



27 March 2025

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

**Re:** Removal of National Environmental Policy Act Implementing Regulations, Council on Environmental Quality [Docket Number CEQ-2025-0002]

Thank you for the opportunity to provide comments on the interim final rule to remove the existing implementing regulations for the National Environmental Policy Act (NEPA). The Wildlife Society (TWS) understands that the Council on Environmental Quality (CEQ) is not seeking comments on the substance of the rules being removed. We also recognize the logic underlying the interim final rule. However, TWS is concerned by the process for making these substantive changes, and in the spirit of NEPA, would like to recommend an alternative approach.

***The Wildlife Society strongly recommends that CEQ withdraw the interim final rule and seek clarity from Congress regarding the long-held interpretation of NEPA and CEQ rulemaking authority.***

Pursuing a legislative solution would clarify CEQ's legal authority to issue binding regulations, allow for broad stakeholder input and result in a consistent implementation framework for NEPA.

#### Legal Authority

In the interim final rule, CEQ cites the Feb. 3, 2025, U.S. District Court case, *Iowa et al. v. CEQ*, where the judge opined that "NEPA is not ambiguous. The plain text of the statute does not give CEQ authority to issue binding regulations."

However, despite the clear articulation of CEQ's lack of rulemaking authority, the court did not invalidate all previous NEPA regulations. Instead, the court vacated just the most recent 2024 CEQ rule, with the recognition that "vacating a rule does not mean the Court decides the appropriate replacement." As a result, the court restored "the status quo...version of NEPA in place on June 30, 2024, the day before the [2024] rule took effect."





to changes to NEPA. However, TWS feels that Congress is the most appropriate and accountable body for ensuring that open questions around NEPA and CEQ are adequately considered and addressed. The transparent and formal processes of Congress through public hearings, debates and votes, combined with the balanced dialogue and stakeholder engagement of congressional consideration, would ensure broad acceptance of the final decision, reduce uncertainty across all stakeholders and lessen possible legal challenges due to Congress's constitutional authority to enact laws.

### Consistency and Predictability

The Wildlife Society appreciates CEQ's efforts to promote consistency and predictability across agencies revising or developing NEPA implementing procedures as outlined in the CEQ memorandum to agency heads on Feb. 19, 2025. However, while TWS supports CEQ's expressed intent, the actual effect of the guidance provided in the memorandum could result in frequent changes to NEPA now and in the future.

If consistency is the goal, instructing agencies to rely on the version of NEPA in place on June 30, 2024, would comply with the court's orders and maximize predictability until Congress engages on the topic. As the court ruling indicates, "Congress has a long history of making amendments to circumvent judicial interpretation," so it would not be unusual for Congress to engage on NEPA in light of the recent changes. By trying to unravel the regulations of NEPA through rulemaking and voluntary guidelines before receiving clarity from Congress, CEQ is creating uncertainty and confusion where none existed.

Further, if Congress does not engage and the CEQ voluntary guidelines become the basis for NEPA implementing procedures, those guidelines become susceptible to the shifting priorities of each new administration. That would further hamper consistency and long-term predictability. Working with Congress to facilitate legislative clarity would provide a much more consistent and predictable framework for NEPA implementation.

### Conclusion

While the proposed interim final rule allows for public comments, a legislative solution would provide for more meaningful public engagement. Engaging Congress on such a significant regulatory shift would also provide greater legitimacy and ensure a more comprehensive and durable outcome to addressing the challenges and complexities of NEPA implementation. As a result:

***The Wildlife Society strongly recommends that CEQ withdraw the interim final rule and seek clarity from Congress regarding the long-held interpretation of NEPA and CEQ rulemaking authority.***