



THE WILDLIFE SOCIETY

Leaders in Wildlife Science, Management and Conservation

September 26, 2023

Council on Environmental Quality
730 Jackson Place NW
Washington, DC 20503

Re: docket number CEQ-2023-0003

The Wildlife Society appreciates the opportunity to provide comments regarding the proposed rule-making updating U.S. Council on Environmental Quality (CEQ) National Environmental Policy Act (NEPA) implementing regulations.

Founded in 1937, The Wildlife Society (TWS; wildlife.org) and our network of affiliated chapters and sections represents over 15,000 wildlife biologists and managers, dedicated to excellence in wildlife stewardship through science and education. Our mission is to inspire, empower, and enable wildlife professionals to sustain wildlife populations and their habitat through science-based management and conservation.

For fifty years, regulatory implementation of the National Environmental Policy Act has ensured that federal agencies make decisions with an understanding of the environmental consequences of those actions and disclose those effects to the public. The Wildlife Society is encouraged by the administration's previous rescission of some of the 2020 regulatory changes and appreciates the continuing efforts to ensure that the NEPA process provides for efficient and effective environmental reviews that are guided by science, allows for full and meaningful public engagement, and fully considers climate change and environmental justice.

Original purpose of NEPA

Through changes to § 1500.1 and § 1500.2, the proposal would restore many of the provisions from the 1978 regulations, removing language added in 2020 that describes NEPA as a purely procedural statute. As we noted in previous comments submitted to the CEQ, modifying NEPA guidelines to be devoid of a link to the ultimate objective of improving environmental outcomes of agency action is in stark contrast to the Congressional intent of NEPA. Its original purpose must be preserved if future decisions are to reflect current science-based natural resource management that prioritizes a vetting of alternatives. TWS fully supports the proposed changes to these sections.

In particular, we appreciate the changes in 1500.2(d), emphasizing public engagement, including with communities with environmental justice concerns. We agree that an emphasis on engagement with these communities is important because federal agencies have not always meaningfully engaged with them and such communities have often been disproportionately and adversely affected by federal actions.

Opportunities for public engagement

The proposal makes several changes to improve the ability of the public to participate in the NEPA process, removing provisions that inappropriately restrict public comments and place unnecessary burden on public commenters. The proposal would remove language from § 1503.3(a), added in the 2020 rule, that requires comments to be as detailed as necessary to meaningfully participate and fully inform the agency of the commenter's position. This requirement unfairly targets members of the public who may not have the skills or access to data sources that provide the specificity required for the level of comments required. Our previous comments strongly recommended the revocation of this regulation in order to allow the public to fully vet concerns; we thank you for proposing its removal.

To reflect current agency practice and provide the public with a clearer understanding about potential public participation opportunities with respect to EAs, CEQ proposes to add a new paragraph to § 1501.5 that provides that, if an agency chooses to publish a draft EA, it must invite public comment on the draft and consider those comments when preparing a final EA. We appreciate the inclusion of this additional opportunity for public engagement.

CEQ proposes revisions to § 1501.9 to emphasize the importance of creating an accessible and transparent NEPA process. Proposed paragraph (c)(1) would recommend agencies invite likely affected agencies and governments, and paragraph (c)(2) would recommend agencies conduct early engagement with likely affected or interested members of the public. Paragraph (c)(3) would provide flexibility to agencies to tailor engagement strategies, considering the scope, scale, and complexity of the proposed action and alternatives, the degree of public interest, and other relevant factors. CEQ also proposes to add a clause to the end of paragraph (c)(3) to require agencies to consider the primary language of affected persons when determining the appropriate notification methods to use. We support these changes as well.

Recognition of Tribal rights

The revisions to § 1501.3 would require agencies to consider the effects of their action on the rights of Tribal Nations reserved through treaties, statutes, or Executive Orders and on communities with environmental justice concerns. TWS acknowledges the importance of considering the rights of Tribal Nations and communities with environmental justice concerns and supports this revision.

CEQ also proposes an addition to § 1501.8, clarifying in paragraph (a) that special expertise can include Indigenous Knowledge. [TWS agrees](#) that this proposed change will help to ensure that Federal agencies respect and benefit from the unique knowledge that Tribal governments may bring to the environmental review process. The CEQ notes that, while the Office of Science and Technology Policy and CEQ have issued a Guidance Memorandum for Federal Departments and Agencies on Indigenous Knowledge, they have not defined “Indigenous Knowledge”, and invited comment on whether it should include such a definition in the regulations. TWS recommends that, should the agency decide to define the term “Indigenous Knowledge,” it should work closely with Tribal Nations to do so.

Environmental justice

CEQ proposes to add a new provision in § 1505.3 to encourage lead and cooperating agencies to incorporate, where appropriate, mitigation measures addressing a proposed action's significant adverse human health and environmental effects that disproportionately and adversely affect communities with environmental justice concerns. TWS supports the effort to encourage agencies to incorporate mitigation measures where proposed actions result in significant concerns for human health, including efforts to address any disproportionate burdens on communities with environmental justice concerns.

Section 1508.1 would update the definition of "effects" to include "disproportionate and adverse effects on communities with environmental justice concerns, whether direct, indirect, or cumulative." We agree that any consideration of effects should include a consideration of environmental justice concerns.

CEQ also proposes, in § 1508.1, to define "environmental justice" as "the just treatment and meaningful involvement of all people so that they are fully protected from disproportionate and adverse human health and environmental effects and hazards, and have equitable access to a healthy, sustainable, and resilient environment." As the CEQ notes, the proposed definition of environmental justice purposely uses the phrase "cumulative impacts," rather than the phrase "cumulative effects," which are used elsewhere in the proposed regulations. We agree that the evolving science on cumulative impacts is sufficiently distinct from the general meaning of cumulative effects under the NEPA regulations, such that using a different term could be helpful to agencies and the public.

Climate change

Section 1508.1 would update the definition of "effects" to include "climate change-related effects, including the contribution of a proposed action and its alternatives to climate change, and the reasonably foreseeable effects of climate change on the proposed action and its alternatives." We agree that any consideration of effects should include a consideration of climate change, and appreciate this explicit inclusion in the definition of effects.

In § 1502.16, CEQ also proposes to include, in the list of the environmental consequences that an agency must consider, an explicit requirement to consider any reasonably foreseeable climate change-related effects, including effects of climate change on the proposed action and alternatives. We also appreciate this inclusion.

Formatting and schedules

The proposal would set 1- and 2-year deadlines for EAs and EISs, respectively, as well as page limits at 75 pages for an EA and 150 or 300 pages for an EIS, depending on complexity. TWS previously requested that CEQ reevaluate the page limits and timeline for environmental reviews added in 2020. While the desire to complete environmental reviews in a timely manner and in a reasonable length is understandable, imposing arbitrary limits does not ensure more focused documents or better analyses that fulfill the goals of NEPA. We continue to recommend an alternative directive that encourages agency coordination on the expected levels of impacts on

each resource area to create tailored EAs and EISs that more specifically focus on resources at risk.

The proposal also would strike the existing requirement to include on the cover of the final EIS the estimated preparation cost. We agree with the various federal agencies that commented, noting that such a requirement may unnecessarily add time to the EIS preparation process.

We appreciate the modification of the definition of “page” in § 1508.1, which would exclude citations from the page limits for EISs and EAs, and also retain the exclusions for maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information from the definition of “page” to facilitate better NEPA documents. We agree that, while agencies could move these visual representations of information to appendices, which could come at the end of an EIS or the end of EIS chapters, this could make the documents less functional to decision makers and the public.

Consideration of alternatives

CEQ proposes in § 1502.14 to restore the clause that agencies must “rigorously explore and objectively” evaluate reasonable alternatives. We support this change. It also proposes to add a requirement to identify the environmentally preferable alternative, which may be the proposed action, no action alternative, or a reasonable alternative. The CEQ regulations always have required agencies to identify the environmentally preferable alternative in a ROD, but we agree that requiring that the draft and final EIS identify the environmentally preferable alternative would provide more transparency to the public as to the agency's decision-making process at an earlier stage, as well as an opportunity to comment on it before the agency makes its decision.

In § 1502.16, CEQ clarifies that the environmental effects considered by an agency should be those that are “reasonably foreseeable,” codifying the longstanding principle from the 1978 regulations and long recognized by the courts that effects must be reasonably foreseeable. We support this codification.

Data quality

[TWS strongly supports](#) the appropriate use of wildlife, ecological, and conservation science in policy determination and decision-making processes, and we appreciate the efforts by CEQ to encourage reliance on the best available science throughout the NEPA process.

CEQ proposes revisions § 1502.15 to require the use of “high-quality information, including the best available science and data, to describe reasonably foreseeable environmental trends, including anticipated climate-related changes to the environment.” We support this change, which would articulate clearly NEPA’s statutory mandate that science inform agencies’ decisions as part of a systematic, interdisciplinary approach.

In § 1502.21, CEQ proposes to remove the phrase “but available,” which addresses situations where an agency encounters incomplete or unavailable information during its evaluation of a proposed action's reasonably foreseeable significant adverse effects. CEQ proposes to strike “but

available,” a phrase added by the 2020 rule, to clarify that agencies must obtain information relevant to reasonably foreseeable significant adverse effects that is essential to a reasoned choice between alternatives where the overall costs of doing so are not unreasonable, and the means of obtaining that information are known. We agree that this qualifier could be read to significantly narrow agencies’ obligations to obtain additional information, even when it is easily attainable and the costs are reasonable. It is necessary for the integrity of the NEPA process that agencies undertake studies and analyses where necessary rather than relying solely on available information where the costs of obtaining the relevant information are not unreasonable.

CEQ proposes changes to § 1502.23 to promote use of high-quality information, such as best available science and data; require agencies to explain assumptions; and, where appropriate, incorporate projections, including climate change-related projections, in the evaluation of reasonably foreseeable effects. In § 1502.23, CEQ proposes to reinstate the term “high-quality information,” as used in the 1978 regulations, and clarify that such information includes best available science and reliable data, models, and resources. CEQ also proposes to strike the statement that agencies are not required to undertake new research to inform their analyses consistent with the changes to paragraph (a). As noted in this section, it is common practice for agencies, when necessary or appropriate, to engage in additional research and create new data based on an action's particular circumstances (such as the affected environment) when analyzing proposed actions under NEPA.

We appreciate the emphasis on data quality and agree that agencies should be permitted to exercise their good judgment in determining when new data and analyses are necessary. We also [emphasize](#) that Indigenous Knowledge, including Traditional Ecological Knowledge, is often a source of high-quality information.

CEQ proposes to add a new sentence encouraging agencies to explain their assumptions and any limitations of their models and methods. We agree that this would support this section's overall purpose of ensuring the integrity of the discussions and analyses in environmental documents.

Finally, a new paragraph in § 1502.23 requires agencies to use projections when evaluating reasonably foreseeable effects, including climate change-related effects, where appropriate. We agree that such a provision is reasonable, and stress the importance of requiring agencies to disclose any and all underlying assumptions or limitations of those models.

Innovative Approaches to NEPA Reviews

CEQ proposes to add a new section to the regulations in § 1506.12 to allow CEQ to grant a request for modification to authorize federal agencies to pursue innovative approaches to comply with NEPA and the regulations in order to address extreme environmental challenges, such as sea level rise or increased wildfire risk. CEQ specifically invited public comment on whether it should add additional procedures or limitations to ensure that innovative approaches are used appropriately.

We applaud the openness of the CEQ to innovative approaches to address environmental challenges. The changing climate is generating many new challenges for natural resources

managers, some of which will certainly require innovative approaches. [TWS recognizes](#) the need for flexibility in approaches as expected outcomes from a changed climate evolve and supports innovative decision-making frameworks that consider likely future conditions during conservation management planning, as well as the development and testing of creative conservation actions that aim to assist wildlife in their adaptation to climate shifts.

The new provision does not include any mention of or requirement for public engagement; we encourage CEQ to make it clear that any modification granted will still require the full gamut of public engagement and participation required by NEPA.

Agency Responsibility for Environmental Documents

CEQ proposes modification and additions to § 1506.5 to clarify the requirements related to a federal agency's role in preparing environmental documents. The 2020 rule amended this provision to allow an applicant to prepare EISs on behalf of the agency. We previously recommended that this be withdrawn, as it may result in review documents being prepared by employees without the necessary training and experience to consider all impacts as required by law. Federal agencies have internal guidance and processes that ensure NEPA documents are appropriately prepared; there is no guarantee that third parties working for a project applicant would have such safeguards in place. We also appreciate the clarification, in paragraph (a), that regardless of who prepares an environmental document, the agency must ensure they are prepared with professional and scientific integrity using reliable data and resources.

Conclusion

In closing, as we did in 2021, we urge the Administration to work closely with state fish and wildlife agencies to ensure that states are thoroughly consulted on proposed federal actions related to NEPA. This is especially important since NEPA compliance is a key component of state funding programs (e.g., Wildlife and Sport Fish Restoration, State Wildlife Grants), and sensible rules to implement NEPA-related reviews are essential.

Thank you for considering the views of natural resource professionals. If we can be of any further assistance, please contact policy@wildlife.org.

Sincerely,



Bob Lanka, CWB®
President-Elect
The Wildlife Society