



# U.S. Nuclear Regulatory Commission Office of Nuclear Reactor Regulation ***NRR OFFICE INSTRUCTION***

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## Change Notice

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Office Instruction No.: LIC-203, Revision 3

Office Instruction Title: **Procedural Guidance for Preparing Categorical Exclusions, Environmental Assessments, and Considering Environmental Issues**

Effective Date: **July 1, 2013**

Approved By: **Susan Abraham**

Date Approved: **June 24, 2013**

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Responsible Organization: **NRR/DLR/RERB**

**Summary of Changes:** This document is the third revision of NRR Office Instruction LIC-203. This revision incorporates the amended final rule for 10 CFR 51.22 “Criterion for Categorical Exclusion; Identification of Licensing and Regulatory Actions Eligible for Categorical Exclusion or Otherwise not Requiring Environmental Review,” which was published April 19, 2010. This revision incorporates updated guidance on the Clean Air Act and Clean Water Act. In addition, this revision incorporates updated guidance on the Endangered Species Act, section 7 formal and informal consultations. Lastly, this revision incorporates the Commission’s updated guidance on environmental justice to clarify instructions and account for changes in the 2010 Census and clarifies NRR responsibilities under the National Historic Preservation Act.

Training: E-mail announcement with recommended self-study

ADAMS Accession No.: **ML12234A708**



# U.S. Nuclear Regulatory Commission

## Office of Nuclear Reactor Regulation

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**NRR OFFICE INSTRUCTION  
LIC-203, Revision 3**

Procedural Guidance for Preparing Categorical Exclusions, Environmental Assessments, and Considering Environmental Issues

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**Acronyms Used**

ACHP	Advisory Council on Historic Preservation
ADAMS	Agencywide Documents Access and Management System
BA	Biological Assessment
BO	Biological Opinion
CAA	Clean Air Act
CEQ	Council on Environmental Quality
CMP	Coastal management plan
COL	Combined License
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
DLR	Division of License Renewal
DORL	Division of Operating Reactor Licensing
EA	Environmental Assessment
EDO	Executive Director for Operations
EFH	Essential Fish Habitat
EIS	Environmental Impact Statement
EJ	Environmental Justice
EPA	Environmental Protection Agency
EPP	Environmental Protection Plan
EPU	Extended power Uprate
ESA	Endangered Species Act
ESP	Early Site Permit
FES	Final Environmental Statement
FONSI	Finding of no significant impact
FR	Federal Register

FRN	Federal Register notice
FWCA	Fish and Wildlife Coordination Act
FWS	U.S. Fish and Wildlife Service
GEIS	Generic Environmental Impact Statement for License Renewal of Nuclear Plants
ITS	Incidental Take Statement
MOA	Memorandum of Agreement
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NAA	Non-attainment Area
NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NPDES	National Pollution Discharge Elimination System
NRO	Office of New Reactors
NRR	Office of Nuclear Reactor Regulation
OCRM	NOAA's Office of Ocean and Coastal Resource Management
OGC	Office of General Counsel
PDR	Public Document Room
PM	Project manager
REMP	Radiological environmental monitoring program
RERB	Environmental Review Branch, Division of License Renewal
ROD	Record of Decision
RPB1	Projects Branch 1, Division of License Renewal
RPB2	Projects Branch 2, Division of License Renewal
SER	Safety Evaluation Report

SHPO State Historic Preservation Officer

TAC Technical assignment control

THPO Tribal Historic Preservation Officer



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**Procedural Guidance for Preparing Categorical Exclusions, Environmental Assessments,  
and Considering Environmental Issues**

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**1. POLICY**

It is the policy of the NRC's Office of Nuclear Reactor Regulation (NRR) to establish procedures and guidance for its staff to meet the requirements established by applicable statute and regulation. The purpose of 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions," is to ensure that the NRC meets its statutory obligations under the National Environmental Policy Act of 1969 (NEPA).

**2. OBJECTIVE**

This office instruction, along with the enclosed guidance documents, provides the NRR staff with a basic framework for meeting NRC's responsibility to comply with 10 CFR Part 51. This office instruction is intended to:

- Define the responsibilities of the Environmental Review Branch and Guidance Update Branch (RERB), Division of License Renewal (DLR) to ensure that NRR is consistent in its implementation of NRC regulations and other Federal environmental requirements;
- Define NRR staff responsibilities; and,
- Provide guidance to NRR staff on the procedural requirements for demonstrating compliance with environmental statutes and regulations covering environmental issues for regulated facilities.

This office instruction contains guidance for preparing categorical exclusions and environmental assessments (EAs), in accordance with NEPA and 10 CFR Part 51, and for considering environmental issues associated with:

- Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority populations and Low-Income Populations," including the Commission's "Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions" (69 Federal Register [FR] 52040, August 24, 2004);
- Coastal Zone Management Act of 1972 (CZMA);
- Endangered Species Act of 1973 (ESA);
- National Historic Preservation Act of 1966 (NHPA);
- Magnuson-Stevens Fishery Conservation and Management Act of 1996 (MSA).
- Clean Air Act of 1963; and

- Clean Water Act of 1948 and 10 CFR 50.54(aa)

This office instruction describes how environmental reviews, leading to the preparation of an EA or use of a categorical exclusion, should be performed for NRR licensing actions. Though this office instruction addresses some aspects of environmental impact statements (EIS) preparation, it should not serve as primary guidance when preparing an EIS. Specific requirements for preparing EISs are set forth in 10 CFR Part 51. In addition, guidance for preparing site-specific supplemental EISs for license renewal power reactor applications can be found in NUREG-1555, "Standard Review Plans for Environmental Reviews for Nuclear Power Plants, Supplement 1: Operating License Renewal." Guidance for preparing EISs for non-power reactors, including medical isotope production facilities, can be found in NUREG-1537, "Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors."

### **3. BACKGROUND**

On June 21, 2001, Office Instruction LIC-203 was initially issued as a revision to Office Letter 906, Revision 2, which included guidance on environmental justice and improvements to the format and content of the EA template. Office Letter 906, Revision 2, was issued on September 21, 1999, and was entitled, "Procedural Guidance for Preparing Environmental Assessments and Considering Environmental Issues."

#### Revision 1:

Revision 1 of LIC-203 was issued on May 24, 2004. This revision clarified NRR responsibilities under the FWCA, provided a policy change in fulfilling NRR responsibilities under the NHPA, and contained preliminary guidance on consideration of environmental justice matters consistent with a draft Policy Statement issued by the Commission on November 5, 2003 (68 FR 62642).

#### Revision 2:

Revision 2 of LIC-203 was issued on February 17, 2009. This revision updated guidance on how to conduct environmental justice impact assessments.

Additionally, Revision 2 incorporated the responsibilities of the NRC under the MSA, which requires that Federal agencies consult with the Secretary of Commerce regarding EFH for any action undertaken by the agency that may adversely affect EFH. EFH regulatory requirements are set forth at 50 CFR Part 600. Lastly, Revision 2 also clarified NRR responsibilities under the CZMA, amended figures and flow charts, and revised the roles and responsibilities to reflect the current NRR office organization.

#### Revision 3:

This revision incorporates the amended final rule for 10 CFR 51.22, "Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review," which was published May 19, 2010. This revision also incorporates updated guidance on the Clean Air Act and Clean Water Act. In addition, this revision incorporates updated guidance on the Endangered Species Act, section 7 formal and informal consultations. Lastly, this revision incorporates the Commission's updated guidance on environmental justice to

clarify instructions and account for changes in the 2010 Census and clarifies NRR responsibilities under the National Historic Preservation Act.

#### **4. BASIC REQUIREMENTS**

##### **4.1. RERB Staff**

RERB is responsible for providing technical support and implementation guidance to the NRR staff for the resolution of environmental issues at NRC regulated facilities. RERB is also responsible for coordinating environmental issues with other NRC offices to ensure that NRR meets its obligations under Federal environmental requirements and properly implements the requirements of 10 CFR Part 51.

##### **4.2. All NRR Staff**

In addition to its regulatory responsibilities embodied in the health and safety requirements of the Atomic Energy Act of 1954, as amended, NRC has responsibilities that are derived from NEPA and from other environmental laws, including the CZMA, the ESA, the NHPA, the FWCA, the MSA, the CAA, and the CWA. In addition, the NRC is required to follow its environmental justice policy statement (69 FR 52040, August 24, 2004), which is based upon Executive Order 12898. Some of these laws may require the NRC to consult or coordinate with other Federal, State or local agencies, or Tribal governments. NRR staff should contact the appropriate subject matter expert in RERB to discuss consultation activities associated with the ESA, the CZMA, the NHPA, the MSA, and the NRC's environmental justice policy statement.

NRR staff must consider these environmental laws and the NRC's environmental justice policy statement when performing regulatory activities such as:

- Power Upgrades: Increasing the authorized power level of commercial power reactors beyond the power rating stated in the facility's Final Environmental Impact Statement (FEIS) or supplement to the Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants (GEIS), NUREG-1437, regarding the facility being reviewed;
- Construction Recapture: Changing the license expiration date to recapture time between the construction permit and actual operation (construction recapture);
- Reviewing requests for license amendments and exemptions from regulations which are not covered by a categorical exclusion;
- Reviewing decommissioning applications under 10 CFR Part 50;
- Revising Appendix B (environmental protection plan) of a licensee's operating license;
- Reviewing construction and/or operating applications under 10 CFR Part 50, which includes both power reactors and non-power reactors;

- Reviewing license renewal applications under 10 CFR Part 54; and
- Conducting rulemaking that may lead to environmental impacts.

When an environmental review of an action is warranted, the NRR Project Manager (PM) may request formal guidance in developing EAs from RERB. Because environmental reviews of applications are fee recoverable under 10 CFR Part 170, the NRR PM should provide a Technical Assignment Control (TAC) number for tracking and billing purposes when seeking concurrence, assistance, or input on environmental reviews.

Staff need not perform an environmental review when performing licensing and regulatory activities eligible for categorical exclusions under 10 CFR 51.22(c), as further described in 5.2.1 and Appendix B. The appropriate NRR Division and the Office of General Counsel (OGC), with support of RERB, will determine whether an action qualifies as a categorical exclusion and, if so, include the criterion in the licensing documents. NRR staff is encouraged to seek early assistance from RERB in addressing environmental issues that are unique, complex, or unfamiliar.

## **5. RESPONSIBILITIES AND AUTHORITIES**

### **5.1. RERB Staff**

RERB will:

- Review and concur on plant-specific and generic EAs prepared by NRR staff for the activities listed above;
- Review and concur on plant-specific Categorical Exclusions prepared by NRR staff for eligible activities under 10 CFR 51.22, when appropriate;
- Prepare input for and/or originate EAs (including environmental justice reviews) when appropriate;
- Review and provide guidance and support to NRR staff participating in the preparation of all EISs (draft, final, and supplements);
- Participate in environmental rulemaking activities;
- Review new and emerging environmental issues;
- Track amendments to existing or issuance of new environmental statutes, regulations, applicable executive orders and guidance and inform, as appropriate, NRR management and other staffs;
- Review environmental documents submitted by other Federal and State agencies, as appropriate;
- Coordinate ESA section 7 consultations with the U.S. Fish and Wildlife Services (FWS) and National Marine Fisheries Service (NMFS), as appropriate;

- Consult with NMFS regarding potential impacts to EFH, as appropriate;
- Consult with the Advisory Council on Historic Preservation (ACHP) and the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer(s) (THPO), as appropriate, on matters related to historic and cultural resources under Section 106 of the NHPA;
- Ensure in coordination with the Office of General Counsel that the requirements of all environmental laws, regulations and executive orders that apply to NRC licensing actions have been met;
- Coordinate environmental matters with other NRC Headquarters and Regional offices, Federal, State, and local agencies, and if appropriate, Tribal governments; and
- Maintain and update this office instruction.

## **5.2. All NRR Staff**

Individual NRR staff members are responsible for implementing the procedural requirements of this office instruction. NRR staff should consult with RERB when reviewing environmental issues or safety issues that require an EA, an EIS, or in which the applicability of a categorical exclusion is unclear.

### **5.2.1. NRR Responsibilities under NEPA: EISs, EAs, and Categorical Exclusions**

Section 102 of NEPA, passed by Congress in 1969, requires the use of a systematic approach to integrate the social and natural sciences when making decisions that may have environmental impacts. NEPA requires that Federal agencies prepare EISs for “major Federal actions” that may significantly affect the quality of the human environment as documentation of the analysis process. EISs must include a thorough analysis of the environmental effects of the proposed action, as well as appropriate alternatives to the proposed action. The findings of EISs must then be considered in the decision-making process.

In order to implement the requirements of NEPA, NRR prepares EISs and EAs. NRC regulatory requirements regarding these documents can be found in 10 CFR Part 51. The NRC has previously determined that certain categories of actions do not have significant impacts on the environment. For those categories of actions, the NRC has established categorical exclusions, which are listed in 10 CFR 51.22(c). If a specific action falls within the scope of a listed categorical exclusion (some categorical exclusions have criteria), the NRC does not need to prepare an EA or EIS,

#### Environmental Impact Statements:

An EIS is prepared for any action determined to be a “major Federal action significantly affecting the quality of the human environment.” 10 CFR 51.20(b) provides a specific list of NRC actions that require

preparation of an EIS. For instance, renewal of a license to operate a nuclear power reactor requires the preparation of an EIS. In general, an EIS contains detailed analyses of the environmental impacts of the proposed action and an analysis of the environmental impacts of the alternatives to the proposed action, and involves extensive public participation and typically involves coordination with other Federal, State, and local agencies, and if appropriate, Tribal governments.

#### Environmental Assessments:

For those actions that are not listed in 10 CFR 51.20(b) or covered by a 10 CFR 51.22(c) categorical exclusion, the NRC will need to prepare an EA. An EA documents the evaluation of whether an action constitutes a “major Federal action” significantly affecting the human environment. If the review documented in the EA demonstrates that the proposed action will not have a significant impact on the environment, a finding of no significant impact (FONSI) is prepared in accordance with the criteria of 10 CFR 51.32; no EIS need be prepared. The FONSI may be set forth in the conclusion section of the EA. If the EA demonstrates that the proposed action will, or has the potential to, significantly affect the environment, but can be mitigated to the point where the action will no longer have a significant impact, contact RERB staff for additional guidance (this scenario may involve the preparation of a “mitigated” FONSI). If the environmental review documented in the EA reveals that the proposed action will, or has the potential to, significantly affect the human environment, and mitigation is not viable, then the NRC must prepare an EIS. Refer to Fig. 1 in Appendix C for a flow chart of the process by which a reviewer should determine whether an action requires an EA, EIS, or meets the criteria for a categorical exclusion, as defined in 10 CFR 51.22. For an extended power uprate (EPU), the staff prepares an EA that goes into greater depth and provides more opportunity for public involvement than a typical EA for licensing actions. RERB staff will prepare EAs for all EPU requests. For additional guidance on the process of power uprate reviews please refer to NRR Office Instruction LIC-112 “Power Uprate Process.”

#### Categorical Exclusions:

A categorical exclusion is prepared for an action that an agency has previously determined does not individually or cumulatively have a significant effect on the human environment. 10 CFR 51.22 identifies NRC licensing and regulatory actions that are eligible for categorical exclusion. A categorical exclusion should be documented with a brief explanation as to how the proposed action would not have any significant environmental effects and a description of how the proposed action is included under 10 CFR 51.22. Appendix B of this office instruction provides guidance on the preparation, use and documentation of categorical exclusions. For actions in which it is not clear if they are encompassed by a categorical exclusion under 10 CFR 51.22, Appendix B.3 provides an analysis and checklist that can be performed to determine if a categorical exclusion is appropriate. The NRR PM should

consult with OGC and RERB staff, as appropriate, to determine whether a proposed action is eligible for categorical exclusion.

Environmental Review Process:

*Licensing Action*

Upon receipt of a proposed licensing action, the NRR PM should determine what level of environmental review is needed (categorical exclusion, EA, or EIS). Refer to Fig. 1 in Appendix C for a flow chart of the process by which a reviewer should determine whether an action requires an EA, EIS, or meets the criteria for a categorical exclusion. If the proposed action is unique or involves unusual circumstances, then the NRR PM should consult with RERB staff before initiating the environmental review. Additionally, as mentioned previously in this office instruction, 10 CFR 51.22(c) lists those NRC licensing and regulatory actions that are eligible for categorical exclusion and, therefore, do not require preparation of an EA or EIS. The NRR PM should consult with OGC and RERB staff, as appropriate, to determine whether a proposed action is eligible for categorical exclusion. In such case, a categorical exclusion should be prepared in accordance with Appendix B of this office instruction.

If the NRR PM, in consultation with OGC and RERB staff, determines that the proposed action is not eligible for a categorical exclusion and it is not one of the listed actions that require preparation of an EIS (see 10 CFR 51.20(b)), then an EA should be prepared in accordance with the requirements of 10 CFR 51.30 and this office instruction. 10 CFR 51.30 requires that an EA:

1. *Identify the proposed action;*
2. *Briefly discuss the need for the proposed action;*
3. *Discuss the alternatives to the proposed action;*
4. *Describe the environmental impacts of the proposed action and alternatives; and*
5. *List agencies and persons consulted and identify sources used.*

An EA should not duplicate the safety details of the review; only the environmental impacts of the proposed action should be considered. Appendix C of this office instruction provides detailed guidance for each step in the preparation of an EA.

The staff should prepare a FONSI if the EA supports a conclusion that the proposed action will not have a significant effect on the quality of the human environment. The FONSI may be set forth in the conclusion section of the EA. Preparation and publication of the FONSI in the Federal Register must be in accordance with the requirements of 10 CFR 51.32, 10 CFR 51.34, 10 CFR 51.35 and 10 CFR 51.119. The staff may

issue a draft FONSI (e.g. EPU EAs) for public comment. Such a draft FONSI must be published in the Federal Register with a minimum comment period of 30 days, in accordance with the requirements set forth in 10 CFR 51.33 and 51.119.

If the PM believes mitigation of the effects is possible (i.e. a mitigated FONSI), contact RERB staff for guidance. If the EA concludes that the proposed action will result in significant environmental impacts, then the NRR PM should contact RERB to coordinate the preparation of an EIS.

Should an EIS need to be prepared, RERB will be responsible for coordinating the preparation of the EIS with the NRR PM for the facility in question. An EA does not need to be prepared before an EIS for those specific actions listed under 10 CFR 51.20(b) as requiring an EIS.

#### *Rulemaking Activities*

When an EA is written in support of rulemaking activities that affect NRR, the initiating office, if other than NRR, may coordinate with RERB in the preparation of an EA. Detailed guidance on incorporation of the NEPA process within rulemaking activities is provided in the NRC Regulations Handbook, NUREG/BR-0053, Revision 6.

### **5.2.2. NRR Responsibilities Regarding Environmental Justice**

Executive Order 12898 was issued by the President on February 11, 1994, mandating that Federal agencies make “environmental justice” (EJ) part of each agency's mission by addressing disproportionately high and adverse human health or environmental effects of Federal programs, policies, and activities on minority populations and low-income populations. Subsequently, the Council on Environmental Quality (CEQ) developed guidelines on how to integrate environmental justice into the NEPA process entitled *Environmental Justice Guidance Under the National Environmental Policy Act*, December 1997. The guidance is available at: <http://ceq.hss.doe.gov/nepa/reggs/ej/justice.pdf>.

On August 24, 2004, the Commission issued a *Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions* (69 FR 52040), which states “The Commission is committed to the general goals set forth in E.O. 12898, and strives to meet those goals as part of its NEPA review process.” NRR developed a corresponding procedure (Appendix D), which incorporates the Commission’s policy statement on environmental justice into the licensing process.

Environmental justice reviews will be performed for all actions requiring preparation of an EIS (or a supplement thereto). An environmental justice review is not usually required for an EA in which a FONSI is made; however, special circumstances may warrant an environmental justice review. Special circumstances occur when there is a clear potential for



offsite impacts and there are some indications of populations that might signal the existence of an EJ issue. If there is a clear potential for significant offsite impacts from the proposed action, an EJ review might be needed to provide a basis for concluding that there are no disproportionately high or adverse impacts. In such circumstances, NRR senior management will decide whether an EJ review is warranted for an EA on a case-by-case basis. Also, NRR generally conducts an EJ review for an EPU, the findings of which are documented in the EA. Appendix D provides a more detailed explanation of the process for conducting an EJ review and a flow chart (Fig. 2) illustrating the steps in the review.

### **5.2.3. NRR Responsibilities under the Coastal Zone Management Act**

The CZMA of 1972 was promulgated to encourage and assist States and territories in developing management programs that preserve, protect, develop, and, where possible, restore the resources of the coastal zone. A “coastal zone” is generally described as the coastal waters and the adjacent shore lands strongly influenced by one another, which may include islands, transitional and intertidal areas, salt marshes, wetlands, beaches, and Great Lakes waters. Appendix E of this office instruction lists those States and territories with Federally-approved Coastal Management Plans (CMPs) and describes each State or territory’s coastal zone.

The CZMA requires that activities of Federal agencies reasonably likely to affect coastal zones be consistent with any applicable State approved CMP to the maximum extent practical. Applicants must submit to both the NRC and to the State a certification that the proposed activity complies with the enforceable policies of the State’s program. If the CZMA applies to the project, the NRC cannot issue its license or permit until the State has concurred in the applicant’s certification of a coastal consistency determination. If the State fails to complete its review of the consistency certification within six months, the State’s concurrence with the certification is conclusively presumed (10 CFR 930.54(e)). In the case where the State objects to the consistency determination, the Federal agency will withhold the permit/license approval until the Secretary of Commerce presides over such objection.

Regulations implementing the Federal consistency provisions of the CZMA have been promulgated by the National Oceanic and Atmospheric Administration (NOAA) at 15 CFR Part 930. NOAA regulations specifically require the State’s concurrence with consistency certifications for license renewal and major amendments that will affect any coastal use or resource. NOAA defines “major amendments” as activities involving a change that affects any coastal use or resource in a way that is substantially different than the description or understanding of the effects at the time of the original activity (15 CFR 930.51(c)). In general, the NRR licensing actions requiring a consistency certification are license renewal applications, EPU license amendments, and power or non-power

reactor applications that are submitted under Part 50. Additional licensing actions that may require a Federal consistency certification are carried out by the Office of New Reactors (NRO) and include early site permits (ESPs) and combined licenses (COLs).

#### *PROCEDURE FOR LICENSING ACTIONS*

The following guidance is provided regarding NRC staff's responsibilities under the CZMA consistency certification requirements. Because this procedure may not address all situations that may occur, the NRR PMs should consult with RERB staff whenever a CZMA consistency certification is required. The CZMA Flow Chart (Fig. 3) in Appendix E characterizes the steps involved in obtaining the State's concurrence on a consistency certification in more detail. The NRR PM should consult with RERB for the following actions:

1. *Determine whether the facility is located in a State's coastal zone or if the licensing action could have a reasonably foreseeable effect on any coastal use or resource within the coastal zone (e.g., a coastal zone is within a reasonable downstream distance from a facility located on a river), as defined in 15 CFR 930.11. Refer to Table 2 in Appendix E for a description of coastal zones in States and territories with Federally-approved CMPs.*
2. *Identify listed activities requiring a consistency certification by referencing the NRC entry under the State's CMP.*
3. *Upon receipt of an application for a listed activity (e.g. license renewal), ensure that the State has concurred with the licensee's certification of a coastal consistency determination. Approval of the requested action shall be withheld until the State has concurred with the licensee's consistency determination, or the Secretary of Commerce has overridden any State's objections.*

*Note: For license renewals (10 CFR Part 54) and license applications under 10 CFR Part 50, RERB will be responsible for review of the action and will ensure that the State's concurrence has been provided, as required.*

4. *Upon receipt of an application for an unlisted activity (e.g., EPU license amendment), determine whether the licensing action could have a reasonably foreseeable effect on any coastal use or resource within the coastal zone, as defined in 15 CFR 930.11, and consult with RERB, as needed.*
  - *For unlisted actions in which coastal effects may be reasonably foreseeable, the NRR PM should consult with RERB and, if the applicant has not provided a consistency certification, should contact the applicant and the applicable State agency early in the review process to ensure timely State determination of the need for a consistency review. As provided in 15 CFR 930.54(a)(2), notice to the State agency may be constructive if notice is*

*published in an official federal publication document or through an official State clearinghouse (i.e., the Federal Register, draft or final EISs that are submitted to the State agency, or a State's intergovernmental review process). If the State has not notified the NRC within 30 days from notice of the license or permit application that a review is necessary, the State waives its right to review the unlisted activity (10 CFR 930.54(a)(1)). The waiver does not apply in cases where the State agency does not receive notice of the federal license or permit application (15 CFR 930.54(a)(1)).*

5. *For either listed or unlisted activities, upon notification by the State that a consistency review is required for the proposed action, the EA or EIS should document whether the State's concurrence on the consistency certification has been obtained in the Land Use section. Approval of the proposed action (e.g., licensing under 10 CFR Part 50, license amendment, or applicable rulemaking action) by the NRC cannot occur before the State has concurred with the licensee's consistency certification, or the Secretary of Commerce has overridden any State objection.*

#### **5.2.4. NRR Responsibilities under the Endangered Species Act**

Congress enacted the Endangered Species Act (ESA) in 1973 (16 U.S.C. 1531 *et seq.*) in order to protect and recover imperiled species and the habitats upon which they depend. The U.S. Fish and Wildlife Service (FWS) and the National Oceanic and Atmospheric Administration (NOAA)'s National Marine Fisheries Service (NMFS) jointly administer the ESA. The FWS manages the protection of and recovery effort for listed terrestrial and freshwater species, while the NMFS manages the protection of and recovery effort for listed marine and anadromous species.

The NRC must comply with the ESA when authorizing, funding, or carrying out Federal actions such as granting operating reactor license renewals, approving extended power uprates, and reviewing license amendment requests.

Section 7 of the ESA (16 U.S.C. 1536) requires that each Federal agency ensure that any action authorized, funded, or carried out by an agency is not likely to jeopardize the continued existence of any endangered or threatened species (jeopardy), or destroy or adversely modify any critical habitat for such species (adverse modification). "Action" may include licensing, rulemaking, and/or other regulatory activities. Federal agencies should act, if possible (where they have the legal authority), to prevent endangered species and their habitats from being threatened or destroyed.

If an action has the potential to affect any endangered or threatened species or critical habitat, the NRC shall consult with the Secretary of the Interior (for freshwater and terrestrial species through FWS) or the Secretary of Commerce (for marine and anadromous species through NMFS). Generally, the NRC consults with the FWS or NMFS for all major Federal actions under NEPA that require the preparation of an EIS. The

NRC may also consult with the FWS or NMFS for Federal actions that require the preparation of an EA, such as an EPU review. The FWS and NMFS joint regulations implementing the ESA at 50 CFR Part 402 allow for two types of consultations: informal and formal.

Informal consultation is a less structured approach to meeting section 7 requirements than formal consultation and includes phone calls, letters, and meetings between the NRC and FWS or NMFS. This type of consultation is appropriate if the NRC determines that a proposed action is “not likely to adversely affect” listed species or critical habitat. The NRC may prepare a biological assessment as part of informal consultation, and the regulations do not specify a particular timeline for completion of informal consultation. Appendix F of this instruction contains a flow chart (Fig. 5) illustrating the informal ESA consultation process.

The formal consultation process is a more structured approach to meeting section 7 requirements. Formal consultation is appropriate if the NRC determines that a proposed action “may affect” listed species or designated critical habitat. Formal consultation requires the preparation of a biological assessment and its submission to the “Director”<sup>1</sup>, in accordance with 50 CFR 402.12. In addition, a request for formal consultation shall be in writing and submitted to the Director and include a description of the action to be considered; a description of the specific area that may be affected by the action; a description of any listed species or critical habitat that may be affected by the action; a description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects; relevant reports, including any environmental impact statement, environmental assessment, or biological assessment prepared; and any other relevant available information on the action, the affected listed species, or critical habitat (50 CFR 402.14(c)). The regulations provide that formal consultation is to be concluded within 90 days of its initiation, unless extended (50 CFR 402.14(e)). Within 45 days after concluding formal consultation, the FWS or NMFS shall deliver a biological opinion to the NRC and any applicant (50 CFR 402.14(e)).

The biological opinion may include an incidental take statement, reasonable and prudent measures, and terms and conditions which the NRC must ensure that its licensee complies with in order to be exempt from the prohibitions of section 7(o)(2) of the ESA (50 CFR 402.14(h)-(j)). The issuance of the biological opinion terminates formal consultation (50 CFR 402.14(l)(1)). Appendix F of this instruction contains a flow chart (Fig. 4) illustrating the formal ESA consultation process.

RERB is responsible for initiating consultation (informal or formal, as appropriate) and coordinating with FWS and NMFS on an ongoing basis for

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<sup>1</sup> The term “Director” is defined in the regulations implementing the ESA as the Assistant Administrator for Fisheries (NOAA), or his or her authorized representative or the FWS regional director, or his or her authorized representative. 50 CFR 402.02.

endangered species issues at all operating reactors overseen by NRR. RERB should initiate consultation early in the review process to ensure adequate time to conclude consultation prior to a licensing decision. If consultation is initiated in conjunction with a NEPA review, the status or outcome of the consultation should be documented in the EA or EIS.

NRR PMs should contact RERB for any license amendment requests or other actions that have the potential to affect species and habitats protected under the ESA; RERB will determine if consultation is required. Note that while consultation is required for many Federal actions, reinitiated consultation may also be required during regular operations under certain conditions such as the take of a species not authorized in a biological opinion or the listing of a new species under the ESA. RERB staff is responsible for identifying and determining when reinitiating consultations are required and coordinating the activities of the consultation; RERB staff will notify the NRR PM of these activities.

More detailed information on section 7 consultations appears in the *Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act*, March 1998, published by FWS and NMFS. The handbook is available at:

<http://sero.nmfs.noaa.gov/pr/esa/pdf/Sec%207%20Handbook.pdf>

#### **5.2.5. NRR Responsibilities under the National Historic Preservation Act**

The National Historic Preservation Act (NHPA) of 1966, as amended, was promulgated to coordinate public and private efforts to preserve significant historic and cultural resources. Section 106 of the NHPA directs Federal agencies to take into account the effects of their “undertakings” on historic properties and allow the Advisory Council on Historic Preservation (ACHP) an opportunity to review and comment on the undertaking. ACHP is an independent Federal agency charged with implementing Section 106 throughout the Federal government; ACHP Section 106 implementing regulations are at 36 CFR Part 800. The Section 106 process may proceed on a separate track from NEPA or may be encompassed within the agency NEPA process (see 36 CFR 800.8). “Undertakings” denotes a broad range of Federal activities, including the issuance of NRC licenses and permits. “Historic property” is any prehistoric or historic district, site, building, structure, traditional cultural property, or object included in or eligible for inclusion in the National Register of Historic Places (National Register). Appendix G (Fig. 6) contains a flow chart illustrating the Section 106 process. When performing an EA or EIS, the NRC must determine if effects exist which may harm any historic property or historic and cultural resources. A finding of an adverse effect on historic properties does not necessarily require an EIS. The standard Section 106 process is comprised of the following steps:

- *Initiate the Section 106 process (36 CFR 800.3).* Establish the undertaking and identify the appropriate SHPO and/or THPO, as well as concerned members of the public.

- *Identify Historic Properties (36 CFR 800.4).* Through consultation with the applicable SHPO and/or THPO, determine the scope of effort, the area of potential effects, *identify historic properties and resources*, and evaluate the historic significance.
- *Assess Effects (36 CFR 800.5).* Determine whether or not the proposed action will have an adverse effect upon any historic property within the area of potential effects by applying the criteria of adverse effect (36 CFR 800.5(a)).
- *Resolve Adverse Effects (36 CFR 800.6).* Adverse effects are resolved through mitigation and/or consultation.

### COORDINATING SECTION 106 CONSULTATIONS WITH NEPA

In 36 CFR 800.8, “Coordination with the National Environmental Policy Act”, compliance with Section 106 can be achieved in conjunction with the NEPA process for the same action. NRR staff may use the NEPA process to fulfill the requirements of the NHPA when preparing both EAs and EISs. Under 36 CFR 800.8(c), an agency can use the NEPA process to comply with Section 106 as an alternative to the procedures set forth in 36 CFR 800.3 through 36 CFR 800.6. The key to using the NEPA process to comply with Section 106 of the NHPA is early coordination. The staff should be aware when coordinating Section 106 with NEPA, if a MOA is entered into by the NRC as part of the resolution of any adverse effects upon historic properties, then the MOA must be referenced in the draft EA or draft EIS for public comment.

When using the NEPA process to comply with Section 106 of the NHPA, NRR staff should consult with RERB staff to perform the substantive steps that are required by the ACHP Section 106 regulations. The following is a list of general principles NRR staff must follow in order to ensure compliance with Section 106 (more specific procedures are listed in the “Procedure for Licensing Actions” below):

1. *Coordinate early.* NRR PMs should plan their Section 106 responsibilities as early as possible in the NEPA process, and plan public participation, analysis, and review requirements of both statutes.
2. *Identify consulting parties.* Identify the appropriate SHPO or THPO, American Indian tribes, Native Hawaiian organizations, local governments, preservation organizations, and individuals who may be concerned with the possible effects of the proposed undertaking on historic properties in a manner consistent with 36 CFR 800.3(f). Typically, public participation will also be required (see 36 CFR 800.2(d) and 36 CFR 800.3(e)). In accordance with 36 CFR 800.8(c), notify the ACHP and the SHPO/THPO that the NRC intends to comply with Section 106 through the NEPA process.

3. *Identify historic properties.* Identify historic properties and assess effects on them in a manner consistent with Section 800.4 through 800.5. The scope and timing of identification and effect determination may be “phased to reflect the Agency Official’s consideration of project alternatives in the NEPA process” and the effort of the Agency shall be “commensurate with the assessment of other environmental factors.” See 36 CFR 800.8(c)(1)(ii). The staff should be aware of the requirements to withhold sensitive information about the location of historic properties in accordance with Section 304 of the NHPA. Guidance is provided in *Guidance for Withholding Information Regarding Sensitive Historic Resources* at ML111080735.
4. *Engage in consultation.* Consult with the SHPO/THPO, American Indian tribes, Native Hawaiian organizations, and other parties during NEPA scoping, analysis, and documentation. As commensurate with the Agency’s NEPA process, the public must be invited to participate.
5. *Develop an EA or EIS.* Develop alternatives and potential mitigation measures in consultation with other stakeholders, and describe these alternatives and measures in the EA or EIS. Section 800.8(c)(2) requires that the EA or the draft and final EIS be reviewed by the SHPO/THPO and other consulting parties. NRR must also submit the EIS (both draft and final) to the ACHP. If any of these parties object within the comment period, and the disagreement cannot be resolved, NRR staff will refer the matter to the ACHP. The ACHP then has 30 days to review the objection. If no objections are received within the 30 day period, the NRC shall continue its compliance with 36 CFR 800.8(c). Section 800.8(c)(1)(v)) also requires the NRC to develop, in consultation with identified consulting parties, alternatives and proposed mitigation measures that might avoid, minimize or mitigate any adverse effects of the proposed action on historic properties, and to describe such alternatives and proposed mitigation measures in the EA or draft EIS.

#### *PROCEDURE FOR LICENSING ACTIONS*

The following should be used as guidance for licensing actions when using the NEPA process to satisfy the NRC’s obligations under Section 106 (refer to Fig. 6, Appendix G). NRR PMs should consult with RERB during this process.

1. *Identify the proposed action.* Determine if the proposed undertaking is an undertaking as defined in 36 CFR 800.16(y).
2. *Determine if the proposed action has the potential to affect historic properties.* If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties are present, the NRC has no further Section 106 obligations. Report this determination in the EA’s FONSI or the EIS’ Record of Decision (ROD). If, however, the undertaking is a type of

activity that does have the potential to cause effects on historic properties, then the NRR PM should contact RERB for further guidance and prepare to take or assist with the steps listed in paragraphs 3 through 11 below.

3. *Identification of the Consulting Parties.* Identify the appropriate SHPO/THPO, Federally-recognized tribes, and other consulting parties. Typically, public participation will also be required (see 36 CFR 800.2(d) and 36 CFR 800.3(e)).
4. *Determine Area of Potential Effects (APE).* In consultation with the SHPO/THPO, determine the scope of the review (the physical area affected by the proposed action). The term “area of potential effects” is defined in the ACHP regulations at 36 CFR 800.16(d).
5. *Consultation.* In consultation with the applicable SHPO/THPO, affected Federally-recognized tribes, and other consulting parties (including the public), identify historic properties, evaluate historical significance, and assess the effects of the proposed action on historic and cultural resources. See 36 CFR 800.4.
6. *Determine if adverse effects exist.* Applying the ACHP’s criteria of adverse effect (36 CFR 800.5(a), determine if there are any adverse effects to historic and cultural resources within the APE. The determination of whether there are any adverse effects is made in consultation with the applicable SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties. NRR staff shall also consider any views concerning such effects which have been provided by consulting parties and the public. Any determination by the NRC of no adverse effect must be documented in accordance with 36 CFR 800.11(e) and this documentation must be sent to the applicable SHPO/THPO and all other consulting parties (36 CFR 800.5(c)). The SHPO/THPO has 30 days from receipt of this documentation to review the no adverse effect finding. If the SHPO/THPO agrees or does not respond by the close of the 30 day review period, and no other consulting party objects, then the section 106 process is closed and the NRC may proceed with the action. The determination of no adverse effect and the closure of the section 106 process shall be documented in the draft or final EA or EIS.
7. *Resolve Adverse Effects.* If there is an adverse effect, or if within the 30 day review period the SHPO/THPO or any consulting party notifies the agency official in writing that it disagrees with the finding and specifies the reasons for the disagreement in the notification, the agency official shall continue to work with the consulting parties to resolve the disagreement or request review by the ACHP. The resolution of adverse effects is typically memorialized in a Memorandum of Agreement (MOA) that is entered into by the NRC, the SHPO/THPO, the licensee/applicant, and possibly, other



consulting parties. See 36 CFR 800.6(b)(1)(iv) and (c). Mitigative actions may be discussed in the EA or EIS or through the MOA.

8. Issue draft EA or EIS for public comment.
9. Resolve public comments.
10. Issue FONSI/ROD.
11. Proceed with action.

Note: If a project, activity, or program is categorically excluded under 10 CFR 51.22(c), the NRR PM should determine if it still qualifies as an undertaking requiring a separate review under Section 106 pursuant to 36 CFR 800.3(a).

For further guidance on Section 106 consultations, refer to:  
<http://www.achp.gov/regs-nhl.html>.

#### **5.2.6. NRR Responsibilities under the Magnuson-Stevens Fishery Conservation and Management Act**

The Magnuson-Stevens Fishery Conservation and Management Act of 1996 (MSA) ensures that renewable fishery resources are not exhausted by over harvesting or other environmental damage. Section 305 of the MSA (16 U.S.C. § 1855) requires Federal agencies to consult with the Secretary of Commerce through NMFS before authorizing any action which may adversely affect EFH identified under the Act. The Fishery Management Councils, in conjunction with NMFS, designate EFH, which can consist of both the water column and the seafloor of an aquatic area needed to support one or more life stages of a managed fish species.

When reviewing an action, the NRR PM should coordinate with RERB to determine whether impacts to EFH are reasonably foreseeable due to the requested action. NRR actions typically requiring an EFH Consultation include license renewal reviews and license amendment reviews for extended power uprates. RERB will typically initiate such EFH Consultations in conjunction with its NEPA review and document the status or outcome of the EFH Consultation in the EA or EIS. If no change to any aspect of aquatic resources is anticipated, then an evaluation of EFH should not be necessary.

However, if a change to any aspect of aquatic resources is anticipated, then the NRC staff should determine if the requested action will result in any adverse effects to designated EFH, and if so, contact NMFS to initiate EFH consultation. The consultation process for an environmental review requiring an EFH assessment can be found in *Essential Fish Habitat Consultation Guidance*, Version 1.1, published by NMFS. The guidance is available at:  
[http://www.habitat.noaa.gov/pdf/efhconsultationguidancev1\\_1.pdf](http://www.habitat.noaa.gov/pdf/efhconsultationguidancev1_1.pdf).

### **5.2.7. NRR Responsibilities under the Clean Air Act**

The Clean Air Act (CAA) regulates air pollutant emissions from stationary and mobile sources in the U.S. The CAA authorizes the Environmental Protection Agency (EPA) to establish National Ambient Air Quality Standards (NAAQS) (40 CFR Part 50) to protect public health and welfare and to regulate emissions of hazardous air pollutants. NAAQS, also called “criteria” pollutants, have been set for six principal pollutants that are considered harmful to human health and the environment: carbon monoxide, lead, nitrogen dioxide, particulate matter, ozone, and sulfur dioxide. In order to meet the NAAQS set forth by the EPA, states are required to create state implementation plans and update the plans periodically. The CAA also includes provisions for the EPA to implement the Acid Rain Program, which entails a market-based nationwide cap and trade program to reduce sulfur dioxide emitted by electric power plants. Additionally, the CAA includes programs and provisions for reducing toxic air pollutants and ground-level ozone. Larger industrial and commercial sources of air emissions are required to obtain an operating permit from the State, which may consolidate the information requirements of the programs described above into one permit.

The 1990 amendments to the CAA include a provision that no Federal agency may support any activity that does not conform to a state implementation plan designed to achieve the NAAQS. EPA issued the General Conformity Rule to implement section 176(c) of the CAA, as amended (58 FR 63214, November 30, 1993). The rule ensures that Federal actions do not interfere with a state’s plans to bring an area into attainment with a NAAQS or any applicable State Implementation Plan (SIP) or Tribal Implementation Plan (TIP). EPA issued revised general conformity regulations, in a final rule published on April 5, 2010, with an effective date of July 6, 2010 (75 FR 17254), to streamline the general conformity process. The EPA regulations (40 CFR Part 93, Subpart B) require Federal agencies to conduct an applicability analysis and possibly prepare a written conformity determination if a proposed action occurs in a NAAQS nonattainment area (NAA) or maintenance area and the total of the action’s direct and indirect emissions of criteria pollutants and their precursors would exceed threshold (i.e., de minimis) emissions levels (40 CFR 93.153(b)). A NAA is any geographic area of the United States that is in violation of any NAAQS and has been designated as non-attainment under the CAA. A maintenance area is any geographic area of the United States previously designated non-attainment and subsequently redesignated to attainment and is subject to the requirement to develop a maintenance plan under the CAA. These areas are designated in 40 CFR Part 81, Subpart C. If the proposed action does not occur in a NAAQS nonattainment or maintenance area, the general conformity rule does not apply.

#### *PROCEDURES FOR LICENSING ACTIONS*

The following guidance is provided regarding NRC staff's responsibilities under the CAA. The NRR PM should consult with RERB for the following actions:

1. Determine if the proposed action is located in an attainment, non-attainment, or maintenance area as identified in 40 CFR Part 81, Subpart C.
2. Determine if the proposed action will result in an increase in air emissions.
3. For a proposed action that will cause an increase in air emissions and is located in a nonattainment or maintenance area, determine if the emissions exceed threshold (i.e., de minimis) emissions levels (40 CFR 93.153(b)).
4. If project emissions exceed threshold emission levels, determine if a conformity analysis is required. For more details on conducting conformity determinations, see NRO's Revision to Staff Guidance for Conducting General Conformity Determinations (ML12313A190).

The EA should identify nonattainment, or maintenance areas of the proposed action location and the source of air emissions resulting from the proposed action. For most NRR licensing actions resulting in an EA, an assessment of air impacts is generally not necessary unless the proposed action would involve air emissions with potentially significant impacts. If the proposed action would change air emissions, the NRR PM should consult with RERB to determine if a conformity analysis should be performed.

#### **5.2.8. NRR Responsibilities under the Clean Water Act**

The Clean Water Act (CWA) of 1972 was enacted to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." The CWA aims to accomplish this objective by preventing point and nonpoint pollution sources, providing assistance to publicly owned treatment works for the improvement of wastewater treatment, and maintaining the integrity of wetlands. The CWA does not directly address groundwater or water availability. However, many states regulate surface water and/or groundwater withdrawals through a combination of registration and/or permitting.

Section 401 of the CWA requires that an applicant for a Federal license or permit that may result in a discharge of regulated pollutants into waters of the United States first obtain, and provide to the Federal licensing agency (i.e. NRC), a Section 401 water quality certification from the water pollution agency of the State or authorized tribe with jurisdiction over the discharge. This certification denotes that discharges from the activity or project to be licensed will comply with applicable CWA requirements and specifically, that the discharge will not cause or contribute to a violation of governing water quality standards. If the applicant has not received a Section 401 certification, the NRC cannot issue a license unless the

authorized agency has otherwise waived the requirement. The status of compliance in obtaining a Section 401 certification and requirements should be documented in the EA.

Section 402 of the CWA established the National Pollutant Discharge Elimination System (NPDES) program, which regulates point source discharges of pollutants (effluents) into the waters of the United States. NPDES permits are issued by the EPA or an authorized state or territory to discharging facilities. To date, 46 states and 1 U.S. territory have been delegated and assumed full or partial NPDES permitting authority from the EPA. In summary, NPDES permits set specific technology-based and/or water quality-based discharge limits, prescribe monitoring and reporting requirements, as well as set special conditions applicable to each discharger. Authorized states are prohibited from adopting standards that are less stringent than those established under the Federal NPDES permit program, but may adopt or enforce standards that are more stringent than the Federal standards.

In order to comply with the CWA when reviewing a licensing action, if the licensing action would change any discharge to a water body, the NRR PM should consult with RERB staff to determine if the change in discharge quantity or quality would remain within the limits of the facility's NPDES permit. Note also that any NPDES permit holder is required to notify the responsible permitting authority as soon as possible of any planned physical alterations or additions to the permitted facility that could change the nature or increase the quantity of pollutants discharged. The status of compliance of the NPDES permit requirements should be documented in the EA. The environmental impacts of the proposed action need to be considered in the EA irrespective of whether a permit has been obtained. In order to adequately assess environmental impacts, the State's 303(d) list of impaired waters, which classifies the quality of each State's water bodies, may also need to be reviewed to determine any preexisting and/or potential sources of environmental impacts on the affected water bodies.

#### **5.2.9. NRR Responsibilities under the Safe Drinking Water Act**

Drinking water sources are protected by the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*) and other Federal laws. If the NRR PM determines that the proposed action may have an impact on any drinking or potable water source, the NRR PM should consult with RERB staff.

### **6. PERFORMANCE MEASURES**

Not applicable

### **7. PRIMARY CONTACT**

**Nancy Martinez**  
**301-415-2719**  
[Nancy.Martinez@nrc.gov](mailto:Nancy.Martinez@nrc.gov)

**8. RESPONSIBLE ORGANIZATION**

NRR/DLR/RERB

**9. EFFECTIVE DATE**

TBD July 1, 2013

**10. REFERENCES**

10 CFR Part 50. *Code of Federal Regulations*, Title 10, *Energy*, Part 50, "Domestic Licensing and Production and Utilization Facilities."

10 CFR Part 51. *Code of Federal Regulations*, Title 10, *Energy*, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

10 CFR Part 54. *Code of Federal Regulations*, Title 10, *Energy*, Part 54, "Requirements for Renewal of Operating Licenses for Nuclear Power Plants."

10 CFR Part 170. *Code of Federal Regulations*, Title 10, *Energy*, Part 170, "Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended."

15 CFR Part 930. *Code of Federal Regulations*, Title 15, *Commerce and Foreign Trade*, Part 930, "Federal Consistency with Approved Coastal Management Programs."

36 CFR Part 800. *Code of Federal Regulations*, Title 36, *Parks, Forests, and Public Property*, Part 800, "Protection of Historic Properties."

40 CFR Part 50. *Code of Federal Regulations*, Title 40, *Protection of the Environment*, Part 50, "National Primary and Secondary Ambient Air Quality Standards."

40 CFR Part 51. *Code of Federal Regulations*, Title 40, *Protection of the Environment*, Part 51, "Requirements for Preparation, Adoption, and Submittal of Implementation Plans."

40 CFR Part 81. *Code of Federal Regulations*. Title 40, *Protection of Environment*, Part 81, "Designation of Areas for Air Quality Planning Purposes."

40 CFR Part 93. *Code of Federal Regulations*. Title 40, *Protection of Environment*, Part 93, "Determining Conformity of Federal Actions to State or Federal Implementation Plans."

40 CFR Part 93. *Code of Federal Regulations*, Title 40, *Protection of the Environment*, Part 93, "Determining Conformity of Federal Actions to State or Federal Implementation Plans."

50 CFR Part 402. *Code of Federal Regulations*, Title 50, *Wildlife and Fisheries*, Part 402, “Interagency Cooperation – Endangered Species Act of 1973, as Amended.”

50 CFR Part 600. *Code of Federal Regulations*, Title 50, *Wildlife and Fisheries*, Part 600, “Magnuson-Stevens Act Provisions.”

58 FR 63214, Environmental Protection Agency. Determining Conformity of General Federal Actions to State of Federal Implementation Plans, Vol. 58, No. 228. November 30, 1993.

65 FR 77124, National Oceanic and Atmospheric Administration. Coastal Zone Management Act Federal Consistency Regulations. Vol. 65, No. 237, pp. 77124-77125. December 8, 2000.

69 FR 52040, U.S. Nuclear Regulatory Commission. Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions. Vol. 69, No. 163, pp. 52040-52048. August 24, 2004.

75 FR 17254, U.S. Environmental Protection Agency. Revisions to the General Conformity Regulations; Final Rule. Vol. 75, No. 64, pp. 17254–17279, April 5, 2010.

Atomic Energy Act of 1954 (AEA). 42 USC 2011, et seq.

Clean Air Act of 1990 (CAA). 42 USC 7401-7671q.

Clean Water Act of 1977 (CWA). Federal Water Pollution Control Act of 1977, 33 USC 1251, et seq.

Coastal Zone Management Act of 1972 (CZMA). 16 USC 1456(c)(3)(A).

Council on Environmental Quality. 1997. “*Environmental Justice: Guidance Under the National Environmental Policy Act*.” Washington, D.C. Available URL: <http://ceq.hss.doe.gov/nepa/regs/ej/justice.pdf> (accessed August 20, 2012).

Endangered Species Act of 1973 (ESA). 16 USC 1531, et seq.

Executive Order 12898. 1994. “Federal Actions to Address Environmental Justice in Minority and Low-Income Populations.” *Federal Register*, Vol. 59, No. 32.

Fish and Wildlife Coordination Act (FWCA). 16 USC 661, et seq.

Magnuson-Stevens Fishery Conservation and Management Act (MSA). PL 94-265, as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, PL 109-479. 16 USC 1855.

National Environmental Policy Act of 1969 (NEPA). 42 USC 4321, et seq.

National Historic Preservation Act of 1966 (NHPA). 16 USC 470, et seq.

National Oceanic and Atmospheric Administration. 2008. “Ocean and Coastal Resource Management” website. National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce. Available URL: <http://coastalmanagement.noaa.gov/welcome.html> (accessed August 20, 2012).

National Marine Fisheries Service. 2004. *Essential Fish Habitat Consultation Guidance*. Version 1.1. Silver Spring, MD. Available URL: [http://www.habitat.noaa.gov/pdf/efhconsultationguidancev1\\_1.pdf](http://www.habitat.noaa.gov/pdf/efhconsultationguidancev1_1.pdf) (accessed August 20, 2012).

U.S. Fish and Wildlife Service. 1992. *Digest of Federal Resource Laws*. Available URL: <http://www.fws.gov/laws/lawsdigest/resourcelaws.htm> (accessed August 20, 2012).

U.S. Fish and Wildlife Service and National Marine Fisheries Service. 1998. *Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act*. Washington, D.C. Available URL: <http://sero.nmfs.noaa.gov/pr/esa/pdf/Sec%207%20Handbook.pdf> (accessed August 20, 2012).

U.S. Fish and Wildlife Service. 2004. *Water Resources Development Under the Fish and Wildlife Coordination Act*. Arlington, VA. Available URL: <http://www.fws.gov/habitatconservation/fwca.html> (accessed August 20, 2012).

U.S. Nuclear Regulatory Commission. 1996. *Generic Environmental Impact Statement for License Renewal of Nuclear Plants*. NUREG-1437, Volumes 1 and 2. Washington, D.C. May 1996. ADAMS Nos. ML040690705 and ML040690738.

U.S. Nuclear Regulatory Commission. 1996. *Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors*. NUREG-1537. Washington, D.C. February 1996. ADAMS No. ML042430055.

U.S. Nuclear Regulatory Commission. 1999. *Standard Review Plans for Environmental Reviews for Nuclear Power Plants: Operating License Renewal*. NUREG-1555, Supplement 1. Washington, D.C. October 1999. ADAMS No. ML003702019.

U.S. Nuclear Regulatory Commission. 2005. *U.S. NRC Regulations Handbook*. NUREG/BR-0053, Revision 6. Washington, D.C. September 2005. ADAMS No. ML052720461.

U.S. Nuclear Regulatory Commission. 2007. *Delegation of Signature Authority*. Office Instruction ADM-200, Revision 10. Washington, D.C. January 29, 2007. ADAMS No. ML070050008.

**Appendix A - Change History****Office Instruction LIC-203****Table 1.** LIC-203 Change History

<b>Date</b>	<b>Description of Changes</b>	<b>Method Used to Announce &amp; Distribute</b>	<b>Training</b>
06/21/2001	This OI is a conversion of OL-906, Revision 2, which included guidance on environmental justice and improvements to format and content of the EA template. Changes to the guidance include minor clarifications offered by the NRR staff. No significant policy or procedural changes have been made to the guidance document	(1) E-mail to all staff (2) Copies to SES and Licensing Assistants	E-mail announcement with recommended self-study
05/24/2004	This is a revision of NRR Office Instruction LIC-203. Changes to the guidance include the clarification of NRR Responsibilities under the Fish and Wildlife Coordination Act. There is a policy change in fulfilling NRR Responsibilities under the National Historic Preservation Act. The Commission is presently formulating its policy statement on environmental justice matters. When finalized, appropriate modifications to this OI will be considered. Other than these, no significant policy or procedural changes have been made to the guidance document.	E-mail to all staff	E-mail announcement with recommended self-study
02/17/2009	This document is the second revision of NRR Office Instruction LIC-203. This revision incorporates the final Commission policy on environmental justice; incorporates NRR responsibilities under the Magnuson-Stevens Fishery Conservation and Management Act; the Clean Air Act, and the Clean Water Act; clarifies NRR responsibilities under the Coastal Zone Management Act and the Fish and Wildlife Coordination Act; revises figures and tables; removes the environmental assessment templates to enable the templates to be kept by RERB as a living document; and amends the roles and responsibilities to reflect the current NRR	E-mail to all staff	E-mail announcement with recommended self-study



	office organization.		
<del>X/X/2012</del> 6/24/2013	<p>This document is the third revision of NRR Office Instruction LIC-203. This revision incorporates the amended final rule for 10 CFR 51.22 “Criterion for categorical exclusion; identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review,” which was published May 19, 2010. This revision incorporates updated guidance on the Clean Air Act and Clean Water Act. In addition, this revision incorporates updated guidance on the Endangered Species Act, Section 7 formal and informal consultations. Lastly, this revision incorporates the Commission’s updated guidance on environmental justice to clarify instructions and account for changes in the 2010 Census and clarifies NRR responsibilities under the National Historic Preservation Act.</p>	E-mail to all staff	E-mail announcement with recommended self-study

## Appendix B

### Preparation and Use of Categorical Exclusions

Categorical exclusions (CATXs) are specific categories of actions that the NRC has previously determined will not have an individual or cumulative significant effect on the human environment. An agency establishes its list of categorical exclusions by rulemaking. The NRC's list of categorical exclusions is set forth in 10 CFR 51.22(c). Experience has shown that these activities do not result in any significant effect upon the human environment, and therefore, an in-depth environmental review is not necessary for each successive and identical action. The purpose of categorically excluding activities that have no individual or cumulative significant effects on the environment is to allow the NRC staff to focus on more extensive NEPA analyses for those actions that may significantly affect the quality of the human environment.

On April 19, 2010, NRC amended the list of activities included within 10 CFR 51.22(c) based on the regulatory experience gained since the initial development of the regulation in March 1984 (75 FR 20248). Specifically, staff reviewed EAs and associated FONSI's from 1987 to 2007 to see which activities repeatedly resulted in no significant impacts to the human environment. Based on this review, the scopes of some of the NRC's categorical exclusions were expanded and two new categorical exclusions were added. Section B.2 describes these recent changes.

The NRC has the option to prepare and issue an EA or EIS for any proposed action, even if the proposed action meets the criteria for a particular categorical exclusion (10 CFR 51.22(b)). If a proposed action meets the criteria for a particular categorical exclusion, and the NRC staff wishes to rely upon that categorical exclusion, then the staff must determine that no extraordinary circumstances<sup>2</sup> are present that will preclude use of that categorical exclusion. Extraordinary circumstances are those in which a normally excluded action has the potential to have a significant environmental effect (see CEQ regulation defining the term "categorical exclusion" at 40 CFR 1508.4). Use of a CATX would not be appropriate in those situations in which extraordinary circumstances are present; the staff must prepare an EA, or if necessary, an EIS. Extraordinary circumstances are discussed further below.

#### B.1 Documenting the CATX

The NRR PM should document any NRR licensing or regulatory action that is determined to fall within the scope of a categorical exclusion listed in 10 CFR 51.22. This documentation serves as an administrative record that the NRC had a practical rationale for applying the CATX. The written analysis showing the application of the CATX can be included within any NRC publicly available document, such as the safety or technical review, a *Federal Register* notice, a letter of response to the applicant/licensee or otherwise added to the docket for that particular project. A separate stand alone decision document is not required to document the CATX.

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<sup>2</sup> The NRC uses the term "special circumstances" in 10 CFR 51.22(b). The term "special circumstances" is interpreted to be analogous to "extraordinary circumstances," the phrase used by CEQ and virtually all other Federal agencies.

At a minimum, such documentation should include (1) an explanation on how the action fits within one of the categorical exclusions listed in 10 CFR 51.22 and (2) a statement that no extraordinary circumstances would preclude the proposed project from qualifying as a categorically excluded action. A template and two examples of CATX documentation are provided below.

General Template:

*This action is categorically excluded under 10 CFR 51.22(c) [state subsection(s) that apply], and there are no extraordinary circumstances present that would preclude reliance on this exclusion. The NRC staff has made this finding because this action applies [describe how the proposed actions fits within the categorical exclusion and any subcategories or factors described within the categorical exclusion]. [The following two sentences are added to document that there are no extraordinary circumstances that would prevent the use of the categorical exclusion:] In addition, the NRC staff has determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. As such, there are no extraordinary circumstances present that would preclude reliance on this categorical exclusion. [It is the Project Manager's responsibility to ensure the accuracy of the above statements]. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with [summarize NRC's action].*

Example of a CATX for NRC approval of a licensee's or applicant's request for an exemption from reporting requirements<sup>3</sup>:

*NRC approval of this exemption request is categorically excluded under 10 CFR 51.22(c)(25)(vi)(B), and there are no extraordinary circumstances present that would preclude reliance on this exclusion. [The following two sentences apply to the criteria that must be met to use one of the exemption request categorical exclusions listed in 10 CFR 51.22(c)(25)—in this specific example, clause (B), which applies to licensee requests for exemptions from reporting requirements:] The [NRR staff director (or his or her designee)] has made this finding because this action applies to granting of an exemption from the reporting requirements of [identify NRC regulation]. The [NRR staff director (or his or her designee)] has determined that approval of this exemption request involves no significant hazards consideration; no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; no significant increase in individual or cumulative public or occupational radiation exposure; no significant construction impact; and no significant increase in the potential for or consequences from radiological accidents. [The following two sentences are added to document that there are no extraordinary circumstances that would prevent the use of the categorical exclusion:] In addition, the NRC staff has determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. As such, there are no extraordinary circumstances present that would preclude reliance on this categorical exclusion. [It is the Project Manager's responsibility to ensure the accuracy of the above statements]. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or*

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<sup>3</sup> The NRR PM should be aware that categorical exclusions are appropriate for a limited scope of NRC approvals of licensee exemption requests as specified in 10 CFR 51.22(c)(9) and 10 CFR 51.22(c)(25).

*environmental assessment need be prepared in connection with the approval of this exemption request.*

Example of a CATX for NRC approval of a licensee's request for an amendment to a license issued under 10 CFR Part 50:

*NRC approval of this license amendment request is categorically excluded under 10 CFR 51.22(c)(12), and there are no extraordinary circumstances present that would preclude reliance on this exclusion. [The following two sentences apply to the criteria that must be met to use the categorical exclusion listed in 10 CFR 51.22(c)(12)—in this specific example, issuance of a Part 50 license amendment request relating solely to safeguards matters:] The [NRR staff director (or his or her designee)] has made this finding because this action applies to granting an amendment to a license issued under 10 CFR Part 50, the requested amendment relates solely to safeguards matters, and the amendment would be confined to the following activities: (i) organizational and procedural matters; (ii) modifications to systems used for security and/or materials accountability; and (iii) administrative changes. The NRC staff has determined that approval of this license amendment will not involve any significant construction impacts. [The following two sentences are added to document that there are no extraordinary circumstances that would prevent the use of the categorical exclusion:] In addition, the NRC staff has determined that there would be no significant impacts to biota, water resources, historic properties, cultural resources, or socioeconomic conditions in the region. As such, there are no extraordinary circumstances present that would preclude reliance on this categorical exclusion. [It is the Project Manager's responsibility to ensure the accuracy of the above statements]. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.*

For actions which clearly qualify for a CATX, no coordination with RERB is necessary. In some cases, actions are not clearly encompassed by the CATX or there are extraordinary circumstances whereby an action normally covered under a CATX listed in 10 CFR 51.22(c) could cause significant impacts to the human environment. In such cases, a more detailed environmental analysis may be appropriate. It is suggested that the NRR PM coordinate with RERB and, if appropriate, OGC, in making determinations on whether a CATX is applicable for actions that do not clearly qualify as a CATX.

An acceptable method for considering extraordinary circumstances and documenting a CATX decision is to use a checklist. Section B.3 contains a generic checklist with instructions, which can be used to document whether special circumstances are present.

## **B.2 Revisions to the List of Categorical Exclusions**

On April 19, 2010, the NRC revised the 10 CFR 51.22 requirements regarding categorical exclusions (75 FR 20248). As described above, many of the revisions were based on a review of EAs over an extended period to determine which NRC actions consistently resulted in findings of no significant impact. Below is a summary of the changes for categorical exclusions that may be relevant to NRR. The "Discussion and Findings" are excerpts from the final rule's statements of consideration that explain why the categorical exclusion was revised or added to

10 CFR 51.22(c). While this section focuses on a subset of categorical exclusions that are most likely to be used by NRR, any of the 25 categorical exclusions described in 10 CFR 51.22(c) may be used, if appropriate, for NRR activities.

#### Background for 10 CFR 51.22(c)(3)

This CATX states:

Amendments to any part in this chapter which relate to—

- (i) Procedures for filing and reviewing applications for licenses or construction permits or early site permits or other forms of permission or for amendments to or renewals of licenses or construction permits or early site permits or other forms of permission;
- (ii) Recordkeeping requirements;
- (iii) Reporting requirements;
- (iv) Education, training, experience, qualification or other employment suitability requirements; or
- (v) Actions on petitions for rulemaking relating to these amendments.

Statement of Consideration (75 FR 20253):

*The final rule amends 10 CFR 51.22(c)(3) to delete the specific listing of 10 CFR Parts and to add a generic reference to reflect any part of CFR Chapter 10. This revision eliminates the need for changes due to new parts being added or deleted. As a result, efficiencies will be gained in the rulemaking process.*

*This amendment redesignates the existing subparagraph (iv) as subparagraph (v) and adds a new subparagraph (iv) to 10 CFR 51.22(c)(3) to expand the categorical exclusion to include amendments concerning education, training, experience, qualification, or other employment suitability requirements established in the regulations.*

#### Background for 10 CFR 51.22(c)(9)

This CATX states<sup>4</sup>:

Issuance of an amendment to a permit or license for a reactor under Part 50 or Part 52 of this chapter that changes a requirement or issuance of an exemption from a requirement, with respect to installation or use of a facility component located within the restricted area, as defined

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<sup>4</sup> On June 7, 2013, 10 CFR 51.22(c)(9) was revised to clarify that this categorical exclusion applies to stand alone exemption issuances (78 FR at 34246).

in Part 20 of this chapter; or the issuance of an amendment to a permit or license for a reactor under part 50 or part 52 of this chapter that changes an inspection or a surveillance requirement; provided that:

- (i) The amendment or exemption involves no significant hazards consideration;
- (ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; and
- (iii) There is no significant increase in individual or cumulative occupational radiation exposure.

Statement of Consideration (75 FR 20253):

*The final rule amends 10 CFR 51.22(c)(9) to broaden the scope of the categorical exclusion to include the granting of a power reactor licensee exemption request from a requirement pertaining to the installation or use of a facility component located within the restricted area, as defined in 10 CFR Part 20. Under the previous provision, the granting of such an exemption request would not be covered by this categorical exclusion and therefore, would have required the preparation of an EA. The Commission has now determined that there is ample data in the form of EAs and FONSIs to justify the categorical exclusion of the granting of these exemptions, provided that for each exemption request, the NRC first finds that the safety criteria set forth in 10 CFR 51.22(c)(9) is met (i.e., the exemption involves no significant hazards consideration, there is no significant change in the types of, or significant increase in the amounts of any effluents that may be released offsite, and there is no significant increase in individual or cumulative occupational radiation exposure). During the period 2003 through 2007, at least 50 EA/FONSIs resulted from licensee requests for such exemptions.*

#### Background for 10 CFR 51.22(c)(10)

This CATX states:

Issuance of an amendment to a permit or license issued under this chapter which—

- (i) Changes surety, insurance and/or indemnity requirements;
- (ii) Changes recordkeeping, reporting, or administrative procedures or requirements;
- (iii) Changes the licensee's or permit holder's name, phone number, business or e-mail address;
- (iv) Changes the name, position, or title of an officer of the licensee or permit holder, including but not limited to, the radiation safety officer or quality assurance manager; or
- (v) Changes the format of the license or permit or otherwise makes editorial, corrective or other minor revisions, including the updating of NRC approved references.

Statement of Consideration (75 FR 20253):

*The final rule amends 10 CFR 51.22(c)(10) to delete the specific listing of 10 CFR Parts and to add a generic reference to cover any part of 10 CFR, Chapter 1. This revision eliminates the need for changes due to new parts being added or deleted. As a result, efficiencies are gained in the rulemaking process.*

*In addition, 10 CFR 51.22(c)(10) is revised to add new subparagraphs (iii), (iv), and (v) to clarify that changes to a license or permit that are administrative, organizational, or editorial in nature are not subject to environmental review. The NRC has conducted several EAs, each resulting in a FONSI, for minor administrative changes to licenses and permits because these actions were not specifically identified in 10 CFR 51.22(c). These types of amendments to a license or permit facilitate the orderly conduct of the licensee's business and ensure that information needed by the Commission to perform its regulatory functions is readily available. These amendments would also include the changing of references on licenses and other licensee documents (e.g., licensee's operational procedures) to reflect amendments to NRC regulations and updated NRC-approved guidance (e.g., NUREG documents). Under the previous provision, the NRC was required to prepare EAs and FONSIs for the following administrative actions:*

- (1) Amendments to reflect changes in ownership;*
- (2) Amendments to reflect organization name changes;*
- (3) Amendments to reflect corporate restructuring, including mergers;*
- (4) Amendments to licenses to reflect changes in references; and*
- (5) Amendments correcting typographical and editorial errors on licenses, permits, and associated technical specification documents.*

*The Commission has consistently determined that these types of amendments have no significant effect on the human environment.*

Background for 10 CFR 51.22(c)(25):

This CATX states:

Granting of an exemption from the requirements of any regulation of this chapter, provided that—

- (i) There is no significant hazards consideration;
- (ii) There is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite;
- (iii) There is no significant increase in individual or cumulative public or occupational radiation exposure;
- (iv) There is no significant construction impact;
- (v) There is no significant increase in the potential for or consequences from radiological accidents; and
- (vi) The requirements from which an exemption is sought involve:
  - (A) Recordkeeping requirements;
  - (B) Reporting requirements;
  - (C) Inspection or surveillance requirements;
  - (D) Equipment servicing or maintenance scheduling requirements;
  - (E) Education, training, experience, qualification, requalification or other employment suitability requirements;
  - (F) Safeguard plans, and materials control and accounting inventory scheduling requirements;

- (G) Scheduling requirements;
- (H) Surety, insurance or indemnity requirements; or
- (I) Other requirements of an administrative, managerial, or organizational nature.

Statement of Consideration (75 FR 20255):

*The final rule adds a new categorical exclusion, 10 CFR 51.22(c)(25), which addresses the granting of licensee exemption requests from certain regulatory requirements. Various NRC regulations allow for the granting of specific exemptions from NRC regulations. Before an exemption may be granted, the NRC must satisfy certain criteria, namely, it must make findings that the exemption is “authorized by law,” “will not endanger life or property or the common defense and security,” and is “otherwise in the public interest.” In the case of Parts 50 and 52 exemptions, the exemption request must meet additional criteria. The NRC thoroughly evaluates each exemption request under these provisions, and only those exemption requests that meet these provisional criteria are granted.*

*Prior to this final rule, 10 CFR 51.22 did not provide a categorical exclusion for the granting of exemption requests from administrative, managerial, or organizational regulatory requirements that will not have a significant effect on the human environment. The NRC has found that the majority of the exemptions it grants are administrative or otherwise minor in nature and do not trigger any of the significance criteria that are required findings under other categorical exclusions, such as 10 CFR 51.22(c)(9)(i)-(iii). The NRC has prepared numerous EAs, each resulting in a FONSI, to support the granting of such exemption requests.*

*This categorical exclusion contains prescriptive criteria that limit its application to only those exemptions that will not have a significant effect on the human environment. The categorical exclusion only applies to those exemption requests that meet all of the criteria enumerated in 10 CFR 51.22(c)(25)(i)-(vi). Thus, the requirements from which the exemption is sought must be one of those listed in 10 CFR 51.22(c)(25)(vi). In addition, the granting of the exemption request cannot result in any:*

- (1) significant hazards consideration;*
- (2) significant change in the types or significant increase in the amounts of any effluents that may be released offsite;*
- (3) significant increase in individual or cumulative public or occupational radiation exposure;*
- (4) significant construction impact; or*
- (5) significant increase in the potential for or consequences from radiological accidents.*

*The NRC has found that granting exemptions for the types of requirements listed in subparagraphs 51.22(c)(25)(vi)(A)-(I) are categories of actions that normally do not result in any significant effect, either individually or cumulatively, on the human environment. Thus, in order for the categorical exclusion to be applicable to a specific exemption request, the NRC staff*



*must first make the safety findings described in 10 CFR 51.22(c)(25)(i)-(v) and then determine that the requirement is of a type listed in 10 CFR 51.22(c)(25)(vi).*

### **B.3 Checklist to Support an Environmental Finding of Categorical Exclusion**

A brief analysis is helpful in ensuring that the proposed action clearly falls within the scope of the CATX. Documenting this analysis establishes an administrative record of the NRC staff's rationale that would serve to rebut any challenge to the NRC's use of the CATX. The following checklist is intended to assist in both developing and documenting this analysis. The checklist will also assist in identifying any special or extraordinary circumstances that may prevent the use of the CATX and require, instead, the preparation of an EA.

Below is a general checklist. The checklist consists of questions which ask about the likelihood that a particular kind of environmental consequence would result from the proposed action. The NRR PM may consult with RERB staff, as necessary, in order to complete the checklist. If the checklist is used, it would be appropriate to file the documentation in ADAMS.

The preparer of this checklist (typically, the NRR PM) should have knowledge of the proposed action and the environmental features within or near the project area that could be impacted by the proposed action. Although some of the responses may be obtained from the preparer's own knowledge and observations, the preparer should also refer to previous environmental documents, correspondence between the NRC, the applicant/licensee, and others, and to information available on other Federal agency, state, and local government websites to fully complete the checklist.

To complete the checklist, the preparer should check "Yes" or "No" for each question.<sup>5</sup> Attach documentation as needed to support the answer. A "Yes" response may indicate that an extraordinary circumstance is present, removing the proposed action from the scope of the categorical exclusion. If there is a "Yes" response, the preparer should consult with RERB. A "No" response would support use of the categorical exclusion, with respect to that resource area. If more data is required to answer a question, note this in the "Rationale and/or Documentation" column. The NRR PM may consult with RERB staff about what data are needed and/or how to obtain it.

<b>Checklist to Support an Environmental Finding of Categorical Exclusion (CATX)</b>	
Project Name and Location	[insert]
Project Description	[insert]

<sup>5</sup> This paragraph applies to all checklist questions except for question no. 20.

**Checklist to Support an Environmental Finding of  
Categorical Exclusion (CATX)**

CATX Category (identify 10 CFR 51.22 CATX, e.g., 10 CFR 51.22(c)(9)).	[insert]
Does the CATX category selected above cover the full extent of the proposed action?	[insert]

Environmental Resource Area Review for Potential Effects and Impacts	Impact Anticipated?		Rationale and/or Documentation
	Yes	No	
<b>Potential Impacts to Biota, the Physical Environment, and Land Use</b> Consider whether the proposed action would result in any construction, digging, grading, vegetation clearing, or other ground-disturbing activities, or increases in noise, dust, sedimentation, pollution, effluents, or salt deposits, or other activities that could directly or indirectly affect the resources described below. Note that the terms “project” and “proposed action” are intended to be synonymous.			
1. <b>Biotic communities:</b> Would the project disturb areas with plant communities, wetlands, or aquatic habitats and/or cause displacement of wildlife, fish, migratory birds, or other biota? If yes, check appropriate boxes below.  <u>Check all appropriate boxes</u> <input type="checkbox"/> The proposed action would likely impact previously disturbed natural communities. <input type="checkbox"/> The proposed action would likely impact previously undisturbed natural communities. <input type="checkbox"/> Noise, construction, or other activities resulting from the proposed action would likely displace wildlife.			
2. <b>Water Resources:</b> Would the project significantly impact water quality to groundwater, surface water bodies, public water supply systems or violate Federal, State, or tribal water quality standards? Would the project cause a significant change in the types or a significant increase in the amounts of effluents that may be released to water bodies? Would the project significantly increase erosion or runoff?			

3.	<p><b>Special Status Species and Habitats:</b> Are there any State or Federally listed endangered, threatened, and candidate species (flora or fauna) or designated critical habitat within the project area that would be impacted by the proposed action? Is the project located in, or could the proposed action cause adverse effects to a waterway, stream, or water body that is designated as essential fish habitat?</p>			
4.	<p><b>Hazardous materials:</b> Would the proposed action involve or affect hazardous materials or involve construction in an area that contains hazardous materials and/or hazardous waste?</p>			
5.	<p><b>Air quality:</b> Would the proposed action include construction activities, increased emissions, or increased vehicular traffic? If yes, check appropriate boxes below.</p> <p><u>Check all appropriate boxes</u></p> <p><input type="checkbox"/> Project is located within or adjacent to USEPA-defined Nonattainment or maintenance area.</p> <p><input type="checkbox"/> Project is accounted for in State Implementation Plan.</p> <p><input type="checkbox"/> Project air pollutant emissions do not exceed applicable <i>de minimis</i> levels as defined by General Conformity.</p>			
6.	<p><b>Compatible land use:</b> Would the proposed action impact or change any land uses? If yes, check appropriate boxes below.</p> <p><u>Check all appropriate boxes</u></p> <p><input type="checkbox"/> The proposed action would likely have an impact on onsite land use.</p> <p><input type="checkbox"/> The proposed action would likely have an impact on offsite land use.</p> <p><input type="checkbox"/> Land use changes resulting from the proposed action would not be consistent with State or local plans, goals, policy, zoning or controls.</p>			
7.	<p><b>Special land use designations:</b> Would the proposed action impact floodplains, a U.S. National Park Service-designated Wild or Scenic River, or a coastal zone as defined by a State's Coastal Management Plan?</p>			
8.	<p><b>Parks, public lands, refuges and recreational resources:</b> Would the proposed action impact publicly owned land from a public park, recreation area, or wildlife or waterfowl refuge of national, state or local significance?</p>			

Environmental Resource Area Review for Potential Effects and Impacts		Impact Anticipated?		Rationale and/or Documentation
		Yes	No	
<b>Potential Impacts to Historic Properties and Historic and Cultural Resources</b> Consider whether the proposed action would result in any adverse effect to any historic property (as defined in the ACHP regulations at 36 CFR 800.16(l)) or historic or cultural resource, including but not limited to, ground-disturbing activities that could remove or damage historic properties or cultural resources or the construction of new structures that could impact viewsheds, as described below.				
9.	<p><b>Historic Properties:</b> Would the proposed action have an adverse effect on a prehistoric or historic district, site, building, structure, object or traditional cultural property (TCP) included in or eligible for the National Park Service’s <i>National Register of Historic Places</i>, or a State or local register of historic places? If yes, check appropriate boxes below.</p> <p><u>Check all appropriate boxes</u></p> <p><input type="checkbox"/> The proposed action would likely result in a visual impact to the viewshed of a historic property, such as a historic district, site, building, structure, object or TCP that is included in or eligible for listing in the <i>National Register of Historic Properties</i>, or a State or local register of historic places.</p> <p><input type="checkbox"/> The proposed action would likely result in an adverse effect, other than a viewshed impact, to a historic property, such as a historic district, site, building, structure, object or TCP that is included in or eligible for listing in the <i>National Register of Historic Places</i>, or a State or local register of historic places.</p> <p><input type="checkbox"/> The proposed action would directly or indirectly affect a district, site, building, structure, object or TCP over 50 years old.</p>			
10.	<p><b>Historic and Cultural Resources:</b> Would the proposed action have an effect on historic or cultural resources (<i>i.e.</i>, archaeological sites, TCP, prehistoric or historic districts, buildings, structures, or objects with an associated historical, cultural, archaeological, architectural, community, or aesthetic value) of Federal, Tribal, State or local significance? If yes, check appropriate boxes below.</p> <p><u>Check all appropriate boxes</u></p> <p><input type="checkbox"/> The proposed action would affect previously disturbed ground.</p> <p><input type="checkbox"/> The proposed action would affect previously undisturbed ground.</p> <p><input type="checkbox"/> The proposed action would likely result in a visual impact to the viewshed of a cultural resource (<i>e.g.</i>, by the construction of new buildings or structures).</p>			

Environmental Resource Area Review for Potential Effects and Impacts		Impact Anticipated?		Rationale and/or Documentation
		Yes	No	
11.	<b>Socioeconomics:</b> Would the project significantly change the amount of taxes paid by the licensee or the number of workers at the facility?			
12.	<b>Transportation:</b> Would the project cause a significant increase in traffic congestion or cause a degradation of level of service?			
13.	<b>Community Services and Housing:</b> Would the project cause disruption of or increased strain on community services (e.g., police, schools, hospitals) or be inconsistent with the plans or goals of the community? Is there adequate available housing for the potential influx of new workers?			
14.	<p><b>Noise levels:</b> Would the proposed action increase noise levels for noise sensitive areas (residences, schools, churches, hospitals)?</p> <p><u>Check all appropriate boxes</u></p> <p>The proposed action would cause the following type of increase in noise levels:</p> <p><input type="checkbox"/> Intermittent</p> <p><input type="checkbox"/> Temporary (i.e., less than 180 days)</p> <p><input type="checkbox"/> Long-term or permanent</p>			
15.	<p><b>Environmental justice:</b> Would the proposed action cause any human health or environmental effects on the general population? If yes, check appropriate boxes below.</p> <p><u>Check all appropriate boxes</u></p> <p><input type="checkbox"/> There are potentially affected minority and/or low-income populations within the impact area.</p> <p><input type="checkbox"/> If the above box is checked, would the proposed action cause any disproportionately high and adverse human health or environmental effects on minority and/or low-income populations? For example, would there be higher exposure rates to minority and/or low-income populations or increased traffic in these communities?</p>			

Environmental Resource Area Review for Potential Effects and Impacts		Impact Anticipated?		Rationale and/or Documentation
		Yes	No	
<b>Potential Impacts to Radiological Health</b>				
16.	<b>Human Health:</b> Would the proposed action cause a significant increase in individual or cumulative occupational or public radiation exposure?			
17.	<b>Accidents:</b> Would the proposed action cause a significant increase in the potential for or consequences from a radiological accident?			
18.	<b>Effluents:</b> Would the proposed action cause a significant change in the types or a significant increase in the amounts of any effluents that may be released offsite?			
<b>Other Considerations</b>				
19.	<b>Cumulative impacts:</b> When considered together with other past, present, and reasonably foreseeable future projects, on or off the project site, regardless of whether it is a Federal or non-Federal project, would the proposed action produce a significant cumulative effect?			
20.	<b>Environmental laws:</b> Has the applicant or licensee provided a list of applicable Federal, State, and local laws and regulations to which the proposed action is subject?			
21.	<b>Highly controversial:</b> Is the proposed action likely to be highly controversial on environmental grounds or is it likely to generate a great deal of public interest? A proposed action is considered highly controversial when an action is opposed on environmental grounds by a Federal, State, or local or Tribal government agency, or by a substantial number of persons affected by such action. The amount of public involvement and controversy related to previous actions at the site would be important to consider.			

Environmental Resource Area Review for Potential Effects and Impacts		Impact Anticipated?		Rationale and/or Documentation
		Yes	No	
22.	<p><b>Uncertainty:</b> Is there a high level of uncertainty about the proposed action's environmental impacts? Consider whether there is anything not known about the proposed action's potential impacts, and then whether this information gap has any significance. For example, when considering installation of monitoring equipment, it might not be known whether there are archeological sites in the vicinity. If the installation would result in ground disturbance, this uncertainty should be resolved before using a CATX and proceeding with the installation. If the installation would not result in ground disturbance, there may be no need to resolve the uncertainty.</p>			

Conclusions	
<p>Based on the above checklist, the preparer concludes:</p> <p><input type="checkbox"/> The proposed action meets the criteria of a listed CATX under 10 CFR 51.22(c), and no special or extraordinary circumstances exist that would require further environmental review (<i>i.e.</i>, preparation of an EA or EIS).</p> <p><input type="checkbox"/> The proposed action may result in significant impacts to the human environment. Therefore, a more detailed environmental review (<i>i.e.</i>, preparation of an EA or EIS) is required.</p>	
Licensing Project Manager Name	[insert]
Licensing Project Manager Signature	[insert]
Date	[insert]

## Appendix C

### Content of NRR Environmental Assessments

This guidance is intended to provide assistance in developing an environmental assessment (EA). The reviewer may use the Environmental Assessment Procedural Flow Chart (Fig. 1) to aid in determining if the proposed action requires an EA, an Environmental Impact Statement (EIS), or meets the criteria for a categorical exclusion. In accordance with subsection (a) of 10 CFR 51.30, "Environmental Assessment," EA sections are outlined below with a summary of the information that should be included in each section. The sections are as follows:

- identification of the proposed action;
- the purpose and need for the proposed action;
- identification of reasonable alternatives to the proposed action;
- the environmental impacts of the proposed action;
- the environmental impacts of alternatives to the proposed action, as appropriate;
- list of agencies and persons consulted; and
- identification of sources used.

The specific sections of the EA are differentiated below by the underscore.

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#### Identification of the Proposed Action

This section briefly describes the proposed action, references the pertinent licensee application, if any, and includes the date of such application.

#### The Need for the Proposed Action

A discussion of the need for the proposed action is required by 10 CFR 51.30(a)(1)(i). When writing this portion of the EA, the preparer should discuss the applicant's motivation for submitting the application to the NRC. For example, does the requested exemption or license amendment provide some benefit to the applicant if granted? How would the applicant be affected if the application was not approved?

#### Identification and Description of Alternatives to the Proposed Action

This section identifies, describes, and evaluates reasonable alternatives to the proposed action, including at a minimum, the no action alternative. In addition, as required by 10 CFR 51.30(a)(1)(ii), this section should describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.



### Environmental Impacts of the Proposed Action

The environmental impacts of the proposed action must be evaluated in accordance with 10 CFR 51.30(a)(1)(iii). This section should include an evaluation of both radiological and non-radiological impacts. Impacts can be direct, indirect, cumulative, long-term, and short-term.

The preparer should evaluate the environmental resource areas below. It is important to understand that all environmental resource areas are not required to be discussed in detail in each EA. The preparer should focus the analysis and discussion on resource areas that are expected to be impacted.

- Radiological and Human Health: The preparer should briefly discuss the radiological impacts (e.g., changes in dose) to members of the public and occupational workers that result from the proposed action. The discussion should include changes to the types and amounts of radioactive discharges (gaseous, liquid, and solid material) and direct radiation during routine operations and any actions considered by the licensee to keep doses as low as is reasonably achievable (ALARA). For the radiological impacts that result from design basis accidents (DBAs), the preparer should briefly discuss the radiological impacts for the proposed action by comparing the calculated dose submitted by the licensee against the applicable dose criteria in 10 CFR 100.11. The preparer should coordinate the draft DBA evaluation with the licensing Project Manager in the Division of Operating Reactor Licensing to ensure that the DBA discussion in the EA or EIS is consistent with the conclusions contained in the safety evaluation for the proposed licensing action. For routine operations, the preparer should compare the public and occupational worker doses that are expected for the proposed action to ensure compliance with the dose limits in 10 CFR Part 20.
- Land Use: The preparer should evaluate any changes in land use including temporary or permanent construction and conversion of undisturbed or previously disturbed land. Note that this resource area may overlap with ecology, archaeological, and other resource areas, but may warrant a separate discussion depending on the type of modification that would occur as a result of the proposed action.
- Water Use: The preparer should evaluate any changes in water use including altered intake or discharge volume, altered temperature of discharged water, or any other change in use of surface or ground water that would result from the proposed action. The preparer should ensure that any changes to water use are within the limits set forth by the applicant's National Pollutant Discharge Elimination System (NPDES) permit, if applicable.
- Air Resources: The preparer should evaluate any changes to non-radiological air emissions, specifically carbon monoxide, lead, nitrogen dioxide, particulate matter, ozone, and sulfur dioxide, which are regulated under the Clean Air Act (CAA). Refer to section 5.2.7 for a description of NRR's responsibilities under the CAA.
- Ecology: The preparer should evaluate any changes to both the aquatic and terrestrial environment(s) including alterations in natural communities, changes in species composition, population dynamics, and other impacts that may result from the proposed action.

- Threatened, Endangered, and Protected Species and Essential Fish Habitat: The preparer should evaluate any impacts to threatened, endangered, and protected species and/or critical habitat under the Endangered Species Act and impacts to EFH under the Magnuson-Stevens Act. Refer to sections 5.2.4 and 5.2.6 for a description of NRR's responsibilities under these laws.
- Historic and Cultural Resources: The preparer should evaluate any changes to historic properties and cultural resources under the National Historic Preservation Act (NHPA). Refer to section 5.2.5 and Appendix G for a description of NRR's responsibilities under the NHPA.
- Socioeconomics and Environmental Justice: The preparer should evaluate any impact to socioeconomic conditions and minority populations and low-income populations. Refer to section 5.2.2 for a description of NRR's responsibilities under the NRC's *Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions* (69 FR 52040) and Appendix D for procedures for an environmental justice review.

The preparer should describe each resource that would be affected by the proposed licensing or regulatory action and the significance of the relationship between the environmental resource and the change caused by the proposed action. For example, air (the environmental resource) would be affected by a release of particulate matter (the plant component) resulting from the proposed action and the significance of the release would depend on the types and amounts of the emissions. In this case, the preparer would address the question, would the emission for the contaminant be above the regulatory limits or would it be a small fraction of the regulatory limits? This section should clearly state which resources are affected by the proposed action. Likewise, it should clearly state that no environmental resources are affected, if that is the case.

Although impacts may exist, they may not be significant, and impacts can be beneficial as well as adverse. However, an impact that is not significant does not equate to "no impact." Typical impacts may include, but are not limited to:

- Increased radiation dose to workers and/or members of the public;
- Habitat destruction;
- Degradation of water quality or water supply;
- Increased air emissions;
- Increased noise;
- Degradation of wetlands or bogs;
- Damage or reduced access to historic properties or cultural resources;
- Changes to local or regional socioeconomic conditions or population demographics; and
- Increased traffic or other transportation effects.

If a FONSI is to be issued, the impacts section should certify that the proposed action would not significantly increase the probability of accidents, would not increase any radioactive effluents or the resultant doses above regulatory limits, adversely affect any endangered or threatened species, or entail an NRC undertaking involving historic sites. Additionally, if the proposed action (typically a change in a plant component or a change in plant operation) does not affect any environmental resources, explain this in the impacts section.

#### Environmental Impacts of the Alternatives to the Proposed Action

Alternatives to the proposed action must be evaluated in accordance with 10 CFR 51.30(a)(1)(ii) and (iii). At a minimum, all EAs must include the no-action alternative. For those actions where impacts are not significant, it is reasonable to consider only a limited range of alternatives.

A non-significant impact does not equate to no impact; therefore, the NRC staff should consider all reasonable alternatives. If the “no-action” alternative is the only alternative examined, the alternatives section may contain the following statement, if applicable:

“As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the “no-action alternative”). Denial of the proposed action would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.”

#### Alternative Use of Resources

Agencies must consider alternative courses of action if the proposed action involves an unresolved resource conflict in accordance with Section 102(2)(E) of NEPA. This section should include a description of how available resources, such as water, land, or other physical materials, would be used under the proposed action. This consideration would take place when the objective of the proposed action can be achieved in two or more ways that will have differing impacts on one or more natural resources even if a FONSI had been made.

#### Mitigation Measures (if applicable)

EAs should incorporate mitigation measures in the proposed action and alternatives, when appropriate. These mitigation measures may assist in a FONSI if the mitigation measure can be enforced by the NRC or another Federal, State, tribal, or local governmental agency. The analysis should address the anticipated effectiveness of these mitigation measures in reducing impacts or enhancing beneficial impacts. Impacts need not be significant for mitigation measures to be considered. Any mitigation measures used to justify FONSI should be tangible and specific. For example, mitigation measures that avoid, minimize, rectify, reduce over time, or compensate are tangible as opposed to measures that include activities such as further consultation, coordination, and study. Measures should include such things as design alternatives that would reduce emissions, construction impacts, land disturbances, aesthetic intrusion, etc. All relevant, reasonable mitigation measures that could improve the project should be identified, even if they are outside the jurisdiction of the NRC.

#### Agencies and Persons Consulted

A list of agencies (Federal, State, Tribal, and local government) and persons consulted must be included in accordance with 10 CFR 51.30(a)(2). The consultation must be documented in a brief summary in the EA and should contain (1) the name of the agency or person contacted, (2) the date and purpose of the consultation, (3) a brief summary of the agency’s or person’s

comments and the staff's resolution or disposition of such comments, and (4) references to publicly available documents containing additional information, as applicable.

The person preparing the EA should briefly describe why the consultation was initiated. For example, if the National Marine Fisheries Service was contacted to discuss a specific issue involving short-nosed sturgeon, the summary could be worded as follows:

“The National Marine Fisheries Service was contacted on [insert date], to discuss and evaluate the ability of the short-nosed sturgeon to avoid capture after the proposed modification of river water intake.”

If the consultation was made to meet a programmatic requirement and not a specific issue, the consultation can be summarized as follows:

“In accordance with its stated policy, on [insert date], the staff consulted with [insert name of agency official or person] of the [insert name of agency, if applicable], regarding the environmental impact of the proposed action. The [insert name of agency official or person] had [the following comments/no comments].”

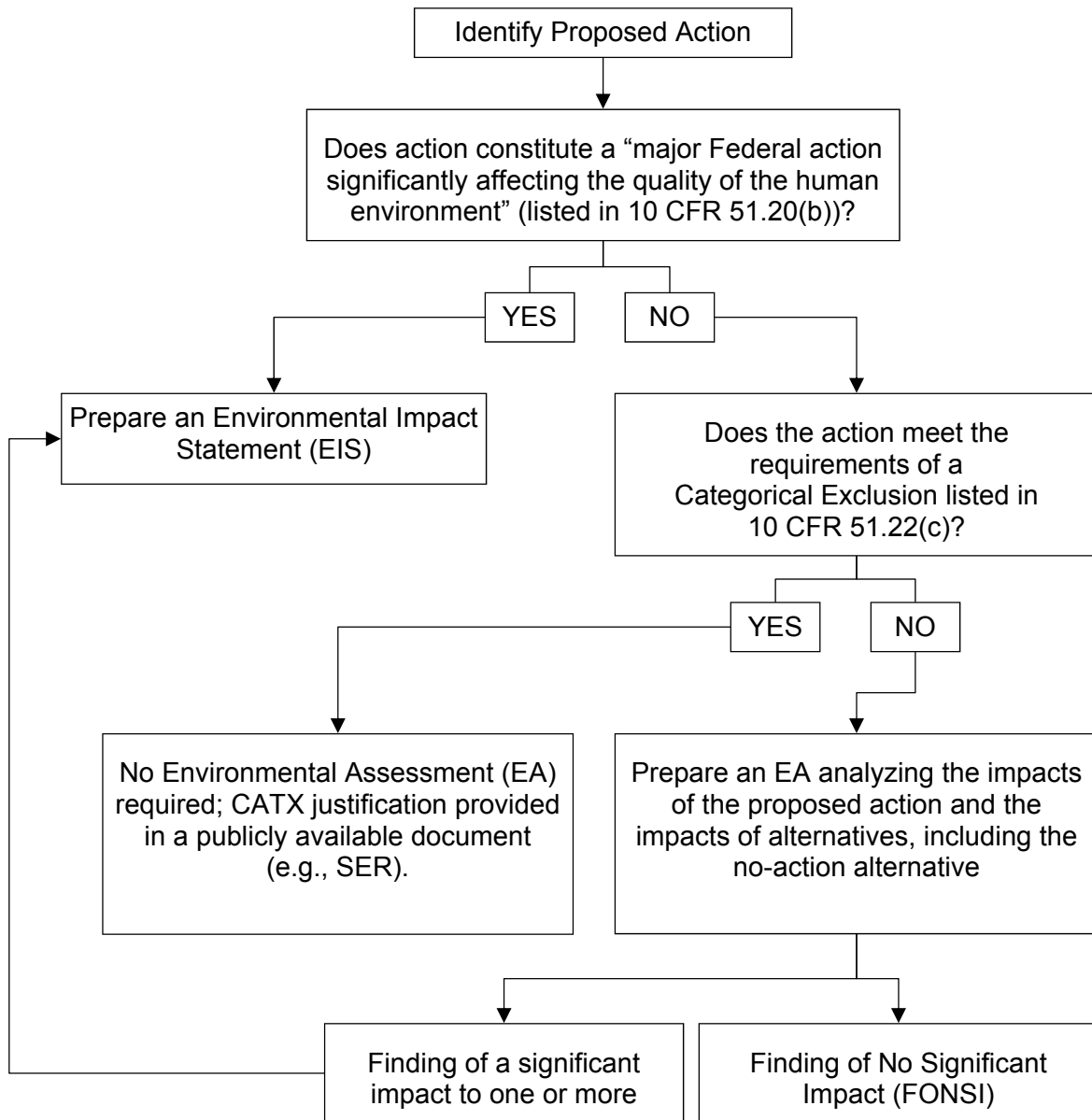
### Comments

If a draft EA has been made available for comment in accordance with 10 CFR 51.33, or if the draft EA was otherwise provided to other Federal agencies, or State, local and tribal governments, and if comments were provided to the NRC in response, the preparer should respond to and document the comments in the EA or in a document that is attached to the EA. The comments may be summarized. Any separate documentation, such as comment letters, should be placed in the NRC Document Room (PDR) and the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room to ensure public access.

### Identification of Sources Used

In accordance with 10 CFR 51.30(a)(2), each EA should include a list of resources cited in the document to support the conclusions of the finding.

**Figure 1.** Flow Chart for Determining Scope of an Environmental Review



## Appendix D

### Environmental Justice in NRR NEPA Documents

#### **BACKGROUND**

On February 11, 1994, the President signed Executive Order 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” which directs Federal agencies to develop strategies for considering environmental justice in their programs, policies, and activities. Environmental justice is described in the Executive Order as “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.” On December 10, 1997, the Council on Environmental Quality (CEQ) issued, “Environmental Justice Guidance Under the National Environmental Policy Act.” The Council developed this guidance to, “further assist Federal agencies with their National Environmental Policy Act (NEPA) procedures.” As an independent agency, CEQ’s guidance is not binding on the NRC; however, the NRC considered CEQ’s guidance on environmental justice in this procedure.

CEQ provides the following information in *Environmental Justice: Guidance Under the National Environmental Policy Act* (1997):

**Disproportionately High and Adverse Human Health Effects.** Adverse health effects are measured in risks and rates that could result in latent cancer fatalities, as well as other fatal or nonfatal adverse impacts on human health. Adverse health effects may include bodily impairment, infirmity, illness, or death. Disproportionately high and adverse human health effects occur when the risk or rate of exposure to an environmental hazard for a minority or low-income population is significant (as employed by NEPA) and appreciably exceeds the risk or exposure rate for the general population or for another appropriate comparison group (CEQ 1997).

**Disproportionately High and Adverse Environmental Effects.** A disproportionately high environmental impact that is significant (as employed by NEPA) refers to an impact or risk of an impact on the natural or physical environment in a low-income or minority community that appreciably exceeds the environmental impact on the larger community. Such effects may include ecological, cultural, human health, economic, or social impacts. An adverse environmental impact is an impact that is determined to be both harmful and significant (as employed by NEPA). In assessing cultural and aesthetic environmental impacts, impacts that uniquely affect geographically dislocated or dispersed minority or low-income populations or American Indian tribes are considered (CEQ 1997).

On August 24, 2004, the Commission issued a *Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions* (69 FR 52040), which states, “the Commission is committed to the general goals set forth in E.O. 12898, and strives to meet those goals as part of its NEPA review process.” The following guidance is consistent with this policy statement.

#### **SCOPE OF ENVIRONMENTAL JUSTICE FOR NRR REVIEWS**

This procedure provides guidance to the Office of Nuclear Reactor Regulation (NRR) staff on conducting environmental justice reviews for proposed actions requiring either an environmental impact statement (EIS) or an environmental assessment (EA).

Environmental justice reviews will be performed for all regulatory actions requiring the preparation of an EIS, which may include licensing actions and rulemaking activities. An EIS is required for licensing and regulatory actions that are “major Federal actions significantly affecting the quality of the human environment” or actions that involve a matter which the Commission has determined should be evaluated in an EIS. A list of the types of actions requiring an EIS is found in 10 CFR 51.20(b).

When preparing an EA, if there is a clear potential for significant offsite impacts from the proposed action then an appropriate environmental justice review might be needed to provide a basis for concluding that there are no unique impacts that would be significant. If the impacts are significant because of the uniqueness of the affected minority and/or low-income populations, then a finding of no significant impact (FONSI) may not be possible and mitigation (if authorized) or an EIS may be necessary.

If it is determined, however, that a particular action would have no significant health or environmental impact, then there is no need to consider whether the action would have disproportionately high and adverse impacts on minority populations and/or low-income populations. Similarly, an environmental justice review is not required for those actions listed in 10 CFR 51.22(c) as being categorically excluded from detailed environmental review.

Environmental justice issues and potential impacts on minority and/or low-income populations may be identified through public involvement in NRC’s review in the proposed action (*e.g.*, scoping comments, comments on draft EIS/EAs), knowledge learned through research about minority and/or low-income groups that may be affected, or in determining the nature of the impacts. In these instances, the NRR PM should consult with the Environmental Review and Guidance Update Branch (RERB), Division of License Renewal (DLR), which is responsible for environmental reviews, should be notified for assistance. RERB concurs on all EAs issued by NRR and will notify management if it appears that an environmental justice review is warranted. NRR management will then make a decision on a case-by-case basis whether the circumstances are such that minority and/or low-income populations may be affected and that an environmental justice review is warranted.

### **GENERAL PRINCIPLES OF ENVIRONMENTAL JUSTICE**

Environmental justice issues encompass a broad range of impacts normally covered by NEPA. The staff should be sensitive to the fact that environmental justice issues and concerns may arise at any time during the NEPA process.

The NRC staff should consider the demographic composition of the affected area to determine the location of minority and/or low-income populations and whether they may be affected by the proposed action. The staff then needs to determine if the proposed action would cause any human health or environment effects and if so, whether these effects would be disproportionately high and adverse on minority or low-income populations.

The staff should develop an effective public participation strategy to include minority and/or low-income individuals and communities in the NEPA process. The staff should acknowledge and seek to overcome linguistic, cultural, institutional, geographic, and other barriers to meaningful participation and should incorporate active outreach to affected minority and/or low-income communities.

The staff should strive to include minority and/or low-income community representation in the NEPA process. The staff should be aware of the diverse constituencies within any community

and should endeavor to have complete representation of the community as a whole. The staff should be aware that community participation must occur as early as possible if it is to be meaningful.

The staff should also seek Tribal representation in the NEPA process in a manner that is consistent with government-to-government relations.

The staff should consider relevant public health data and industry data concerning the potential for multiple or cumulative exposure to human health or environmental hazards in the affected minority and/or low-income populations and historical patterns of exposure to environmental hazards, to the extent such information is reasonably available.

The staff should recognize the interrelated social, occupational, cultural, historical, and economic factors that could amplify the natural and physical environmental effects of the proposed action on minority and/or low-income populations. These effects include the sensitivity of minority and/or low-income populations and individuals to particular impacts; the effect of any disruption on the community structure associated with the proposed action; and the nature and degree of impact on the economic, cultural, and social structure of the community.

The review is forward looking and should focus on the proposed action. For example, if the action is a license amendment, only the activities covered by the amendment should be considered and not the impact of the original license even if no environmental justice review was performed for the original license.

Under NEPA, the identification of a disproportionately high and adverse human health or environmental effect on a minority and/or low-income population does not preclude a proposed action from going forward, nor does it necessarily compel a conclusion that a proposed action is environmentally unreasonable. Rather, the identification of such an effect should heighten agency attention to alternatives (including alternative sites), mitigation strategies, monitoring needs, and preferences expressed by the affected community or population.

### **PROCEDURES FOR LICENSING ACTIONS**

The following guidance should be used when performing an environmental justice review. This procedure may not address all situations that may occur. Project managers should consult with RERB whenever an environmental justice review is undertaken. See Fig. 2 on page D-11 for an environmental justice process flow chart.

#### *1. Determine if the action requires an environmental justice review.*

Determine whether the regulatory action will be supported by an EIS or EA. When the regulatory action requires the preparation of an EIS, an environmental justice review must be conducted, as discussed below.

Under most circumstances, no environmental justice review is required when an EA is prepared. However, the staff will conduct an environmental justice review for an EA when there is a clear potential for human health or environmental impact impacts from the proposed action; an EJ review might be needed to provide a basis for concluding that there are no disproportionately high or adverse impacts to minority and/or low income populations. In the event that an environmental justice review is performed for an EA, the process outlined in steps 2 through 5, below, should be used as guidance.



2. *Locating and identifying minority and low-income populations and integrating environmental justice into the scoping process.*

Early on in the NEPA process (before or at the beginning of scoping), the staff should attempt to identify the location of minority and/or low-income populations in the potentially affected area, usually within a 50-mile (80-kilometer) radius. The staff should also develop a strategy for involving potentially affected minority and/or low-income populations and individuals in NRC's scoping process.

The following steps can be utilized to assist with locating and identifying minority and/or low-income populations at the beginning of the NEPA review (before or at the beginning of scoping). These steps can be used to help determine whether there would be any potential environmental justice issues or concerns and whether minority and/or low-income populations could be disproportionately affected by the proposed action.

*A. Determine geographic area for comparison.*

In determining the location of minority and/or low-income populations, the geographic area within a 50-mile radius is typically large enough to encompass the entire area of potential effect so the staff can perform its comparative analysis. The 50-mile radius (centered on the nuclear plant or other facility) is consistent with the impact analysis conducted for human health impacts. If the impact area overlaps more than one government jurisdiction (State, county, etc.), then the staff should define the geographic area to encompass parts of each government jurisdiction; such a defined geographic area does not have to stop at established boundaries such as county or State lines.

*B. Determine the composition of minority and/or low-income populations in the geographic area.*

Determine the percentage of (1) the aggregate minority and (2) low-income populations within the geographic area (50-mile radius). Geographic distribution of race, ethnicity, and poverty, as well as delineation of tribal lands and resources, should be examined.

The first step is to obtain the most recent decennial (10-year) demographic (Census) data for the 50-mile radius and surrounding communities. In the case of license renewal, the applicant's environmental report usually lists the affected counties in the 50-mile radius. The demographic data should consist of Census Bureau information on race, Hispanic, Latino or Spanish ethnicity, and individual and family poverty information.

In determining the aggregate minority population, individual(s) who identified themselves in the decennial census as members of the following racial and ethnic categories are considered minority individuals. In other words, everyone except persons who identified themselves as White, Not Hispanic or Latino are considered minority.

Race:

- Black or African American
- American Indian or Alaska Native
- Asian
- Native Hawaiian and Other Pacific Islander
- Some other race
- Two or more races (i.e., multiracial)

**Ethnicity:**

Hispanic, Latino, or Spanish origin (may be of any race)

The 10-year Census provides the option of identifying oneself in more than one race categories or multiracial census category of “two or more races.” People in this category are counted as part of the minority group they identified with in the census. Location specific - aggregate minority population data can be found in Census Summary File 1 (SF-1) Table P4 at the U.S. Census Bureau’s American Fact Finder: <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> .

Low-income population is defined as individuals or families living below the poverty level as defined by the U.S. Census Bureau (e.g., the U.S. Census Bureau’s Current Population Reports, Series P-60 on Income and Poverty). For individual and family poverty data estimates see Census Bureau’s American Community Survey (ACS) poverty tables.

The geographic scale should be commensurate with the potential impact area, and should include a sample of the surrounding population, (e.g., at least several block groups). The goal is to evaluate the “communities,” neighborhoods, or areas that may be disproportionately impacted. One source for determining a 50-mile radius is the on-line web-based EJView computer software offered by the U.S. Environmental Protection Agency (EPA). Other sources of demographic information include the applicant, local governments, State agencies, or local universities. It is recommended that 10-year census data on minority and poverty should be used. Interim year census data is available from ACS, based on estimated projections and small sample sizes. The reviewer should also use the best available State information. Minority and low-income population demographic data can be presented for counties and States in tables in the EIS or EA.

*C. Determine the location of minority and low-income population in the impact area.*

The next step is to compare the percentage of minority and/or low-income populations in the 50-mile geographic area to the percentage of minority and/or low-income populations in each “census block group” or “census tract” to determine which block group exceeds the percentage thereby identifying the location of these populations.

The recommended geographic area for determining the location of minority and/or low-income populations is the “census block group.” The census block group was chosen because it provides race and ethnicity information as well as income and poverty information that is not collected for the smaller “census block.” It is also not as large as the “census tract,” which are generally too large for an adequate location and identification of minority or low income communities. A minority and/or low-income community may be considered as either a population of individuals living in geographic proximity to one another or a dispersed/transient population of individuals (e.g., migrant workers) where either type of group experiences common conditions of environmental exposure.

“Minority and low-income populations” are identified when (1) the minority and/or low-income population of an impacted area exceeds 50 percent or (2) the minority and/or low-income population percentage of the impacted area is meaningfully greater than the minority and/or low-income population percentage in the general population or other

appropriate unit of geographic analysis (e.g., 50-mile radius geographic area or county). All block groups with minority and/or low-income percentages higher than the geographic area should be identified on 50-mile radius maps.

It is possible that the geographic area could cross county and State lines and this should be considered when making comparisons. If it is determined that the percentage in the block groups significantly exceeds the geographic area percentage for either minority or low-income population, then the environmental justice impacts should be considered in greater detail. In general (and where appropriate), the staff may consider differences greater than 20 percentage points to be significant. Additionally, if either the minority or low-income population percentage exceeds 50 percent, the environmental justice impacts should be considered in greater detail.

The criteria listed above should only serve as a guideline for determining the presence of a minority or low-income populations because demographic data may overlook low-income and/or minority populations if they constitute a relatively small percentage of the total population in the block group. Therefore, the staff should seek to supplement the environmental justice analysis with any relevant additional information collected during the environmental scoping process to identify such low-income or minority populations. If it is apparent through interviews, public comment/interest, by investigation, or by other scoping activities, that there is a distinct minority or low-income population or community that may be adversely affected by the proposed action, then the staff reviewer should proceed with the environmental justice review even if that population was not identified through the use of demographic data.

If no minority or low-income populations are identified in the geographic area or area of potential effect, then this determination should be documented and the environmental justice review is complete.

Consistent with scoping activities conducted under NEPA, the staff may consider measures for increasing participation of minority and low-income groups such as outreach through minority business and trade organizations, schools, colleges, labor organizations, or other appropriate organizations. Meetings open to the public should be advertised through locally-targeted media, mailings, and the internet. Other means of advertising include posting flyers in local shopping centers, community, government and other public places. If representatives of the affected group(s) are identified, these individuals should be included on the mailing list for the review. When communicating with the public, the staff should consider innovative approaches to overcoming linguistic, institutional, cultural, economic, historical, or other potential barriers to effective participation in the decision-making process. During the scoping process the staff should supplement the census data with inquiries of the local planning departments, social service agencies, and other local offices to identify minority or low-income groups that may not be identified through the census data.

If no minority or low-income populations and/or individuals are found during scoping or later on in the review, then the results should be documented and the environmental justice review is complete.

3. *Determine whether there are human health and environmental impacts on minority or low-income populations.*

Potential human health and environmental impacts are determined through the normal NEPA process during the development of the EIS or EA, including indirect and cumulative impacts,

where appropriate. The impacts should be evaluated to determine which impacts may affect (or cause concern to) minority and/or low-income populations. Once it is determined that the proposed action could affect and/or cause environmental justice concerns for minority and/or low-income populations located near the plant site, it is then necessary to determine whether the impact(s) could have a “disproportionately high and adverse” effect on these populations.

Impacts that could potentially affect or cause concern to minority and/or low-income populations should be summarized in the environmental justice section of the EIS (or EA, if analyzed). The discussion should address the potential human health and environmental effect(s) on these populations. It is not necessary to discuss the technical aspects of the impact(s) at the same level of detail as other environmental consequences sections. It is acceptable to briefly describe the human health or environmental impact, its potential effect on minority and/or low-income populations, and reference the appropriate section for a more detailed technical discussion of the impact.

In considering human health and environmental impacts to minority and/or low-income populations, different patterns of consumption of natural resources should also be considered (i.e., differences in rates and/or pattern of fish, vegetable, water, and/or wildlife consumption among groups defined by demographic factors such as socioeconomic status, race, ethnicity, and/or cultural attributes). Section 4-4 of Executive Order 12898 (Environmental Justice) directs Federal agencies, whenever practical and appropriate, to collect and analyze information on the consumption patterns of populations who rely principally on fish and/or wildlife for subsistence and to communicate the risks of these consumption patterns to the public. NRR staff should consider whether there are any means for minority or low-income populations to be disproportionately affected by examining potential impacts to American Indian, Hispanic, and other traditional lifestyle special pathway receptors. Special pathways that take into account the levels of contaminants in native vegetation, crops, soils and sediments, surface water, fish, and game animals on or near nuclear plant sites should be considered.

Each nuclear plant has a comprehensive Radiological Environmental Monitoring Program (REMP) that assesses the radiological impact of site operations on the environment. Radiological monitoring indicator and control samples are collected from the aquatic and terrestrial pathways applicable to each plant site. The aquatic pathways include fish, surface waters, and sediment. The terrestrial pathways include airborne particulates and radioiodine, milk, leafy vegetation, food products, soil, and direct radiation. It is recommended that NRR staff review the most recent *Annual Radiological Environmental Operating Report* from the plant for sampling information used to measure the direct radiation and the airborne and waterborne pathway activity in the vicinity of the nuclear plant site. Many State agencies and a few independent organizations conduct their own radiological monitoring programs separate from or in conjunction with the REMP at nuclear plants. Reports and studies conducted by these agencies and organizations should also be considered.

NRR staff should also focus the environmental justice review on human health or environmental impacts that are known to be significant or perceived as significant by minority and/or low-income persons. The severity of environmental impacts or concerns usually varies inversely with the distance from the nuclear plant; therefore, the review should be focused on areas closer to the plant site.

4. *Determine whether there are disproportionately high and adverse human health or environmental effects on minority and/or low-income populations.*

NRR staff first needs to assess if impact(s) would disproportionately affect minority or low-income populations. In other words:

- Would the impact(s) be greater for minority and low-income populations than the general population?
- Are there any unique effects experienced by minority and/or low-income populations that would not be experienced by the general population?

As discussed in the previous section, NRR staff should recognize that the impacts to minority or low-income populations may be different from impacts to the general population due to a community's distinct cultural practices. In addition, staff should take into account different patterns of living and consumption of natural resources, such as subsistence consumption.

To effectively visualize potential disproportionate impacts, it may be helpful to display the location of minority and/or low-income populations on 50-mile radius maps. In cases where minority and/or low-income populations are located next to or in close proximity to the plant site, the impact(s) could disproportionately affect these populations more than the general population. For instance, potential exposure to effluents and emissions may have a greater effect on minority and/or low-income populations living closest to the nuclear plant. Noise and traffic may disrupt these populations to a greater extent than the general population and those living far from the plant site. In addition, the potential risks associated with accidents may have a disproportionate affect on minority and/or low-income populations living closest to the plant.

If there are no disproportionate impacts, no further analysis is needed. The reviewer should document the finding in the environmental justice section.

After identifying human health and environmental impacts that could disproportionately affect minority and low-income populations, it is necessary to determine if the effect(s) would be high and adverse. For example, would the effect(s) on minority and/or low-income populations be above generally accepted norms such as regulatory limits or State and local statutes and ordinances? Each human health and environmental impact, and where appropriate, the cumulative and multiple effects of the impact(s), should be reviewed for significance.

If the determination can be made that the disproportionate human health and environmental impact(s) and/or combination of impacts would not be high and adverse, then no further analysis is needed. The reviewer needs to document this conclusion in the environmental justice section.

If there are disproportionately high and adverse impacts to minority and/or low-income populations, it is then necessary to consider mitigation measures that could be taken to reduce the impact(s). To the extent practicable, any mitigation measures discussed in the EA or EIS should reflect the needs and preferences of the affected minority and/or low-income populations and communities. In any case, the facts should be presented so that the ultimate decision-maker can weigh all aspects in making the agency decision. The Executive Order does not prohibit taking an action where there are disproportionate high and adverse impacts to minority or low-income populations.

*5. Make a determination regarding impacts to minority and low-income populations and document the conclusion.*

The results of an environmental justice review should be documented in the EIS or in the EA, if appropriate. NRR staff should clearly state the conclusion regarding whether or not the proposed action and any alternatives would have a disproportionately high and adverse

environmental impact on a minority and/or low-income population. This statement should be supported by sufficient information to allow the public to understand the rationale for the conclusion, and should be written in concise non-technical plain language that minimizes the use of acronyms or jargon.

The EIS or EA should contain a section titled “Environmental Justice” even if the demographics do not indicate a potential for an environmental justice concern. If a plant site has already received an environmental justice evaluation, it is acceptable to reference the previous evaluation and provide a summary of the findings and then add any new information that results from the proposed action. For instance, if an environmental justice review was included in a license renewal review, it would not need to be completely readdressed for a license amendment. If a reference to another document is used, a summary of the review and its conclusions should be included in the environmental justice section.

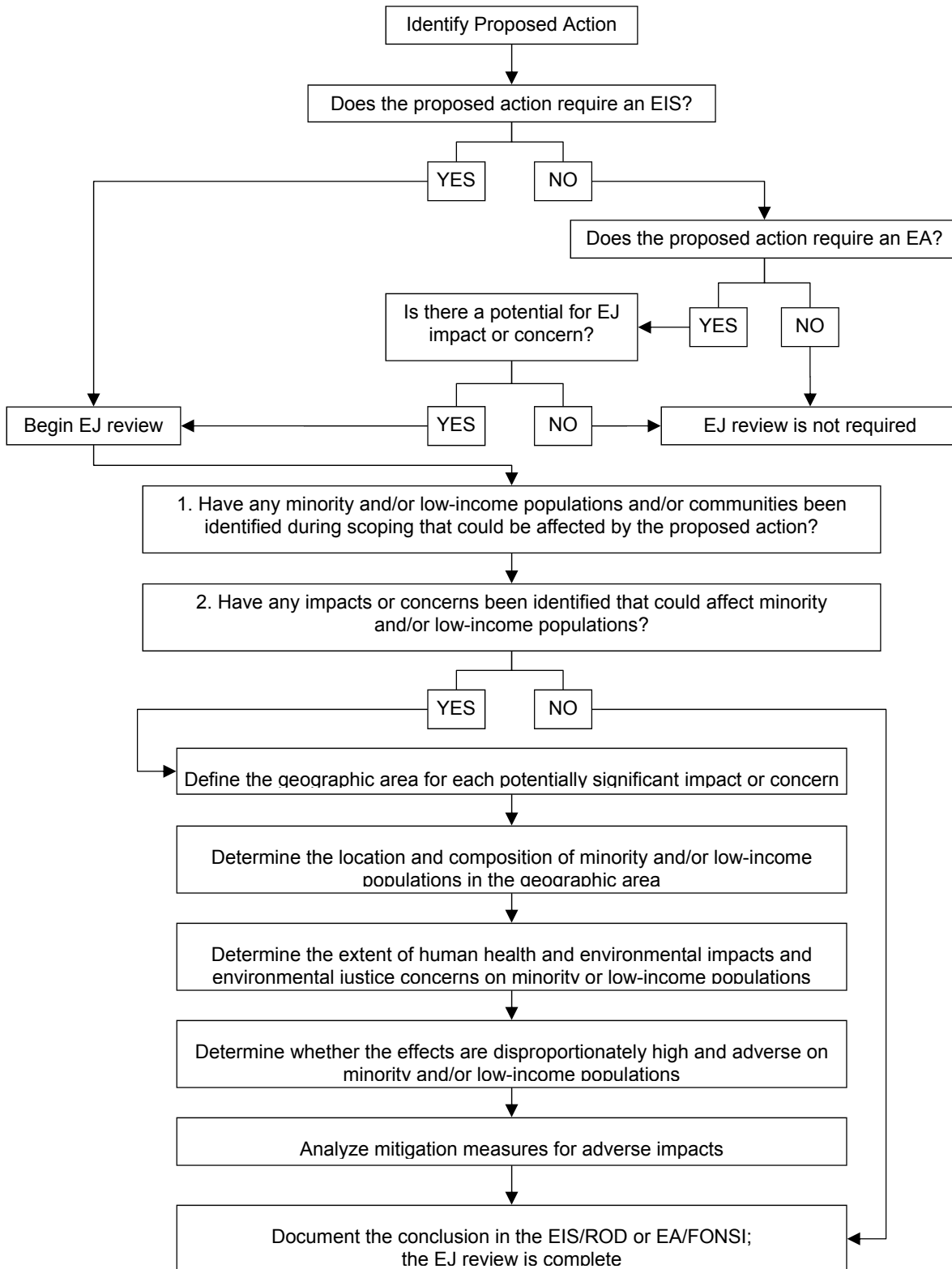
### **PROCEDURES FOR RULEMAKING ACTIVITIES**

1. Staff responsible for rulemaking should address environmental justice in the preamble to any proposed and final rules that require an EIS, a supplement to an EIS, or generic EIS.
2. If it is known in advance that a particular rulemaking might disproportionately affect a minority and/or low-income population or community, NRC staff should ensure that the population and/or community knows about the rulemaking and are given the opportunity to participate. Such actions may include translating the *Federal Register* Notice (FRN) into a language other than English for publication in a local newspaper and holding public outreach meetings in the potentially affected community.
3. If an environmental justice review is performed for a rulemaking activity, then the staff should consider using the template provided in the NRC Regulations Handbook, NUREG/BR-0053, Revision 6, pp. 67-68,<sup>6</sup> to seek and welcome public comments on environmental justice (the template would either be part of the proposed rule FRN or a draft FONSI issued pursuant to 10 CFR 51.33). The staff should follow the “Procedures for Licensing Actions,” steps 2-5 above, to perform the environmental justice review.
4. Public comments on the environmental justice review should be addressed in the statements of consideration to the final rule when published in the *Federal Register*. Comments on the environmental justice review should be addressed at the same level of detail and in the same location as comments received on other parts of the rule.

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<sup>6</sup> See NUREG/BR-0053, Revision 6, p. 64 for a discussion of environmental justice issues in rulemaking activities.

**Figure 2. Environmental Justice Review Flow Chart**



## Appendix E

### State Coastal Zone Descriptions and CZMA Consistency Certification Process Flow Chart

**Table 2.** Description of coastal zones for States and territories with Federally-approved coastal management programs<sup>7</sup>

State	Definition of State's Coastal Zones
	<b>The seaward boundary of the Great Lake States is the U.S.- Canada International boundary, and for all other States is the 3 nautical mile territorial sea, except for those states marked with an asterisk (*)</b>
Alabama	Extends inland to the continuous 10-foot elevation contour in Baldwin and Mobile Counties.
Alaska	As of July 1, 2011, Alaska no longer has a federally approved coastal management program or defined coastal zone and federal consistency does not apply to Alaska. Contact NOAA's Office of Ocean and Coastal Resource Management for additional information.
American Samoa	Consists of the entire Territory.
California and the San Francisco Bay Conservation and Development Commission (BCDC)	Extends 1,000 yards inland from the mean high tide line. In significant coastal estuarine habitat and recreational areas, it extends inland to the first major ridgeline or 5 miles from the mean high tide line, whichever is less. In developed urban areas, the boundary is generally less than 1,000 yards. The coastal zone for the BCDC includes the open water, marshes and mudflats of greater San Francisco Bay, and areas 100 feet inland from the line of highest tidal action. The boundary also includes: the Suisun marsh and buffer zone; managed wetlands diked off from the Bay; and open waters diked off from the Bay and used in salt production.

<sup>7</sup> Table adapted from "State Coastal Zone Boundaries" published by NOAA, dated February 9, 2012, available at: <http://coastalmanagement.noaa.gov/mystate/docs/StateCZBoundaries.pdf>.



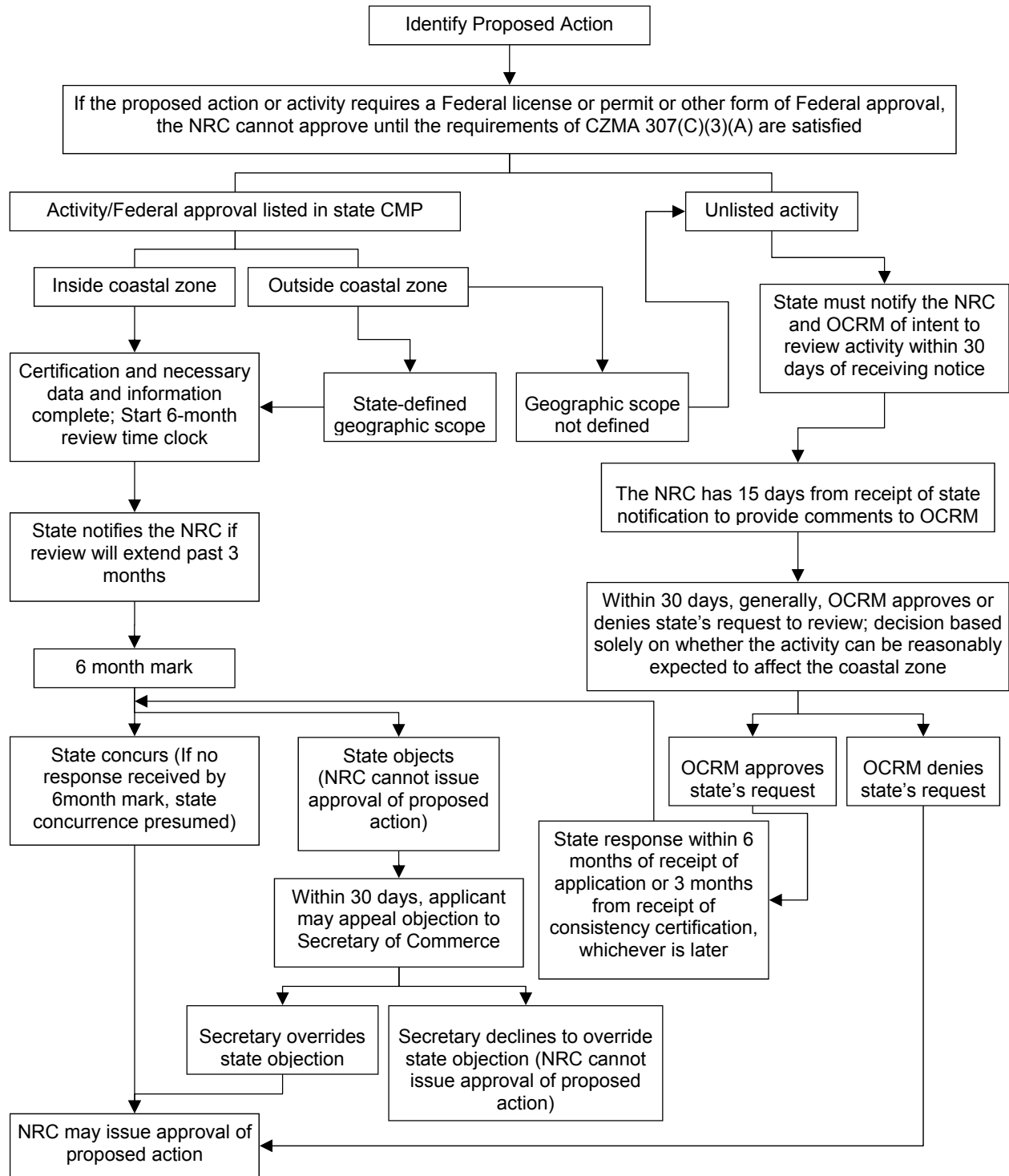
Connecticut	Has two tiers incorporated within the 36 coastal townships. The first tier is bounded by a continuous line delineated by a 1,000 foot linear setback measured from the mean high water mark in coastal waters; or a 1,000 foot linear setback measured from the inland boundary of State regulated tidal wetlands; or the continuous interior contour elevation of the one hundred year frequency coastal flood zone; whichever is farthest inland. The second tier is the area between the inland boundary of the 36 coastal communities and the inland boundary of the first tier.
Delaware	Consists of the entire State.
Florida*	Consists of the entire State, but has two tiers. Local governments eligible to receive coastal management funds are limited to those Gulf and Atlantic coastal cities and counties which include or are contiguous to State water bodies where marine species of vegetation constitute the dominant plant community. Florida's seaward boundary in the Gulf of Mexico is 3 marine leagues (9 nautical miles) and is 3 nautical miles in the Atlantic.
Georgia	Includes the 11 counties that border tidally-influenced waters or have economies that are closely tied to coastal resources.
Guam	Consists of the entire Territory.
Hawaii	Consists of the entire State.
Illinois	Consists of two components. The Lakeshore boundary is based on the Lake Michigan watershed and is generally parallel to the Lake Michigan shoreline. The Inland Waterway Boundary includes the Inland Waterway Corridors, which are selected segments of the Chicago River system (North Branch, South Branch, Main Branch, and North Shore Channel) and select segments of the Little Calumet and Grand Calumet Rivers. The Inland Waterway Corridors consist of both the waterway and designated land area to either side of the waterway.
Indiana	Based on watershed boundaries within coastal townships and the counties of Lake, Porter and LaPorte. To create an inland boundary that is identifiable in practical landmarks, the coastal zone boundary is described based on the U.S. Geological Survey Quadrangle maps and major roads for each county. The coastal zone boundary is located in the northern portions of Lake, Porter, and LaPorte Counties. At its widest extent, the boundary extends away from the shoreline 17 miles to the Crown Point area and at its narrowest point, less than 2 miles, just north of Hudson Lake in LaPorte County. See NOAA, <i>Indiana Lake Michigan Coastal Program and Final Environmental Impact Statement</i> , Appendix C (April 2002) to determine the precise coastal zone boundary in a particular area of the State.

Louisiana	Varies from 16 to 32 miles inland from the Gulf coast and generally follows the Intracoastal Waterway running from the Texas-Louisiana State line then follows highways through Vermilion, Iberia, and St. Mary parishes, then dipping southward following the natural ridges below Houma, then turning northward to take in Lake Pontchartrain and ending at the Mississippi-Louisiana border.
Maine	Includes the inland line of coastal towns on tidewaters and all islands.
Maryland	Extends to the inland boundary of the 16 counties bordering the Atlantic Ocean, the Chesapeake Bay, and the Potomac River (as far as the municipal limits of Washington, D.C.), and includes Baltimore City and all local jurisdictions within the counties.
Massachusetts	Extends 100 feet inland of specified major roads, RR tracks, or other visible right of ways which are located within a half mile of coastal waters or salt marshes. The coastal zone includes all islands, transitional and intertidal areas, and coastal wetlands and beaches. In instances where the road boundary excludes significant resource areas, the boundary line may depart from the road to encompass.
Michigan	Extends a minimum of 1,000 feet from the ordinary high water mark. The boundary extends further inland in some locations to encompass coastal lakes, rivermouths, and bays; floodplains; wetlands; dune areas; urban areas; and public park, recreation, and natural areas.
Minnesota	Divided into three areas. The first includes the area of the St. Louis River in Carlton County, south of Duluth. The second is the city of Duluth and surrounding areas of urban growth and expansion to the north and west. The third is the region between the Duluth city limits north to the Canadian border, also known as the "North Shore," which includes portions of St. Louis, Lake, and Cook Counties. See NOAA's <i>Minnesota's Lake Superior Coastal Program for Final Environmental Impact Statement</i> , Chapter One (May 1999) to determine the precise coastal zone boundary in a particular area of the State.
Mississippi	Includes the 3 counties adjacent to the coast. The coastal zone includes these counties, as well as all adjacent coastal waters. Included in this definition are the barrier islands of the coast.
New Hampshire	Consists of the 17 coastal municipalities.

New Jersey	Consists of four distinct regions of the State, which are treated separately. From the New York border to the Raritan Bay, the boundary extends landward from mean high water to the first road or property line. From the Raritan Bay south along the Atlantic shoreline and up to the Delaware Memorial Bridge, the boundary extends from half a mile to 24 miles inland (1,376 square miles of land area). From the Delaware Memorial Bridge northward up the Delaware River to Trenton, the boundary extends landward to the first road inclusive of all wetlands. The fourth boundary serves a 31-mile square area in the northeast corner of the State bordering the Hudson river (New Jersey Meadowlands Commission).
New York	Varies from region to region while incorporating the following conditions: the inland boundary is approximately 1,000 feet from the shoreline of the mainland. In urbanized and developed coastal locations the landward boundary is approximately 500 feet from the mainland's shoreline, or less than 500 feet where a roadway or railroad line runs parallel to the shoreline at a distance of under 500 feet and defines the boundary. In locations where major State-owned lands and facilities or electric power generating facilities abut the shoreline, the boundary extends inland to include them. In some areas, such as Long Island Sound and the Hudson River Valley, the boundary may extend inland up to 10,000 feet to encompass significant coastal resources, such as areas of exceptional scenic value, agricultural or recreational lands, and major tributaries and headlands.
North Carolina	Includes the 20 counties that in whole or in part are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean or any coastal sound(s). Within this boundary, there are two tiers. The first tier is comprised of areas of environmental concern (AEC) and is subject to more thorough regulatory controls. AECs include: coastal wetlands, estuarine waters, public trust areas, estuarine shorelines, ocean beaches, frontal dunes, ocean erosion areas, inlet lands, small surface water supply watersheds, public water supply well-fields, and fragile natural resource areas. The second tier includes land uses which have potential to affect coastal waters even though they are not located in AECs.
Northern Mariana Islands	Consists of the entire Commonwealth.
Ohio	Includes portions of 9 counties bordering Lake Erie and its tributaries and varies depending on biophysical characteristics of various coastal regions - in the western part of the coast the boundary extends inland up to 15 miles along certain low lying wetland and floodplain areas; in most of the eastern part of the State, areas with high bluffs, the boundary extends inland for only about an eighth of a mile, with the exception of the Mentor Marsh area.

Oregon	Extends inland to the crest of the coastal range, except for the following: along the Umpqua River, where it extends upstream to Scottsburg; along the Rogue River, where it extends upstream to Agness; and except in the Columbia River Basin, where it extends upstream to the downstream end of Puget Island.
Pennsylvania	Varies along Lake Erie from 900 feet in urban areas to over 3 miles in more rural areas, and encompasses the floodplains of Lake Erie and tributary streams, bluff hazards recession areas, and coastal wetlands. The coastal zone along the Delaware River Estuary extends inland to 660 feet in urbanized areas, to 3.5 miles in rural areas, and includes floodplains of the Delaware and Schuylkill Rivers and their tributaries to the upper limit of tidal influence, and tidal and freshwater wetlands.
Puerto Rico*	Extends 1,000 meters inland; however, it extends further inland in certain areas to include important coastal resources. Puerto Rico's seaward boundary is 3 marine leagues (9 nautical miles).
Rhode Island	Consists of the entire State. However, the inland extent of the regulatory authority of the State's CZMA agency is 200 feet inland from any coastal feature, to watersheds, and to certain activities that occur anywhere within the State that include: power-generating plants; petroleum storage facilities; chemical or petroleum processing; minerals extraction; sewage treatment and disposal plants; solid waste disposal facilities; and, desalination plants.
South Carolina	Includes all lands and waters in the counties which contain any one or more of the critical areas (coastal waters, tidelands, beaches, and primary oceanfront sand dunes).
Texas*	Consists of the area seaward of the Texas coastal facility designation line which roughly follows roads that are parallel to coastal waters and wetlands generally within one mile of tidal rivers. The boundary encompasses all or portions of 18 coastal counties. Texas' seaward boundary is 3 marine leagues (9 nautical miles).
Virginia	Includes the 29 counties, 17 cities, and 42 incorporated towns of Tidewater Virginia, including the Atlantic Coast watershed and portions of the Chesapeake Bay and Albemarle-Pamlico Sound watersheds.
Virgin Islands	Consists of the entire Territory.
Washington	Consists of the 15 coastal counties that front saltwater.
Wisconsin	Consists of the 15 counties that front Lake Superior, Lake Michigan, or Green Bay.

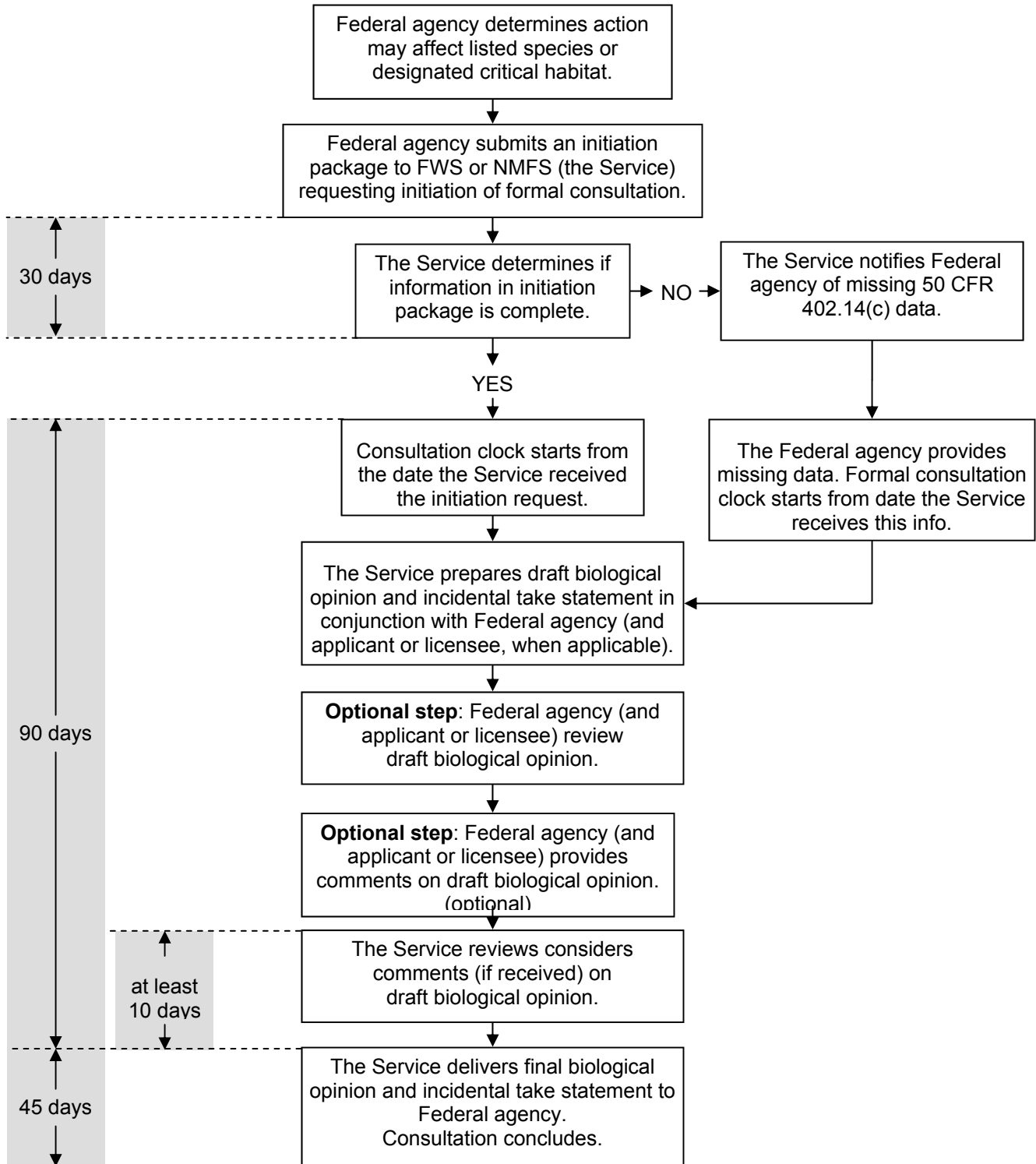
**Figure 3. CZMA Consistency Certification Process Flow Chart**



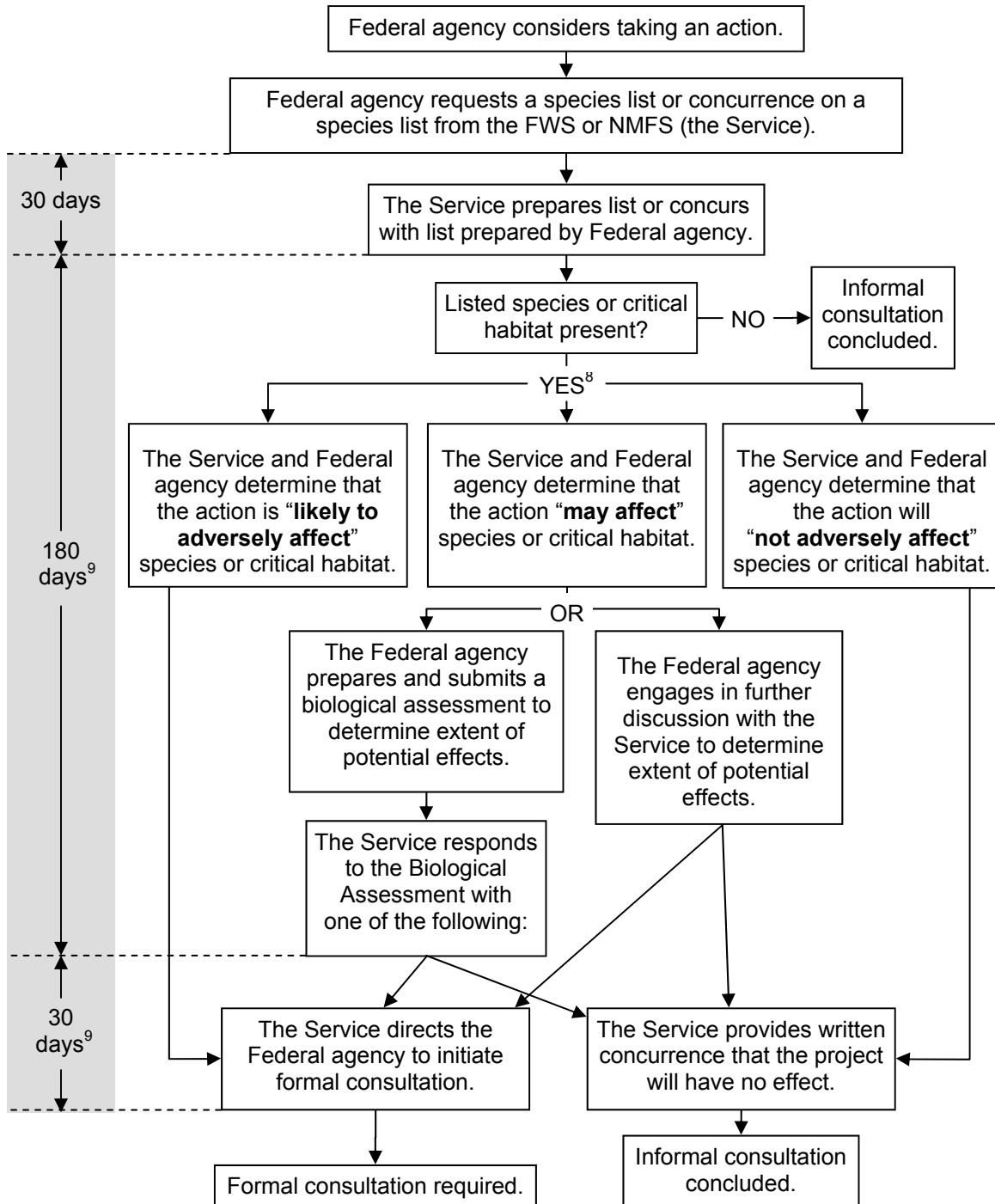
## Appendix F

### Endangered Species Act Section 7 Consultation Process Flow Charts

**Figure 4.** Formal Section 7 Consultation Process



**Figure 5.** Informal Section 7 Consultation Process



<sup>8</sup> If an action is a "major construction activity" and listed species are present, a biological assessment must be prepared, regardless of anticipated effect level (50 CFR 402.12(b)(1)).

<sup>9</sup> These timeframes only apply to the scenario in which informal consultation includes a biological assessment.

### Appendix G

## National Historic Preservation Act Section 106 Process Flow Chart

Figure 6. National Historic Preservation Act Section 106 Consultation Process Flow Chart

