

BOEM

Bureau of Ocean Energy
Management

NEPA and BOEM

Tribal Ocean Summit
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National Environmental Policy Act (NEPA)

- **The National Environmental Policy Act (NEPA) requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions.**
- Section 102 in Title I of the Act requires federal agencies to incorporate environmental considerations in their planning and decision-making through a systematic interdisciplinary approach.
- Specifically, all federal agencies are to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment.

National Environmental Policy Act (NEPA)

NEPA is the overarching environmental law for federal agencies.

- This includes BOEM, which operates under the authorization of the [Outer Continental Shelf Lands Act \(OCSLA\)](#).
- Federal agencies meet their NEPA review responsibilities by completing the NEPA processes set forth in their NEPA implementing procedures and the federal Council on Environmental Quality's (CEQ) regulations ([40 C.F.R. Parts 1500-1508](#)).
- There are three forms of NEPA review:
 - Categorical Exclusion
 - Environmental Assessments
 - Environmental Impact Statements
- NEPA's purpose and function are satisfied if federal agencies have considered relevant environmental information and if the public has been informed regarding the decision-making process.

National Environmental Policy Act (NEPA)

- The President, federal agencies and the courts share responsibility for enforcing NEPA provisions.
- The CEQ is charged with implementing NEPA.
 - CEQ periodically revises the regulations. The most current regulations can be found at: <https://ceq.doe.gov/laws-regulations/regulations.html>.
 - Federal departments and agencies develop their own regulations and guidance based on CEQ direction. CEQ revised the NEPA regulations in 2020; most departments and federal agencies are making similar revisions. The Department of the Interior's NEPA regulations can be found at: <https://www.doi.gov/nepa>.

What Does NEPA Require?

NEPA generally requires:

- Agencies and the public to participate in the planning process.
- Full disclosure about the proposed action, alternatives, environmental impacts, and possible mitigation.



Determining Level of NEPA Compliance

Agencies must determine if a Federal action is subject to NEPA (i.e., Is there a potential for impacts to the environment?).

If so, agencies must determine the level of required NEPA compliance:

- *Categorical Exclusion* – The proposed action falls into a category of actions already defined, analyzed and found not to pose the potential for significant impacts to the environment. If a categorical exclusion applies to an action, an environmental assessment or environmental impact statements is not required.
- *Environmental Assessment (EA)* – The proposed action **could** have significant impacts, but more analysis and information is needed.
- *Environmental Impact Statement (EIS)* – The proposed action **will** have significant impacts. This document discloses to the public and the decisionmaker what those impacts might be and how they could be avoided or minimized (this is known as “mitigation”).

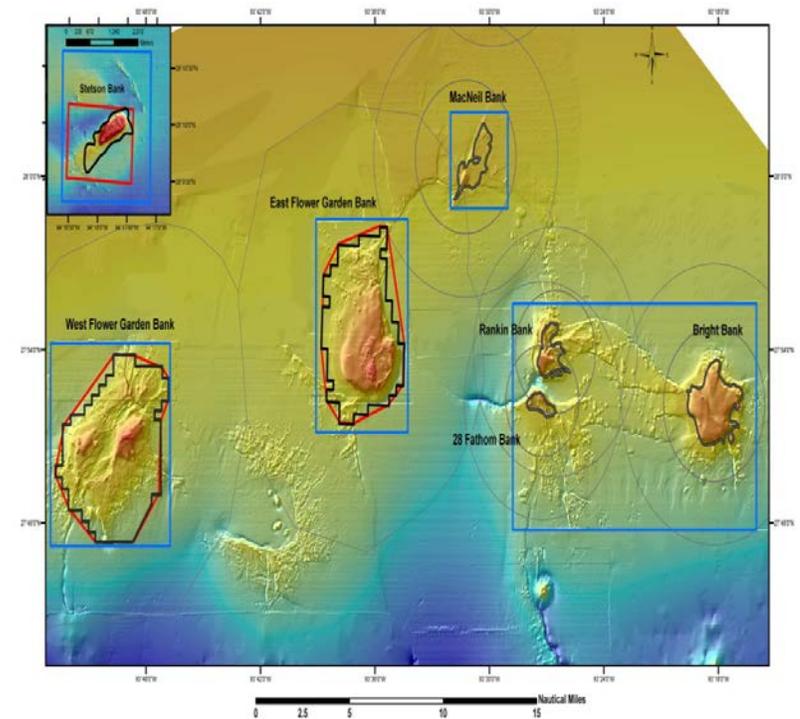
Mitigation Under NEPA

Mitigation is an important mechanism federal agencies can use to minimize the potential adverse environmental impacts associated with their actions.

Mitigation includes:

- Avoiding impact by not taking a certain action or parts of an action.
- Minimizing an impact by limiting the degree or magnitude of the action and its implementation.
- Rectifying an impact by repairing, rehabilitating or restoring the affected environment.
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- Compensating for the impact by replacing or providing substitute resources or environments.

Source: 40 CFR 1508.1(s)(1-5), pages 47-48 in <https://ceq.doe.gov/docs/laws-regulations/nepa-implementing-regulations-desk-reference-2020.pdf>



What Does NEPA Not Do?

NEPA *does not*:

- Decide which alternative to choose.
- Prevent environmental impacts.
- Prohibit any actions.
- Justify a predetermined action.
- Require full mitigation for all environmental impacts.
- Guarantee wise decisions.
- Mandate particular results or substantive outcomes.



NEPA applies to all of BOEM's program areas – oil and gas, renewable energy and marine minerals.

BOEM conducts NEPA in several ways:

- *Programmatic NEPA* – An EIS or an EA that analyzes a suite of activities, often on a large geographic scale.
- *Site-specific NEPA* – An EIS or EA that analyzes a narrower activity or geographic area.
- *Categorical Exclusion Reviews* – Consideration of an activity that is not expected to have any effect on the environment.
- *Determination of NEPA Adequacy* – Consideration of an activity or activities that fall under an existing analysis such that no additional analysis is necessary.

More BOEM-specific information can be found at:

<https://www.boem.gov/national-environmental-policy-act-nepa>.

Tribal Engagement Under NEPA

The NEPA process is one way BOEM engages with tribes and tribal interests.

- BOEM considers impacts to land use, subsistence resources, culture and way of life, and communities that may be disproportionately affected by an activity, all of which may include consideration of impacts to tribes and tribal interests.
- Government-to-Government (G2G) consultation may be conducted alongside a NEPA process where the action being analyzed has the potential to affect federally recognized tribes. NEPA is not a substitute for G2G consultation.
- Preparation of an EIS requires public involvement, which includes asking for comments on BOEM's assessment of potential impacts. Public involvement may also include public meetings, requests for specific information, and other opportunities for BOEM to understand how energy and mineral development could affect people and nature.
- Federally recognized tribes can be a **Cooperating Agency** to the NEPA process.

Cooperating Agency Status for Federally Recognized Tribes Under NEPA

- Under the revised CEQ NEPA regulations, **any federally recognized tribe with jurisdiction by law or with special expertise with respect to any environmental issue can be a Cooperating Agency** during the development of an EIS.*
- **As a Cooperating Agency, federally recognized tribes can participate earlier in the NEPA review process.** They can also:
 - Participate in the scoping process (period during which the federal agency seeks public input on the range of issues and potential alternatives to be addressed in the EIS).
 - Assume responsibility for developing information and preparing environmental analyses, including portions of the environmental impact statement.**
 - Make available staff support to enhance the lead agency's interdisciplinary capability.**
 - Consult with the lead agency in developing the NEPA schedule.
 - To the maximum extent practicable, jointly issue environmental documents with the lead agency.

**Upon request of the lead agency*

***Upon BOEM's request*

Cooperating Agency Status for Federally Recognized Tribes Under NEPA

Being a Cooperating Agency will allow for earlier receipt and review of NEPA documents, essentially allowing more opportunities for review, comment, and participation in the development of NEPA documents

- The opportunity to be a Cooperating Agency is open to federal agencies, state agencies (such as SHPOs), municipal governments and federally recognized tribes as “government entities” and is not open to non-governmental organizations.
- The ability of federally recognized tribes to be Cooperating Agencies is in recognition of their status as government entities with special expertise.

National Historic Preservation Act (NHPA)

The National Historic Preservation Act (NHPA) requires federal agencies to consider the effects of their undertakings on historic properties.

- Federal agencies meet this requirement by completing the Section 106 process set forth in the implementing regulations, “Protection of Historic Properties,” 36 C.F.R. Part 800. The Section 106 process goal is to identify and to consider historic properties that might be affected by an undertaking and to attempt to resolve any adverse effects through consultation.
- The process provides for participation by State Historic Preservation Offices (SHPO); Tribal Historic Preservation Offices (THPO); tribal, state and local governments; Indian tribes and Native Hawaiian organizations; applicants for Federal assistance, permits or licenses; representatives from interested organizations; private citizens; and the public.
- Federal agencies and consulting parties strive to reach agreement on measures to avoid, minimize and mitigate adverse effects on historic properties and to find a balance between project goals and preservation objectives.



NEPA Substitution for the NHPA Section 106 Review

Federal agencies are encouraged to coordinate compliance with Section 106 with any steps taken to meet the requirements of NEPA.

- Federal agencies' statutory obligations under NEPA and NHPA are independent. However, integrating (or substituting) the processes creates efficiencies, promotes transparency and accountability, and supports a broad discussion of effects to the human environment.
- Substitution, or use of the NEPA process for Section 106 purposes (addressed in 36 C.F.R. §§ 800.8), authorizes agencies to use the procedures and documentation required for the preparation of an EA, Finding of No Significant Impact (FONSI), EIS, and Record of Decision.

NEPA Substitution for Offshore Wind Projects

BOEM is implementing NEPA Substitution for Section 106 Review during the environmental review process for offshore wind projects, primarily because:

- **BOEM** needs an efficient, streamlined approach that better integrates NHPA and NEPA reviews both thematically and in terms of schedule.
- **BOEM, lessees, and consulting parties** need clearer expectations of the timeline for environmental reviews.
- **Tribes and consulting parties** have requested opportunities for earlier and more direct input into the selection of alternatives and mitigation measures.
- **Tribes** have requested a greater focus on meetings between BOEM and tribes to discuss sensitive topics as well as greater focus on G2G consultations.



NEPA Substitution for Offshore Wind Projects

Potential benefits of NEPA Substitution for Section 106 Review in BOEM offshore wind projects:

- Creates a unified, more efficient, and predictable regulatory review and consultation process.
- Requires fewer documents.
- Provides additional dedicated meetings for tribes.
- Creates better integration of natural and cultural resource assessments.
- Allows tribes earlier input into the selection of alternatives and mitigation measures.
- Sets clearer expectations.

For More Information

For additional information on BOEM and NEPA, please visit:

- **BOEM and NEPA:** <https://www.boem.gov/national-environmental-policy-act-nepa>
- **BOEM's Environmental Comment – Public Review NEPA Documents:** <https://www.boem.gov/nepaprocess>

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