



National Environmental Policy Act (NEPA)

THE NATIONAL ENVIRONMENTAL Policy Act (NEPA) of 1969 is an important procedural land use planning statute followed by all federal agencies as well as local (state, county, city, or industrial) projects that require a federal permit or receive funding from federal agencies. Often referred to as the “Magna Carta” of U.S. environmental policy, the statute also empowers any member of the public to take part in many decisions that affect federal public lands through information gathering, commenting, and even agency appeals. When President Richard Nixon signed NEPA into law on New Year’s Day, 1970, he hailed the Act as providing the “direction” for the country to “regain a productive harmony between man and nature.”

PURPOSE AND PROVISIONS

Agencies such as the Bureau of Land Management, U.S. Forest Service, and U.S. Fish and Wildlife Service must comply with the various levels of the NEPA planning process before federal actions are undertaken. A multitude of actions on federal public lands such as timber sales, mining permits, grazing permits, road building, land sales, wildlife management, ski area development, water developments, and even agency-wide planning that guides entire geographical regions are subjected to the NEPA planning process.

Under NEPA, federal agencies are required to analyze and disclose environmental consequences of proposed actions on federal public lands. For instance, in Section 102 of the law, agencies are required to reveal: (1) the environmental impact of the proposed action, (2) any adverse environmental effects that cannot be avoided should the proposal be implemented, (3) alternatives to the proposed action, (4) the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and (5) any irreversible commitments of resources that would be involved should the action be implemented.

The NEPA process thus requires the federal agency proposing an action or project to produce



In December 2005 the House Resources Committee’s NEPA Task Force proposed weakening NEPA.

an environmental assessment (EA). If the proposed action is found to be of a less significant nature, agencies will issue a “finding of no significant impact” (FONSI) and a decision notice (DN).

Citizens and the public (towns, nongovernmental organizations [NGOs], chambers of commerce, tribes, businesses, and so on) can supply comments in the scoping and draft phases of these projects. For instance, the public can identify important resource concerns they may have, identify alternatives to projects (as well as oppose agency plans outright), and appeal and refute the FONSI and DN by concisely and thoroughly stating how they feel the federal action will, for instance, violate a Land and Resource Management Plan (in the case of the U.S. Forest Service) or harm endangered species of plants, insects, or animals. There is no geographical restriction placed on public comments; residents of a state can comment on federal actions in any other state or U.S. territory.

If the federal action is found to be of major consequence, one that broadly and significantly affects the quality of the human environment, the agency must undertake an extensive environmental impact statement (EIS). According to Robert Dreher:

Analysis of alternatives is the “heart” of an EIS. Comparing the environmental impacts of an agency plan with the impacts of alterna-



tive courses of action defines the relevant issues and provides a clear basis for choosing among options. By considering and, where appropriate, adopting reasonable alternatives that meet agency objectives with less environmental impact, federal agencies can achieve NEPA's environmental protection goals while implementing their primary missions.

After completing an EIS, it is also possible that an agency will abandon all or part of its proposal.

Although NEPA is an impetus for an agency to carefully examine the consequences of its decision for other resources and values, NEPA does not *require* that an agency change its decision to take action even if its final choice is in fact detrimental to the environment. Many federal agencies have eventually made environmentally disastrous decisions even after their completion of the NEPA process showed that they may potentially be breaking other environmental laws, such as the Endangered Species Act. Federal agencies have wound up fighting thousands of lawsuits brought by public interest environmental organizations that wish to overturn harmful agency decisions.

NEPA also created the President's Council on Environmental Quality (CEQ), which is responsible for advising the president and vice president on national and international environmental policy matters. The council also ensures that federal agencies adhere to NEPA guidelines.

ACCOMPLISHMENTS

Some of the more important aspects of NEPA are that its requirements have added greater public accountability for federal agencies, as well as increased the visibility of, and accessibility to, federal agency decision making. It is "action forcing," requiring agencies to study the potential impacts of their actions before environmental damage can occur, rather than allowing nuisance laws to resolve the problems after the damage is done. It calls on federal agencies to use the science of ecology and look more holistically at cumulative impacts of proposed actions.

Before the implementation of NEPA, federal agencies (with little or no advance notice or public debate) were able to embark upon massive timber

cutting programs that destroyed entire ecosystems, and even dam valleys to the detriment of homes, businesses, farms, and habitat. With NEPA, the public has a useful tool for staying informed and influencing potentially harmful decisions that affect themselves and the environment.

NEPA has resulted in prominent success stories. In 1971 environmentalists stopped the Army Corps of Engineers from dredging the Cache River in Arkansas, where the recent sighting of the ivory-billed woodpecker, once thought extinct, later occurred. In the mid-1980s, the Pacific Northwest experienced a severe gypsy moth invasion. The U.S. Department of Agriculture (USDA) proposed to spray the town of Salem, Oregon, with the toxic pesticide carbaryl. Concerned citizens suggested the alternative biological insecticide B.t. (*Bacillus thuringiensis*). When the USDA refused to consider this alternative in its EIS, the citizen group sued the USDA in court and won. The agency later reported that B.t. use led to one of the most successful moth eradication programs in the history of the agency.

At the time of this writing, NEPA is under attack. In December 2005 the Republican staff of the House Resources Committee's NEPA Task Force released 13 draft proposals to amend and rewrite important definitions within NEPA. These reforms were supported by agency officials who feel that their decision-making autonomy is restrained by NEPA provisions, resource extraction and user industries (resorts, motorized recreation, and so on), and their political allies who would like expedited decisions and easier access to resources.

Some of the proposals to reform NEPA include: (1) exempting large categories of government activity from the NEPA environmental review process; (2) restricting the substance of environmental analysis under NEPA, in particular by allowing federal agencies to ignore environmentally superior alternatives to a proposed action; and (3) limiting opportunities for the public to comment on and challenge agency decisions.

SEE ALSO: Bureau of Land Management; Ecology; Environmental Impact Statements (EIS); Fish and Wildlife Service; Forest Service; Nixon Administration; Public Land Management.



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to stop clear-cutting practices in the Monongahela. During the same period, a University of Montana study led by Arnold Bolle concluded that management of the Bitterroot National Forest was focused almost solely on maximum timber yields, leading to serious ecological problems. In the years after these debates, courts throughout the United States applied the Monongahela decision to shut down timber sales elsewhere in the national forest system. Facing a serious challenge to its ability to govern national forests, and an equally serious challenge to the viability of commercial timber production on federal lands, the U.S. Forest Service (USFS) pursued a comprehensive legislative remedy to the problem of timber harvesting practices on federal land.

Two competing legislative solutions sought to resolve the problem of timber production in the national forests. One, sponsored by West Virginia Senator Jennings Randolph and written with the help of Arnold Bolle and others, enjoyed the broad support of conservation organizations such as the

In 2005 the USFS created a broad categorical exclusion from its Environmental Impact Statement obligations.

National Forest Management Act (NFMA)

THE NATIONAL FOREST Management Act (NFMA) of 1976 (NFMA) is the principal statute governing the administration of the national forests. The act is an amendment to the Forest and Rangeland Renewable Resources Planning Act of 1974, which called for the management of renewable resources on national forest lands. The 1976 legislation reorganized and expanded the 1974 act, requiring the Secretary of Agriculture to assess forest lands and develop and implement a resource management plan, regularly revised, for each forest unit. NFMA also set standards and procedures for timber harvesting.

The amended act emerged out of controversy over clear-cutting practices in the Monongahela National Forest in West Virginia and the Bitterroot National Forest in Montana. Throughout the late 1960s, efforts by West Virginia legislators and conservation organizations culminated in a successful legal battle

