

NEPA

**THE NATIONAL
ENVIRONMENTAL
POLICY ACT**





- The National Environmental Policy Act (NEPA) of 1970
- Requires that all Federal Agencies consider environmental impacts of all **actions** that they are considering or undertake
- NEPA requires agencies to assess the environmental effects of proposed **actions PRIOR** to making a decision to move forward



Grants subject to NEPA

- All MARAD grant and loan programs are subject to NEPA.
- NEPA must be completed before a Grant Agreement can be executed and funding can be obligated.
- That means, for the most part, the grant project can not be started before NEPA is completed. Except for some pre-approved exceptions, that means until NEPA is completed, there can be no procurement, no bidding, no construction.



Three Classes of Action

- **Categorical Exclusions (CE)**
 - category of actions that individually or cumulatively have no significant effect on the quality of the human environment
- **Environmental Assessments (EA)**
 - includes those actions for which the significance of the impacts are uncertain
- **Environmental Impact Statement (EIS)**
 - cover those actions that have been determined to have significant environmental impact



- A CE is one of three basic types of NEPA analysis.
- A CE is a category of **actions** that, for many reasons, an Agency has determined do not generally result in significant environmental impacts.
- Common misconception that a CE means no NEPA analysis is required.
- CE's must still be documented and retained by MARAD.



When is a categorical exclusion not appropriate?

- significantly affects public health or safety;
- highly uncertain, involve unique or unknown risks, have disproportionately high and adverse effects on minority and low-income populations, or that are substantially controversial on environmental grounds;
- establishes a precedent or for future actions that have the potential for significant impacts;
- requires federal or state permits (e.g. in-water work)
- violates Federal, state, tribal or local environmental laws, rules or regulations;
- project has substantial public interest; or
- significantly affects protected resources such as eligible or listed properties on the National Register of Historic Places, threatened/endangered species, and wildlife refuges.



- National Historic Preservation Act
- Separate from NEPA, but required to be completed prior to finalizing NEPA
- For EVERY project, consultation with SHPO is required PRIOR to initiating the project (minimum 30 day response time)



- Endangered Species Act
- Part of the NEPA process (including Categorical Exclusions)
- For EVERY project, consultation with NOAA National Marine Fisheries and US Fish & Wildlife is required PRIOR to initiating the project

- NEPA is not a permit. It is a process.
- Securing local/state/federal permits does not equal NEPA compliance.
- Compliance with other environmental laws does not absolve MARAD of the responsibility to also comply with NEPA.
- States have a process similar to NEPA. A State NEPA document cannot be used in place of a Federal NEPA document.

- Even if another agency has completed NEPA for the project, MARAD is still required to complete NEPA.
- If an agency, such as the Corps of Engineers, has already prepared a NEPA document for a project, MARAD can sometimes adopt the NEPA that has been done. But MARAD needs to evaluate that NEPA documentation for sufficiency before making that determination. The document must cover the entirety of the project, be up to date, and meet MARAD NEPA standards.
- If MARAD is able to adopt another agency's NEPA document, there is still a process to evaluate and document that adoption. Sometimes consultations need to be re-initiated to fulfill agency responsibilities.

- The average timeframe for the different levels of NEPA documents are as follows:
- Categorical Exclusion: 2-3 months
 - Environmental Assessment: 6-12 months
 - Environmental Impact Statement: 12-24 months

How can you prepare for NEPA to expedite the time between Grant Award and Obligation of Funds?

- Most common is early coordination with USACE. This can “unofficially” happen prior to grant award.
- Retain services of an environmental consultant prior to grant award.
- Understand that MARAD does not have a CatEx for rail or roads.
- Plan to utilize non-invasive surveys/studies as part of pre-award activities.
- Begin discussions with MARAD NEPA staff as soon as possible after grant award.
- Plan early for a MARAD NEPA staff site visit soon after grant award. Engage resource agencies and, if needed, include them on the site visit.

- For more information about MARAD's NEPA process, please see MAO 600.1, which details the procedures MARAD uses for NEPA compliance.
- For questions, contact Kris Gilson, Director, Office of Environmental Compliance at Kristine.Gilson@dot.gov.