

1.2 THE NEPA PROCESS

1.2.1 What is NEPA?

Signed into law on January 1, 1970, NEPA²¹ is the basic national charter for the protection of the environment, both human and natural. It established a national environmental policy and goals for the protection, maintenance, and enhancement of the environment and it provides a process for implementing these goals within the federal agencies. NEPA requires federal agencies to:

- consider the potential environmental consequences of their actions,
- consult with other interested agencies,
- document their analysis,
- make this environmental information available to the public for comment before the decisions are made and before actions are taken,
- identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment, and
- use all practicable means to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

NEPA is only applicable to federal actions, including projects and programs funded by federal agencies and those that require a federal permit or other regulatory decision. NEPA also established the Council on Environmental Quality (CEQ), which promulgated the *Council on Environmental Quality Regulations for Implementing NEPA (40 C.F.R. Parts 1500–1508)*. These regulations required each federal agency to issue its own individual implementing regulations. More information on NEPA can be found through the CEQ publication “A Citizen’s Guide to NEPA,” which is an informational guide that provides an explanation of NEPA, explains how it is implemented, and identifies how the public can participate in the assessment of environmental impacts conducted by federal agencies²².

1.2.2 What interest factors are evaluated?

The Proposed Project and the alternatives are evaluated to determine the impacts or changes that may occur on both people and the environment as a result of the potential effects of the proposed improvements. Effects can be ecological, aesthetic, historic, cultural, economic, social, or health-related. The following are the interest factors to be evaluated in this EIS:

²¹ 42 U.S.C. §§ 4321-4370h

²² http://ceq.hss.doe.gov/publications/citizens_guide_to_nepa.html

- Geology and Soils
- Hydrology
- Water Quality
- Vegetation and Wildlife
- Waters of the United States
- Protected Species
- Essential Fish Habitat
- Transportation
- Land Use and Infrastructure
- Cultural Resources
- Visual Resources and Aesthetics
- Noise and Vibration
- Air Quality
- Climate Change
- Hazardous, Toxic, Radioactive Waste
- Socioeconomics and Environmental Justice
- Human Health and Safety
- Section 4(f) and Section 6(f)²³

1.2.3 How is the Corps implementing the requirements of NEPA in the evaluation of this project?

This EIS has been prepared pursuant to (1) Section 102(2)(c) of NEPA (42 U.S.C. 4321 et seq.); (2) the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 C.F.R. 1502.4 et seq.); (3) Section 404 of the CWA on permitting disposal sites for dredged or fill material (33 U.S.C. 1344), as amended; and (4) NEPA “Implementation Procedures for the Regulatory Program” (33 C.F.R. 325, Appendix B); and (5) the Federal Railroad Administration (FRA) procedures for considering environmental impacts (78 C.F.R. 2713).

The purpose of this EIS is to inform decision makers and the public of the likely environmental consequences of the Proposed Project and its alternatives. To that end, the EIS identifies, documents, and evaluates potential effects of construction and operation of the Navy Base ICTF on the natural and human environment using a period of analysis from 2018 (facility opening) through 2038 (20-year planning horizon). The actual opening date is uncertain at this time.

An interdisciplinary team of scientists, planners, economists, engineers, archaeologists, and historians has described the existing environment and analyzed the Proposed Project and its alternatives with respect to the no-action alternative in the study area (defined as the area that may be directly and indirectly affected, as explained in Section 1.6.1), and has identified relevant beneficial and adverse effects associated with the project. The impacts can be direct effects (those caused by the action that occur at the same time and place), indirect effects (those caused by the action that take place later in time or farther removed in distance), or cumulative effects (the incremental impacts of the project when combined with past, present, and reasonably foreseeable future activities).

²³ U.S. Department of Transportation Act of 1966 (49 U.S.C. 303, Section 4(f)) and Land and Water Conservation Fund Act of 1965 (Public Law 88-578, 78 Stat 897)

The Proposed Project is described in detail in Chapter 1, followed by a discussion in Chapter 2 of the development and screening of alternatives, resulting in the identification of alternatives carried forward for analysis in the EIS. Chapter 3 presents the “Affected Environment” or baseline conditions of the resources potentially impacted by the project (as of September 2015). The potential direct and indirect impacts of each alternative on these resources are discussed in Chapter 4 – Environmental

EIS Chapters

- 1 Purpose and Need and Description of Proposed Project
- 2 Development and Description of Alternatives
- 3 Affected Environment
- 4 Environmental Consequences
- 5 Cumulative Impacts
- 6 Mitigation
- 7 Irreversible and Irrecoverable Commitments of Resources
- 8 Regulatory Environment Overview
- 9 Public, Agency, and Stakeholder Coordination and Consultation
- 10 References
- 11 Glossary
- 12 List of Preparers

Consequences, while cumulative impacts are discussed in Chapter 5. Mitigation measures to reduce project impacts are identified throughout Chapter 4, but are consolidated into one discussion in Chapter 6. The remaining chapters of the EIS (Chapters 7–12) provide information that supports and documents the NEPA process followed during consideration of a permit decision.

An EIS is not a regulatory decision document. It is used by agency officials, in this case, the Corps, in conjunction with other relevant information in a permit application file, to inform the final permit decision. Since the “action” in this case is a permit decision, not an action proposed to be undertaken by the Corps, the

decision options available to the District Engineer are: 1) to issue the permit; 2) to issue the permit with conditions, or 3) to deny the permit. As required by NEPA, the final decision will be documented in a Record of Decision (ROD).

In compliance with the CEQ regulations, when an EIS is being prepared and more than one federal agency has jurisdiction over a proposed action, a lead agency shall supervise the preparation of the EIS. In this case, the Corps is the lead federal agency for the preparation of this EIS. As provided for by NEPA, the United States

The U.S. Army Corps of Engineers is the Lead Federal Agency for the Navy Base ICTF EIS.

Environmental Protection Agency (EPA) and the Federal Railroad Administration (FRA) have agreed to formally become cooperating agencies in the preparation of this EIS. A “Cooperating Agency” can be any federal agency with jurisdiction by law or special expertise with respect to any environmental impact (or reasonable alternative) involved in a proposed project or action. Under CEQ regulations (40 C.F.R. Section 1501.6), a Cooperating Agency may, “assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which

the Cooperating Agency has special expertise. In addition, pursuant to CEQ Regulations (40 C.F.R. Section 1506.3), a Cooperating Agency may adopt without recirculation the environmental impact statement of a lead agency when, after an independent review of the statement, the Cooperating Agency concludes that its comments and suggestions have been satisfied.” Additional information on the roles of the EPA and the FRA as Cooperating Agencies can be found in Section 1.3.4.

1.3 AGENCY INVOLVEMENT (ROLES AND RESPONSIBILITIES)

1.3.1 What is the role of the U.S. Army Corps of Engineers?

The Department of the Army regulatory program is one of the oldest in the Federal Government. Initially, it served a fairly simple, straightforward purpose: to protect and maintain the navigable capacity of the nation’s waters. Time, changing public needs, evolving policy, case law, and new statutory mandates have changed the complexion of the program, adding to its breadth, complexity, and authority.

The Corps has direct permit authority to evaluate applications for certain activities in our nation’s waters pursuant to three separate laws:

- Section 10 of the Rivers and Harbors Act regulates the construction, excavation, or deposition of materials in, over, or under “navigable waters of the U.S.,” or any work which would affect the course, location, condition, or capacity of those waters;
- Section 404 of the CWA regulates the discharge of dredged or fill material into “waters of the U.S., including wetlands”; and
- Section 103 of the Marine Protection, Research and Sanctuaries Act regulates the transportation of dredged material for the purpose of disposal in the ocean²⁴.

The regulations found at 33 C.F.R. Part 320–332 govern the regulatory program of the U.S. Army Corps of Engineers. These regulations outline the laws and procedures utilized by the Corps in assessing applications for permits.

²⁴ The project will not result in discharges of dredged material proposed to be transported to the ocean; therefore, Section 103 of the Marine Protection, Research and Sanctuaries Act is not applicable.