

# NOAA Office for Coastal Management

## Environmental Compliance Requirements

For more information or if you have questions:

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*This is NOAA's responsibility to conduct, but working together helps reduce the timeframe of analysis significantly.*

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- NOAA offices (and all other federal agencies) are required by the National Environmental Policy Act (NEPA) of 1970 to effectively consider the environmental impacts of their actions.

- **FUNDING PROJECTS IS CONSIDERED AN ACTION**

**This is referred to as "NEPA Review" by NOAA's Office for Coastal Management.**

- NEPA also provides the process by which NOAA documents its compliance with other federal, state, and local environmental and cultural resource laws and Executive Orders, including:
  - Marine Mammal Protection Act
  - Endangered Species Act
  - National Historical Preservation Act
- NOAA is also required to comply with several executive orders, including "Compliance with the National Environmental Policy Act, Executive Orders 12114, Environmental Effects Abroad of Major Federal Actions; 11988 and 13690, Floodplain Management; and 11990, Protection of Wetlands."

**This is referred to as "Environmental Compliance review" by NOAA's Office for Coastal Management.**

- NEPA review and environmental compliance review happen at the same time – when the Texas GLO submits your projects to NOAA as part of their annual CZMA funding application.
- NOAA's National Ocean Service finalized its Environmental Compliance Program Policy in September of 2016, enacting a change in the way that NOAA's Office for Coastal Management (which sits within the National Ocean Service) conducts its environmental compliance reviews for the projects we fund.

- NOAA has approved several categories of action that do not individually or cumulatively have a significant effect on the quality of the environment, and those actions are considered to be “categorically excluded” from requiring an Environmental Assessment.
- An Environmental Assessment must be prepared if an action does not qualify for a Categorical Exclusion (CE). NOAA OCM uses an environmental assessment to determine if the action it is undertaking would have significant impacts to the natural environment. Several factors go into determining if an action will have significant impacts. Some of the factors include:
  - Location
  - Time of year
  - Presence of endangered or threatened species
  - Size of project
  - Project methodology and impact on species

If a project is determined not to have any significant impacts, NOAA will issue a “Finding of No Significant Impact”. If a project were likely to have significant impacts, an environmental impact statement (EIS) would be prepared. **NOAA OCM DOES NOT FUND CZMA PROJECTS THAT REQUIRE AN EIS.**

- Once NOAA OCM has made a Finding of No Significant Impact, we will release funding (if funding has been held back) and give the program permission to start or continue work.

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*Consulting with other agencies is a necessary part of the Environmental Compliance process, and can often have significant time requirements.*

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NOAA OCM is required to document its compliance with other environmental laws when it decides to take an action, like funding a grant. We are required to review many different federal laws, executive orders, and state/local laws for compliance with environmental rules. However, a few of the necessary consultations have established processes and timelines that may affect your project.

#### ***Endangered Species Act***

NOAA is required to determine whether their actions may affect listed or proposed species and designated or proposed critical habitat. Once NOAA determines that a project “may affect” an endangered species or its habitat, it must request concurrence from US Fish and Wildlife Service that the project “may affect, but not likely to adversely affect” endangered species. This is known as an informal consultation under Section 7 of the Endangered Species Act.

1. Access species list from USFWS - <https://ecos.fws.gov/ipac/>
2. Prepare a biological assessment for the species to document NOAA’s conclusion and the rationale to support those conclusions on the effects of the proposed project on protected resources. USFWS has provided guidance on preparing a biological opinion (<https://www.fws.gov/midwest/endangered/section7/pdf/BAGuidance.pdf>).

**Biological assessment and opinion must be completed and submitted within 180 days of receiving the species list, otherwise a new species list must be generated.**

3. Submit biological assessment to the relevant regional office of the USFWS for concurrence; assessment can be submitted electronically by email or mailed.
4. USFWS attempts to complete review of informal consultation requests within 30 days.

#### **Magnuson-Stevens Fishery Management and Conservation Act – Essential Fish Habitat**

NOAA is required to consult with the National Marine Fisheries Services if they have authorized, funded, or undertaken all or part of an activity that may affect essential fish habitat.

1. Determine whether essential fish habitat exists in the project area using the Essential Fish Habitat Mapper tool (<http://www.habitat.noaa.gov/protection/efh/efhmapper/>)
2. Determine whether the project will adversely affect essential fish habitat and make a determination that the project will or will not adversely affect EFH. If it will not, consultation is complete.
3. If a determination that the project may adversely affect EFH is made, then develop and submit an EFH Assessment to NOAA Fisheries. Guidance for preparing EFH assessments are located at <http://www.habitat.noaa.gov/pdf/preparingefhassessments.pdf>.
4. NOAA Fisheries reviews the EFH Assessment and, if needed, provides EFH Conservation Recommendations to NOAA within 30-60 days.
5. NOAA responds to NOAA Fisheries within 30 days about any Conservation Recommendations and how they will proceed with the project. **For financial assistance awards, applicant must provide written concurrence that they will adhere to the conservation recommendations.**

#### **National Historic Preservation Act**

Federal agencies must consider the effects of projects on historical properties. This includes projects that an agency carries out, assists, permits, licenses, or approves (which includes financial assistance).

1. Determine whether the action is an undertaking. If the project is receiving federal funds, it is considered an undertaking.
2. Determine whether the action will have a potential to cause effects on historic properties or resources. If no potential to cause effects exists, consultation is complete.
3. Written consultation is required for projects that may impact historic properties or resources.
  - a. Define the area of potential effect (APE) for the project.
  - b. Identify any historic properties in the APE.
  - c. Assess whether or not there will be impact and describe them in a consultation letter to the State Historic Preservation Officer.
    - i. No Historic Properties: No historic properties exist in the project area
    - ii. No Adverse Impact: Historic properties exist, but will not be negatively impacted by the action.
    - iii. Adverse Impact: activities that involve physical destruction or removal/relocation of historic property or resource.
4. SHPO has 30 days to respond to NOAA's consultation and request for concurrence. If the SHPO does not respond, NOAA can presume concurrence.
5. If the SHPO objects to NOAA's determination, a more formal consultation may take place.

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*The information you provide as part of your application package is essential for a smooth NEPA and Environmental Compliance review.*

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- **NEPA AND ENVIRONMENTAL COMPLIANCE REVIEW OCCURS ON EVERY PROJECT, INCLUDING 306 AND 306A**
- When the Texas GLO submits its grant application to NOAA OCM, it is necessary for the program to also submit the information necessary for NOAA OCM to complete its NEPA and Environmental Compliance review. This information comes from you, so the more you provide to the Texas GLO as part of your application, the easier (and shorter!) the environmental review process will be.
- The information required for this review is included within the 306A Checklist. Any supplemental information that you provide to support your determinations on that checklist makes the process that much quicker.
- The earlier we receive the supplemental information, the earlier we are able to conduct our NEPA and environmental compliance review which results in less projects having funding restrictions placed on them.
- Applicants can hire consultants to conduct an environmental analysis, but NOAA OCM is required to review that document and make the final determination of a finding of no significant impact.
- NOAA OCM can adopt all or portions of an EA or EIS prepared by another *federal agency* if the action addressed in the prepared document is essentially the same as the action being proposed by NOAA OCM.
- NOAA may also incorporate material, including state environmental reports or analysis, by reference in its environmental assessment.

***The list below is a list of project information that NOAA OCM may request in order to complete its NEPA and Environmental Compliance reviews. If you have this information at the time of application, submitting it early may help reduce NEPA and Environmental Compliance review timeframes.***

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## *Project Questionnaire for NEPA and Environmental Compliance*

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1. Provide the detailed information below to describe the proposed activity:
  - a. Its purpose, objectives, and goals
  - b. Graphics (e.g., figures, photographs), site plans, plan diagrams, models
  - c. For purposes of compliance with EOs 11988/13690, applicants should include on site plans the existing 100-year and/or 500-year floodplains determined by FEMA, as

well as any available data or information on future flood hazards applicable to the project site over the anticipated project lifetime (e.g., relative sea-level rise projections and/or mapping data; projected flood zones that combine FEMA 100-year flood data and relative sea-level rise; long-term or storm-related erosion hazard zones). Information in narrative form is acceptable when mapping data are not available.

- d. Sampling, collection, or observation protocols and operational procedures
  - e. Any proposed best management practices or on-site mitigation to reduce or control project impacts
  - f. Monitoring measures and protocols for the project (if any)
  - g. A description and plan diagram of the proposed impact area, if the proposed activity involves construction, restoration, dredging, excavation, and/or fill
  - h. A description, including specifications of the equipment or structures (e.g., scientific monitoring equipment, deployment platforms) that would need to be temporarily or permanently placed in the environment
  - i. A description of the construction methods and materials to be used during project implementation
2. Endangered or protected species:
    - a. List any threatened, endangered, or other protected species (e.g., marine mammals) that exist in the project area. If Endangered Species Act or related consultation has been initiated or completed, please attach.
  3. If your project has any components that may risk the introduction or spread of non-indigenous species, describe any management practices or protective measures that would be implemented to prevent the introduction or spread of non-indigenous species, such as sanitizing boats and vessels before departure from ports and sterilizing gear/machinery/equipment/materials prior to placement on land or in water.
  4. Are there any hazardous substances or hazardous wastes as defined by CERCLA or RCRA, used, stored, generated, or released by the proposed activity which could pose any threat to human health and/or the environment? If so, please list in attachment.
  5. List any potential unique or unknown risks to human health or the environment from the proposed activity.
  6. To what degree would the proposed action have effects on the human environment that are likely to be highly controversial? A project is considered highly controversial if there is a substantial dispute about the size, nature, or effect of the major Federal action rather than the existence of opposition to the use.
  7. Describe how, if true, the proposed activity is a continuation of or related to an on-going or phased project. Include information and attach reports from previous years.
  8. Is the project compatible with relevant local, regional, or state planning and zoning?
  9. Will there be changes to scenery or view-sheds in the project vicinity?
  10. Will implementation change traffic patterns or increase traffic volumes?
  11. Describe whether the proposed activity's location includes unique geographic areas of notable recreational, ecological, scientific, cultural, historical, scenic, or aesthetic importance (Examples include, but are not limited to: coral reefs; marine protected areas; national marine sanctuaries; essential fish habitat; habitat area of particular concern; critical

- habitat designated under the Endangered Species Act; park or refuge lands; wild or scenic rivers; wetlands; prime or unique farmland; sites listed on the National Register of Natural Landmarks; sites listed or eligible for the National Register of Historic Places; Tribal lands; sites that are ecologically significant or critical areas including areas that are normally inundated by water or areas within the 100-year flood plain).
12. Is the project likely to have adverse economic or environmental impacts on minority or low-income groups, or Native American tribes that are out of proportion with its impacts on other groups?
  13. Would the proposed activity degrade or disturb previously undisturbed areas? If yes, please explain.
  14. If there are any previous or ongoing uses or other issues of the site that make it likely that contaminants may be uncovered and/or disturbed, identify the potential contaminant and the circumstances that may uncover and/or disturb the contaminants.
  15. If the proposed activity would be conducted in partnership with NOAA or require NOAA's direct involvement, activity, or oversight, describe NOAA's involvement, activity, or oversight, including the name of the office or program that is involved.
  16. List all other interested or affected Federal, state, and local agencies; Tribal governments, nongovernmental organizations; minority or economically disadvantaged communities. Describe listed entities' involvement, activity, or oversight regarding the proposed activity.
  17. List all federal, state, and local permits, authorizations, waivers, determinations, and ongoing consultations that would be required for the proposed activity to comply with all applicable environmental laws and regulations. Provide the date the permit, authorization, waiver, or determination was obtained or the date by which it will be obtained. Provide copies of the permits, authorizations, waivers, or determinations that have been secured.
  18. If any of the permits in #17 have expiration dates that could affect project implementation, please note and explain.
  19. If the project involves wetlands or living shorelines and does not qualify for an ACOE nationwide permit, please note and explain.
  20. Has National Historic Preservation Act consultation with the State Historic Preservation Office or Tribal Historic Preservation Office been initiated or completed? If Yes, please attach relevant documents. If not, by submitting this questionnaire, the CZM Program Manager recognizes that such consultation is necessary before the project will be approved to proceed.
  21. Identify the lead Federal agency, if applicable, and whether any NEPA document has been completed or is in process for the proposed activity.
  22. If necessary, indicate whether CZMA Section 6217 management measures (coastal nonpoint source pollution control) or similar state best management practices will be used during project implementation.