact to the listed species in the Action Area, except those caused by the proposed action. The purpose of the environmental baseline is to provide the context for the impacts of the proposed action with regard to the impacts of all the other human activities that are also affecting the listed species.

5.0 EFFECTS OF THE ACTION

This section includes an analysis of the direct and indirect effects (defined above) of the proposed action, and any interrelated and interdependent actions (see definition below), on the species and/or critical habitat. Factors to be considered in the analysis include: proximity of the action, distribution, timing, nature of the effect, duration, disturbance frequency, disturbance intensity, and disturbance severity. A sufficiently detailed description of the proposed action should be provided in the Proposed Action and Action Area Section above so that the scope of the action and the subsequent analysis of its potential effects are clear.

*Definition: **Interrelated or Interdependent Activity:** An interrelated activity is an activity that is part of the proposed action and depends on the proposed action for its justification. An interdependent activity is an activity that has no independent utility apart from the action under consultation.*

6.0 CUMULATIVE EFFECTS (FORMAL CONSULTATION ONLY)

Describe all “non-Federal” actions reasonably certain to occur in the foreseeable future. Includes state, local, private, and tribal actions (e.g. residential developments, watershed enhancement, etc.). Section 7 regulations require the Federal action agency to provide an analysis of cumulative effects, along with other information, when requesting initiation of formal consultation. Note that ‘cumulative effects’ under the ESA is defined more narrowly than under NEPA¹.

¹ “Cumulative impacts”, as defined by NEPA [40 CFR §1508.7], are the impacts on the environment which result from the incremental impacts of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts are distinct from “cumulative effects”, as defined by the ESA [50 CFR § 402.02], which are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area.

7.0 CONCLUSIONS

An effects determination should be made for the proposed action with regard to each listed species and designated critical habitat. The three possible effects determinations for each species are: 1) No Effect (NE); 2) May Affect, but Not Likely to Adversely Affect (NLAA); and 3) May Affect, and Likely to Adversely Affect (LAA).

In conclusion, we have determined that the proposed action [**will have no effect on/may affect, but is not likely to adversely affect/may affect, or is likely to adversely affect**] [**listed species/designated critical habitat**].

Make this determination for each species. A NE effects determination requires no consultation with the Service, a NLAA effects determination requires a request for concurrence from the Service (informal consultation), and a LAA effects determination requires initiation of formal consultation with the Service.

8.0 LITERATURE CITED

Include all scientific papers, agency reports, other literature, and personal communications.

Appendix S: Endangered Species Act Technical Assistance Template

Commandant
United States Coast Guard

2703 Martin Luther King Jr. Ave SE
Washington, DC 20593-7000
Staff Symbol: DCO
Phone: (202) 372-2000
Fax: (202) 372-8342

5800

Daisy Mudduck
Southeast Regional Office
1313 Disneyland Drive
Anaheim, CA 92802

Dear Ms. Mudduck:

The Coast Guard has received a marine event permit application for [*insert event name*] (the "Proposed Action").

[*Insert detailed description of the event including: location, date, time, description of what will be occurring, number of spectators, and any other related information.*]

This letter constitutes a request for information on federally listed threatened, endangered, or candidate species, or critical habitat within the vicinity of this project. Thank you for your assistance with this matter. Should you have any questions, please contact ENS Happy at (305) 305-1234.

Sincerely,

Trevor E. Parra
Captain, U.S. Coast Guard
Commander Sector Miami

Appendix T: Endangered Species Act Section 7 Consult Template

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2703 Martin Luther King Jr. Ave SE
Washington, DC 20593-7000
Staff Symbol: DCO
Phone: (202) 372-2000
Fax: (202) 372-8342

5800

Daisy Mudduck
NMFS Southeast Regional Office
1313 Disneyland Drive
Anaheim, CA 92802

Dear Ms. Mudduck:

In accordance with the requirements of Section 7(a)(2) of the Endangered Species Act (“ESA”), we are initiating informal consultation regarding the Coast Guard’s proposal to issue a Marine Event Permit for *[insert event name]* (the “Proposed Action”).

[Insert detailed description of the event including: location, date, time, description of what will be occurring, number of spectators, and any other related information.]

The Coast Guard has determined that the proposed action may affect, but is not likely to adversely affect species and critical habitat protected under the ESA. The following species have been identified as species and critical habitat protected under the ESA that may be located in the vicinity of the Proposed Action. *[Insert information about which species or habitat are in the area.]*

[Insert a discussion of why the event will not adversely affect listed species or critical habitat. Include a discussion of how the species will respond to any stressors, or how the proposed action may benefit any species or habitat. Analysis must include both direct and indirect impacts of the event. For example, impacts of spectators that anchor. Use the best available information to make a case that the event will not adversely affect the list species or critical habitat in the area.]

We request your concurrence with our ‘not likely to adversely affect’ determination. Thank you for your assistance with this matter. Should you have any questions, please contact ENS Happy at (305) 305-1234.

Sincerely,

Jason R. Mitchell
Captain, U.S. Coast Guard
Commander Sector Miami