



505 FW 4

Other Related Reviews

FWM#: 153 (new)
Date: June 28, 1994
Series: Interagency Activities
Part 505: Environmental Review
Originating Office: Division of Habitat Conservation

4.1 General Requirements.

A. Interrelated Reviews.

(1) The Council on Environmental Quality's (CEQ) National Environmental Policy Act (NEPA) regulations (40 CFR 1502.25) require to the fullest extent possible, that Federal agencies prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (FWCA), National Historic Preservation Act, Endangered Species Act (ESA), other environmental review laws, and executive orders (EO). Most Federal projects or activities require compliance with these laws and EOs. Similarly, a non-Federal project may require Federal permits, such as section 404 permits for private development in waters of the United States, a Bureau of Land Management (BLM) or Refuge permit or easement for a transmission line crossing, or an Environmental Protection Agency (EPA) point discharge permit under the National Pollution Discharge Elimination System. In any such case, where a private applicant or the State prepares the environmental document, the Federal agency approving the permit or issuing a grant remains responsible for complying with NEPA and other Federal laws, regulations, and EOs. Other project reviews should be reviewed and processed in the same manner, unless otherwise directed, as environmental reviews.

(2) The Fish and Wildlife Service (Service) has the opportunity and duty to review these documents and others prepared under various environmental protection laws (e.g., 40 CFR 1503.2, section 4(f) of the Department of Transportation Act of 1966). However, even though the Service has additional review opportunities, the Service uses early involvement and coordination to ensure that all interrelated reviews are incorporated within the environmental document. All Service review and approval functions should be coordinated. If the Service fails

to point out ESA requirements or neglects to comment on other project involvements, such as section 10/404 permits, the project sponsors and lead Federal agency may have a false impression of our concerns.

B. Segmentation.

(1) The issue of segmentation can involve many different types of proposed Federal projects or permits. However, it has frequently been raised with regard to highway projects. An important precedent-setting case on highway segmentation is *River v. Richmond Metropolitan Authority (1973)*. The court ruled that the requirements of Federal law may not be avoided by segmentation of a project. The court established three criteria to "prove" segmentation that subsequently have been incorporated into Federal Highway Administration (FHWA) and Corps of Engineers (Corps) NEPA regulations relative to "scope of analysis."

(2) To "prove" segmentation, the following conditions must be shown:

(a) the project was originally perceived as unified and interdependent,

(b) the segments do not have independent utility, and

(c) the segments are not reasonable when considered alone.

(3) One or more of these criteria may be sufficient, although, when all three apply, a better case can be made. If these criteria can be established and if there is sufficient Federal involvement in the planning and construction of the project, segmentation may occur. In this instance, the Service may be able to argue, for example, the need for an environmental impact statement (EIS) for the entire or larger interconnected project. The same logic and approach can be taken if Federal permits are required for some or all of the segments.

4.2 Fish and Wildlife Coordination Act. See also 502 FW.

A. General.

(1) Under provisions of the FWCA (16 U.S.C. 661-667e; 48 Stat. 401, as amended), the Service has the authority to investigate and report on all proposals for work and/or other activities in or affecting the waters of the United States that are sanctioned, permitted, assisted, or conducted by the Federal government. Service comments on an EIS should be consistent with and in support of impact and mitigation analyses provided in FWCA reports, and should reference the FWCA report as appropriate. Ideally, the draft and final FWCA report should be available to the Federal agency prior to its preparation of the draft and final EIS, respectively. However, in unusual circumstances, where the EIS is circulated for review prior to completion of the FWCA reporting process, anticipated impacts and tentative mitigation

needs should be identified to the extent possible. A statement should be included in the Service's NEPA comments stating that a more detailed FWCA report is forthcoming.

(2) The FWCA requires Federal construction agencies proposing works to impound, divert, or otherwise modify water bodies to consult with the Service. FWCA reports stem from field investigations for such water projects as proposed or under study by the Corps and Bureau of Reclamation (BR), as well as for other Corps maintenance and construction activities in navigable waters. Under the Corps and BR procedures to implement the NEPA Regulations, EISs have become an integral part of their planning documentation.

(3) Although EISs are often included with other planning documents, the Service and Department of the Interior (DOI) normally respond to each document separately. This obligation can be met in one letter, provided the comments for each document are presented in separate sections. Due to their unique or complex planning procedures, guidance is provided on the following Federal agency actions.

B. Corps of Engineers Projects.

(1) The Corps of Engineers defines their policy and procedures for implementing NEPA in 33 CFR 230. Under these procedures, the Corps integrates NEPA requirements with other planning and environmental review and consultation requirements. NEPA review activities generally occur during Feasibility Studies, which follow Reconnaissance Studies, in the Corps planning process. When an EIS is required, it will occur as a separate section bound in the Feasibility Report. When commenting on these combined documents, which are "ER"-controlled, the FWCA response to the planning document should be separated from the EIS comments, but may be presented in the same letter.

(2) Comments to the Department's Office of Environmental Policy and Compliance (OEPC) should also include the Service's opinion as to the environmental acceptability of the proposed action, and make note of previous Service assistance and comments. Any Service reports or documents referenced must be attached, unless previously submitted to the lead agency. Service comments to OEPC should close with an offer of continued coordination with the field office (address and telephone number should be provided).

(3) At the termination of Feasibility Studies, the Chief of Engineers prepares a proposed report based on findings of the District Engineer and Division Engineer, which recommends the plan the Chief will propose to Congress for authorization. The proposed Chief's Report is generally two or three pages and summarizes and approves or disapproves the findings and recommendations of the Division and District Engineers. The supporting documents to the proposed Chief's Report vary but usually include the reports of the Division Engineer as well as the District Engineer's Feasibility Report and final EIS.

(4) The Service is required to complete the review of the final EIS within 30 days, but has 90 days to complete the Federal/State agency review of the proposed Chief's Report. These comments are normally contained in one letter, but must be in separate sections. The comments for both reviews should normally be submitted to the Corps within the 30-day period. Should the Service need to make comments on ESA compliance, these comments should be in a separate section of the letter.

(5) Review of the proposed Chief's Report and final EIS should determine whether Service recommendations are included in the Chief's recommendations. Service comments on the proposed Chief's Report should, at a minimum, address the following concerns.

(a) Whether the proposed Chief's Report adequately addresses Service concerns and recommendations (i.e., mitigation, ESA compliance).

(b) Whether the Service supports the Chief's recommended plan.

(6) Comments should present a definite Service position on the proposed Chief's Report and on the project. Where the Service has major unsatisfied concerns, a concise and complete justification of our position, consistent with the FWCA Report, should be provided. Service comments should clearly and forcefully urge the Chief to include modifications deemed necessary to provide for fish and wildlife concerns. When commenting, the Service should recommend specific language changes. "No Comments" on proposed Chief's Reports must also be made in writing to OEPC.

C. Soil Conservation Service Activities. See also 504 FW 1.

(1) Soil Conservation Service (SCS) projects also require similar consultation with and reporting requirements by the Secretary of the Interior. This authority was provided in the 1958 amendments to the FWCA, which added a new section (section 12) to the Watershed Protection and Flood Prevention Act of 1954 (P.L. 566).

(2) In December 1979, the Service and SCS signed Channel Modification Guidelines to be used in the planning of all SCS projects or measures where channel modification may be proposed. Respective Service and SCS responsibilities and guidelines for the resolution of issues are defined.

(3) The current edition of the SCS Watershed Protection Handbook outlines SCS procedures to be used to integrate NEPA into their planning process. Like the Corps, SCS now combines documents, in this case, the Watershed Plan and draft EIS. Comments on SCS Watershed Plans combined with EISs should be addressed like those for the Corps of Engineers, as outlined above.

D. Corps of Engineers/Coast Guard Permits and Licenses Activities.

(1) The Corps NEPA regulations (33 CFR 230) and Department of the Army regulatory program regulations (33 CFR 320 and 330) should be reviewed. The following guidance is provided regarding the interrelationship of NEPA with permits and licenses.

(a) Where the need for Federal permits or licenses has been identified in an EIS, comments to planning agencies should indicate which permits would require Service review and the likely Service position based on available information. If the Service's comments outline serious concerns or if the Service's likely position would be to recommend denial, the Service should urge the applicant to consult as early as possible with the appropriate Service office (address and telephone number should be provided). Mitigation measures, including project modifications, or proposed permit conditions should be identified in Service comments on the draft EIS.

(b) Despite efforts to have permit requirements identified early in the NEPA process or when site-specific information is lacking, an EIS may still lack an indication of possible permits. If this inadequacy is identified, Service comments on the draft EIS could contain a statement similar to the following:

"The statement lacks a discussion of (i.e., the requirement for permits) and evaluation of how these actions may affect fish and wildlife resources. Accordingly, these comments do not preclude separate evaluation and comments by the Fish and Wildlife Service, pursuant to the FWCA (16 U.S.C. 661, et seq), if project implementation requires a permit from the U.S. Coast Guard (CG) and/or the Corps, pursuant to sections 9 and 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean water Act of 1972, as amended. Please consult with the Field Supervisor, U.S. Fish and Wildlife Service (provide address and telephone number)."

(c) If permits are required for the proposed action, the Service may concur, with or without stipulations, or recommend denial depending on the effects on fish and wildlife resources. For example, for a CG permit for a major bridge replacement, the Service could require features to reduce turbidity during project construction, or that the shoreline area be stabilized with planting suitable for wildlife utilization.

(d) The following general guidance applies to the Service's review of section 10/404 permit applications with regard to NEPA compliance.

(i) Integrating NEPA effectively into the section 10/404 process is a

question of "timing." The key elements of the NEPA document (proposal, alternatives, impact assessment) are of little value to the decisionmaker if it is not prepared and publicly reviewed simultaneously with the permit document.

(ii) The requirements for identifying alternatives under NEPA and section 404 are similar. However, the section 404(b)(1) guidelines require selection of the "least environmentally damaging practicable alternative." NEPA does not require the selection of any particular alternative, only that all reasonable alternatives be identified and analyzed.

(iii) Permit applicants should be made aware early-on of the Corps requirement to comply with NEPA and the section 404(b)(1) guidelines. This should be done through pre-application consultation.

(iv) When an EIS is required, the section 404 process, including the identification of potential alternatives, should commence with the NEPA scoping process.

(v) Ideally, to fulfill the purpose of NEPA, the Corps should receive sufficient information from the applicant to either prepare a draft NEPA document for inclusion with the public notice, or provide public notice for review of the draft environmental document prior to the final decision. Following public review, the final NEPA document and compliance with the section 404(b)(1) guidelines would be completed and the permit decision made.

(2) Bridges on federally-funded highways require the approval of both the FHWA and the CG. Procedures coordinating the actions of these two agencies are found in a 1972 FHWA/CG Memorandum of Agreement (MOA) (refer to DOI Environmental Review Memorandum ER 73-2, April 11, 1973, in the Service NEPA Reference Handbook). The 1972 FHWA/CG MOA assigns the responsibility for preparing the environmental documents to the FHWA. The CG considers the environmental documents and other information in their decision to approve (with or without conditions) or deny a bridge permit, pursuant to 33 U.S.C. 401, 491, 511 et seq., 525, and acts of Congress.

4.3 Department of Transportation Act of 1966 Activities.

A. Authorities.

(1) The Service and Department review federally-funded activities under the jurisdiction of the Department of Transportation (DOT) under several authorities, including NEPA. These authorities are listed below.

(a) 49 U.S.C. 1653(f), Department of Transportation Act of 1966, section 4(f).

(b) 23 CFR 771 and 777, Federal Highway Administration regulations for implementing section 4(f) of the Department of Transportation Act of 1966. Terms particular to section 4(f) are found in 23 CFR 771.107.

B. Section 4(f) responsibilities.

(1) Section 4(f) of the DOT Act declares that the Secretary of DOT shall not approve any program or project requiring use of any publicly-owned land from a public park, recreation area, wildlife or waterfowl refuge, or historical site of national, State, or local significance, unless there is no feasible and prudent alternative, and such program or project includes all possible planning to minimize harm.

(2) Section 4(f) of the Department of Transportation Act of 1966 applies to all DOT activities, including activities under the purview of the Federal Highway Administrations, the Federal Aviation Administration, Urban Mass Transportation Administration, and the Coast Guard, as well as the Interstate Commerce Commission.

(3) The Secretary of DOT must cooperate and consult with the Secretary of the Interior in developing transportation plans and programs that include measures to maintain and enhance the natural beauty of the lands traversed. DOI procedures for reviewing comments on FHWA proposals are found in DOI Environmental Review Memoranda ER 75-2 and 75-3, July 21, 1975, and August 15, 1975, respectively (refer to Service NEPA Reference Handbook).

(4) Airport projects are subject to provisions of section 4(f), as well as section 16 of the Airway Development Act of 1983 (refer to Service NEPA Reference Handbook). Both Acts address consultation requirements with the Secretary. In general, Service comments relative to section 4(f) and FAA's NEPA document suffice in meeting both requirements.

C. How to Comment on Section 4(f) Statements. Section 4(f) statements are generally accompanied with an environmental document. The Service comments on each document separately, but includes the responses together in the transmitted response to the action agency.

(1) Service section 4(f) comments must indicate the Service position on the adequacy of the statement as it relates to the two provisions.

(a) Does the Service concur that there are no feasible and prudent alternatives to the use of the section 4(f) property? Or should DOI's comments be deferred until additional information is provided?

(b) Does the Service concur that the project includes all possible measures to minimize harm to the section 4(f) property? If not, we should identify the inadequacy and provide any additional measures we feel are needed (i.e., land replacement, landscaping, fencing, facility replacement and/or relocation, and wetland drainage prevention).

(2) The Service's detailed analysis of the two provisions and the propriety of any section 4(f)

approval by DOT should be outlined in a separate section of the Service's comments on the EIS or environmental assessment (EA). The separate section should be titled "Section 4(f) Comments." The "Summary Comments" section should specifically state that the Service either: does not object, does not object with conditions, or objects to section 4(f) approval at this time because DOT would not consider and/or implement Service recommendations of a reasonable and prudent nature to comply with one or both provisos. A sample DOI letter commenting on a section 4(f) statement/EIS is found in the Service NEPA Reference Handbook.

(3) Service section 4(f) comments should address any inadequacies in the following:

(a) identification of section 4(f) properties in the project's zone of adverse impact; and

(b) determination of the significance of these properties [all Service lands, including hatcheries and refuges, and land acquired with Federal Aid funds and FWCA mitigation lands, are significant in the context of section 4(f)].

(4) identification and evaluation of alternatives to the use of section 4(f) properties;

(5) assessment of environmental impacts;

(6) identification of circumstances where "constructive use" may occur;

(7) mitigation measures; and

(8) consultation and coordination with the Service in the assessment of impacts and in the resolution or tentative agreement on measures to minimize harm to any Service properties.

D. When Applicability of Section 4(f) is in Question.

(1) In some situations, FHWA may question whether section 4(f) is applicable because of the nature of the section 4(f) area or because of the nature of "use." In such situations, Service comments should furnish facts and information, express our opinion, and request a formal opinion relative to the applicability of section 4(f). DOI's position is that section 4(f) applies to the following lands within the jurisdiction of the Service:

(a) all lands authorized, established, or administered as part of the National Wildlife Refuge System;

(b) all lands established or administered as part of the National Fish Hatchery System;

(c) all waters and lands acquired for mitigation purposes under the FWCA; and

(d) all State lands acquired, or developed, or improved for fish and wildlife conservation, restoration, or management with grants under Pittman-Robertson (P/R)-Dingell-Johnson (D/J), section 6 of ESA, and the Anadromous Fish Act of 1965.

(2) DOI Environmental Review Memorandum ER 80-2, June 25, 1980, provides additional information on the applicability of section 4(f) (refer to Service NEPA Reference Handbook).

E. "Constructive Use." FHWA and Urban Mass Transit Authority joint regulations define the circumstances under which "constructive use" of certain protected resources would or would not occur (23 CFR 771.135). For example, "constructive use" could mean adverse proximity (indirect) effects of the construction of a highway or airport to a nearby refuge or public park. In such cases, section 4(f) would apply. Service reviews of highway and airport proposals should be aware of this circumstance. If "constructive use" applies, the Service should fully describe the probable impacts ("use") of the section 4(f) properties.

F. Relationship of Section 4(f) to Grant-in-Aid Programs.

(1) Fish and wildlife resources managed by the States using P-R or D-J grant-in-aid funds also come under the provisions of section 4(f). The Service is assigned section 4(f) commenting responsibility for DOT-funded projects potentially affecting State and local wildlife management lands (publically-owned) that do not come under the direct management jurisdiction of the Service. If these State-managed lands or streams will be impacted by a federally-funded or permitted highway or airport project, it constitutes a "diversion of funds" as outlined in 50 CFR 80.4 and 80.14, if P-R or D-J funds were used by the State to enhance fish or wildlife resources on these areas. The State DOT is responsible for replacing any P-R/D-J impacted lands according to these provisions. Service reviewers of such highway or airport projects should be mindful of possible impacts to these lands.

(2) If the Service determines no impact, its comments should state that no lands are involved which were acquired or are managed with Federal grant-in-aid assistance under the Wildlife Restoration Act (P-R Act, Public Law 75-415) or the Fish Restoration Act (D-J Act - Public Law 81-681). Therefore, the Secretary of the Interior's regulations in 50 CFR 80.4 and 80.14 are not applicable. If it is determined that there may be impacts to P-R/D-J lands, the Service's comments should clarify the State's responsibility for diversion of funds.

G. When Service Lands are Involved in Transportation Projects.

(1) National Wildlife Refuge System Lands.

(a) Service Refuge Managers should be aware that it is improper to issue a permit for a

transportation project granting use of 4(f) lands under our jurisdiction, or in which we have grant-in-aid interest, until the Service, through DOI, has reviewed and commented on the section 4(f) statement, and section 4(f) approval has been granted by DOT. These reviews are either controlled through OEPC and are signed at that level, or they may be controlled and signed at the Service Regional Director level, depending upon the level of impact on section 4 (f) lands (see 4.3.K).

(b) In coordinating with a transportation agency relative to proposed use of section 4(f) lands under Service jurisdiction, the Service should determine if there may be feasible and prudent alternatives to use of those lands. The compatibility of the proposed use with the purposes for which the lands were acquired and are being managed must also be determined under the National Wildlife Refuge System Administration Act of 1966. Assuming both findings are satisfactory, the next step is to determine measures to minimize harm that could occur as a result of the proposed action. These required steps should be made known to the transportation agency as early as possible so they may be included in the section 4(f) statement and any NEPA documentation.

(2) National Fish Hatchery System Lands. The words "wildlife" and "refuge" under the DOT Act of 1966 have broader meaning than under the National Wildlife Refuge System Administration Act [*Brooks v. Volpe*, 460 F.2d 1193, 1194 (9th Cir. 1972)]. It is DOI's position that all lands and interests therein authorized, established, or administered as part of the National Fish Hatchery System are subject to the provisions of section 4(f). However, such lands are not part of the National Wildlife Refuge System, unless so specified by Congress. This is stated in a DOI Solicitor's Opinion, December 24, 1975; and in a letter from the Secretary, DOI, to Secretary, DOT, June 20, 1980 (refer to Service NEPA Reference Handbook). The protection provided by this Act, and others, such as the Refuge Recreation Act, are extended by regulation to the National Fish Hatchery system (50 CFR 25-29, 31-36, 60, and 70-71).

H. Protection of Wetlands on Section 4(f) Properties. See also 507 FW 2, regarding the protection of privately-owned wetlands affected by federally-aided highway projects.

(1) The FHWA has agreed that components of the National Wildlife Refuge System (i.e., national wildlife refuges and waterfowl production areas), recreational (but not scenic) segments of Federal wild and scenic rivers, and national parks usually require section 4(f) approval by DOI if any use is required of such lands. This also applies to any Federal or State park or recreation lands acquired under section 6(f) of the Land and Water Conservation Act, section 6 of the ESA, Anadromous Fish Act of 1965, lands acquired or managed under the P-R or D-J grant-in-aid program, and under several other wetlands funding legislation.

(2) In practice, based on section 4(f) and related case law, wetlands that occur on section 4 (f) lands usually are afforded a higher degree of protection for proposed use by FHWA than

privately-owned wetlands. Mitigation, including the replacement of such lands, generally must be acceptable to the Service before DOI will provide section 4(f) concurrence to FHWA.

I. Minor Involvement with Public Parks, Recreation Lands, Wildlife and Waterfowl Refuges, and Historic Sites.

(1) On August 19, 1987, FHWA implemented a nationwide 4(f) evaluation and approval process for federally-aided highway projects with minor involvement with public parks, recreation lands, wildlife and waterfowl refuges, and historic sites (52 FR 31111). For a project to qualify under this streamlined, programmatic approach, the project must entail an improvement to an existing highway, have minor impacts, and have agreement from officials with jurisdiction over the property with regard to the assessment of impacts and proposed mitigation.

(2) DOI has determined that the point of coordination on these proposed projects between the FHWA and the bureaus is at the Regional Director level. The Service Regional Director will coordinate the Service response (i.e., collate field office views) to FHWA on any projects addressed under the nationwide section 4(f) evaluation.

4.4 Endangered Species Act. See also 734 FW.

A. The presence of listed or proposed threatened or endangered species and/or designated or proposed critical habitats in the area to be impacted and the potential impacts of the proposed project on those species or habitats should be fully discussed in agency's environmental documents (i.e., EAs and EISs). Service comments on draft environmental documents should identify potential impacts to those species or habitats which have not been adequately addressed.

B. It is to all parties' benefit that the Service identify potential endangered species and critical habitat conflicts early in the project planning process, such as scoping.

C. The joint Service-National Marine Fisheries Service Interagency Cooperation regulations [50 CFR 402.12(c)] state that consultation, conference, and biological assessment procedures under section 7 may be consolidated with interagency cooperation procedures required by other statutes, such as NEPA. However, satisfying the requirements of NEPA does not in itself relieve a Federal agency of its obligations to comply with their responsibilities under section 7. The following guidance is provided.

(1) During scoping, the Service should provide the Federal agency with all relevant information on endangered and threatened species. However, this does not relieve the Federal action agency of its requirement to submit a written request for a list of any listed or proposed species or designated or proposed critical habitats, or to develop its own list for Service

approval [50 CFR 402.12(c)]. The list should be included in the draft and final environmental document as supporting documents.

(2) Similarly, where section 7 requires a Federal agency to prepare a biological assessment [50 CFR 402.12(f)], the assessment should be part of the draft and final environmental document.

(3) Formal section 7 consultation is required when a Federal action may affect listed species or destroy or adversely modify designated critical habitat (50 CFR 402.14). The results of such consultation should be addressed in the draft and final environmental document, or, as appropriate, in the record of decision for an EIS.

D. The Service should ensure that the Federal action agency is also aware of other ESA activities in the area to be impacted, such as recovery plans, recovery actions planned or underway, and any existing or proposed habitat conservation plans, pursuant to section 10(a)(1)(B) of ESA. These activities should be addressed in the action agency's environmental document.

4.5 Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands).

A. EO 11988 affirms that it is national policy to protect and enhance the natural and beneficial values of floodplains and to actively discourage noncompatible development. EO 11990 recognizes that the remaining U.S. wetlands are a valuable national resource. These EOs caution all Federal agencies to do everything possible to preserve remaining wetlands and floodplains by avoiding direct or indirect support of new construction in wetlands wherever there is a practicable alternative.

B. It is Service policy to provide Federal leadership in preserving and restoring the natural and beneficial fish and wildlife values of floodplains and wetlands. Whenever there is a practicable alternative, the Service should not undertake, support, or permit activities under its authorities that would adversely impact floodplains or wetlands. The Service should be alert during the NEPA planning process for opportunities to protect, restore, and/or enhance fish and wildlife resources values in floodplains and wetlands.

C. Service comments on an EIS should identify and discuss impacts to floodplain and/or wetland resources. Alternative project elements with less impact to these resources should be suggested, and steps that could be taken to minimize impacts or to restore or enhance natural floodplain/wetland values should be recommended.

D. If the proposed action does not appear to be in compliance with the EOs, Service comments should state so and recommendations should be made for modifying or abandoning

the project.

4.6 Federal Energy Regulatory Commission (FERC). See also 503 FW.

- A.** For a project license or exemption, FERC regulations require applicants to consult with appropriate State and Federal agencies and affected tribes before submitting an application to FERC. FERC's regulations for implementing NEPA are found in 18 CFR 2, 157, and 380.
- B.** When FERC decides the application is ready for environmental analysis, it requests public and agency review and comment within 60 days. The Service, through a controlled Departmental process, may issue comments, section 10(j) recommendations, section 4(e) terms and conditions, and section 18 prescriptions for the license. FERC, which has adopted CEQ's NEPA regulations, then prepares a NEPA document for the action.
- C.** Most licensing decisions are based on EA's. In many cases, FERC provides the public and the Service the opportunity to review and comment on draft EAs. The final EA and finding of no significant impact is issued with the license order.
- D.** In instances where an EIS is prepared, the Service, DOI, and the public are invited to scoping meetings and have an opportunity to comment on the draft EIS. If Section 4(e), 10(j) or 18 terms, conditions, prescriptions or recommendations are to be revised or submitted along with NEPA comments, they should be clearly labelled and separated from the main body of the comment letter.
- E.** Applicants seeking a preliminary permit do not have to consult with State and Federal agencies prior to filing an application. In these cases, agencies are given 60 days by FERC regulations to provide comments on the Notice of Application. This review is controlled by OEPC. Additional procedures are found in DOI's Environmental Review Memorandum No. ER 90-2, October 3, 1990.

4.7 Other Related Review Procedures. The Service review of environmental documents is often in conjunction with other planning documents. The environmental review procedures should be conducted jointly with the review requirements of the other planning documents. In addition to the other related reviews addressed above, the following Service procedures should be reviewed.

A. Presidential Permits (see 507 FW).

B. Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (see 507 FW).

C. Review of Regulations. Service comments on proposed regulations will be collated by

the Service Washington Office, unless otherwise directed by the Service or OEPC. Such comments will be coordinated and consistent with Service comments on the environmental document or other project reviews associated with the proposed rule.

For additional information regarding this Web page, contact [Krista Holloway](#), in the Division of Policy and Directives Management, at Krista_Holloway@fws.gov

Return to the [Series 500 Home Page](#)

Visit the [Division of PDM Directives Home Page](#)

Visit the [U.S. Fish and Wildlife Service Home Page](#)