

ENVIRONMENTAL CHECKLIST REFERENCE GUIDE

1. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The NEPA of 1969 (42 U.S.C. 4321 et seq.) provides a national policy that encourages “productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man . . .” The NEPA requires that all federal agencies use a systematic, interdisciplinary approach for protection of the human environment; this approach will ensure the integrated use of the natural and social sciences in any planning and decision-making that may have an impact upon the environment. The NEPA also requires the preparation of a detailed Environmental Impact Statement (EIS) on any major federal action that may have a significant impact on the environment. An Environmental Review may be required. Further guidance concerning NEPA can be found at <https://ceq.doe.gov/> or by contacting the relevant federal agency.

2. COASTAL ZONE MANAGEMENT ACT (CZMA)

If the activity will occur in or near the state’s designated coastal zone and have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone, a federal consistency determination or certification pursuant to Section 307 of the Coastal Zone Management Act may be required from the state coastal zone management program. Contact the relevant State Coastal Zone Management Program, for further guidance on federal consistency requirements in your state. Further guidance on federal consistency can be found at <https://coast.noaa.gov/czm/consistency/>.

3. NATIONAL MARINE SANCTUARIES ACT

Each National Marine Sanctuary has its own unique set of regulations. There are some regulatory prohibitions that are typical for many sanctuaries: 1) discharging material or other matter into the sanctuary; 2) disturbance of, construction on or alteration of the seabed; 3) disturbance of cultural resources; and 4) exploring for, developing or producing oil, gas or minerals (with a grandfather clause for preexisting operations). A permit or other authorization may be required from the National Oceanic and Atmospheric Administration (NOAA) National Marine Sanctuary. Contact the nearest Regional Office of NOAA’s National Marine Sanctuaries Program for further guidance <https://sanctuaries.noaa.gov/about/regions.html> or <https://sanctuaries.noaa.gov/management/permits/welcome.html>.

4. MAGNUSON – STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT (MSA)

Consultation with NOAA’s National Marine Fisheries Service (NMFS) may be required if Essential Fish Habitat (EFH) is present. Contact the NMFS Office of Habitat Conservation, Habitat Conservation Division, at https://sero.nmfs.noaa.gov/habitat_conservation/efh.html or <https://www.fisheries.noaa.gov/national/habitat-conservation/consultations-essential-fish-habitat> to determine if consultation is required. Further guidance concerning EFH can be found at, <http://www.habitat.noaa.gov/index.html>.

5. MARINE MAMMAL PROTECTION ACT (MMPA)

A permit may be required if an activity will result in the “take” of a marine mammal. Taking is defined as “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.” Permits for most marine mammals are issued by NMFS (e.g., dolphins, whales, seals and sea lions); however the U.S. Fish and Wildlife Service (USFWS) has responsibility for the conservation and management of three species of manatees, sea and marine otters, walrus, polar bears, and dugongs. Contact the NMFS Office of Protected Resources Program, Protected Resources Division at <https://www.fisheries.noaa.gov/topic/marine-mammal-protection> or https://sero.nmfs.noaa.gov/protected_resources/index.html or the appropriate USFWS Ecological Services Field

Office at <https://www.fws.gov/ipac/> or <https://www.fws.gov/international/animals/marine-mammals.html> to determine if a permit and/or consultation or coordination is required. Further guidance concerning marine mammal permits can be found at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

6. ENDANGERED SPECIES ACT (ESA)

A consultation pursuant to Section 7 of the ESA and/or a permit and conservation plan pursuant to Section 10 may be required. Contact the appropriate USFWS Ecological Services Field Office, <https://ecos.fws.gov/ipac/> and/or the NMFS Office of Protected Resources, Protected Resources Division, <https://www.fisheries.noaa.gov/species-directory/threatened-endangered> and https://sero.nmfs.noaa.gov/protected_resources/index.html, to determine if consultation is required. Most consultations are conducted informally with the federal agency or a designated non-federal representative. Non-federal representatives may be involved in the informal consultation process and may request and receive species lists, prepare the biological assessment, and provide information for the formal consultation. However, the action agency is required to formally designate the non-federal representative in writing. The ultimate responsibility for Section 7 obligations remains with the federal action agency. Further guidance concerning Section 7 consultations can be found in the Endangered Species Act Consultation Handbook at Centralized Library, Final Section 7 Consultation Handbook: U.S. Fish and Wildlife Service <https://www.fws.gov/policy/m0002.html>. If Treasury is the only federal agency involved in the project, a Section 10 permit may be required in lieu of a Section 7 consultation. Further guidance concerning Section 10 permits and conservation plans for activities involving threatened or endangered marine and anadromous species can be found at <https://www.fisheries.noaa.gov/national/endangered-species-conservation/endangered-species-act-guidance-policies-and-regulations>. For terrestrial or freshwater species or land-based sea turtle activities, further guidance concerning section 10 permits and habitat conservation plans can be found at <https://www.fws.gov/endangered/permits/index.html>.

7. COASTAL BARRIER RESOURCE ACT (CBRA)

Federal funding may be prohibited for projects that occur on certain coastal barriers designated under the John H. Chafee Coastal Barrier Resources System unless the project meets an exception. Treasury may be required to make a determination regarding CBRA. Contact the appropriate USFWS Ecological Services Field Office for further guidance at <https://www.fws.gov/cbra>.

8. MIGRATORY BIRD TREATY ACT The Migratory Bird Treaty Act makes it illegal for anyone to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such a bird except under the terms of a valid permit issued pursuant to Federal regulations. The migratory bird species protected by the Act are listed in 50 C.F.R. 10.13. A permit may be required. Contact the appropriate ecological services field office of the USFWS, <https://www.fws.gov/>. More information can be found at <https://www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php>.

8. BALD AND GOLDEN EAGLE ACT

The Bald and Golden Eagle Protection Act prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald eagles [or any golden eagle], including their parts, nests, or eggs. The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb." More information can be found at <https://www.fws.gov/birds/policies-and-regulations/laws-legislations/bald-and-golden-eagle-protection-act.php>.

9. WILD AND SCENIC RIVERS ACT

The Wild and Scenic Rivers Act prohibits federal support for actions such as the construction of dams or other instream activities that would harm the free-flowing condition, water quality, or outstanding resource values of a designated Wild and Scenic River. There are designated rivers in the Gulf Coast States and the Act may apply.

Contact the appropriate USFWS Ecological Services Field Office for further guidance at <https://www.rivers.gov/index.php>.

10. NATIONAL HISTORIC PRESERVATION ACT (NHPA) AND THE ARCHAEOLOGICAL AND HISTORIC PRESERVATION ACT (AHPA)

Special conditions may be required on projects that could affect historic resources. Contact your state historic preservation office <https://www.nps.gov/subjects/nationalregister/index.htm> or <http://ncshpo.org/directory/>, or your tribal historic preservation office at <https://www.nathpo.org/thpos/find-a-thpo/> for further guidance concerning compliance requirements.

11. RIVERS AND HARBORS ACT

A Section 10 permit may be required from the U. S. Army Corps of Engineers (USACE). Contact the Regulatory Program of the nearest District Office of the USACE at <http://w3.saj.usace.army.mil/permits/HQAvatar/index.htm> for further guidance on Section 10 permits. The USACE can authorize activities by a standard individual permit, letter-of-permission, nationwide permit, or regional permit. The USACE will make the determination on what type of permit is needed. (In cases of use or alteration of a federal civil works project, a Section 408 consultation with the USACE may be required.)

12. CLEAN WATER ACT (CWA)

A separate type of permit is required to dispose of dredge or fill material in the Nation's waters, including wetlands. Authorized by CWA Section 404, this permit program is administered by the USACE, subject to and using environmental guidance from the Environmental Protection Agency (EPA). Some types of activities are exempt from permit requirements, including certain farming, ranching, and forestry practices that do not alter the use or character of the land; some construction and maintenance; and activities already regulated by States under other provisions of the Act. A permit may be required from the USACE or delegated state agency. Contact the Regulatory Program of the nearest USACE District Office for further guidance on Section 404 permits at <http://w3.saj.usace.army.mil/permits/HQAvatar/>.

A CWA Water Quality Certification (Section 401) is required for activities that may result in a discharge into the Nation's waters, including wetlands, watercourses, and natural or man-made ponds. A National Pollution Discharge Elimination System (NPDES) permit may also be required for such discharges. Contact your state water quality agency for additional guidance. Further guidance concerning Section 401 or NPDES requirements can be found at <https://www.epa.gov/cwa-401/basic-information-cwa-section-401-certification> and <https://www.epa.gov/npdes>.

13. MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA)

Titles I and II of the MPRSA, also referred to as the Ocean Dumping Act, generally prohibits (1) transportation of material from the United States for the purpose of ocean dumping; (2) transportation of material from anywhere for the purpose of ocean dumping by U.S. agencies or U.S.-flagged vessels; (3) dumping of material transported from outside the United States into the U.S. territorial sea. A permit may be required. Contact the EPA Office of Wetlands, Oceans, and Watersheds/Oceans and Coastal Protection Division for additional guidance <https://www.epa.gov/ocean-dumping>. Further guidance about permits under the MPRSA can be found at <https://www.epa.gov/ocean-dumping/ocean-dumping-permits>.

14. CLEAN AIR ACT (CAA)

If the proposed activity may result in any emissions of pollutants to the air within a non-attainment area or maintenance area, special conditions may be required on such projects that could affect air quality. Contact the nearest state air quality agency at <http://www.4cleanair.org/> for further guidance on determining conformity with the state implementation plan. Further guidance concerning non-attainment areas can be found at <https://www3.epa.gov/airquality/greenbook/mapnpoll.html> and <https://www3.epa.gov/airquality/greenbook/ancl.html>.

15. RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

A RCRA permit may be required from the EPA or designated state agency. Contact the nearest RCRA Regional Office of the EPA or state authorized agency for further guidance on RCRA compliance. Additional guidance can be found at <https://www.epa.gov/rcra>.

16. COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA)

If the activity involves a Superfund site, special provisions and requirements may apply. Contact the nearest EPA Regional Office for further guidance on CERCLA requirements at <https://www.epa.gov/superfund/superfund-cercla-overview> or <https://www.epa.gov/superfund/search-superfund-sites-where-you-live>.

17. SAFE DRINKING WATER ACT (SDWA)

A permit may be required if the proposed activity will involve underground injection which may impact drinking water sources. Contact the nearest state drinking water or underground injection control program for further guidance. Additional guidance can be found at <https://www.epa.gov/uic>.

18. FARMLAND PROTECTION POLICY ACT (FPPA)

Projects are subject to FPPA requirements if they may irreversibly convert farmland (directly or indirectly) to nonagricultural use and are completed by a Federal agency or with assistance from a Federal agency. The project may be subject to the FPPA. Contact your local office of the Natural Resources Conservation Service (NRCS) or USDA Service Center for further guidance at <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/contact/local/> and <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/landuse/fppa/>.

EXECUTIVE ORDERS

Executive Orders are directives from the President of the United States to federal agencies and officials.

19. E.O. 11988– FLOODPLAIN MANAGEMENT

Executive Order 11988 requires that an eight-step process be followed for projects that may have potential impacts to or within floodplains. Contact the nearest Regional Office of the Federal Emergency Management Agency for further guidance at <https://msc.fema.gov/portal/home>.

20. E.O. 11990 and E.O.12608– WETLAND PROTECTION

This Executive Order requires agencies to avoid providing assistance for new construction located in wetlands unless there is no practicable alternative to such construction, and that the proposed action includes all practicable measures to minimize harm to wetlands, which may result from such use. The Executive Order defines wetlands: "(c) The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud

flats, and natural ponds.” For further guidance, contact the appropriate USFWS Ecological Services Field Office <https://www.fws.gov/offices/> or <https://www.fws.gov/wetlands/Data/Mapper.html>.

21. E.O. 12898 – ENVIRONMENTAL JUSTICE

This Executive Order requires that "each federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." See the Council on Environmental Quality website for further guidance on Environmental Justice at <https://ceq.doe.gov/nepa-practice/justice.html>.

22. E.O. 13089 – CORAL REEF PROTECTION

This Executive Order requires that any actions that are authorized or funded by federal agencies not degrade the condition of coral reef ecosystems. Some of the Gulf Coast States contain coral reef ecosystems and include National Marine Sanctuaries <http://sanctuaries.noaa.gov/>. Contact the NOAA Coral Reef Conservation Program for further guidance at <http://coralreef.noaa.gov/>.

23. E.O. 13112 – INVASIVE SPECIES

This Executive Order requires agencies to prevent the introduction of invasive species and provide for their control. For further guidance on invasive species, see <https://www.invasivespeciesinfo.gov/>.

24. E.O. 13186 – RESPONSIBILITIES OF FEDERAL AGENCIES TO PROTECT MIGRATORY BIRDS

This Executive Order requires the incorporation and promotion of migratory bird conservation considerations into all agency activities. The Gulf Coast States contain North American migration flyways. Contact the appropriate USFWS Ecological Services Field Office at <https://www.fws.gov/offices/>. Further guidance regarding E.O. 13186 can be found at <https://www.fws.gov/birds/policies-and-regulations/administrative-orders/executive-orders.php>.

In addition, the USFWS and NMFS have a Biological Evaluation Form for *Deepwater Horizon* Oil Spill Restoration that may be helpful to fill out and may be obtained from Erin Chandler (erin_chandler@fws.gov) or Christy Fellas (Christina.fellas@noaa.gov).