

# National Environmental Policy Act and the Missouri River Recovery Management Plan

U.S. Army Corps of Engineers | Fact Sheet

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## What is the National Environmental Policy Act (NEPA)?

- As our country's basic national charter for protection of the environment, NEPA:
  - establishes environmental policy for the nation,
  - requires an interdisciplinary approach to federal agency decision-making, and
  - contains "action-forcing" procedures to ensure federal agency decision-makers take environmental factors into account.
- A key concept of NEPA, and one most closely associated with the law, is the requirement for federal agencies to prepare an environmental impact statement (EIS) for major federal actions that could significantly impact the quality of the human environment (i.e. natural, social, and economic resources).
- The environmental review process is intended to lead to better informed decisions and citizen involvement.
- Implementation of the Missouri River Recovery Management Plan (MRRMP) is considered a major federal action with potential to significantly affect the quality of the human environment; therefore, an integrated EIS is being prepared with the plan.

## What does NEPA require?

- In the case of an EIS, the following items are required:
  - Statement of the purpose of and need for the action
  - Consideration of alternatives, including the no-action alternative
  - A description of the affected environment
  - A discussion of the environmental consequences of the alternatives including direct, indirect, and cumulative impacts
  - Public involvement
- NEPA does not require the agency to select the environmentally preferable alternative or prohibit adverse environmental effects.

## What is the purpose and need for action?

- Purpose defines what the lead agency, in collaboration with cooperators, intends to fulfill by taking action.
  - The purpose of the MRRMP-EIS is to develop a suite of actions that meets Endangered Species Act (ESA) responsibilities for the piping plover, least tern, and pallid sturgeon using U.S. Army Corps of Engineers (USACE) authorities.
  - The purpose of the MRRMP-EIS is further described by the objectives of the plan specific to each of the three listed species. When achieved, these objectives would represent success in accomplishing the purpose of avoiding jeopardy of the species.
  - The USFWS provided "targets" for the birds and criteria for the pallid sturgeon which, based on the best available information, are thought to achieve the species objectives.
- Need includes the identification and description of the conditions that require the actions. A description of the need for an action also serves to provide evidence that action is warranted. "Need" answers the question: "Why is the agency taking action?"
- The need for the plan is based on two main areas:
  - The effects of USACE actions (i.e., operation of the Missouri River Mainstem Reservoir System and the Bank Stabilization and Navigation Project) on the listed species.
  - The need to evaluate the effectiveness of ongoing Biological Opinion (BiOp) compliance activities based on new science completed since the BiOp. This was highlighted in the recommendations made by the Independent Science Advisory Panel.

## What alternatives need to be considered?

NEPA requires the initial consideration of a range of alternatives and detailed evaluation of those alternatives found to be reasonable.

- A reasonable alternative is one that
  - meets the purpose of and need for the plan
  - is technically feasible
  - is not cost prohibitive
  - displays a level of common sense
- NEPA requires that the alternatives evaluated in the EIS include the no-action alternative.
- An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if the alternative is reasonable.
- When an agency determines that an alternative is not reasonable, it can dismiss it from detailed consideration by documenting its reasons for dismissal.
- There is no required specific number of alternatives that need to be considered in an EIS; all reasonable alternatives need to be fully evaluated.
- The alternatives being developed for the MRRMP-EIS need to achieve the species objectives, and therefore meet the purpose of and need for the plan.

## What is a Preferred Alternative?

Typically, an agency's preferred alternative is a cost effective alternative that best meets the purpose of and need for the plan, associated goals and objectives and any other factors being considered, including completeness, acceptability, and effectiveness. The agency is not required to identify a preferred alternative in the draft EIS.

## What does NEPA require for analysis of impacts?

- An EIS must rigorously evaluate all reasonable alternatives in comparative form to provide a clear basis for choice.
- The impact analysis allows decision makers to compare alternatives and to identify any necessary mitigation needed to reduce impacts of taking action.
- No particular level of impacts assessment is required; however, the degree of analysis devoted to each alternative must be substantially similar.
- The scope of the impacts assessment should consider three types of impacts: direct, indirect, and cumulative impacts:
  - **Direct impacts** – occur as a result of the action and occur at the same place and time as the action.
  - **Indirect impacts** – occur as a result of the action but happen later in time or are further removed.
  - **Cumulative impacts** – occur as a result of the action when combined with past, present and reasonably foreseeable future actions regardless of who takes the actions.
- The MRRMP-EIS will assess the forecasted impacts of the reasonable alternatives on human considerations and other important resources.

## How is the public involved in NEPA?

Public involvement is a critical component of the NEPA process. In fact, the implementing regulations state that “[a]gencies shall make diligent efforts to involve the public in preparing and implementing their NEPA procedures” (40 CFR § 1506.6 (a)). The level of NEPA analysis will dictate certain levels of public involvement. An EIS requires the highest level of public involvement, including the following:

- formal notices published in the Federal Register
- a public scoping period
- a 45-day minimum public review period of the draft EIS

## How does adaptive management fit with NEPA?

- An EIS that incorporates adaptive management as an alternative or part of an alternative needs to clearly describe how adaptive management would be implemented.
- This includes a description of the proposed initial actions, as well as a range of future actions that may be implemented based on the results of monitoring and assessment.
- If subsequent NEPA reviews for project- or site-specific actions are anticipated, a framework and scope will be identified in the EIS.
- If ongoing monitoring reveals “new, significant information,” USACE may be required to prepare a supplemental EIS.
- This requirement would be triggered when “The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts” (40 CFR § 1502.9(c)).