



THE WILDLIFE SOCIETY

ALASKA CHAPTER

The Alaska Chapter of The Wildlife Society strives to enhance the ability of wildlife professionals to conserve biological diversity, sustain productivity, and ensure responsible use of wildlife.



9 March 2020

Ms. Mary B. Neumayr, Chair
Council on Environmental Quality
730 Jackson Place NW
Washington DC 20503

Dear Ms. Neumayr,

The Alaska Chapter of The Wildlife Society (TWS) offers the following comments on docket number CEQ-2019-0003: Update to the regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA).

We represent professional wildlife biologists within the state of Alaska. Our membership includes biologists involved in wildlife management, research, education, and administration in Alaska. Our over 200 members are employed by state, federal and local governments, academic institutions, non-governmental organizations, industry and private consulting companies.

NEPA-driven decisions have an outsized impact in Alaska. Alaska's 223 million acres of federal lands represent over a third of all federal land in the United States. Management of those lands, especially for resource extraction (principally oil, gas, minerals and timber) often require NEPA assessments. The Chapter regularly comments on various NEPA processes to support science-based decision-making related to wildlife and wildlife users. Changes to NEPA will directly affect our ability to engage in this way.

We recognize that while NEPA has worked well for the last 50 years, the implementation of the Act can be improved. We agree that Environmental Assessments (EA) and Environmental Impact Statements (EIS) should be more readable, concise, pertinent, and timely documents. The following comments identify concerns and make recommendations on the proposed revision.

The proposed imposition of seemingly arbitrary timelines and page limits, reducing the types of analyses allowed, and exempting certain activities from NEPA analyses altogether significantly

undermines the purpose of NEPA. Ironically, these changes, if implemented, could make NEPA projects *more* vulnerable to legal challenges and related delays. More importantly, they will almost certainly have the effect of obscuring or minimizing the associated impacts of development activity to the public - the “owners” of these lands. This is not what most Americans want, and it is certainly not consistent with the purpose of NEPA.

The proposed changes adopt a “one-size-fits-all” approach to writing EAs and EISs that ignores vast differences in the scope, complexity and environment in which these projects on federal lands take place. Consider how different the EIS for a road project in Iowa might be compared to a proposal to drill for oil and gas in the Arctic Ocean. Affected residents in Arctic Alaska are mostly Alaska Natives. They have limited familiarity and access to the federal register, and limited time to review technical documents, especially during the few months when they are whaling, hunting, and fishing to meet their subsistence needs. It will not work to tell Alaskans that the information on wildlife use and distribution normally included in an EIS has to be cut out because page limits don’t allow, or because an agency bureaucrat deemed it non-essential.

Can the individuals advocating for this so-called “modernizing” of the NEPA regulations see the issue from the perspective of local Alaskans? Natives have depended on these lands for thousands of years, long before they became “federal” land. The so-called problem of an EIS taking 1 or 2 years longer to complete pales compared to the prospect of a major development project changing their very way of life forever. If doing a good job requires more time, then provide it.

The notion that imposing time and page limits on NEPA documents will somehow result in “better” documents and faster development is naïve. Contractors have a saying that applies well here. You can get something built fast, built cheap, or built well. Any TWO of those things are possible (not all 3). Here, CEQ is saying we need better EISs, completed faster, in fewer pages. Want that all you wish, but it is not going to happen. Corners will have to be cut, information excluded, writing and editing given short shrift¹. You will *not* get a better product from this. We predict the court challenges will prove it.

Of course, the third leg of that stool is cost. If agencies were to double the number of qualified technical writers, editors, and multi-disciplinary specialists (economists, biologists, engineers etc.) working on an EIS, you could produce a higher quality product in less time. However, in Alaska, the trend over the last 15 years has been to *eliminate* these expert employees in favor of remote, low-bid contractors. The EIS quality has suffered as a result. If you want the kind of quality you say, in the time-frame you say, CEQ needs to acknowledge there will be increased costs; and agency budgets will need to be adjusted to accommodate.

With respect to the page limits proposed in the modernized regulations, CEQ specifies the text of an EA “shall” be no more than 75 pages...and the text of an EIS “shall” be no more than 150 pages, unless it is unusually complex, in which case it shall be no more than 300 pages. These

¹ As any author will attest, a clear, concise piece takes MORE time to write, not less.

numbers feel arbitrary. What official, and what process, is used to decide the project is “unusually complex”? While CEQ should encourage shorter documents, and establish recommended guidelines for length, they should be just that—guidelines—not hard limits. How will complex impacts to wildlife, fisheries, watersheds, and long-term cumulative impacts be scientifically described with such brevity?

The CEQ includes a clause that stipulates a “senior agency official” may approve in writing a longer time period. Assuming this means an Assistant Secretary or higher, this important decision is held by a political appointee who likely has little knowledge of the environment, complexities, and controversies that may require an extension. If page- and time-limits are codified, we recommend approval of an exception to these limits be delegated to a senior agency official within the region where the federal project occurs; and that the decision be insulated from political pressures that may come from Washington DC. For public understanding, it would be helpful if the CEQ could project whether this exception might be invoked 25% of the time or whether it is intended as a truly rare exception, with high political involvement (e.g., exercised in 1 out of 100 EISs).

With respect to time limits (1 year for EAs, 2 years for EISs), we can expect some number of EAs and EISs will miss their self-imposed deadlines by days, weeks or months. In such cases, is there a penalty for the agency? Does missing the deadline give grounds for litigation by an industry group? Here, as with the limit on page length, we suggest the regulations be interpreted as guidelines—something agencies should aspire to. Putting it in hard terms, with the word “shall”, fails to recognize the infinite variety of situations and resources that agencies must wrestle with.

CEQ is requiring that agencies include in the EIS a summary of comments received, and “the decision maker must certify in the record of decision that the agency has considered all of the alternatives, information, and analyses submitted by public commenters”. We believe the agency must do more than “certify” they have considered this information (accomplishable with a single sentence). The agency should provide a specific response to the substantive comments received, especially from professional societies and special interest groups that submit detailed reviews. Such responsiveness was common in EISs 10-20 years ago, but is rare today. Responding specifically and publicly to substantive public comment would go a long way to reversing the public perception that Federal agencies do not listen to the public.

CEQ is proposing a change in position to state that analysis of cumulative effects, as defined in CEQ current regulations, is not required under NEPA. CEQ alleges that despite detailed guidance, determining the scope of those effects spatially and temporally has been difficult, and “can divert agencies from focusing their time and resources on the most significant effects.”

We believe the guidance provided in current CEQ regulations is clear and does not pose any real difficulty. While NEPA may not specify need to consider cumulative effects specifically, the law is clear (and the Supreme Court has affirmed) that significant environmental effects must

be considered. If the agency believes that the cumulative effects of some management action do, in fact, represent a significant impact, they are required to evaluate it.

An example, using the Tongass Forest, is the need to evaluate proposed logging plans in the context of past and future logging on the forest. Secondary forest succession following clear-cut logging will continue to change the habitat and its suitability for wildlife for centuries after the clearcutting occurs. It is impossible to accurately present the effects of management on wildlife, and wildlife-users, without considering the cumulative effects over time and space. Throwing out all cumulative effects analyses, especially given its history in CEQ regulations, and its accepted ecological importance, would make agencies vulnerable to legal challenges.

CEQ also proposes to clarify that effects should not be considered if they are “remote in time, geographically remote, or the result of a lengthy causal chain”. The term “remote” is vague and relative. This might prevent evaluation of a tailings pond failure on downstream fish if such failure was likely remote in time (100 years), distant (50 miles downstream), or the result of a lengthy causal chain (copper from mine tailings leaching into water supply and interfering with homing ability of salmon). Who determines what constitutes remote or lengthy? We can foresee problems making such calls, especially if done very conservatively to avoid displaying impacts that the public knows will have certain major effects on their lives.

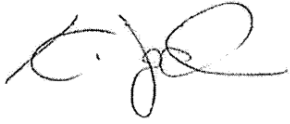
The proposed new rules acknowledge that mitigation must be considered in EA and EIS documents but specifically remove mandates of such action. The language appears to limit the authority of an agency to solve a problem under its jurisdiction. While the EIS or EA cannot *mandate* the mitigation (per Supreme Court rulings), the public deserves a clear understanding of the options, costs, and effectiveness of potential mitigation to environmental harms associated with the proposed action. The CEQ regulations should be strengthening this disclosure requirement.

The CEQ proposes a new definition of reasonable alternative that would provide that reasonable alternatives “must be technically and economically feasible to meet the purpose and need of the proposed action”. How might the agency balance economic feasibility against environmental protection? The more economically feasible a project is, the fewer environmental safeguards there are (typically). If economics is to play into NEPA regulations at all (and we are dubious), it should clearly be secondary to the main purpose of the law, which is to ensure environmental protection.

In conclusion, while we agree with the thesis that plain, well-focused writing that clearly explains issues, impacts and alternatives is desirable, we do not feel that imposing arbitrary limits on length, time, and content is the best way to reach that goal. These appear primarily aimed at benefitting industry interests, not the interest of the public at large. The risks of environmental harm increasing under these rules are particularly great for residents of Alaska. We hope you will make changes to this proposal in light of our comments and recommendations.

If we can be of any further assistance, please feel free to contact Kim Jochum, PhD, President, Alaska Chapter of The Wildlife Society, at kimjochum@gmail.com or 907-602-8601.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Jochum', with a stylized flourish at the end.

Kim Jochum, PhD
President, Alaska Chapter of The Wildlife Society

CC: The Honorable Michael Dunleavy, Governor of Alaska
The Honorable Lisa Murkowski, United States Senator (AK)
The Honorable Dan Sullivan, United States Senator (AK)
The Honorable Don Young, United States Representative (AK)