

NEPA and Environmental Compliance Review Procedures Annual Update 2018

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OFFICE FOR COASTAL MANAGEMENT
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Overview

- **Updates**
 - NOAA's National Environmental Policy Act (NEPA)
 - NOS & OCM Environmental Compliance Policies
 - OCM Process Improvement Team
- **Requirements & Review Procedures**
 - Statutes
- **Status of 306A Guidance**
- **Shared Lessons Learned and Best Practices**
 - PA, NH & TX



Updates

- **NOAA completed revised NEPA NAO (216-6A), including revised CEs and Companion Manual**
 - New Extraordinary Circumstances and CEs are in effect
- **NOS issued Environmental Compliance Policy in May 2016**
 - Directs offices to: allocate resources (staff & training) and establish, document and conduct standard procedures for complete comprehensive environmental analyses
- **OCM issued Environmental Compliance Policy in September 2016**



Updates

- **OCM Process Improvement Team**
 - Convened a cross-office team
 - Serve as a mechanism to broaden the understanding and application of the environmental compliance requirements for the office
 - Identify creative solutions, and options, to address the environmental compliance workload, including recommendations regarding OCM policy, programmatic and staffing approaches, and ways for addressing environmental compliance for the office
 - Wrap up in Spring 2018



National Environmental Policy Act (NEPA)

Trigger

- **‘Major federal action’ requiring NOAA determination of environmental consequences - Includes projects or programs entirely or partially**
 - funded; assisted, regulated, conducted, approved, or permitted by a federal agency
- **NEPA ends with NOAA’s final decision – cannot be completed after the fact**
- **NOAA has no statutory exceptions**
- **NEPA must be completed *before* funds are spent**



Who must conduct NEPA?

- **ONLY federal agencies are required to comply**
- **State and local governments, universities, and private individuals are not directly subject to NEPA requirements**
 - Actions taken by these groups (e.g., applying for a permit or federal funds) may trigger one or more NEPA requirements for federal agencies
 - State NEPAs can support Federal analyses but cannot be a substitute
- **NOAA must complete its own NEPA before any funds can be spent**
 - Other federal agency NEPA documents cannot be a substitute



NEPA Documentation

- **Categorical Exclusion Documents**
 - Used when environmental impacts are well documented to have no potential to be significant; AND
 - “Extraordinary circumstances” are not present
- **Environmental Assessments**
 - Used when “categorical exclusion” does not apply OR if extraordinary circumstances exist
 - This assessment helps NOAA determine if the environmental effects will be significant
- **Environmental Impact Statements**
 - Used when environmental effects are expected to be significant



Categorical Exclusions

Extraordinary Circumstances

A categorical exclusion cannot be used if one or more “extraordinary circumstance” applies, including actions that:

- Affect human health or safety (including minority or low-income communities)
- Affect areas with unique environmental characteristics, species or habitats protected by the ESA, the MMPA, the MSA, NMSA, or the Migratory Bird Treaty Act, significant properties/historic resources;
- Involve hazardous or toxic substances;
- Introduce/expand invasive species;
- Violate laws or cannot be resolved through regulatory processes;
- Effects are highly controversial or precedent-setting;
- Effects that are uncertain, unique, or unknown; or
- Cause significant cumulative impacts when the proposed action is combined with other past, present and reasonably foreseeable future actions, even though the impacts of the proposed action may not be significant by themselves.



Environmental Assessment

- **Appropriate if the project will have no significant impact on the human environment**
 - Illinois Coastal Non Point Pollution Program
 - Hika Park Public Access
 - NERR boundary expansion
- **“Significance” depends on:**
 - Context (e.g., location, time of year, species present)
 - Intensity (e.g., size of project, effects on species)
- **Requires extensive NOS and NOAA review (~9 mos.)**
- **Results in a “Finding of No Significant Impact” or requirement for environmental impact statement**



Environmental Impact Statement

- **Prepared for actions with significant effects on the environment**
 - New National Estuarine Research Reserve in Hawaii
- **More strict than an environmental assessment**
 - Mandatory scoping periods
 - Public comment periods
 - Notices in the Federal Register
 - EPA Review
- **Can take 1-2 years (or more) to finalize**



What Information is Needed?

- **Description of proposed action**
 - What is it?
 - Dimensions
 - Methods
 - Materials
 - Project location
 - City, County, Latitude/Longitude
 - Maps
 - Existing environmental conditions
 - Substrate, vegetation, existing uses
 - Presence of wetlands, floodplains, other unique habitats
 - Threatened or endangered species
 - Historic, archeological, or tribal resources



What Information is Needed? (cont'd)

- **Timing**
 - Time of year and length of time
- **Mitigation Measures or BMPs**
- **Permits needed and their status**
 - Include any terms and conditions
- **Cumulative effects**
 - Independent project
 - Ongoing project
 - NERRS SWMP or property maintenance
 - Phased project
 - Texas Baytown marine debris removal



Supporting Information

- **Please include**
 - Sub-applications, maps, engineering designs and diagrams
 - Reports or other agency NEPA documents
 - Copies of state clearinghouse or other state-conducted consultations
 - Historic preservation
 - Fish and wildlife agency reports
 - Specific state or local agency consultations



Procedures for Financial Assistance Reviews

- **Reviews take place down to the *task and outcome level***
 - New awards
 - SAC releases
 - Change of scope requests
- **For NEPA**
 - Does an extraordinary circumstance exist?
 - Is there an appropriate CE?
- **For Environmental Compliance**
 - Listed species
 - Essential fish habitat
 - Historic or cultural resources
 - Marine mammals or marine sanctuaries (rarely)
 - Others, as necessary



Endangered Species Act

Section 7 Consultation

- **Secretaries of Interior and Commerce administer this legislation**
 - NOAA NMFS consults for *most* marine species
 - U.S. Fish and Wildlife Service consults for *most* terrestrial species
- **Consultation required to ensure actions authorized, funded, or carried out are not likely to**
 - Jeopardize endangered or threatened species, or species proposed for listing; or
 - Result in the destruction or adverse modification of designated critical habitat



Endangered Species Act

Section 7 Consultations

- **Three potential determinations**
 - ✓ **No Effect:** No impacts, positive or negative (concurrence not required but memo for record is required)
 - ✓ **May affect but not likely to adversely affect (MANLAA):**
All effects are beneficial, insignificant, or discountable
 - Requires **written** concurrence from USFWS or NMFS
 - **May affect and likely to adversely affect:** Resources are likely to be affected in a negative manner
 - NOAA Office for Coastal Management has not continued support for projects expected to have an adverse effect on listed species



Endangered Species Act

What Information is Needed for Section 7?

- **Official species list**
 - USFWS - IPaC database system
 - NMFS – written request
- **If present, prepare section 7 consultation letter to include:**
 - Description of proposed action and project area and species or critical habitat
 - Anticipated effects on **each** listed species or habitat
 - Consider species affected and their potential response (including all life stages)
 - Responses might include no response, impacts to foraging, reproduction, injury, or mortality
 - Cumulative effects analysis
 - Identify future state or activities that are reasonably certain to occur within the project area. How will those activities affect listed species?



What to Expect for ESA Consultations

- **If no effect**
 - Prepare substantiated memo for record
- **If MANLAA**
 - Requires written concurrence
 - Goal is 30 days
 - May include BMPs/conditions
 - Must have state/local written agreement to comply
 - Cannot proceed without written concurrence
 - Prepare substantiated memo for record
- **If adverse effect**
 - Work with your program specialist to select another project



Essential Fish Habitat

- **Essential Fish Habitat** – waters and substrate necessary for fish to spawn, breed, feed, or grow to maturity
- **Federal agencies must**
 - Evaluate the effects of actions authorized, funded, taken, or proposed
 - Consult with NOAA's NMFS when any action **may adversely affect** habitat identified under this Act
 - “Adverse effect” = any impact that reduces the quality or quantity of this habitat
 - Prepare a written assessment of any action that requires consultation



Essential Fish Habitat

What Information is Needed for EFH Consultation?

- **If not present**
 - prepare substantiated memo for record
- **If present, prepare letter to NMFS**
 - Proposed action and project area description, Include site characteristics and maps
 - Essential fish habitat designations in fishery management plans
 - <http://www.habitat.noaa.gov/protection/efh/habitatmapper.html>
 - Generalized, GIS interpretation of legal, textual description
 - Methods
 - Impacts and duration
 - Prior correspondence



What to Expect for EFH Consultations

- **NMFS responds within 30 days**
 - May include conservation recommendations
 - Must have state/local agency written agreement
- **Certain NMFS regional offices have standard forms and procedures to follow**
- **OCM developing programmatic agreement for subset of most common and complementary projects**
 - Criteria established for future projects to expedite review



National Historic Preservation Act

- **Section 106 requires federal agencies to determine if the action is an “undertaking”**
 - If yes, consultation is required (minimum 30 days)
- **NOAA’s action of providing funds IS an undertaking under this act, requiring consultation to :**
 - Determine whether historic sites, artifacts, or other historic, archeological, or cultural resources may be affected
 - Make a determination of adverse effects and approaches to avoid or mitigate them
 - Discuss the project with state or tribal historic preservation officer and advisory council to determine effective mitigation



National Historic Preservation Act

What Information is Needed for NHPA Consultation?

- **Prepare letter to SHPO/THPO**
 - Description of proposed action and project area
 - Include coordinates and available maps with project area defined
 - Properties listed or eligible for National Register
 - Methods and materials
 - Anticipated effects
 - Prior correspondence (e.g, written reports or studies)
 - Include state historic preservation office (SHPO) determination letter and original letter to this office
 - Include required state-specific forms, as needed (e.g., WI and NH)
- **SHPO has 30 days to respond after they have sufficient details to review**



Marine Mammal Protection Act

- **Prohibits the taking (harassment, injury, killing) or marine mammals unless exempted or permitted**
- **NMFS may issue an incidental take authorization for**
 - Highway, bridge, port construction (pile driving) or certain scientific research affecting animals
- **NMFS may issue permits to allow for**
 - Stranding networks; investigations of mortality events; biomonitoring; tissue/serum banking; analytical quality assurance
- **NOAA developing acoustics guidance to address impacts of sonar and sound on marine mammals**
- **NOS developing Programmatic Environmental Assessment to address sound**



Marine Mammal Protection Act

What Information is Needed for MMPA Consultation?

- **Presence of marine mammals at or near project site**
 - Include types, numbers, etc.
- **Methods and best management practices used**
- **Anticipated impacts, including sound**
 - <http://www.nmfs.noaa.gov/pr/acoustics/draft%20acoustic%20guidance%20July%202015.pdf>
- **Required Marine Mammal Protection Act permits** -
 - Provide copies of valid permits, including conditions
- **Copies and details of prior correspondence**



What to Expect from MMPA Consultations?

- **If application includes activities related to marine mammal stranding network efforts**
 - OCM will prepare substantiated memo for the record documenting presence of valid permit and conditions
- **If application includes activities related to sonar mapping, and the like**
 - OCM will work with NMFS on case-by-case basis



National Marine Sanctuary Act

- **Requires interagency consultation on actions “likely to destroy, cause loss of, or injure a sanctuary resource”**
 - Actions = federal and private actions authorized by licenses, leases, or permits, including actions external to the sanctuary
- **Three other possible types of approval**
 - General use permits: covers several categories of activities otherwise prohibited by National Marine Sanctuary regulations
 - Authorizations: Issued at 6 sites and must relate to other federal, state, or local permits
 - Special use permits: Authorized for 7 categories of activities, but must not result in injury of sanctuary resources



National Marine Sanctuary Act

What Information is Needed for NMSA Consultation?

- **Description of proposed action and project area**
- **Information on potential effects**
- **Project applicant may also be required to secure a sanctuary permit**
- **Prior correspondence with the sanctuary**
 - Include emails, permits, conditions
 - Applicant should contact the sanctuary superintendent and comply with procedures



What to Expect from NMSA Consultations?

- **In no affect to sanctuary resources**
 - Prepare substantiated memo for the record
- **If activity had the potential to affect any sanctuary resources**
 - OCM must correspond with sanctuary
 - Typically, email correspondence with sanctuary is sufficient
- **Typically, formal NMSA consultation is not required**



Compliance Review Statistics

- 125+ New awards
 - CZMP awards have average of 20 tasks
 - NERR awards have 10-12 tasks
- 90+ NOAA-led coral projects
- 100+ Contract actions
- 12+ Program change reviews
- 1-2 CELCP plan reviews
- 2-3 6217 plan reviews
- 17 NERR MP reviews
- 700+ Post-award reviews - SACs, change in scope
- Handful of EAs & 1 EIS each year



Update on 306A Guidance

- **Final version ready for public comment**
- **Approval process will be part of Paperwork Reduction Act process**
- **Will publish in Federal Register in mid-March**
- **Required analysis package being prepared**
- **Effective date will be date of OBM approval**
 - Not required for FY18
- **Will compile 306A examples if requested**



Lessons Learned

- **Pre-review** allows early identification of environmental compliance and consultation needs
- **Early consultation** reduces number of special award conditions and expedites distribution of funds
- **More complete information in project application** = quicker completion of NEPA and environmental compliance requirements
- **Clear and accurate descriptions** of activities eliminate confusion and unnecessary delays
- **Improved state grant application requirements** enables collection of information that better meets NOAA's compliance needs



Shared Experiences

- **New Hampshire**
 - Steve Couture
- **Pennsylvania**
 - Don Benczkowski & Stacey Box
- **Texas**
 - Carly Vaughn & Melissa Porter



NH Department of Environmental Services Coastal Program *306A projects*

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NEW HAMPSHIRE
DEPARTMENT OF
**Environmental
Services**



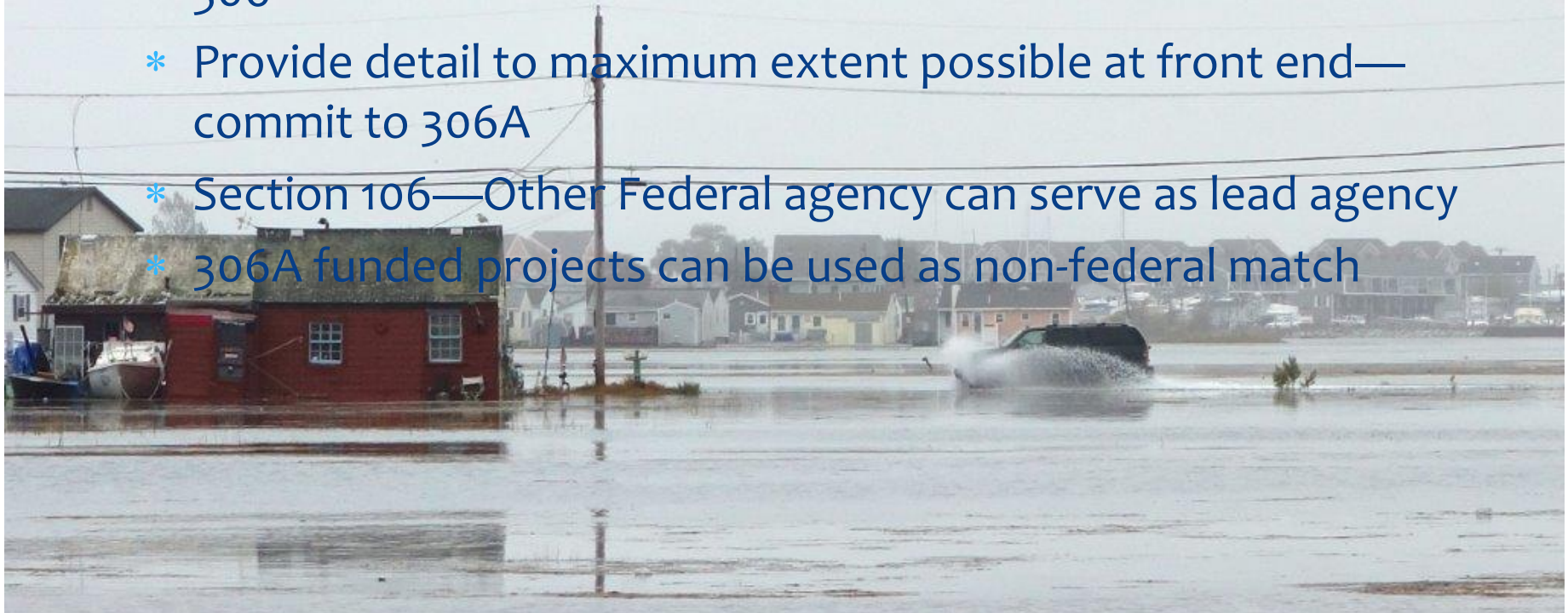
NH 306A summary:

- * Approximately one 306A project per FFY
- * Project types
 - * Stormwater (redevelopment improvements)
 - * Sand dune restoration (state park)
 - * Dam removal (design, engineering, 106 compliance)
 - * Land acquisition
- * Small scale - \$10-\$70k range



NH 306A lessons learned:

- * Usually leading project and/or have significant stakeholder as partner/lead
- * Avoid projects that are not CE!
- * Determine if CZM funds can be used to support project via 306
- * Provide detail to maximum extent possible at front end—commit to 306A
- * Section 106—Other Federal agency can serve as lead agency
- * 306A funded projects can be used as non-federal match



Pennsylvania Coastal Management Program



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SHPO Form

- This form was recently revised by Pennsylvania Historical and Museum Commission. The revised form includes asking for maps and a very detailed project description to “make it clear exactly what materials we need to conduct our review in order to avoid the back-and-forth of requesting additional information, and hopefully, save some time for everyone.”
- <http://www.phmc.pa.gov/Preservation/About/Documents/SHPO-Project-Review-Form.pdf>



NEPA Review Questionnaire

- **Will the proposed project:**
 - Have a potentially significant effect on public (human) health or safety?
 - Have a potentially significant effect on the environment or environmentally sensitive areas?
 - Establish a precedent for future projects that will have significant environmental effects or unknown environmental risks?
 - Have a significant impact on federally listed threatened or endangered species or their critical habitat?
 - Have a potentially significant effect on historical, archaeological or cultural resources?
 - Employ a new or unproven technology that may involve unknown environmental risks?
 - Result in a violation of federal, state or local law?
 - Be part of a phased approach project that could potentially have a cumulative significant impact?



Section 306A and Construction/Acquisition

Outside Current Boundary

- The PA Coastal Resources Program previously requested that NOAA provide direction regarding the possibility of funding 306A projects outside of the current CZ boundary
- In evaluating previous NOAA 312 evaluation comments, PA CRM was trying to determine if boundary expansion should take place in order to entertain projects located outside the current CZ boundary
- NOAA stated in the new draft Section 306A Guidance that 306A funds could support construction/acquisition projects, provided the project(s) has/have a strong coastal connection (Geography, Section 2.4, p. 14, Draft Final 306A Guidance)





Texas Coastal Management Program



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CMP Grants Program

- 90% of the funds are passed through to local governments and entities
- Competitive grant process
- Eight networked agencies and four Commissioner-appointed members select projects for funding



Grant Selection Process

Apr	Solicitation and guidance document issued
May	Grant workshops held along the coast
Jun	Mandatory pre-proposal deadline
Jul/Aug	Review team identifies projects that (1) align with networked agency needs and (2) may encounter permitting or consistency issues
Aug	Written comments provided to applicants
	Notification letters sent to applicants selected to submit final application
Oct	Final application deadline
Oct/Nov	Review team scores final applications
Dec	Review team meeting to finalize scores
Jan/Feb	Projects approved by Commissioner

§306A Final Application Requirements

- ✓ Attorney Title Opinion
- ✓ Certificate of Consistency
- ✓ USGS Map
- ✓ Project Site Map and Project Plans
- ✓ Photos of Project Site
- ✓ Section 306A Checklist
- ✓ Permits and Environmental Clearances

Approval Process

Jan/Feb

- Revising/drafting work plans as needed
- Reviewing 306A applications documents to ensure compliance with NOAA requirements

Feb/Mar

- Submit 306A projects for historical review (30 days)
- Conduct consistency review for 306A projects

Apr

- Submit draft application to NOAA
- Submit 306A documents to project officer to initiate early review

Oct

- Receive grant award from NOAA
- Submit required information needed to satisfy Special Award Conditions (if applicable)

CMP Grants Team

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Questions?

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For More Information

- **Council on Environmental Quality NEPA:** www.nepa.gov
- **NOAA NEPA information:** www.nepa.noaa.gov
- **Endangered Species Act:**
 - www.nmfs.noaa.gov/pr/laws/esa/
 - www.fws.gov/endangered/
- **Essential Fish Habitat:**
 - www.habitat.noaa.gov/protection/efh
- **National Historic Preservation Act:**
 - www.achp.gov/work106.html
- **Marine Mammal Protection Act:**
 - <http://www.nmfs.noaa.gov/pr/laws/mmpa/>
- **National Marine Sanctuaries Act:**
 - <http://sanctuaries.noaa.gov/management/consultations/welcome.html>
 - <http://sanctuaries.noaa.gov/management/permits/welcome.html>

