



## DEPARTMENT OF COMMERCE

### Office of the Secretary

[Docket No. 250627-0115]

**XRIN: 0605-XR011**

### Procedures for Considering Environmental Impacts

**AGENCY:** Office of the Secretary (OS), Department of Commerce (DOC).

**ACTION:** Notice of Availability; Request for Comments.

**SUMMARY:** The Department of Commerce (DOC or Department) is updating DOC Administrative Order 216-6, “Implementing the National Environmental Policy Act,” which outlines the Department’s responsibilities for complying with the National Environmental Policy Act (NEPA) and identifies procedures specific to sub-components of DOC that implement NEPA. The updated Order and procedures promote collaboration and efficiencies in the implementation of NEPA and modernize the processes and procedures for environmental review. DOC is not soliciting comments on the updated Order or sub-component NEPA procedures. The National Oceanic and Atmospheric Administration (NOAA) is soliciting comments on its proposal to establish new, and amend its existing, categorical exclusions (CEs) in its agency NEPA implementing procedures.

**DATES:** All documents identified in this notice are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. To ensure consideration, comments on NOAA’s proposal to establish new, and amend its existing, CEs must be submitted by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Please submit your comments by only one of the following means, identifying your submission by docket number. All electronic submissions must be made to

*<http://www.regulations.gov>.*

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- *Mail:* NOAA NEPA Coordinator, 1315 East-West Highway, Room 15877, Silver Spring, MD 20910

*Instructions:* All comment submissions must include the agency name, docket name, and docket number (NOAA-HQ-2025-0207). Note that all comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Peter Viola, Attorney Advisor, Office of the Assistant General Counsel for Transactions and Program Management, [pviola@doc.gov](mailto:pviola@doc.gov), (202) 482-4669.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

NEPA requires all Federal agencies to assess the environmental impact of their actions. 42 U.S.C. 4332(2)(C). The statute establishes a national environmental policy of the Federal government to use all practicable means and measures to foster and promote the general welfare, create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. 42 U.S.C. 4331(a). NEPA Section 102(2) establishes the procedural requirements to carry out the policy stated in Section 101 of NEPA. It requires Federal agencies to consider the environmental effects of proposed actions in their decisionmaking and prepare detailed environmental statements on major Federal actions significantly affecting the quality of the human environment. 42 U.S.C. 4332(2)(C).

The Fiscal Responsibility Act of 2023 (FRA) was signed into law on June 3, 2023. The FRA amended NEPA, including limiting the definition of “major federal action” to include an action that an agency determines is subject to substantial Federal control and responsibility, limiting the scope of an environmental impact statement (EIS) review to reasonably foreseeable

environmental effects of the proposed agency action, and limiting the alternatives in an EIS to a reasonable range of alternatives that are technically and economically feasible. In addition, the FRA established page and time limits for environmental assessments (EAs) and EISs, outlined specific roles for lead agencies, and directed a lead agency to prescribe procedures to allow a project sponsor to prepare an EA or EIS under the supervision of the agency. Further, the FRA provided guidelines for the use of analysis from a prior programmatic environmental review document in a subsequent document for a specified time period, and a streamlined process for adopting another agency's categorical exclusions (CEs).

CEQ previously issued regulations at 40 CFR Parts 1500–1508 (CEQ regulations) implementing NEPA that were binding on Federal agencies. On February 25, 2025, CEQ issued an interim final rule to remove the existing CEQ regulations, in response to Executive Order (E.O.) 14154, “Unleashing American Energy.” The Department has accordingly revised DAO 216-6 and bureau-level procedures in consultation with CEQ. The revisions to DAO 216-6 and DOC bureau-level procedures are effective immediately. As part of revising its NEPA procedures, NOAA has made changes to its CEs and is requesting public comment on those changes. CEs are categories of actions that an agency has determined normally do not have a significant effect on the human environment, individually or in the aggregate. CEs are a form of review that agencies use to comply with NEPA for proposed actions that normally have no or minimal environmental effects.

## **II. Revision of DOC Bureau-Level NEPA Procedures**

DAO 216-6 has been revised to identify the bureaus within the Department that undertake NEPA reviews and provide general direction regarding complying with the statute. The Department's bureaus that undertake NEPA reviews include NOAA, the National Institute of Standards and Technology, the National Telecommunications and Information Administration, the Economic Development Administration, and the First Responder Network Authority. DAO 216-6 provides links to the NEPA procedures for each of these bureaus, thus

providing a single source for applicants or other individuals seeking information on bureau-level NEPA procedures. The revised DAO 216-6 and bureau-level procedures update terminology for consistency with modern NEPA practice, including the definition of “major Federal action”, and remove references to the rescinded CEQ regulations; allow reliance on previously prepared EISs, EAs, and CEs; and set forth procedures for using applicant-prepared and programmatic environmental documents.

### **III. Proposed Revisions to NOAA Categorical Exclusions; Request for Comments**

In 2017, NOAA finalized its most recent revision to its NEPA procedures, including a wholesale overhaul of NOAA’s CEs, covering categories of actions that normally do not have a significant effect on the human environment, individually or in the aggregate, and therefore do not require preparation of an EA or EIS. 42 U.S.C. 4336(b)(2), 4336c, 4336e(1); 82 FR 4306. As part of the review of its agency NEPA procedures, NOAA has also reviewed and is proposing revisions to its categorical exclusions. This proposal is based on NOAA’s experience implementing these CEs, on a review of NOAA’s operational activities, based on input from the NOAA NEPA Working Group, legal and mission changes, and in order to prioritize efficient environmental review in tandem with NOAA’s revised NEPA procedures.

This section lists each proposed revision to NOAA’s CEs and summarizes NOAA’s rationale for each proposed revision. For a detailed discussion of and substantiation for each proposed revision to NOAA’s CEs, please refer to the substantiation record available at [www.regulations.gov](http://www.regulations.gov) and [www.noaa.gov/nepa](http://www.noaa.gov/nepa).

#### *Proposed New Categorical Exclusions*

##### **B13: Licensing of Private Remote Sensing Space Systems**

NOAA is proposing a new CE to cover remote sensing licensing actions in response to regulatory and program changes under the Land Remote Sensing Policy Act (LRSPA), 51 U.S.C. 60101–60162, and its implementing regulations at 15 CFR part 960 following the update to

NOAA's NEPA procedures in 2017. The proposed new CE would cover the issuance of licenses under the LRSPA by the Commercial Remote Sensing Regulatory Affairs (CRSRA) division of NOAA's Office of Space Commerce for private entities to operate space-based private remote sensing space systems. The CE will also cover associated actions related to the license such as the imposition of license conditions, shutter control directives issued in the interests of national security; the modification of such licenses, and disposal of the system "in a manner satisfactory to the President."

Proposed CE text: "B13: Issuance of licenses, conditions, license modifications, and associated actions under the Land Remote Sensing Policy Act, 51 U.S.C. §§ 60101–60162, for the operation of private remote sensing space system activities."

#### E5: Shellfish Outplanting

This proposed CE will cover the limited collection of shellfish from healthy, abundant wild populations using minimally invasive procedures and resulting in collection of few animals relative to the overall wild population. The farms and lease sites covered by proposed CE are those that employ recommended protocols that prevent the introduction of disease, chemicals, toxins, and non-native species, safeguard genetic integrity of native populations, and conduct their operations in compliance with established Federal and state regulatory guidelines and best management practices. The CE will cover small-scale, limited research that does not involve the introduction or use of new or modified gear, use of new or non-approved chemical compounds or chemicals, introduction of a species not previously present within the waterbody, an increase in the operational footprint of an existing farm or lease site, or the creation of a new commercial aquaculture farm or research lease site.

Proposed CE text: "E5: Research involving the limited collection and placement of native, naturalized, or shellfish species already found in the watershed ("outplanting"). This CE covers a limited collection of shellfish from healthy, abundant wild populations using minimally invasive procedures and resulting in collection of few animals relative to the overall wild

population. This CE covers outplanting on existing commercial aquaculture farms or aquaculture research lease sites or in an established Floating Upweller System (FLUPSY) for experimental purposes. The farms and lease sites covered by this CE are those that employ recommended protocols that prevent the introduction of disease, chemicals, toxins, and non-native species, safeguard genetic integrity of native populations, and conduct their operations in compliance with established Federal and state regulatory guidelines and best management practices. This CE covers small-scale, limited research that does not involve the introduction or use of new or modified gear, use of new or non-approved chemical compounds or chemicals, a species not previously present within the waterbody, an increase in the operational footprint of an existing farm or lease site, or the creation of a new commercial aquaculture farm or research lease site.”

#### F8: Release response and cleanup

NOAA is proposing to add a new CE to cover environmental assessment, response, and cleanup for real property management purposes at sites and facilities that NOAA is responsible for managing. This CE will ensure increased effective response and management across NOAA properties while bringing NOAA’s program into alignment with similar management regimes at sister agencies.

Proposed CE text: “F8: Activities related to release response and cleanup from releases for which NOAA is responsible. This includes, but is not limited to, release response activities, site characterization studies, and environmental monitoring (including sampling, analytical testing, waste disposal, siting, construction, operation, surveying, as well as installation and decommissioning of characterization and monitoring devices).”

#### G10, G11, & G12: Aircraft Operations

NOAA’s Office of Marine and Aviation Operations (OMAO) manages and operates NOAA’s fleet of fifteen research and survey ships and ten specialized environmental data-collecting aircraft. NOAA aircraft operate throughout the world providing a wide range of capabilities including hurricane reconnaissance and research, marine mammal and fisheries

assessment, and coastal mapping. NOAA aircraft carry scientists and specialized instrument packages to conduct research for NOAA's missions.

These proposed CEs incorporate and adopt similar language and parameters established by other agencies that operate and maintain aircraft fleets, such as the U.S. Air Force and U.S. Navy. NOAA is proposing these CEs in order to ensure NEPA coverage for routine use of aircraft in NOAA's missions. NOAA's existing CEs are limited to the use of systems to collect data and the repositioning of assets, not fully covering the broad scope of NOAA's aviation missions. These CEs fill this gap by extending CE coverage to OMAO's training operations, special use airspace requests, airfield procedures, and routine use of aircraft for both operational and support purposes. In addition to bringing NOAA's CE use into alignment with other operational agencies, these CEs will help ensure mission readiness across NOAA's aircraft fleet.

Proposed CE texts: "G10: Aircraft operation trainings conducted on or over nonmilitary land or water areas, where such training is consistent with the type and tempo of existing non-military airspace, land and water use."

"G11: Formal requests to the Federal Aviation Administration, or host-nation equivalent agency, to establish or modify special use airspace."

"G12: Adopting airfield approach, departure, and en route procedures that are less than 3,000 feet above ground level and that also do not route air traffic over noise-sensitive areas, including residential neighborhoods or cultural, historical, and outdoor recreational areas."

#### *Proposed Technical and Editorial Changes*

NOAA is proposing technical and editorial corrections to the following twenty-two CEs. NOAA has determined these proposed changes do not substantively affect the scope or change the meaning of the CE. NOAA is making these revisions to correct grammatical errors, eliminate duplicative text, provide clarification for practitioners, ensure consistency, update examples, and use plain language.

The revised text of these CEs is as follows:

“A1: A fishery management action, including those that change regulations, which does not result in a substantial change in any of the following: fishing location, timing, effort, authorized gear types, or harvest levels.

A2: Preparation of a recovery plan pursuant to the Endangered Species Act § 4(f)(1), 16 U.S.C. § 1533(f)(1). Such plans are advisory documents that provide consultative and technical assistance in recovery planning and do not implement site-specific or species-specific management actions. However, implementation of specific tasks identified in a recovery plan may require additional NEPA analysis depending on the nature of the action.

A3: Temporary fishery closures or extensions of closures under the Magnuson-Stevens Fishery Conservation and Management Act, § 305(c)(3)(C), 16 U.S.C. § 1855(c)(3)(C), to ensure public health and safety.

A4: Minor updates to existing national marine sanctuary management plans. This CE does not apply to sanctuary designations, expansions, changes in terms of designation, or new sanctuary management plans.

A6: Review and approval of changes to state coastal management programs under the Coastal Zone Management Act § 306(e), 16 U.S.C. § 1455(e), and NOAA’s regulations at 15 C.F.R. pt. 923.

B1: Issuance of permits or permit modifications under Endangered Species Act (ESA) § 10(a)(1)(A), 16 U.S.C. § 1539(a)(1)(A), for take, import, or export of endangered species for scientific purposes or to enhance the propagation or survival of the affected species, or in accordance with the requirements of an ESA Section 4(d) regulation for threatened species.

B2: Issuance of permits or permit amendments under the Marine Mammal Protection Act § 104, 16 U.S.C. § 1374, for take or import of marine mammals for scientific research, enhancement, commercial or educational photography or public display purposes; and issuance of Letters of Confirmation under the General Authorization for scientific research involving only Level B harassment.

B3: Issuance of, and amendments to, “low effect” Incidental Take Permits and their supporting “low effect” Habitat Conservation Plans under the Endangered Species Act § 10(a)(1)(B), 16 U.S.C. § 1539(a)(1)(B).

B4: Issuance of incidental harassment authorizations under the Marine Mammal Protection Act § 101(a)(5)(A), (D), 16 U.S.C. § 1371(a)(5)(A), (D), for the incidental, but not intentional, take by harassment of marine mammals during specified activities and for which no serious injury or mortality is anticipated.

B5: Issuance of, or amendments to, general permits for activities that are included in the established permit categories at 15 C.F.R. §§ 922.30–922.37, that meet the regulatory review criteria at 15 C.F.R. §§ 922.30–922.37, and any applicable site-specific regulations.

B6: Issuance of, or amendments to, special use permits for activities in a national marine sanctuary that are necessary to establish conditions of access to and use of any sanctuary resource or promote public use and understanding of a sanctuary resource and must be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources in accordance with the National Marine Sanctuaries Act § 310, 16 U.S.C. § 1441.

B7: Issuance of, or amendments to, authorizations for activities allowed by a valid federal, regional, state, local or tribal government approval (e.g., leases, permits, and licenses) issued after the effective date of designation or expansion, so long as such authorizations are based upon a consideration of the regulatory review criteria at 15 C.F.R. §§ 922.30–922.37.

B8, Issuance of, or amendments to, certifications for pre-existing activities authorized by a valid federal, regional, state, local, or tribal government approval (e.g., leases, permits, and licenses) or rights of subsistence use or access in existence on the effective date of the final regulations for a designation or revised terms of designation of any national marine sanctuary where the Office of National Marine Sanctuaries issues terms and conditions that are either ministerial or prescribe avoidance, minimization, or mitigation measures.

B9: Issuance of, or amendments to Papahānaumokuākea Marine National Monument (as originally established by Proclamation No. 8031, 71 Fed. Reg. 36,443 (June 26, 2006) and named Papahānaumokuākea by Proclamation No. 8112, 72 Fed. Reg. 10031 (March 6, 2007)) permits for activities that are included in established permit categories (50 C.F.R. pt. 404) and that meet the regulatory review criteria (50 C.F.R. § 404.11), that limit any potential impacts so that the proposed activity will be conducted in a manner compatible with the monument's primary objective of resource protection.

B10: Issuance of, or amendments to, Papahānaumokuākea Marine National Monument special ocean use permits for activities or use of the monument that are engaged in to generate revenue or profits for one or more of the persons associated with the activity or use, and do not destroy, cause the loss of, or injure monument resources.

B11: Issuance of, or amendments to permits or authorizations for activities that are conducted within Marine National Monuments other than Papahānaumokuākea that are limited in scope so that the potential impacts of the proposed activities will be conducted in a manner compatible with a monument's primary objective of resource protection, and do not destroy, cause the loss of, or injure monument resources.

B12: Issuance of Exempted Fishing Permits, Scientific Research Permits, and other permits for research that may impact species regulated under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801–1884, and the Atlantic Tunas Convention Act, 16 U.S.C. §§ 971–971k. This CE is limited to permits that authorize activities that are limited in size, magnitude, or duration.

C1: Habitat restoration actions, provided that such action: (1) Transplants only organisms currently or formerly present at the site or in its immediate vicinity (if transplant is a component of the action); (2) Does not require substantial placement of fill or dredging; (3) Does not involve any removal of debris, excavation, or conditioning of soils unless such removal of debris, excavation, or conditioning of soils is geographically limited to the impact area such that site

conditions will not impede or negatively alter natural processes, is in compliance with all permit and disposal requirements, and will not impact aquifers or recharge areas; and (4) Does not involve an added risk of human or environmental exposure to toxic or hazardous substances, pathogens, or radioactive materials.

Note on the application of C1: If applicable, limitations and mitigation measures identified in the NOAA Restoration Center Programmatic Environmental Impact Statement for Habitat Restoration Actions must be followed. This CE includes, but is not limited to, response or restoration actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601–9628, the Oil Pollution Act (OPA), 33 U.S.C. 2701–2761, or the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431–1445a, if such actions help to restore an ecosystem, habitat, biotic community, or population of living resources to a determinable pre-impact condition prior to the incident leading to the response or restoration. The decision maker should consider the scope and scale of response and restoration actions proposed under CERCLA, OPA, or NMSA, which may preclude the use of this CE.

D2: Provision of a grant, a contract or other financial assistance to a State, Fishery Management Council, or Marine Fisheries Commission under the Magnuson-Stevens Fishery Conservation and Management Act § 402(d), 16 U.S.C. § 1881a(d).

E6: Research that involves the development and testing of new and modified fishing gear and technology in order to reduce adverse effects from fishing gear on non-target species, and is limited in size, magnitude, or duration.

G2: Routine movement of mobile assets, such as vessels and aircraft, for homeport reassignments or repair/overhaul, where no new support facilities are required.

G5: Enforcement operations conducted under statutory mandate. This does not include bringing judicial or administrative civil or criminal enforcement actions which are outside the scope of NEPA.”

*Proposed Substantive Changes*

NOAA's review of its CEs determined that certain existing CEs would benefit from revisions that clarified the scope and applicability of the CE. Internal discussions also resulted in many instances in the addition or revision of examples provided for the CEs for the benefit of NOAA NEPA practitioners. This section explains the substantive revisions NOAA made to its proposed CEs and the rationale for those revisions.

#### A5: Updates to National Estuarine Research Reserve Actions

NOAA is proposing to amend A5 to allow for National Estuarine Research Reserve (NERR) boundary changes so long as certain conditions are met. Additionally, the CE is limited in that it does not apply to new NERR management plans, the addition of a new component to the NERR, or to the execution of any specific action subsequently funded to support the updated NERR management plan. The proposed changes and revisions do not result in a substantial change in scope or applicability from the listed 2017 CEs.

The revised text is as follows: "A4: Updates to existing National Estuarine Research Reserve (NERR) management plans and boundary changes, as long as these changes do not significantly change allowable uses, uses requiring a permit, or restrictions on uses. This CE includes changes to the NERR boundary where the following conditions are met: (1) The boundary change meets site selection and feasibility criteria. 15 C.F.R. § 921.11; (2) The proposed management of the properties is consistent with the NERRS regulations. 15 C.F.R. §§ 921.1, 921.13; and (3) The state has adequate state control over the parcels. 15 C.F.R. § 921.30(a). This CE does not apply to management plans for newly designated NERRs, the addition of a new component to a multiple-site NERR, or to the execution of any specific action subsequently funded by NOAA to support the updated NERR management plan."

#### E1\* & E3

NOAA is proposing to create a streamlined and combined E-series CE E3 that combines a portion of the 2017 E1 CE with the 2017 E3, E4, and E5 CEs in an effort to consolidate research-related activities together. This consolidation will increase certainty and efficiency in

practice and align NOAA's NEPA procedures more closely to other agencies' NEPA procedures, which often only have a single research related CE. This change is not intended to change the scope of actions covered under the E-series CEs. The past several years implementing the 2017 CEs has revealed practical inefficiencies and confusion around selecting the appropriate research-related CE—between E1, which largely focused on laboratory-based activities; E3, which largely focused on nondestructive data collection techniques; E4, which largely focused on the observation of living resources, without physical contact; and E5, which largely focused on physical interaction with living resources. It was not uncommon for a proposed action to involve activities that fell within the gambit of more than one of these research-related CEs. Because the activities under each of these CEs have already been determined by NOAA in its existing NEPA Procedures to not have individual or cumulative significant impacts on the human environment and the research activities considered are at times a single proposed action, NOAA determined it is appropriate to combine E1 (in part), E3, E4, and E5 into a single research-related CE. The consolidation of E1 (in part), E3, E4, and E5 will rectify the unnecessary administrative burden present in the current NOAA NEPA Procedures and reduce uncertainty, increase efficiency, and ensure compliance with NEPA when applying CEs. Although this change is not intended to change the scope of actions covered under the 2017 E-series CEs, NOAA is proposing to clarify the bounds of the proposed revised E3 by identifying two prerequisites for its use. Specifically, the activities must: (1) use scientifically accepted best management practices (BMPs) or peer-reviewed scientifically accepted methods that minimize impacts, as applicable, and (2) avoid locations or times that would normally result in long-term adverse ecosystem impacts. These changes, along with a new definition of “long-term adverse ecosystem impacts” and examples of best management practices in the substantiation record, are intended to elucidate the types of “methodologies and locations to ensure that there are no long-term adverse impacts to ecosystems” that were considered in the 2017 version of E5.

The revised text is as follows: “E1\*: Computational and dry laboratory activities including data input and analysis; database and software development and maintenance; virtual simulations and modeling; and bench-scale fabrication, development, calibration, and testing of prototypes.”

“E3: Scientific research activities that involve: field observation, measurements, or surveys; collecting, analyzing, processing, or archiving samples or data; capturing, handling, marking, or tagging living specimens; or any combination thereof.

This CE applies so long as the activities: (1) use scientifically accepted best management practices (BMPs) or peer-reviewed scientifically accepted methods that minimize impacts, as applicable, and (2) avoid locations or times that would normally result in long-term adverse ecosystem impacts. Long-term adverse ecosystem impacts means an impact that persists after the project has concluded that alters or disrupts ecosystem functioning, such as modifying species behavioral patterns or altering habitat functions. The Administrative Record to this CE presents a nonexhaustive list of available resources on BMPs and peer-reviewed scientifically accepted methods that apply to many of the activities encompassed by this CE.”

#### E4: Aquaculture Research

The proposed edits to the 2017 aquaculture research CE, E8, will reduce unnecessary administrative burden for aquaculture activities with no potential for significant impacts to the human environment, reduce uncertainty, increase efficiency, and ensure compliance with NEPA. This CE is limited to research activities conducted at land-based facilities and does not extend to operations of the facility that are independent of research activities. The scope of this CE does not extend to aquaculture farms or aquaculture research sites operating in marine or coastal waters.

The revised text is as follows: “E4: Biological, chemical, food production, ecological, or toxicological research conducted in an established, land-based mesocosm or aquaculture facility (e.g., recirculating aquaculture system, biofloc system, hatchery) that employs recommended

protocols providing for containment and disposal of waste, chemicals, toxins, non-native species, etc., in compliance with established Federal and state regulatory guidelines, and best management practices.”

NOAA requests comments from the public on its proposed revisions to existing CEs and new CEs. NOAA also invites comment on the substantiation record and supporting materials it has prepared to substantiate this proposal. The agency will consider input from the public and consult with CEQ for a conformity determination before finalizing its proposal.

Dated: June 27, 2025.

**David Langdon,**

*Deputy Director,*

*Office of Policy and Strategic Planning,*

*Department of Commerce.*

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