

CHAPTER 2

PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

2-1 Scope

The National Environmental Policy Act (NEPA) is a basic national charter for protection of the environment. It establishes policy, sets goals, and provides a means for carrying out environmental policy. This chapter contains policy and guidance to ensure that the Navy acts, per the letter and spirit of NEPA, on all actions with the potential to have significant environmental impacts. Navy activities should apply the requirements of this chapter to any action affecting the environment inside the U.S., its territories and possessions. Executive Order (E.O.) 12898 of February 11, 1994, deals with Federal actions to address environmental justice in minority populations and low-income populations. This instruction supercedes CNO ltr 5090 Ser N456/8U595188 of 9 Mar 98, Modification of Procedures for Implementing the National Environmental Policy Act (NOTAL).

Proponents of proposed actions having the potential for significant effects on the environment outside the geographical borders of the U.S., its territories, and possessions must also take environmental considerations into account per E.O. 12114 of January 4, 1979, and reference (a). Appendix E presents procedures to follow when a proposed Navy action affects the environment outside the jurisdiction of the U.S.

2-1.1 References. Relevant references are:

- a. DOD Directive 6050.7 of 31 March 1979, Environmental Effects Abroad of Major Department of Defense Actions; (NOTAL);
- b. 32 CFR 775, DON Procedures for Implementing the National Environmental Policy Act;

c. SECNAVINST 5000.2B Implementation of Mandatory Procedures for Major and Non-major Defense Acquisition Programs and Major and Non-major Information Technology Acquisition Programs; (NOTAL).

2-2 Legislation

2-2.1 NEPA mandates that Federal agencies "utilize a systematic, interdisciplinary approach that will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment." NEPA encompasses a wide variety of existing environmental legislation including, but not limited to, the: Clean Air Act (CAA), Clean Water Act (CWA), Coastal Zone Management Act (CZMA), National Historic Preservation Act (NHPA), Marine Protection, Research and Sanctuaries Act (MPRSA), Pollution Prevention Act (PPA), and the Endangered Species Act (ESA). Please refer to appendix A for further discussion of specific laws.

NEPA further requires a detailed statement on the environmental impact of major Federal actions that significantly affect the environment be included in every recommendation or report on proposals for legislation. Two basic tenets of NEPA and the Council on Environmental Quality (CEQ) regulations are that:

- a. Procedures must exist to ensure environmental information is available to decision makers and citizens before making decisions and taking major Federal actions;
- b. The NEPA process should identify and assess reasonable alternatives to proposed actions

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to avoid or minimize adverse environmental effects.

2-2.2 NEPA created the CEQ, which provides regulations to implement the procedural provisions of NEPA.

2-2.2.1 CEQ regulations apply a three-tiered approach to ensure that pertinent environmental information for major Federal actions is available to decision makers and the public:

- a. Categorical Exclusions
- b. Environmental Assessments (EAs)
- c. Environmental Impact Statements (EISs).

This chapter discusses in detail compliance criteria for each level.

2-2.3 E.O. 12898 mandates that each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations.

2-3 Terms and Definitions

R) **2-3.1 Action Proponent.** The commander, commanding officer, or civilian director of a unit, activity or organization that is responsible for initiating and/or carrying out a proposed action. In general, the proponent should be at the lowest level in the chain of command that "owns" the entire action being proposed. The proponent has the responsibility to prepare and/or obtain funding for the preparation of the appropriate environmental documentation. To illustrate, the station commanding officer would normally be the action proponent for a military construction project for the station (but not other installations). The commander of an operational group would normally be the action proponent for training for the group (but not training for others). The

Commander In Chief U.S. Atlantic Fleet, U.S. Pacific Fleet, or U.S. Naval Forces, Europe would normally be the action proponent for the Navy-wide introduction of a new weapon system (e.g. new ship class, new aircraft model, new missile) within his/her Area of Responsibility (AOR). An acquisition program manager for a systems command would normally be the action proponent for systems testing, or for a programmatic action that has multi-base, multi-region or multi-claimant impact. When prudent due to the significance of the action proposed or for other reasons, the designation of action proponent may be elevated to a person higher in the chain of command.

2-3.2 Categorical Exclusion. A category of actions that do not have, under normal circumstances, individually or cumulatively, a significant effect on the human environment; or, that have been previously found to have no such effect as a result of procedures adopted by the Navy for implementing the CEQ regulations and for which, therefore, neither require an EA nor an EIS.

2-3.3 CNO Environmental Review Panel. A selected group of technical experts convened by the Environmental Protection, Safety, and Occupational Health Division (N45), on an ad hoc basis, to review specific EAs/EISs submitted on request to recommend subsequent disposition/processing. Review panel composition is on a subject-by-subject basis with specific subject matter experts named to the panel as appropriate and only for the time necessary to review the current EA/EIS and resolve the current issues. There is no standing membership or scheduled meetings. (R)

2-3.4 Cooperating Agency. Any Federal agency other than a lead agency, which has jurisdiction by law or special expertise concerning any environmental impact, involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian tribe, may by

agreement with the lead agency become a cooperating agency.

R) **2-3.5 Draft Environmental Impact Statement (DEIS).** Statements prepared for actions that may have a significant impact on the quality of the human environment or that are potentially controversial in environmental effects. DEISs are filed with the Environmental Protection Agency (EPA) and distributed to cognizant Federal, State, local, and private agencies, organizations, and individuals for review and comment before preparation of a final EIS (FEIS). A DEIS requires a complete and comprehensive analysis of anticipated impacts to the human environment.

2-3.6 Environmental Assessment (EA). A concise public document that:

a. Briefly provides sufficient evidence and analysis for determining whether to prepare an EIS or a Finding Of No Significant Impact (FONSI).

b. Aids to Navy compliance with NEPA when no EIS is necessary.

c. Facilitates preparation of an EIS when one is necessary.

R) **2-3.7 Final Environmental Impact Statement (FEIS).** Statement that incorporates all pertinent comments and information resulting from review of the DEIS. The FEIS is filed with EPA and distributed to recipients of the DEIS.

R) **2-3.8 FONSI.** A document, in which the Navy briefly presents the reasons why an action not otherwise categorically excluded, will not have a significant effect on the human environment, and for which an EIS will not therefore be prepared. The FONSI shall include a brief summary of the proposed action and brief summary of the basis for the finding regarding any relevant issues, mitigation, and/or regulatory concurrence used by the action proponent to make the finding. A FONSI may be one result of review of an EA.

2-3.9 Human Environment. The natural and physical environment and the relationship of people with that environment.

2-3.10 Impacts. Impacts, as used in this chapter, are synonymous with effects, and include direct, indirect, and cumulative impacts. Direct impacts result from some action and occur at the same time and place as the action. Indirect impacts also result from an action, but occur later in time or at a removed location from the action. They are reasonably foreseeable. Indirect impacts include:

a. Growth inducing effects.

b. Effects related to induced changes in the pattern of land use, population density, or growth rate.

c. Related effects on the human environment.

Cumulative impacts result from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

2-3.11 Lead Agency. The Federal agency or agencies preparing or having taken primary responsibility for preparing an EIS.

2-3.12 Legislative Environmental Impact Statement (LEIS). An LEIS is a detailed statement required by law for inclusion in a recommendation or report on a legislative proposal to Congress. A LEIS is part of the formal transmittal of a legislative proposal. However, one may transmit it up to 30 days later to allow time for completion of an accurate statement that can serve as the basis for public and congressional debate. The Navy does not prepare an LEIS for annual requests to Congress for Military Construction

(MILCON) authorization or other funding appropriations. Following funding authorization, Navy provides appropriate NEPA compliance reviews for each project.

2-3.13 Major Federal Action. Any proposed Navy action that has the potential for physical impact on the human environment. Actions include, but are not limited to:

a. New activities, including projects the Navy is entirely or partly funding, assisting, conducting, regulating, or approving.

b. Substantive changes in continuing actions, such as substantial changes in operational tempo, areas of use, or in methodology/equipment.

c. Approval of specific projects, such as construction or management activities located in a defined geographic area (i.e., MILCON projects, public/private venture projects, unspecified minor construction projects, natural resources management projects, special projects, land acquisition, and locally funded projects).

d. Adoption of programs, such as a group of concerted actions to implement a specific policy or plan.

2-3.14 Mitigation. Actions, which reduce the severity or intensity of impacts of other actions, to include:

a. Avoiding the impact altogether by not taking a certain action or parts of an action or by moving the project location.

b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, for example by adjusting site layout.

c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

d. Reducing or eliminating the impact over time by monitoring, maintaining, and/or replacing equipment or structures so that future environmental degradation due to equipment or structural failure does not occur during the life of the action.

e. Compensating for the impact by replacing or providing substitute resources or environments.

Action proponents should consider the avoidance of impacts as the preferred mitigation measures.

2-3.15 Notice of Intent (NOI). A required notice published in the Federal Register that formally announces the Navy's intent to prepare an EIS. The NOI provides a brief description of: the proposed action (including location, extent and duration of action), purpose and need for the action, any known alternatives to be considered, issues to be addressed (in particular, any sensitive issues), identifies any co-lead or cooperating agencies, and provides a Navy point of contact for any questions. The NOI formally opens the public scoping process and usually, though not required, provides information regarding public scoping meetings to be held.

2-3.16 Record of Decision (ROD). A concise summary for publication in the Federal Register of the decision made by the Navy from the alternatives presented in an FEIS. CNO (N45) prepares the document and the Secretary of the Navy (SECNAV) approves it. The ROD will state the decision, identify alternatives considered (including that which was environmentally preferable), and discuss other considerations (non-environmental) that influenced the decision identified. The ROD will also describe the intended implementation of all practical means to avoid impacts resulting from the chosen alternatives, and explain any decision behind the non-implementation of any of these means. Additionally, the ROD shall address any monitoring associated with mitigation. (R)

2-3.17 Scoping. An early and open process for determining the scope of issues and for identifying the significant issues related to a proposed action.

2-3.18 Significance. The context and intensity of an impact. Context means the area, resources, or processes affected. Intensity refers to the severity of impact as derived from evaluating magnitude of effects on public health or safety, unique characteristics of the geographic area, controversy of environmental effects, risk analysis, precedents, relationship to other actions, cumulative impacts, and the potential for violating laws imposed to protect the environment.

R) **2-3.19 Supplemental Environmental Impact Statement.** A document describing the environmental impacts of a project or proposal prepared when substantial changes relevant to environmental concerns are made in the proposed action, or when significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts becomes available. Action proponents shall prepare a supplemental EIS at any time after preparing and filing a DEIS, FEIS, or ROD. Action proponents will process the supplemental EIS (file with the EPA and distribute to recipients) in the same manner described in this chapter for any similar EIS.

2-4 Navy Policy

2-4.1 General. The Navy shall act with care to ensure, to the maximum extent practicable, that in conducting its mission of providing for the national defense, it does so in a manner consistent with national environmental policies, including environmental justice. In so doing, the Navy recognizes that the NEPA process includes the systematic examination of the likely environmental consequences of implementing a proposed action. To be an effective decision-making tool, the Navy shall integrate the process with other Navy-Marine Corps project planning at the earliest possible time. This ensures that planning and decision-making

reflect environmental values, avoid delays, and avoid potential conflicts. The Navy shall take care to ensure that, consistent with other national policies and national security requirements, practical means and measures are used to protect, restore, and enhance the quality of the environment, to avoid or minimize adverse environmental consequences, and to attain the objectives of:

a. Achieving the widest range of beneficial uses of the environment without degradation, risk to health and safety, or other consequences that are undesirable and unintended.

b. Preserving important historical, cultural, and natural aspects of our national heritage, and maintaining, where possible, an environment that supports diversity and variety of individual choice.

c. Achieving a balance between resource use and development within the sustained carrying capacity of the ecosystem involved.

d. Enhancing the quality of renewable resources and working toward the maximum attainable recycling of depletable resources.

e. Providing the opportunity for public comment.

Every person preparing, implementing, supervising, and managing projects involving categorical exclusions, EAs, and EISs shall have received Environmental and Natural Resources training outlined in chapter 24 of this instruction, shall have received comprehensive NEPA training specific to their job assignment, and shall be familiar with the provisions of this chapter. (R)

2-4.2 NEPA Compliance. To comply (see figure 2.1) with NEPA, the Navy shall:

a. Assess environmental consequences of proposed actions that could affect the quality of the

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environment in the U.S., its territories, and possessions per Department of Defense (DOD) and Council on Environmental Quality (CEQ) regulations.

b. Use a systematic, interdisciplinary approach that ensures the integrated use of the natural and social sciences and environmental considerations in planning and decision-making where there may be an impact on man's environment.

c. Ensure the consideration of presently unmeasured environmental amenities in the decision-making process.

d. Consider the reasonable alternatives to recommended actions in any proposal that would involve unresolved conflicts concerning alternative uses of available resources.

e. Make available to States, counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment.

f. Use ecological information in planning and developing resource-oriented projects

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2-5 Requirements

2-5.1 Categorical Exclusions. CEQ regulations provide for establishment of categorical exclusions for those actions that, after consideration by the Departments (Navy), have been found not to have a significant effect on the human environment individually or cumulatively, under normal circumstances, and therefore do not require an EA or an EIS. Categorical exclusions are applicable to those kinds of military actions that do not significantly affect the quality of the human environment, do not result in any significant change from existing conditions at the site of the proposed action, and whose effect is primarily economic or social. Even though a proposal generally fits the definition of a categorical

exclusion, activities should not use a categorical exclusion if the proposed action:

a. Would affect public health or safety;

b. Involves an action determined to have, in coordination with the appropriate resource agency, potential for significant environmental impacts on wetlands, endangered or threatened species, historical or archeological resources, or hazardous waste sites. Examples include situations in which:

(1) The action would not qualify under an Army Corps of Engineers (COE) nationwide/regional permit, or if it would meet COE requirements but cannot meet Navy's "no net loss" wetland policy. (R)

(2) The National Marine Fisheries Service (NMFS) or United States Fish and Wildlife Service (USFWS) would not issue a "no adverse effect" opinion for any threatened or endangered species or its critical habitat. (R)

(3) The State Historic Preservation Office (SHPO) would not concur with a "no adverse effect" determination.

(4) The action would conflict with remediation plans or activities, such as those that occur under the Installation Restoration Program. (R)

c. Involves effects on the human environment that are highly uncertain, involve unique or unknown risks, or are scientifically controversial;

d. Establishes precedents or makes decisions in principle for future actions with significant effects; and/or

e. Threatens a violation of Federal, State, or local law or requirements imposed for protection of the environment.

It is the responsibility of action proponents (often at the activity level) to decide to categorically exclude a proposed action. The action

proponent must document the decision not to prepare an EA or EIS on the basis of one or more categorical exclusions and must describe the exclusions found applicable, the facts supporting their use, and specific considerations of whether the exceptions to the use of categorical exclusion, set out above, were applicable. This Record of Categorical Exclusion need not be more than a page or two, but the commanding officer or his/her designee must sign it. In the case of weapons acquisition programs, the program manager must sign. If, during action coordination with the appropriate regulatory/resource agencies, it is determined that the action will have no adverse effect on resources listed in paragraph 2-5.1b and no other impacts are anticipated, an action proponent may use a categorical exclusion that includes copies of the agency correspondence in a Record of Categorical Exclusion. The action proponent shall retain the signed Record of Categorical Exclusion within the project files and make it available for review during Environmental Compliance Evaluations (ECEs).

2-5.2 List of Categorical Exclusions. The following are actions (listed in the same order and manner as reference (b)) under normal conditions, categorically excluded from further documentation requirements under NEPA:

- a. Routine personnel, fiscal, and administrative activities involving military and civilian personnel (i.e., recruiting, processing, paying, and records keeping).
- b. Reductions in force wherein impacts are limited to socioeconomic factors.
- c. Routine movement of mobile assets, such as ships and aircraft, in home port reassignments (when no new support facilities are required) to perform as operational groups, and/or for repair and overhaul.
- d. Relocation of personnel into existing Federally owned or commercially leased space that

does not involve a substantial change in the supporting infrastructure (an increase in vehicular traffic beyond the capacity of the supporting road network. To accommodate such an increase is an example of substantial change).

- e. Studies, data, and information gathering that involve no physical change to the environment (i.e., topographic surveys, bird counts, wetland mapping, forest inventories, and timber cruising).

- f. Routine repair and maintenance of facilities and equipment to maintain existing operations and activities, including maintenance of improved and semi-improved grounds such as landscaping, lawn care, and minor erosion control measures.

- g. Alteration and additions of existing structures to conform to or provide conforming use specifically required by new or existing applicable legislation or regulations (i.e., hush houses for aircraft engines and scrubbers for air emissions).

- h. Routine actions normally conducted to operate, protect, and maintain military-owned and/or controlled properties (i.e., maintaining law and order; physical plant protection by military police and security personnel; and localized pest management activities on improved and semi-improved lands conducted under applicable Federal and State directives).

- i. New construction that is consistent with existing land use and, when completed, the use or operation of which complies with existing regulatory requirements (i.e., a building on a parking lot with associated discharges/runoff that are within existing handling capacities; a bus stop along a roadway; and a foundation pad for portable buildings within a building complex).

- j. Procurement activities that provide goods and support for routine operations.

- k. Day-to-day personnel resource management and research activities under approved plans

and inter-agency agreements and designed to improve and/or upgrade military ability to manage those resources.

l. Decisions to close facilities, decommission equipment, and/or temporarily discontinue use of facilities or equipment (where such equipment is not used to prevent/control environmental impacts). (Note: Does not apply to permanent closure of public roads or to base closures.)

m. Contracts for activities conducted at established laboratories and plants, to include contractor-operated laboratories and plants, within facilities where all airborne emissions, waterborne effluent, external radiation levels, outdoor noise, and solid and bulk waste disposal practices comply with existing applicable Federal, State, and local laws and regulations.

n. Routine movement, handling and distribution of materials, including hazardous materials and wastes, that when moved, handled, or distributed are under applicable regulations.

o. Demolition, disposal, or improvements involving buildings or structures neither on nor eligible for listing on the National Register of Historic Places and when under applicable regulations (i.e., removal of asbestos, polychlorinated biphenyls (PCBs), and other hazardous materials).

p. Acquisition, installation, and operation of utility and communication systems, data processing cable and similar electronic equipment, that use existing rights of way, easements, distribution systems, and/or facilities.

q. Renewals and/or initial real estate ingrats and outgrats involving existing facilities and land wherein use does not change significantly. This includes, but is not limited to, existing or Federally-owned or privately-owned housing, office, storage, warehouse, laboratory, and other special purpose space.

r. Grants of license, easement, or similar

arrangements for the use of existing rights-of-way or incidental easements complementing the use of existing rights-of-way for use by vehicles (not to include significant increase in vehicle loading); electrical, telephone, and other transmission and communication lines; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and facilities, and for similar utility and transportation uses.

s. Transfer of real property from the military to another military department or to another Federal agency, and the granting of leases (including leases granted under the agricultural outleasing program where soil conservation plans are incorporated), permits and easements where there is no substantial change in land use or where subsequent land use would otherwise be categorically excluded.

t. Disposal of excess easement interests to the underlying fee owner.

u. Renewals and minor amendments of existing real estate grants for use of government-owned real property with no anticipated significant change in land use.

v. Pre-lease exploration activities for oil, gas or geothermal reserves (e.g., geophysical surveys).

w. Return of public domain lands to the Department of the Interior.

x. Land withdrawal continuances or extensions, that merely establish times, and where there is no significant change in land use.

y. Temporary closure of public access to military property to protect human or animal life.

z. Engineering effort undertaken to define the elements of a proposal or alternatives sufficiently to assess the environmental effects.

aa. Actions, which require the concurrence or approval of another Federal agency, where the

action is a categorical exclusion of the other Federal agency.

bb. Maintenance dredging and debris disposal requiring no new depths, securing of applicable permits, and disposal at an approved disposal site.

cc. Installation of devices to protect human or animal life (i.e., raptor electrocution prevention devices, fencing to restrict wildlife movement onto airfields, and fencing and grating to prevent accidental entry to hazardous areas).

dd. Natural resources management actions undertaken or permitted under agreement with or subject to regulation by Federal, State, or local organizations having management responsibility and authority over the natural resources in question, including hunting or fishing during hunting or fishing seasons established by State authorities under their State fish and game management laws. Concerning natural resources regulated by another Federal agency, the responsible command may cooperate in any environmental analysis that may be required by the other agency's regulations.

ee. Approval of recreational activities that do not involve *significant physical alteration* of the environment or increase human disturbance in sensitive natural habitats and that do not occur in or next to areas inhabited by endangered or threatened species.

ff. Routine maintenance of timber stands, including issuance of down-wood firewood permits, hazardous tree removal, and sanitation salvage.

gg. Reintroduction of endemic or native species (other than endangered or threatened species) into their historical habitat when no substantial site preparation is involved.

2-5.3 Environmental Assessments (EAs)

2-5.3.1 General. An EA is an analysis of the potential environmental impact of a proposed action. Action proponents must prepare an EA when they do not know beforehand whether or not the proposed action will significantly affect the human environment or be controversial regarding environmental effects. An EA will either result in a Finding Of No Significant Impact (FONSI), or, if a significant impact is expected, preparation of an Environmental Impact Statement (EIS).

2-5.3.2 Action Normally Requiring EAs.

The action proponent prepares an environmental assessment of the action unless it is determined that an EIS shall be prepared or that an action falls within the scope of one or more categorical exclusions. The following are examples of actions that, under normal conditions, would require preparation of an EA:

a. Training exercises on or over (airspace) non-military property.

b. Major training exercises on military property not categorically excluded, for which the impacts are unknown, or for which the action proponent does not already know the impacts to be significant.

c. Dredging projects that increase water depth over previously dredged or natural depths.

d. Proposed utilization of tidal and non-tidal wetlands that would require a special permit.

e. Real estate acquisitions or outleases of land involving one of the following:

(1) New ingrats/outgrants only, i.e., not renewals nor continuances wherein land usage remains the same,

(2) Fifty acres or more where existing land use will change and will not be categorically excluded, or

(3) Renewals of agricultural and grazing leases involving changes in animal stocking rates, season of use, or conversions to or from cropland.

f. Real estate acquisition of any size or in-grants/out-grants, which may be considered environmentally controversial, regardless of the appropriation or intended use.

g. Family housing projects when resident population changes substantially.

h. New target ranges or range mission changes that would increase environmental impact.

i. Exercises conducted at the request of States (e.g., ship sinking for artificial reefs) or territorial governments wherein they are expecting an environmental impact.

j. New low altitude aircraft training routes and/or special use airspace and warning areas wherein overflights impact persons or wildlife (particularly endangered species).

k. Mission changes, base closures/relocations/consolidations and deployments that would cause major long term population increases or decreases in affected areas. EAs are not required where impacts are purely socioeconomic and involve no potential for significant environmental impacts.

l. Any activity proposed that may adversely affect *threatened or endangered species*, or the designated or proposed critical habitat of an endangered species. Chapter 22 discusses the associated but separate need for a biological assessment and consultation under the Endangered Species Act.

m. Any activity proposed that would adversely affect historical or cultural sites either now listed on the National Register of Historical Places or deemed eligible for inclusion on the National Register (see chapter 23).

n. Permanent closure or limitation of access

to any areas that were open previously to public use, such as roads or recreational areas.

o. Construction or any other action resulting in discharges to or potential contamination of an aquifer, watershed, or recharge zone regulated by the Safe Drinking Water Act (SDWA).

p. Irreversible conversion of "prime or unique farmland" to other uses.

q. Transportation of hazardous substances, conventional munitions, or other wastes for intentional disposal into the oceans by any naval unit.

r. Award or termination of contracts involving substantial quantities of natural resources, wherein the Navy is the contracting agency.

s. Any action for which the environmental effect is scientifically controversial.

2-5.3.3 Content of EAs. When preparing an EA, the action proponent should follow the same evaluation thought process as for EISs (i.e., focus on the issues of concern and make the EA length sufficient to address those issues). Briefly discuss the need for the action; discuss alternatives considered; describe the environmental impacts of the proposal and any environmental monitoring requirements and provide a listing of the agencies and persons consulted. See chapter 23 for additional information regarding cultural resources.

a. The action proponent must discuss the potential impact on threatened or endangered animal or plant species, or if the U.S. Fish and Wildlife Service or the National Marine Fisheries Service designates the area a "critical habitat" for such species. See chapter 22 for additional responsibilities regarding the protection of endangered species. (R)

b. To satisfy the General Conformity Rule under Section 176(c) of the Clean Air Act, include the results of the Conformity Review as an appendix to an EA that proposes an action in a (R)

nonattainment or maintenance area. The action proponent should include in the Conformity Review one or a combination of the following: (1) a determination that the action is not subject to the rule, citing the specific exception from 40 CFR 51.853(c); (2) a Record of Non-Applicability, or; (3) a Conformity Determination.

2-5.3.4 Public Participation. CEQ regulations clearly recognize the importance of public participation in preparing EAs as well as commands proposing an action to develop a plan to ensure appropriate communication with affected and interested parties. In determining the extent to which public participation is practicable, consider the following factors:

- a. The magnitude of the environmental considerations associated with the proposed action;
- b. The extent of anticipated public interest;
- c. Any relevant questions of national security and classification.

2-5.3.5 EA Process. At the commencement of EA preparation, the action proponent will notify CNO (N45) and the REC via a brief letter that describes the proposed action. This letter will afford CNO (N 45) and the REC the opportunity to inform the action proponent of any policy issues or regional concerns that will need to be addressed in preparing the EA.

The action proponent must also determine if the General Conformity Rule applies to the proposed action as defined in the EA. The CNO Interim Guidance on Compliance with the Clean Air Act General Conformity Rule (appendix F) describes the requirements and procedures for preparing a Conformity Review. If an action proponent prepares a Record of Non-Applicability for a proposed action occurring in a nonattainment or maintenance area, he/she shall sign the record and include it, along with the supporting analysis, in the EA for processing.

Where a case requires a Conformity Determination, the action proponent shall distribute a "review EA" with the draft Conformity Determination as an appendix to appropriate review agencies listed in the Conformity Rule and interested parties for a 30-day comment period (See appendix F). Concurrently, the action proponent shall publish a public notice on the availability of a Draft Conformity Determination in the local newspaper. Once the EA and its Conformity Determination are finalized by the action proponent, the Navy shall process the EA internally as shown in Figure 2.1 (except as noted in paragraph 2-6.6).

a. If the action proponent is in one of the following commands: CINCLANTFLT, CINCPACFLT, CNET, COMNAVRESFOR, COMNAVSEASYSKOM, or COMNAVAIRSYSKOM, he or she shall submit five copies of the completed EA via the chain of command to the flag-level official designated to sign FONSI's at its headquarters ("designated headquarters official"). Each command with a designated headquarters official shall keep CNO (N45) informed of the name of that official. If the action proponent is not in a claimancy mentioned above, and the proposed action is not acquisition related, the action proponent shall submit the EA to CNO (N45) via the chain of command. Action proponents shall continue to process acquisition-related EAs in accordance with reference (c). If the EA involves actions that affect resources under the control of a regional environmental coordinator, it requires the concurrence of the regional environmental coordinator. Should the regional environmental coordinator not concur with the proposed action, alternatives considered, criteria for development of alternatives, or mitigation, he or she shall forward the matter to CNO (N45) for resolution.

b. The designated headquarters official for the commands listed in the previous paragraph shall evaluate the documented impact of the proposed action on the environment and shall advise

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LEVELS OF DOCUMENTATION

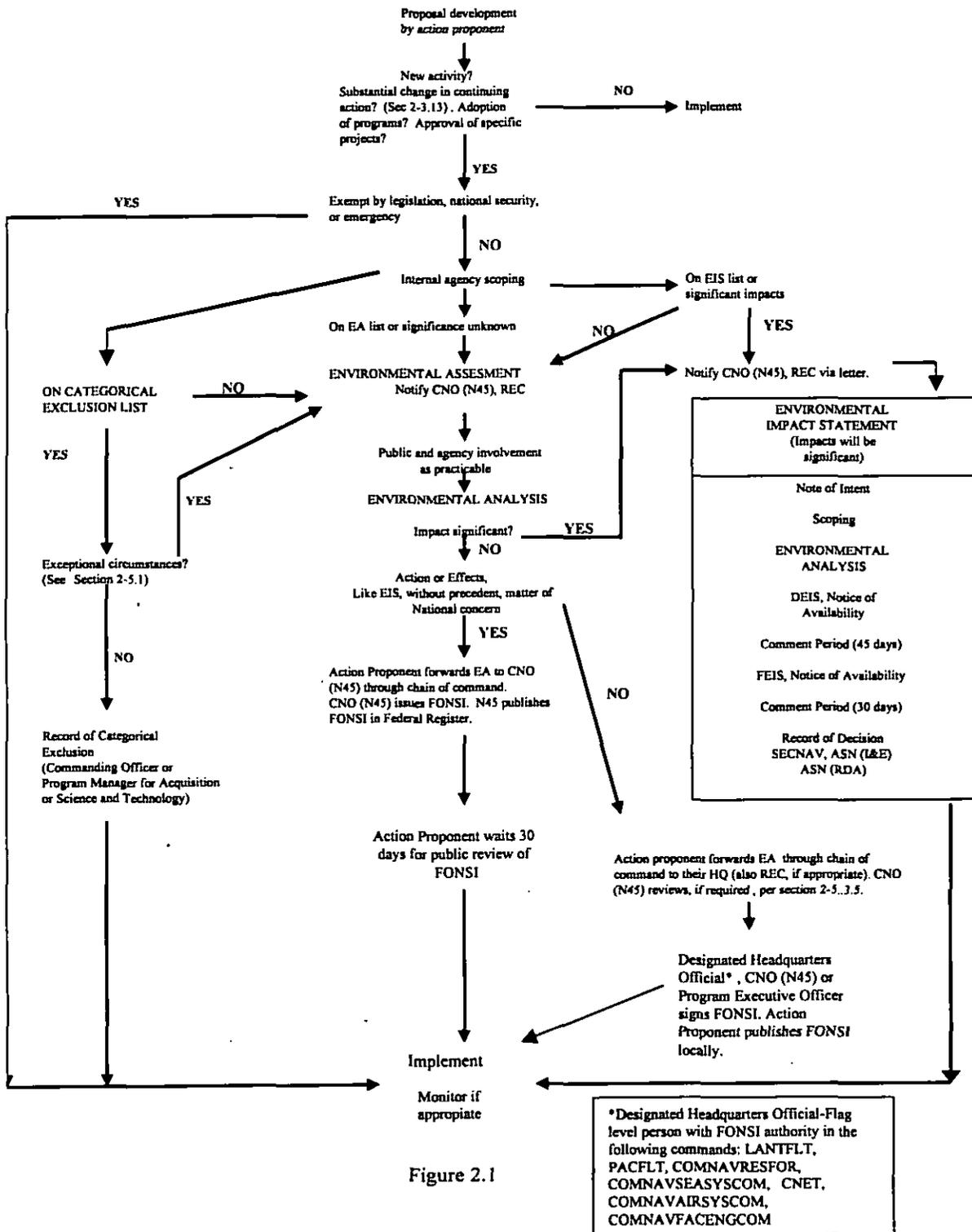


Figure 2.1

the action proponent if additional information is required.

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c. After evaluating the EA, the designated headquarters official shall decide whether a FONSI is appropriate, or whether the proposed action would generate significant impacts. The inclusion of mitigation measures as part of the proposed action may bring impacts below the threshold of significance. If appropriate, he/she shall prepare a FONSI and notify the action proponent to complete public notification and the NEPA process. If the EA includes a Conformity Determination, which has undergone public review, CNO (N45) shall review and sign the Conformity Determination and shall include it in the FONSI. In these cases, the action proponent must publish a notice of the availability of a FONSI/ Conformity Determination in a local newspaper within 30 days of signature. All mitigation committed to in the FONSI is legally binding on the action proponent, and he or she must implement it. Public notification shall normally consist of newspaper publication of a summary of the FONSI and direct mail-out of the full FONSI by the action proponent to any interested or affected parties (as defined during preparation of the EA). The action proponent shall publish the summary of the FONSI for 3 consecutive days in the "Public Notices" section of a newspaper with distribution in the area of the proposed action. In some cases where publication in large-city newspapers would result in prohibitively high cost, the action proponent may opt for a broad mail-out of the FONSI to all regulatory/resource agencies, interested or affected parties, libraries, and elected officials, instead of newspaper publication. Where appropriate, the action proponent should also publicize in foreign-language newspapers. Within 2 days after the designated headquarters official signs the FONSI, he or she shall forward a copy of the EA and FONSI, preferably in electronic form, to CNO (N45).

d. If the proposed action involves:

(1) Effects of national concern,

(2) Action closely similar to conditions that normally require the preparation of an EIS, or

(3) An action without precedent, the action proponent will forward the EA to CNO (N45) via the regional environmental coordinator and chain of command. CNO (N45) will review the EA and determine if a FONSI is appropriate. If so, CNO N45 shall prepare the FONSI in coordination with, and for approval by, Assistant Secretary of the Navy (Installation & Environment) (ASN (I&E)) for publication in the Federal Register. CNO (N45) shall also notify the action proponent to complete the public notification and NEPA process.

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For projects under these circumstances, the action proponent shall make the FONSI available to the public for 30 days before the FONSI becomes final at which time the action may begin.

The action proponent shall also send a copy of the completed EA and FONSI to:

ATTN: DTIC-ODR
Defense Technical Information Center
8725 John J. Kingman Road STE 0944
Fort Belvoir, VA 22060-6218

2-5.4 Environmental Impact Statements (EISs)

2-5.4.1 General. In an EIS, the action proponent provides full and unbiased discussion of significant environmental impacts and informs decision makers and the public of the reasonable alternatives that would avoid or minimize adverse impact or enhance the quality of the human environment.

2-5.4.2 Guidelines and Standards. The action proponent may use several guidelines to judge the significance of the effect of an action on the environment, including:

a. The geographical extent of the action. For example, construction, land use modification, etc., to support a limited maneuver or training exercise

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by an individual command may not normally have a significant effect upon the environment. However, training exercises on a broad geographic scale involving diverse natural areas would be more likely to have a significant effect on environmental quality.

b. *The long-term impact of the action.* The action proponent should maintain an objective view toward the magnitude of environmental effects of both the immediately contemplated action and future actions, for which the proposed action may serve as a precedent, and which may result in a cumulatively significant impact.

c. *The risk potential of the action.* For example, even though the environmental impact of an efficiently run fuel depot may not be significant, the effects of an oil spill (if determined "reasonably foreseeable" within the timeframe of the project) on the local fishing industry or the surrounding beaches, in the case of a tourist-oriented economy, may well render construction of such a depot very significant.

d. *The existing or possible historical, architectural, or archeological interest of the site.* See chapter 23 for additional information regarding cultural resources.

e. *The potential impact on endangered animal or plant species.* Particularly if the U.S. Fish and Wildlife Service or the National Marine Fisheries Service designates the area a "critical habitat" for such species. See chapter 22 for additional responsibilities regarding the protection of endangered species.

2-5.4.3 Actions for Which EISs Must Be Prepared. The following are examples of actions that may have a significant impact on the quality of the human environment or are potentially controversial in environmental effects, and therefore require preparation of an EIS by an action proponent:

a. Large dredging projects or dredging projects where dredged material disposal may result in significant impacts.

b. Proposed major construction and filling in tidelands/wetlands.

c. Establishment of major new installations. (R)

d. Major land acquisitions that result in a change in how the property is used.

e. New sanitary landfills.

f. Disposal of biological or chemical munitions and pesticides or herbicides other than in the manner in which they are authorized for use or disposal. (R)

When an action is among those listed above, closely analogous to the same, or when an EA concludes impacts to be significant or environmentally (scientifically) controversial, the action proponent will prepare an EIS using procedures outlined in this instruction. The action proponent shall notify CNO (N45), the regional environmental coordinator, and, if appropriate, the systems command environmental coordinator via letter before commencing an EIS (see 2-5.4.8).

2-5.4.4 EIS Preparation. To achieve the goal of NEPA to prepare a concise and useful statement, action proponents are to prepare EISs in the following manner:

a. Make EISs analytic rather than encyclopedic.

b. Discuss the impacts in proportion to their significance. Discuss only briefly other, non-significant issues. (R)

c. Keep EISs concise and no longer than necessary to comply with NEPA, these regulations, and those issued by the CEQ. Vary the length of discussion with respect to: (1) the potential (R)

environmental issues, and (2) the context and intensity of the action.

d. Describe the criteria for selecting alternatives.

R) e. The range of alternatives discussed in EISs, including the No Action alternative, will encompass the ultimate decision-maker's alternatives, and those directed by the lead agency if the DOD is a cooperating agency.

f. Before making a final decision, cognizant commands will not make irreversible commitments of resources that change the physical environment.

g. Use EISs as a means of assessing whether the environmental impacts of proposed actions include disproportionately high adverse human health or environmental effects on minority and low-income populations.

h. To satisfy the General Conformity Rule under Section 176(c) of the Clean Air Act, include the results of the Conformity Review as an appendix to the DEIS proposing an action in a non-attainment or maintenance area. Appendix F describes the requirements and procedures for preparing a Conformity Review.

2-5.4.5 Document Length. The text of the EIS should normally be less than 150 pages. For proposals of unusual scope or complexity, EISs should normally be less than 300 pages. The action proponent should make every effort to restrict the document only to pertinent facts, excluding material not directly applicable to the expected impact and ensure that the statement contains sufficient information and baseline data to support the conclusions reached. If desired, the action proponent may include additional data to the statement as appendices.

R) **2-5.4.6 Contractor Involvement in EIS Preparation.** Contractors frequently prepare EISs and EAs. To obtain unbiased analyses, commands must select contractors in a way that avoids any

conflict of interest. Contractors must therefore execute disclosure statements specifying they have no financial or other interest in the outcome of the project. Action proponents must closely monitor the contractor's efforts throughout the contract to ensure an adequate assessment/statement and thus avoid extensive, time consuming, and costly revisions.

2-5.4.7 Cooperation with State and Local Agencies. To eliminate duplication of State and local procedures, action proponents will cooperate fully with State and local agencies to reduce duplication among NEPA, State and local requirements. Such cooperation could include:

a. Joint planning processes.

b. Joint environmental research and studies including assessments of the presence or special needs of minority and low-income groups, including foreign language interpretation, collection, and analysis of demographic characteristics.

c. Joint public hearings (except where otherwise provided by statute).

d. Joint EAs.

e. Joint EISs.

2-5.4.8 Scoping. To facilitate early resolution of policy issues affecting preparation of an EIS, action proponents will forward to ASN(I&E) via CNO (N45), a description of the proposed action, purpose and need, alternatives slated for consideration, and the criteria used to select reasonable alternatives. After forwarding this information, the action proponents shall engage in a dialogue with CNO (N45), ASN (I&E) and the regional environmental coordinator to resolve any issues. During the scoping process action proponents will:

a. Invite the participation of affected Federal, State, and local agencies, any Indian tribe,

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minority and low-income populations, and other interested persons.

b. Determine the scope and the significant issues that the EIS will analyze in depth.

c. Identify and eliminate from detailed study insignificant issues or those previously covered by environmental review, narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

d. Allocate assignments for preparation of the EIS among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

e. Indicate any public EAs and other EISs, which are being or will be prepared, that relate to but are not part of the scope of the impact statement under consideration.

f. Indicate the relationship between the timing of the preparation of EISs and the agency's tentative planning and decision making schedule.

CNO (N45) will publish the NOI to prepare an EIS in the Federal Register. The NOI will briefly describe the proposed action and the scoping process. In addition to publication of the NOI in the Federal Register, the action proponent will mail the NOI directly to concerned agencies and persons. The action proponent should also publish the NOI in local newspapers (especially if extensive mailings are not practicable or may not reach all affected or interested persons). CNO (N45) should make these notifications as soon as practicable after deciding to require an EIS and notifying the proper chain of command. Action proponents may carry out the functions identified in the preceding paragraphs in the context of a public, informal meeting at which written responses or oral presentations resulting from the public notices may be received.

Action proponents may hold such meetings whenever practicable, but they are not mandatory. There is no authority for the payment of expenses incurred by any private person(s) in the preparation and presentation of information at these meetings. If no meeting is to occur, the cognizant command will address the issues based upon responses to notices processed and documented. If a public scoping meeting is to occur, a notice of the public scoping meeting will be published in the Federal Register as part of the NOI, or as soon as practical after the NOI is published. In no case shall the command publish a notice less than 15 days before the day of the public meeting. In addition to publication in the Federal Register, the action proponent will mail the NOI and/or announcement of scoping meeting directly to concerned agencies, organizations and individuals, and publish it in local newspapers. Per E.O. 12898, whenever practicable and appropriate, the action proponent will translate the NOI and announcement of the scoping meeting for non-English speaking communities or persons interested.

2-5.4.9 Processing the DEIS. The Navy shall process the DEIS as follows:

a. The action proponent shall submit 10 copies of the DEIS to CNO (N45) via the chain of command. If the proposed action affects resources under the control of a regional environmental coordinator, including but not limited to facility assets or operations, the DEIS and FEIS shall be endorsed by the regional environmental coordinator. If the proposed DEIS concerns matters expected to generate considerable public interest or controversy, the action proponent shall furnish a copy of the statement and all subsequent correspondence to the Chief of Information (CHINFO) via CNO (N45).

b. In the forwarding endorsement, the appropriate major claimant shall provide recommendations relative to further disposition, if applicable.

c. After receiving the proposed DEIS, CNO (N45) shall evaluate the documented impact of the proposed action on the environment and advise the action proponent if they require additional information. If no additional information is necessary, CNO (N45) will coordinate with appropriate CNO codes to ensure that the information in the DEIS is consistent with Navy operational policy.

R) d. Once policy issues with other CNO codes are resolved, CNO (N45) shall forward it to the ASN (I&E) for approval for filing with EPA. CNO (N45) will brief ASN (I&E) on the issues in the DEIS.

e. If the ASN (I&E) does not concur in filing the document, he or she may return the statement for further action.

f. Once the decision is made to file a statement, the action proponent may be required to coordinate with or provide CNO (N45) with additional copies of the DEIS for distribution. The number of copies shall vary depending on the action contemplated.

g. In conjunction with the foregoing distribution, the action proponent may request specific comments from:

(1) Any Federal agency that has jurisdiction by law or special expertise regarding any environmental impact involved, or one authorized to develop and enforce standards applicable to the proposed action.

(2) Appropriate State and local agencies that are authorized to develop and enforce standards applicable to the proposed action.

(3) Indian tribes, when the effects may be on a reservation.

(4) Any agency that has requested that it receive statements on actions of the kind proposed.

(5) The public, affirmatively soliciting comments from those persons or organizations who may reasonably be interested or affected.

(6) Minority and low-income populations.

h. A minimum of 45 days is allocated for agency/public review, beginning with the date on which notice of the DEIS appears in the Federal Register. Normally that date shall be the Friday following the week that EPA receives the statement. The action proponent may extend the review time for anyone making a timely request for additional comment time. Failure to file timely comments shall not be a sufficient reason for the Navy to extend the review period.

i. Action proponents may hold public hearings as part of the review process. If the hearing is likely to be contentious, the action proponent should consider using a military judge from the JAG as a hearing officer, coordinating this decision with CNO (N45). Action proponents shall prepare a notice of public hearings (includes hearing schedules and provide the notice to CNO (N45) with adequate time for publishing it in the Federal Register at least 15 days prior to the hearing.

j. The General Conformity Rule reporting requirements are similar to those for an EA. The action proponent shall include the appropriate documentation to satisfy the Conformity Review in the DEIS. The action proponent shall also publish a notice of availability of the Draft Conformity Determination in the local newspaper when the DEIS is filed with EPA and ensure that the comment period runs concurrently with the 45-day DEIS review period.

2-5.4.10 Processing the FEIS. Action proponents shall process the FEIS as follows:

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a. After the passage of a minimum of 45 days from the date the announcement of the DEIS appears in the Federal Register, action proponents may file an FEIS. Action proponents shall incorporate into the FEIS all comments received on the DEIS. Where comments reveal previously unrecognized impacts or changes to identified impacts, action proponents shall include sufficient analysis thereof. Action proponents shall reproduce individual comments received from agencies and the public where relevant but should discourage the inclusion of verbatim records from public hearings. Action proponents shall ensure the consideration of the hearings by summarizing comments under relevant topic headings, followed by an appropriate response. Action proponents shall also include a meaningful response to all responsible opposing views that have not been adequately addressed in the DEIS. Possible responses in the FEIS include:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration.

(3) Supplement, improve, or modify the analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further response, citing the sources, authorities, or reasons that support such a position, and, if appropriate, indicate those circumstances that would trigger a reappraisal or further response.

b. Where Navy response to comments can be accomplished by referencing sections contained in the DEIS, the action proponent shall clearly identify pertinent sections in the response.

c. If appropriate, the action proponent shall include an unsigned version of the Final Conformity Determination in the FEIS.

R) d. After preparation of the FEIS, the action proponent shall again forward a minimum of 10

copies of the statement through the chain of command to CNO (N45) for review and appropriate disposition. If the proposed action affects resources under control of a regional environmental coordinator, the regional environmental coordinator must endorse the FEIS before progressing through the chain of command to CNO (N45). CNO (N45) will coordinate the FEIS with appropriate CNO codes to ensure that Navy operational policy is consistent with the information in the FEIS. CNO (N45) will brief ASN(I&E) on emergent issues during DEIS review and resolutions in the FEIS. Upon approval of the FEIS by the ASN (I&E), CNO (N45) shall notify the action proponent to begin public distribution and shall file the FEIS with the EPA. EPA then publishes the notice of availability in the Federal Register, which shall start the 30-day public review period. The action proponent shall distribute the FEIS to recipients of the DEIS and to any person, organization, or agency that submitted substantive comments on the DEIS

Each week, EPA publishes notices of availability in the Federal Register for EISs filed the previous week. The minimum time for FEIS public review shall be calculated from the date of this notice. Action proponents shall publicly distribute FEISs no later than the time they file copies with EPA.

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2-5.4.11 Record of Decision. Action proponents shall delay committing resources irreversibly for a proposed action until the later of the following dates:

a. 90 days after publication of the Federal Register notice announcing the filing of the DEIS with EPA.

b. 30 days after publication of the Federal Register notice of the filing of the FEIS with EPA. The action proponent will forward all comments on the FEIS along with draft responses to CNO (N45) as soon as the 30-day no-action period is over.

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CNO (N45) shall prepare and forward a draft ROD to the appropriate CNO codes to ensure consistency with operational policies. Once CNO issues are resolved, CNO (N45) will forward the draft ROD to ASN (I&E) for approval and signature. If appropriate, ASN (I&E) will incorporate the Final Conformity Determination into the ROD. When ASN (I&E) approves and signs the ROD, CNO (N45) shall arrange for its publication in the Federal Register.

In addition to Federal Register publication, the action proponent shall distribute the ROD to all interested parties, and, if appropriate, publish a notice of availability of Final Conformity Determination in local newspapers and distribute it to agencies and interested parties within 30 days of the approval of the ROD.

The action proponent shall also send a copy of the completed EIS and ROD to:

ATTN: DTIC-ODR
Defense Technical Information Center
8725 John J. Kingman Road STE 0944
Fort Belvoir, VA 22060-6218

2-5.5 Significant Issues and Other Factors

2-5.5.1 Classified Actions. Some aspects of a proposed action may involve information not releasable to the public because it is classified or for some other legal reason. This does not relieve the action proponent from complying with the requirements of this instruction. The action proponent shall prepare, safeguard and disseminate EISs, both draft and final, as well as EAs, per the requirements applicable to classified or sensitive unclassified information. When feasible, the action proponent should organize the documents in such a manner to include the classified or sensitive unclassified portions as appendices. In this way, the action proponent can make unclassified portions available to the public. The action proponent shall coordinate the review of classified or sensitive unclassified EISs with the EPA to

fulfill requirements of Section 309 of the Clean Air Act (CAA).

In rare circumstances where even public notice of the desired action would disclose classified information, there is no "proposal" under NEPA, and neither an EA nor EIS is required. Plans for actions that would disclose the presence of nuclear weapons, for example, do not constitute "proposals" under NEPA. CNO (N45) must review such instances and should require the consideration of environmental factors using other internal procedures that would provide decision-makers with information of a quality equivalent to that produced under NEPA and excepting public review and comment, to evaluate the potential environmental impacts of the action. For such actions involving nuclear weapons, the internal procedures will address the following elements:

- a. A description of the worst case accident considering the particular weapons involved.
- b. The best estimate for accident probabilities.
- c. Alternative site impact information.
- d. Additional information on potential land contamination and clean up.

An EA or EIS containing classified information or other information, prohibited from release by law, serves the same purpose as an ordinary EA or EIS although not all its contents are subject to public review and comment. Action proponents must ensure that the entire package accompanies the proposal through the decision making process. In this way, the content of an EIS or EA containing portions that cannot be released to the public will meet the same overall content requirements that are applicable to an EA or EIS that is fully published.

2-5.5.2 Continuing Actions. CEQ regulations define major Federal actions subject to evaluation

under NEPA to include, among other things, "new and continuing activities." The term "new activities" encompasses future actions (i.e., those not ongoing at the time of the proposal). The DON will apply the term "continuing activities," which may necessitate the preparation of a NEPA document, to include activities that are presently being carried out in fulfillment of a military mission and function, including existing training functions where there are:

a. Currently occurring environmental effects, not previously evaluated in a NEPA document, and there is a discovery that substantial environmental degradation is occurring, or is likely to occur, because of ongoing operations. Examples: A discovery that significant beach erosion is occurring because of continuing amphibious exercises; new designation of wetland habitat or discovery of an endangered species residing in the area of the activity.

b. Environmental effects of an ongoing activity that are significantly and qualitatively different or more severe than predicted in a NEPA document prepared in connection with the commencement of the activity.

Navy activities shall consider substantial change in a continuing activity, which has the potential for significant environmental impacts, as a proposal for a new action and document it accordingly. Preparation of an appropriate NEPA document is not a necessary prerequisite, nor a substitute, for compliance with other environmental laws.

2-5.5.3 Emergency Actions. Where emergency circumstances outside the control of the Navy make it necessary to take an action with significant environmental impact without observing the provisions of CEQ regulations, the Navy must consult with the CEQ about alternative arrangements. Action proponents must submit requests for such consultation to CNO (N45) as soon as they identify the need to consult with the Secretariat and in appropriate cases, the CEQ. The action

proponent shall limit alternative arrangements to those aspects of a proposal that must continue on an emergency basis. The remainder is subject to normal NEPA review. Ordinarily, the failure to plan properly does not establish an emergency.

2-5.6 Weapon System Acquisition Programs. The program manager must comply with NEPA or E.O. 12114 (Environmental Effects Abroad of Major Federal Actions) when a proposed action within an acquisition program will impose a physical effect on the natural environment.

Reference (c) provides a format for the program manager's Programmatic Environmental Safety and Health Evaluation (PESHE) associated with an acquisition through-out its entire life cycle and measures to mitigate adverse effects. The NEPA section of the PESHE is not a NEPA document, but a "file drawer" that contains all NEPA and E.O. 12114 documents prepared, as well as a "road map" of future NEPA and E.O. 12114 actions in the current and upcoming phase. Its purpose is twofold: (1), to provide an administrative record of NEPA documents for program decisions, which ensures that decision-makers understand the nature, scope, and timing of an action's potential environmental impact; and (2), to manage the budgeting and execution of NEPA and E.O. 12114 responsibilities. In the NEPA section of the PESHE, program managers should list the upcoming actions that trigger NEPA, and the level of NEPA documentation required. The PESHE should include a current plan of action and milestones (POA&M) that matches the upcoming actions (tests, for example) with milestones for budgeting and completing the necessary NEPA or E.O. 12114 documentation. The PM can refer to the PESHE POA&M to plan and budget his/her NEPA or E.O. 12114 compliance. In many cases, preparation of an EA must begin at least 6-8 months before decision deadlines for a test (e.g., siting or methodology). Budgeting for the EA may be needed a year earlier. Because environmental concerns may develop at any point during the acquisition process, reference (c) requires program managers to keep the PESHE current throughout

the program life cycle. If the program manager indicates the requirement for NEPA/E.O. 12114 documentation in the PESHE, he or she must complete it before making a decision having an adverse environmental impact or limiting a choice from reasonable alternatives.

The program manager bases the determination of when the potential for significant impact exists on project specific requirements and the criteria in this instruction. For example, concept development during early phases of acquisition programs may use techniques known not to cause a significant environmental impact (e.g., computer simulations). In other cases, the potential for significant impact may occur during these early phases, due to testing and evaluation requirements. Section 2-5.3.2 and 2-5.4.3 list other examples of actions with the potential for environmental impact.

2-5.7 Pollution Prevention

a. EPA will evaluate NEPA documentation reviewed under authority of Section 309 of the Clean Air Act for incorporation of pollution prevention measures and will assist Federal agencies in acknowledging and receiving credit for commitment to pollution prevention.

b. The term "pollution prevention" includes: equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

During all stages of project formulation, from early planning and NEPA documentation through implementation, action proponents should seek opportunities to incorporate pollution prevention into their programs.

c. The following list describes areas where action proponents may appropriately discuss pollution prevention during the NEPA scoping and subsequent environmental review phases:

(1) The definition of the project's purpose and need (the proponent should clearly identify the purpose and not slant the definition to support the proponent's desires, which could limit pollution prevention options).

(2) The project design specifications and standards.

(3) The sizing of a project (e.g., a smaller project may affect less habitat, have fewer impacts on soil erosion and water quality, and/or result in less induced growth).

(4) The location of a facility (i.e., away from sensitive habitats, close to centralized transportation or other compatible uses).

(5) The range of alternatives (e.g., whether pollution prevention opportunities are included).

(6) Rejection of certain alternatives (e.g., because of their potential to cause pollution).

(7) Emphasis on environmental requirements (whether the focus is on pollution prevention, source reduction, innovative technologies or traditional end-of pipe, add-on controls).

(8) The capability of the proposed action to prevent pollution.

(9) The secondary effects of a proposed action, which may discourage pollution prevention.

(10) The mitigation measures incorporated into the proposal (i.e., some mitigation measures may have more pollution prevention benefits than others, and significant pollution prevention may require a basic change in the project).

d. Chapter 3 provides further guidance on compliance with the Pollution Prevention Act as well as pollution prevention strategies.

2-5.8 Time Limits. Action proponents commencing the preparation of an EIS should set time limits with due regard for operational requirements as well as the public and agency comment periods established by CEQ regulations. State or local agencies or members of the public may request that the cognizant command set time limits on the NEPA process. In determining time limits (required to complete the EIS), the action proponents may consider the following factors:

- a. Potential for environmental harm.
- b. Size of the proposed action.
- c. State-of-the-art analytic techniques.
- d. Degree of public need for the proposed action, including the consequences of delay.
- e. Number of persons and agencies affected.
- f. The certainty of relevant information, and if it is uncertain, the time required to obtain information of required authenticity.
- g. Degree to which the action is controversial.
- h. Other time limits imposed on the agency by law, regulations, or E.O.

2-5.9 Format. Action proponents should prepare all pages of the original document on 8 1/2 x 11-inch bond, although it is permissible to use foldout sheets as long as they retain the 11-inch vertical dimension. Use the following format for all EISs and, to the extent appropriate, EAs:

a. **Cover Sheet.** Do not exceed one page for the cover sheet and include:

- (1) A list of the responsible agencies including the lead agency and any cooperating agencies.

- (2) The title of the proposed action that is the subject of the environmental analysis (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

- (3) The name, address, and telephone number of the person at the responsible command who can supply further information.

- (4) A designation of the analysis as an EA, DEIS, or FEIS or draft or final supplement.

- (5) A one-paragraph abstract of the statement.

- (6) The date by which comments must be received.

b. **Summary.** Action proponents will include a summary in each EIS that adequately and accurately summarizes the statement. Place the summary sheet (not to exceed three pages) at the beginning of the document immediately after the cover sheet and include:

- (1) The name of the action and whether it is administrative or legislative.

- (2) A brief description of the action and what geographical region (including State and county, as applicable) is particularly affected.

- (3) A description of alternatives considered.

- (4) A summary of the environmental impact, particularly adverse environmental effects, and major mitigating actions required. The action proponent should include a statement regarding the possible exemption from the general conformity rule of the action, or if the action conforms or does not conform to an applicable State Implementation Plan (SIP) or Federal Implementation Plan (FIP).

(5) A statement as to whether the action is anticipated to have a significant environmental impact or will be scientifically controversial.

c. **Distribution List.** The action proponent shall provide a brief, concise list of the names and addresses of all Federal, State and local organizations and persons to whom he or she will distribute the EIS.

d. **Purpose and Need.** Begin the body of the document by explaining the need for any action. Concisely and objectively, set out the justification for the proposed action and the essential requirements that must be satisfied to achieve the purposes of the proposed action.

e. **Alternatives Including the Proposed Action.** Based on the information and analysis presented in the sections entitled EXISTING ENVIRONMENT and the ENVIRONMENTAL CONSEQUENCES present the environmental impacts of the proposal and the alternatives in comparative (matrix) form, thus sharpening the issues and providing a basis for choice among the options by the decision-maker and the public.

The action proponent shall include in the alternatives to the proposed action, where relevant, those not within the existing authority of the agency. A rigorous exploration and objective evaluation of the environmental impacts of all reasonable alternative actions are essential, particularly those actions that might enhance environmental quality or avoid some or all adverse environmental effects. The action proponent should include sufficient analysis, if applicable, of such alternatives and their environmental benefits, costs, and risks to accompany the proposed action through the agency review process. If the action proponent is considering whether a cost-benefit analysis is relevant to the choice among environmentally different alternatives for the proposed action, he or she should incorporate it by reference or append it to the analysis as an aid in evaluating the environmental consequences. When a

cost-benefit analysis is prepared, discuss in the EA or EIS, the relationship between the analysis and any analysis of unquantified environmental impacts, values and amenities. Action proponents need not weigh the merits and drawbacks of the various alternatives where there are important qualitative considerations. However, the action proponent should indicate in the analysis those considerations, including factors not related to environmental quality that are likely to be relevant and important to a decision. This will prevent premature foreclosure of options that might enhance environmental quality or have less detrimental effects.

Examples of alternatives include:

- (1) Taking no action.
- (2) Postponing action.
- (3) Selecting actions of a significantly different nature, meeting mission and project objectives with different environmental impacts.
- (4) Different designs or details of the proposed action that would present different environmental impacts (including mitigation measures).

In each case, the action proponent should make the analysis sufficiently detailed to reveal the agency's comparative evaluation of the proposed action and each reasonable alternative. Throughout the EA or EIS, the action proponent shall structure the discussion and analysis to prevent premature foreclosure of options that might enhance environmental quality or have less detrimental effects.

f. **Existing Environment of the Proposed Action.** The EA or EIS shall concisely describe the environment of the affected area, including the baseline conditions used to compare the impacts of the various alternatives. The EA or EIS should make the amount of detail provided in such

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descriptions commensurate with the extent and impact of the action, and with the amount of information required at the particular level of decision making. The EA or EIS should discuss, where appropriate, urban quality, historical and cultural resources, and the design of the built environment including the re-use and conservation potential of various alternatives and mitigation measures.

g. Environmental Consequences. This section forms the scientific and analytic basis for the comparisons presented under the alternatives section. The EA or EIS shall include the environmental impacts of reasonable alternatives in the discussion; note any adverse environmental impacts that cannot be avoided if the proposal is implemented; discuss the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and mention any irreversible or irretrievable commitments of resources that would be involved in the proposal should it be implemented. The EA or EIS should not duplicate the discussions of the alternatives section. Instead, this section should involve:

(1) Direct effects and their significance (i.e., an assessment of the positive and negative effects of the proposed action). Action proponents should vary the attention given to different factors according to the nature, scale, and location of the proposed action, and give primary attention to the discussion of those factors most evidently affected by the proposed action.

(2) Indirect effects and their significance. The EA or EIS shall include secondary or indirect consequences for the environment in the analysis. Many major Federal actions, especially those that involve construction (for example, new installations, joint use of an installation, etc.), stimulate or induce secondary effects in the form of associated investments and changed patterns of social and economic activities. Such secondary effects, by their impacts on existing community facilities and activities, by inducing new facilities

and activities, or by changes in natural conditions, may often be even more substantial than the primary effects of the original action itself. For example, the EA or EIS should estimate the effects of the proposed action on population and growth impacts if expected to be significant and evaluate the effect of any possible change in population patterns, particularly those which may affect minority and low-income population. If applicable, the EA or EIS shall also evaluate the growth upon the resource base including land use, water, and public services of the area in question.

(3) Relationships between the proposed action and the objectives of Federal, State and local land use plans, policies, and controls for the area concerned. The EA or EIS shall discuss how the proposed action may conform or conflict with the objectives and specific terms of approved or proposed Federal, State, and local land use plans, policies, and controls, if any, for the area affected, including those developed in response to environmental legislation. Where a conflict or inconsistency exists, the EA or EIS shall describe the extent to which the agency has reconciled its proposed action with the plan, policy, or control. The action proponent shall document justification for any decision to proceed, in the absence of full reconciliation.

(4) The environmental effects of alternatives including the proposed action. These narratives are the basis for the comparisons made in the alternatives section of the document.

(5) Energy requirements and conservation potential of various alternatives and mitigation measures. The EA or EIS shall address comments regarding the energy impact, including the alternatives considered.

(6) Any irreversible and/or irretrievable commitments of resources involved anticipated upon implementation of the proposed action. The EA or EIS shall identify from a survey of unavoidable impacts the extent to which the action irreversibly curtails the range of potential uses of

the environment. The term "resources" in this regard refers to the natural or cultural resources that would be irretrievably committed or lost if the action goes forward.

(7) Relationship between local, short-term use of man's environment and maintenance and enhancement of long-term biological productivity. The EA or EIS shall briefly discuss the extent to which the proposed action involves tradeoffs between short-term environmental gains and the expense of long-term losses or vice versa. Also, the EA or EIS shall discuss the extent to which the proposed action forecloses future options. In this context, short-term and long-term do not refer to any fixed time periods and should be viewed in terms of the environmentally significant consequences of the proposed action.

(8) Means to mitigate and/or monitor adverse environmental impacts (if not previously discussed). Where appropriate, the EA and EIS shall discuss mitigation measures such as avoidance, design modification, rehabilitation, preservation, or compensation. It shall also address the extent of any benefits derived from implementing mitigation measures and/or monitoring programs to avoid or reduce some or all of the adverse environmental effects, if appropriate.

The action proponent shall coordinate any mitigation measures included in the NEPA document with the appropriate chain of command to ensure concurrence, implementation feasibility, and funding availability. If necessary, the action proponent shall coordinate mitigation measures with cognizant regulatory agencies.

(9) Possible conflicts between the proposed action and the objectives of Federal, regional, State and local (and in the case of a reservation, Indian tribe) land use plans, policies, and controls for the area concerned.

(10) Cumulative impacts (see paragraph 2-3.10) as appropriate and in context with the scope and magnitude of the proposed action.

h. **List of Preparers.** Action proponents will prepare EAs and EISs using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts. To ensure that this approach is undertaken, EAs and EISs shall list the names, together with their qualifications (expertise, experience professional disciplines) of the persons who were primarily responsible for preparing the documents or significant background papers, including basic components of the statement. Where possible, the EA or EIS shall identify the persons who are responsible for a particular analysis, including analyses in background papers. This list should not exceed two pages.

i. **Appendix.** Action proponents shall include any of the following information as appendices in the EIS:

(1) Material prepared in connection with an EIS (as distinct from material that is not so prepared or that is incorporated by reference) such as collected comment letters, etc.

(2) Material that substantiates any analysis fundamental to the impact statement.

(3) Analytic and relevant material to the decision to be made.

j. **Incorporation by Reference.** To the extent practicable, action proponents preparing EAs or EISs shall incorporate material by reference when the effect will cut down on bulk without impeding agency and public review of the action. Action proponents shall cite the incorporated material in the statement and briefly describe its content. Action proponents shall not incorporate any material by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. In

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addition, action proponents shall not incorporate by reference any material based on proprietary data.

k. Incomplete or Unavailable Information. For the purposes of this section, "reasonably foreseeable" includes impacts that have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason. When the action proponent is evaluating significant adverse effects on the human environment in an EIS and there is incomplete or unavailable information, the action proponent shall always make clear that such information is lacking. For such situations, the action proponent can take the following actions:

(1) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency will include the information in the EIS.

(2) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known (i.e., the means for obtaining it are beyond the state-of-the-art), the action proponent will include within the EIS:

(a) A statement that such information is incomplete or unavailable.

(b) A statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment.

(c) A summary of existing credible scientific evidence that is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment.

(d) An evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

2-5.10 Record of Decision. The ROD, as described in paragraph 2-3.15, is the decision made by SECNAV or his/her designee, which completes the EIS process. CNO (N45) arranges for publication of the ROD in the Federal Register. The action proponent mails the ROD to the appropriate agencies, organizations, and individuals.

2-5.11 Tiering and Programmatic EISs. CEQ regulations encourage the use of tiering whenever appropriate to eliminate repetitive discussions of the issues and to focus on the actual issues ripe for discussion at each level of the environmental review. Action proponents accomplish tiering through the preparation of a broad programmatic EIS that discusses the impacts of a wide-ranging or long-term stepped program followed by narrower statements or EAs concentrating solely on issues specific to the analysis subsequently prepared. Action proponents should consider tiering appropriate when it helps the lead agency to focus on issues that are ripe for decision and excludes from consideration issues that are already decided or not yet ripe. Action proponents shall conduct a sequence of statements or analyses to make this determination. The following are examples in which tiering can be accomplished:

a. From a broad program, plan, or policy EIS (not necessarily site specific) to a subordinate/smaller scope program, plan, or policy statement or analysis (usually site specific). For example, a national program providing for mineral exploration on military-held lands with a subsequent analysis tiered for each installation impacted, or the initiation of a new training apparatus where the use of the apparatus itself may impact the environment with subsequent-tiered analysis at each site proposed for locating such training.

b. From an EIS on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). For example: the planning for the use of long-term staged construction for the establishment of a new installation to homeport and operate a class of vessels with a subsequent tiered analysis as each stage is programmed and proposed; the planning for the construction of a communication network involving the establishment of sending and receiving apparatus at various geographic locations with a subsequent tiered analysis for each location cited; or a proposal for the homeporting of a new vessel to operate off the east coast of the U.S. with a subsequent tiered analysis of the establishment of the homeport at a preferred specific east coast location.

2-5.11.1 Preparation of the Programmatic EIS.

In addition to the discussion required by these regulations for inclusion in the EIS, the action proponent will include the following in the programmatic EIS:

a. A description of the subsequent stages or sites that may ultimately be proposed (in as much detail as presently possible).

b. The implementing factors of the program that are known at the time of the impact statement preparation.

c. The environmental impacts that will result from establishment of the overall program itself and that will be similar for subsequent stages or sites as further implementation plans are proposed.

d. The appropriate mitigation measures that will similarly be proposed for subsequent stages or sites.

2-5.11.2 Preparation of a Tiered Analysis. The action proponent will also use an EIS as the analytical document for stage or site specified

analysis subsequent to the programmatic EIS when the subsequent tier itself may have a significant impact on the quality of the human environment, or when otherwise requiring an impact statement. Otherwise, the action proponent will document the tiered analysis with an EA to assess fully the need for further documentation or whether a FONSI would be appropriate.

In addition to the discussion required by these regulations for inclusion in EISs and EAs, action proponents are required to accomplish the following in each subsequent-tiered analysis:

a. Summarize the program-wide issues discussed in the programmatic statement and incorporate discussions from the programmatic statement by reference.

b. Concentrate on the issues specific to the subsequent action.

c. State where the earlier document is available.

2-5.11.3 Processing Programmatic Environmental Documentation. Action proponents will prepare, circulate, and file with the EPA Programmatic EISs and all the subsequent tiered impact statements or EAs in the same fashion as required of any other EIS.

2-5.12 Processing Supplemental Statements. Action proponents will prepare supplements to either DEISs or FEISs if there are substantial changes made in the proposed action that are relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Action proponents will usually prepare, circulate, and file such supplements in the same fashion as a DEIS or FEIS. Scoping, however, is not required.

2-5.13 Processing Statements Originated by Other Federal Agencies. Other Federal agencies

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originating environmental impact statements shall be processed as follows:

a. The Federal agency originating the impact statement submits the statement to ASN (I&E).

b. ASN(I&E) refers the statement to CNO (N45) for review.

c. CNO (N45), after independent review, and after referring the statement to the command or activity with the expertise for detailed review and return comments, advises ASN(I&E) of the concurrence/nonconcurrence with the statement for the Navy.

2-5.14 Procedures for Conducting Public Hearings Under NEPA. Action proponents will conduct hearings as follows:

a. **Guidelines and Standards.** The action proponent, in coordination with CNO (N45), will determine whether to hold a public hearing. Public hearings are appropriate in the following situations:

(1) Where the proposed action by the agency will have a direct or peculiar environmental impact on the people living in a particular geographic area.

(2) Where public organizations or members of the public possess expertise concerning the environmental impact of the action that may not otherwise be available.

(3) Where no overriding consideration of national security or time makes it illegal or impractical to involve such organizations or members of the public in the consideration of a proposed action in which there is evidence of wide public interest.

(4) When another agency with jurisdiction over the action submits a request for a hearing and supports its reasons why a hearing will be helpful.

(5) Where the proposed action may affect a minority or low-income population.

b. **Preparation.** In preparation for a hearing, the action proponent shall:

(1) Use two objectives to dictate the format for conducting public hearings: First, the hearing is intended to provide interested members of the general public with relevant information. Second, the hearing affords members of the public an opportunity to present their views of the proposed action.

(2) If the proposed action makes a hearing appropriate, advise the public of the proposed hearing, via the Federal Register, at least 15 days before the scheduled hearing. (The Federal Register notice is in addition to publication in local newspapers.) Per E.O. 12898, notify, wherever practicable and appropriate, in local foreign language newspapers. The action proponent shall include the following in the notification:

(a) The date, time, and telephone number of the hearing officer.

(b) A request for speakers to submit, in writing, their intention to participate.

(c) Any limitations on the length of oral statements.

(d) A suggestion that technical statements or statements of considerable length be submitted in writing.

(e) A summary of the proposed action.

(f) The findings contained in the DEIS.

(g) The office(s) or location(s) where the DEIS is available for examination.

(h) A request that any individual(s) with special needs (i.e., accessibility or transportation, foreign language interpretation, etc.) notify the agency conducting the hearing.

(3) The agency, if feasible, will make copies of the DEIS available to the public at their appropriate regional offices. The action proponent shall forward copies of the DEIS to the appropriate State, regional, and metropolitan clearinghouses (unless the governor of the State involved has designated some other point for receipt of the information) at the same time that the statement is sent to CEQ, EPA, and other Federal agencies. The action proponent shall make the DEIS available to the public at least 15 days before public hearings, using local outlets such as libraries, county commissioner's offices, etc., whenever possible. Whenever practicable and appropriate, the action proponent shall translate document summaries into languages other than English.

(4) Hold the hearing at a time and place and in an area readily accessible to civilian organizations and individuals interested in the proposed action. Hearings are generally preferable in a civilian facility such as a high school auditorium on a weekday evening when such groups are able to attend.

(5) Select a hearing officer who is able to achieve both purposes described in subparagraph (1) above. Select one hearing officer of appropriate seniority (preferably military) that is thoroughly familiar with the proposed action and of suitable temperament to preside at a public meeting (possibly with the news media in attendance). Other personnel who are familiar with the proposed action, or some phase of it, may also provide assistance. Use these personnel in the presentation phase of the hearing to explain details or specialized portions of the proposed action. Non-English interpreters should be present, as appropriate.

(6) Prepare a verbatim written record of the hearing and may use an experienced court reporter or stenographer to prepare the record. The hearing officer may make a tape recording of the hearing and append to the record as exhibits, all written material submitted to the hearing officer during the hearing or prior to the record being completed. The hearing officer shall also add to the record a list of persons attending the hearing, the organizations or interests they represent, and their addresses. Mail a copy of the hearing to persons who have indicated that they desire one, subject to the cost of reproduction.

c. **Format.** The following format provides a general guideline for the conduct of a hearing. Hearing officers should tailor the format for each hearing as the circumstances dictate to meet the objectives of the hearing. The objectives are to provide information to the public and to record the opinions of interested persons for later evaluation in conjunction with the proposed action.

(1) The hearing officer should know the names of attendees. A record of attendance is of assistance in preparing the record, in recognizing individuals who desire to make a statement, and in mailing written answers to persons who desire them. The hearing officer may compile this record by having all people who attended the hearing complete an individual card indicating their name, address, and organization represented, if any, and whether they intend to make a statement at the hearing. The hearing officer may use an appropriate number of attendants to distribute and collect the cards and to separate cards of those who desire to make a statement from those who do not. The hearing officer may then use the cards as an orderly system for calling upon individuals who desire to make statements. Additionally, hearing officers shall ask those individuals responding to the announcement and requesting an opportunity to speak to provide copies of any remarks for hearing proceedings.

(2) The hearing officer should first introduce himself/herself and any assistants and welcome any prominent attendees. He/she should next make a brief statement as to the purpose of the hearing, and state the general ground rules for conduct. The hearing officer can simplify this process by distributing written copies of this information to the attendees and/or making them available at the attendance desk. The hearing officer should make clear that he/she is not going to decide the project's continuation, modification or abandonment.

(3) The hearing officer should fully explain what the proposed action entails, including information on alternative courses of action. He/she may call upon one or more assistants to explain any particular phase of the program.

(4) The hearing officer should only answer questions that seek clarification of the action and should not attempt to respond to those attacking it. He/she should include all questions asked in the record of the hearing.

(5) The agency must give persons attending the hearing the opportunity to present oral and/or written statements. The hearing officer should ensure that he/she has the name and address of each person submitting an oral or written statement. He/she should permit the attendees to submit written statements during the hearing and for a reasonable time following the hearing (normally 2 weeks). If the hearing officer is going to allow oral statements, he or she should publicize this in the public notice of the hearing, indicating a reasonable length of time for them, (3 to 5 minutes). The agency should allow individuals who desire to make a written or oral statement, but did not indicate so on the card submitted when they entered the meeting, the opportunity to do so after all other scheduled statements are complete.

(6) When it is time to adjourn the meeting, the hearing officer should thank the attendees and adjourn the meeting. The hearing officer may decide that attendance will warrant an additional

day, perhaps at another time and location. If so, the hearing officer should announce the intent, but not normally agree to publish again the entire procedure in the Federal Register, etc. At the conclusion of the meeting, the hearing officer should not express any opinion on the merits of the proposals or comments presented by anyone at the hearing.

2-6 Responsibilities

2-6.1 General. Although SECNAV has the ultimate decision-making authority, responsibility for compliance with NEPA, as with all environmental responsibilities, rests within the entire Navy chain of command in the same manner as responsibility for developing and, ultimately, implementing the proposed action.

Commands and activities shall provide every person preparing, implementing, supervising, and managing projects involving categorical exclusions, EAs, and EISs with Environmental and Natural Resources training outlined in chapter 24 of this instruction, comprehensive NEPA training specific to their job assignment, and familiarize them with the provisions of this chapter.

2-6.2 DCNO (Logistics, Environmental Protection, Safety, and Occupational Health Division , CNO (N45))shall:

a. Implement Navy policy regarding NEPA compliance.

b. Serve as CNO lead in all NEPA and E.O. 12114 documents. Coordinate with all appropriate CNO codes to ensure that these documents are consistent with Navy operational policy.

c. Advise commands of the requirement for submitting EAs or EISs. When requested, furnish commands necessary information (i.e., list of potentially interested national organizations for scoping process of EISs).

d. Provide review of documents submitted for CNO decision, including EAs and EISs. Make decisions on whether FONSI is appropriate for EAs submitted for CNO review, or if an EIS is required.

e. Coordinate review of selected EAs and statements through the CNO Environmental Review Panel.

f. Coordinate with the CEQ, EPA, the appropriate Assistant Secretaries of Defense, ASN (I&E), and other DOD components and Federal agencies concerned with environmental matters.

g. Coordinate with CHINFO for public release of EAs, EISs, FONSI, RODs, and corresponding press statements and query responses.

h. Coordinate with JAG to place required notices in the Federal Register.

i. Coordinate with commands to decide feasibility of public hearings under NEPA process.

j. Provide assistance for actions initiated by private persons, State or local agencies, and other non-Navy/DOD entities for which Navy involvement may be reasonably foreseen.

k. Identify major decision points wherein environmental effects be considered as associated with naval actions.

2-6.3 CNO Environment Review Panel. The CNO Environment Review Panel is convened at the request of N45 on an ad hoc basis to:

- R) a. Review appropriate EAs and EISs.
- b. Recommend to CNO (N45) and ASN(I&E) when, in the panel's opinion, DEISs should be submitted to the EPA, other Federal agencies, and to the public for appropriate comment.

c. Recommend to CNO (N45) whether a FONSI or preparation of an EIS is the appropriate disposition of an EA under review.

2-6.4 Major claimants, Regional Commanders, C Os of shore Activities, Training and Operations Planners, Weapons Systems Acquisition Program Managers, and Science and Technology Program Managers shall

a. Ensure that all appropriate instructions including those requiring written justification for projects or programs, collectively or separately, involving Research, Development, Test and Evaluation (RDT&E), MILCON, Operations and Maintenance, Navy (O&MN), Navy Working Capital Fund (NWCF), urgent minor construction, land acquisitions, natural resources management, weapons and support systems and special projects are included in the requirements for funding and scheduling for environmental documentation, as necessary.

b. Review potential environmental impacts associated with a proposed action at the initial planning stage, such as during the facility study in the instance of MILCON projects, and at each following significant step or decision in the development of a program or project as warranted. The intent of NEPA is to encourage participation of Federal- and State-involved agencies and affected citizens in the assessment procedure, as appropriate. The lack of such coordination has been a significant point raised in subsequent litigation as well as causing a gap in information supplied for established review procedures. Accordingly, action proponents shall encourage early contact with those effected. If implementing NEPA, they shall, in most instances, establish a dialogue. Claimants and commanding officers shall sufficiently detail and document the dialogue to identify significant impacts and environmental controversy.

The necessity for convening the review panel shall be an option left to CNO (N45). In individual cases and depending upon the individual submission, unanimous panel concurrence is not necessary to decide on the dispensation of a particular assessment.

c. Assess the environmental effects of current and proposed actions under the criteria of this chapter and send appropriate documentation to CNO (N45) via the chain of command.

d. Participate in the formulation of, and ensure commitment to, FONSI/ROD conclusions and any mitigation and monitoring requirements established.

e. Complete environmental documentation for training exercises off military property at least 120 days before the authorization of the exercise in question. If it is not possible to prepare the appropriate environmental document within the periods identified, CNO (N45) shall be so informed, preferably in writing. Pertinent sections of environmental documents prepared for training maneuvers shall also be incorporated into applicable operational plans.

f. Encourage by all means possible a sense of environmental responsibility and awareness among personnel to implement most effectively the spirit of NEPA. All personnel who engage in any activity or combination of activities that significantly affect the quality of the human environment shall be aware of NEPA responsibility. Only through alertness, foresight, and notification through the chain of command shall they realize NEPA goals.

2-6.5 The Regional Environmental Coordinator shall (R)

a. Participate in the preparation of EAs and EISs for proposed actions that affect resources under their control or issues of concern in the region. (R)

b. Endorse EAs and EISs involving actions that affect resources under their control.

2-6.6 Special Coordination Requirements. Communication and coordination are primary factors in a successful NEPA process and are the responsibility of all concerned. Command counsel and public affairs offices shall be integral parts of a concerted coordination effort. There are, however, several types of actions that require special coordination by action proponents early in the NEPA process:

Under E.O. 12344, statutorily prescribed by Public Law 98-525 (42 U.S. Code (U.S.C) 7558, note), the Director, Naval Nuclear Propulsion (N00N) is responsible for prescribing and enforcing environmental standards and regulations for the control of radiation and radioactivity associated with naval nuclear propulsion activities, including safety and health of workers, operators, and the general public. Accordingly, the Director or designee, in coordination with CNO (N45) or designee, is responsible for developing, approving, and issuing EAs and FONSI's for actions within the purview of CNO (N00N), including obtaining the concurrence of other affected Navy commands as appropriate. ASN (I&E) or designee shall obtain concurrence/approval on any decision to prepare an EIS or on any ROD.