

Environmental Compliance

Below are brief summaries of the major environmental laws the Corps must comply with to build and operate various projects, along with information on how ERS ensures the Seattle District meets all applicable requirements. A complete description of these and other laws, including more detailed compliance procedures, is available in the [Civil Works Environmental Desk Reference](#).

- [National Environmental Policy Act](#)
- [Endangered Species Act](#)
- [Clean Water Act](#)
- [National Historic Preservation Act](#)
- [Fish and Wildlife Coordination Act](#)
- [Coastal Zone Management Act](#)

National Environmental Policy Act

The National Environmental Policy Act (NEPA) is the basic environmental policy for the nation. NEPA is an umbrella statute that sets up a process to document potential environmental impacts of proposed alternatives to help decision makers take environmental considerations into account in project selection. All Federal actions are subject to a NEPA review. NEPA also sets up a process to disclose information on the proposed project and solicit comments. Unlike other environmental laws, NEPA does not contain statutes that help define project design. Rather, NEPA is a mechanism to identify and describe alternatives and their impacts, and possible ways to mitigate for those impacts. Every federal agency is required to have regulations for implementing NEPA. The Corps of Engineers operates according to two sets of regulations, [Engineering Regulation \(ER\) 200-2-2](#) and [Army Regulation \(AR\) 200-2-2](#), which describe procedures for implementing NEPA for civil works and Army projects, respectively.

There are three types of documents that could result from the NEPA process:

1. Environmental Assessment (EA) - The EA is used to determine if an Environmental Impact Statement will be required to document project impacts. The EA provides the decision maker with information to assess whether a proposed project is a major federal action with significant impacts or not. Typically EAs are used on small projects or those where impacts can be mitigated below a particular significance level. The findings of the EA, along with the decision-maker's determination whether it is necessary to prepare an EIS, is documented in the Finding of No Significant Impact (FONSI).
2. Environmental Impact Statement (EIS) - The EIS is used to document impacts of large and/or controversial projects where there are expected to be significant impacts. Impacts are defined as being significant based on scientific input, public controversy, or legal requirements. The EIS is intended to be a disclosure document, providing decision makers with a systematic evaluation of the environmental impacts of a full spectrum of practicable alternatives including the no action alternative.

The Draft EIS describes all the alternatives being considered, and the expected impacts. Typically a preferred alternative is identified. The Draft EIS is circulated to the public for a minimum of 45 days. After the public review period is complete a Final EIS, which incorporates public input and responds to questions raised by the public, is prepared. The Final EIS is circulated for comment for 30 days, after which the Record of Decision (ROD) is prepared. The ROD describes which alternative the agency has chosen to move forward on and why that decision was made. The ROD also identifies what mitigation will be implemented to compensate for the impacts of the proposed project.

3. Categorical Exclusion (Cat. Ex.) - Minor. typically routine

of categorical exclusion (CE) actions, typically require actions that are not expected to have environmental impacts are categorically excluded from the documentation requirements of NEPA. Actions that are eligible for categorical exclusion are defined in Corps regulations ER200-2-2, and AR 200-2-2. Because a project is categorically excluded from NEPA does not mean that it is exempt from other environmental laws.

A Cat. Ex. memo is written to document that the proposed action is eligible for a categorical exclusion as defined in the agency's NEPA regulations, and to document what coordination has been done with the appropriate resource agencies. Cat. Ex. memos are typically not circulated to the public.

For more information on NEPA, see the Council on Environmental Quality's [NEPA Net](#).

Endangered Species Act

The Endangered Species Act (ESA) serves to identify species of plants and animals which are considered to be in danger of extinction. The law is administered by the U.S. Fish and Wildlife Service (USFWS) for terrestrial plants and animals, including resident fish, and by the National Marine Fisheries Service (NMFS) for marine animals and anadromous fish. These two agencies are collectively referred to as "the Services." Compliance with requirements of Section 7 of the ESA are triggered when there is a "Federal Nexus," which occurs when a Federal agency is involved in constructing a project, providing funds for project implementation, or has regulatory jurisdiction over a proposed action. Federal action agencies are required to consider the impacts of proposed federal projects on threatened and endangered species found in the project area for proposed projects.

The responsible Federal agency is required to document the

degree to which the proposed action will impact any threatened or endangered species found in the proposed project area. The agency makes a determination of "no effect," "not likely to adversely affect," or "likely to adversely affect."

"No effect" determinations indicate that listed species will not be affected by the proposed action, typically because their habitat will not be altered or the species is not found in the area at the time of year when the proposed activity will occur, and the project actions would have no long-lasting effects. No effect determinations are documented in a memo format and are generally not circulated to USFWS or NMFS.

Action agencies can document "Not likely to adversely affect" determinations in any way they choose--there are no specific requirements for reporting these determinations, other than notification to the Services of the determination. The Corps of Engineers routinely prepares Biological Evaluations (BE) to document its process through which the determination of "not likely to adversely affect" determination was made. This determination is the appropriate one when any potential effects of the activity will be insignificant or unlikely to occur. The BE is circulated to USFWS and/or NMFS depending upon the species involved. USFWS and/or NMFS will then issue a letter of concurrence with the determination, or not concur. If a nonconcurrence letter is sent, then the Services advise the action agencies to request formal consultation.

A biological assessment (BA) must be prepared whenever an action agency proposes a major construction project that will result in significant environmental effects (i.e., will require preparation of a NEPA EIS). A BA is also prepared when the action agency knows that a project is likely to adversely affect a protected species. The action agency requests initiation of formal consultation with USFWS and/or NMFS. In response to this request, the Services will prepare a Biological Opinion (BO), which

first determines whether the adverse effects would jeopardize the continued existence of any species. If a jeopardy determination is made, the Services identify reasonable and prudent alternatives (RPA) that are intended to avoid jeopardy to the species. The action agencies must implement these measures or appeal to higher authority. If jeopardy is not determined, then the Services identify reasonable and prudent measures (RPM), which the action agencies must implement to reduce impacts to listed species. Jeopardy determinations are rare.

The ESA specifically mandates that the Section 7 process is strictly between the Services and the action agency. However, either the action agency or the Services can request input from others. ERS often posts BAs, BEs, and BOs on our [Environmental Documents](#) page.

Clean Water Act

The Clean Water Act (CWA) was enacted to conserve and restore the quality of the nation's waterways. As part of this legislation, the Corps of Engineers was given the responsibility of issuing dredge and fill permits (Section 404 permits) for activities in "waters of the U.S." Waters of the U.S. include lakes, streams, special aquatic sites, and wetlands. Please to refer to the [Regulatory Branch website](#) for more details on the Corps' Regulatory Program.

When the Corps constructs a civil works project, it does not issue permits to itself. Instead the Corps follows a process similar to the established permit process. This parallel process is administered by ERS rather than Regulatory Branch. Delineation of wetlands and other waters of the U.S. is still required, as is an alternatives analysis, a 404(b)(1) analysis, and the identification of mitigation measures. For most Corps projects, a 401 Water Quality

Continuation issued by the affected state is also required.

National Historic Preservation Act

The National Historic Preservation Act helps Federal agencies actions and programs ("undertakings") avoid unnecessary adverse effects on important historic properties such as buildings, archaeological sites, and other places. Enacted in response to severe disruption of central cities that was caused by Urban Renewal programs of the 1950's and early 1960's, the Act created the executive-level Advisory Council on Historic Preservation ("Council") and chartered the Council to review national historic preservation policies and develop uniform regulations and procedures to carry out the Act. The Council also is required to review, resolve disputes about, and comment on the effects of specific agency undertakings on historic properties. In addition to the Council, the Act created state- and tribal-level government offices to review Federal agency undertakings; the chief officer is designated "State (or Tribal) Historic Preservation Officer" ("SHPO" or "THPO"). The HPO administer funds provided for operation of their offices under the authority of the NHPA. For further information about NHPA, you may check the [Advisory Council's website](#).

Fish and Wildlife Coordination Act

The Fish and Wildlife Coordination Act (FWCA) requires that during planning for water resources projects, the Corps of Engineers consult with the U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS) and, where appropriate, the agency administering fish and wildlife resources for the affected state. The Corps has entered into a Memorandum of

Agreement (MOA) with the USFWS to produce Fish and Wildlife Coordination Act reports for water resources projects. The FWCA report provides an independent review of the proposed project, with an emphasis on documenting impacts to wildlife resources, identifying means to conserve those resources, and measures which could mitigate project impacts. For large projects the draft FWCA report is included in the draft NEPA documentation, and the final FWCA report appears in the final NEPA documentation. FWCA reports are typically not open for public comment, but they may appear on our [Environmental Documents](#) page.

Coastal Zone Management Act

Federal agencies proposing activities or development actions that are reasonably likely to affect the resources of the coastal zone are required to assure that those activities are consistent, to the maximum extent practicable, with the approved state Coastal Zone Management programs. In Washington, this is the Shoreline Management Act and approved local programs. Regulatory permit actions must also be certified that they comply with state approved programs. At least 90 days before final approval of a project, the action agency must submit a Coastal Consistency Determination (CCD) to the appropriate state agency. In Washington, this is the Department of Ecology. The CCD documents how the proposed activity conforms to the approved shoreline plan for the project area. The state then has 45 days to respond to the action agency's determination.