

**ATTACHMENT F:
MARAD NEPA Process**

MARAD (MAR410.1 Office of Environmental Compliance) Process on NEPA for Grantees 082525

The purpose of this document is to provide information to grantees and/or their consultant on MARAD's NEPA process in an effort to streamline and expedite NEPA. It is the grantee's responsibility to ensure that the information contained herein is followed.

General Information

MAR410.1 **strongly recommends** that the grantee retain the services of an environmental consultant who is experienced in the preparation of documentation under the National Environmental Policy Act (NEPA) if an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is required to be completed for the project. Grantees should carefully consider the qualifications and expertise of their consultant to ensure they are well versed in the NEPA process. Submit qualifications of the proposed consultant to MAR410.1 for approval.

It is MAR410.1's experience that reviews will take months longer, significant editing will be required, and exponentially more reviews of the document will be required when a grantee chooses to prepare a NEPA document in-house or chooses to retain the services of a consultant that does not regularly perform NEPA analyses.

MAR410.1 recommends an initial discussion with the grantee and/or their consultant take place within 30 days of grant award. This discussion will help MAR410.1 make a final determination of the project's NEPA level of review. As appropriate, follow-on discussions may be recommended to include USACE and other federal, state, and local service agencies. Early coordination is key to streamlining the NEPA process and minimizing duplication of effort where possible.

Determining NEPA level of review

The grantee should be prepared to share information related to the scope and schedule, as well as any existing documentation such as maps, plans, engineering drawings, studies and investigations related to the project, and environmental reports. Prior to making a final determination of NEPA level of review, the following must be provided to MAR410.1:

- Draft schedule of NEPA milestones
- 30% design plans
- Qualifications of anticipated contractor
- Contractor's disclosure statement
- Detailed scope of work
- Purpose and Need statement
- Identification of any alternatives beyond Proposed Action and NAA
- List of anticipated permits
- List of anticipated impacts
- Independent utility memo (if applicable)
- Scoping and public involvement plan (if applicable)
- List of any studies or field work completed or will be necessary and estimated completion date.

Once all this information has been submitted and reviewed, MAR410.1 will send an email to the grantee notifying that the NEPA start clock has commenced (one year for EA's and two years for EIS's).

Site Visits

MAR410.1 will conduct a site visit. The purpose of the site visit is to document the existing site conditions and make an initial assessment of the project's potential environmental impacts. As appropriate, it is suggested to include the environmental consultant, USACE, and other service agencies in the MAR410.1 site visit.

Categorical Exclusions Scope of Work

Generally, Categorical Exclusions are prepared by MAR410.1 staff. The grantee should prepare a detailed scope of work to reflect the actual project to be completed. This scope of work provided to MAR410.1 should align with the scope of work for the grant agreement. In some cases, there may be changes to project elements between the submission of an application and grant award. The scope of work should also reflect, as much as possible, any design changes that could potentially occur. The rationale being to avoid revisiting NEPA once it is completed, if possible. MAR410.1 recommends that the grantee submit the scope of work within 30 days of grant award.

Timeline and Schedule

NEPA requires a 1-year time limit for completion of EA's and a 2-year time limit for EIS's. MAR410.1 will determine the start date, consistent with NEPA, and notify the grantee and/or their consultant accordingly. Grantees should submit a detailed schedule for NEPA completion within 30 days of grant award for MAR410.1 review and approval. The schedule should outline significant milestones in the environmental review process, such as required consultation and public involvement, as appropriate. MAR410.1 will provide a schedule template for the grantee to fill out.

Section 7 of the Endangered Species Act

MAR410.1 recommends that within 30 days of grant award, the grantee and/or their consultant determine if there are threatened/endangered (T&E) species or critical habitats in the project area and if these resources will be affected so that the consultation processes can be initiated as quickly as possible.

MAR410.1 will generally delegate the preparation of consultation letters to the grantee and/or their consultant via email. The grantee and/or their consultant must ensure in advance this is accepted by the service agency. Some agencies require a formal letter from MARAD, and the instructions are described in detail in additional attached documents. After the grant award notification, the grantee should accomplish these activities as early as possible.

Under the implementing regulations, MARAD will designate a non-federal representative to conduct formal consultation or prepare a biological assessment. However, the ultimate responsibility for compliance with Section 7 remains with MARAD. The grantee and/or their consultant will need to make an initial determination if there are any listed species and potential for adverse effects that would trigger informal or formal consultation. The grantee and/or their consultant will review the existing data (e.g., IPaC) to determine if T&E species may be affected and obtain information from the service agency if informal consultation is an appropriate approach. MAR410.1 will determine if the grantee and/or their consultant may act on MARAD's behalf.

If formal consultation is required, a biological assessment would then need to be prepared and submitted to the service agency. The biological assessment, consultation letter, and accompanying documentation will need to be reviewed, approved, and signed by MAR410.1, but it is the responsibility of the grantee and/or their consultant to ensure that the documents are properly prepared and provided for MAR410.1 review. Section 7 must be completed prior to finalizing the NEPA document. Additional information can be found in the attached documents.

Section 106 of the National Historic Preservation Act and Tribal Concurrence

All Section 106 and Tribal Consultation must be completed prior to finalizing the NEPA document. The grantee must reach out to the grants program office and/or the Federal Preservation Officer for the appropriate instructions on how to complete Section 106. MAR410.1 can provide contact information if needed. The grantee, their consultant, or the grants program office shall notify MAR410.1 when SHPO/THPO consultations are completed.

Section 4(f) of the Department of Transportation Act

For grantees that may have potential 4(f) impacts where a project would require use of historic property or land from a publicly owned park, recreation area, or refuge, please review the following:

<https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/section-4f-department-transportation-act>

If 4(f) properties are potentially impacted from a proposed project, MAR410.1 will be required to submit a 4(f) determination to DOI and the sooner this is accomplished, the better. If the grantee has a potential 4(f) concern for the project, consult with MAR410.1 as soon as possible so that we can review and assist in determination and document preparation.

Format of EA/EIS

The sample EA Table of Contents provided separately does not contain a listing of the potentially applicable resources. These resources include (but may not be limited to) the below bullet items and should be placed in the appropriate section based on whether or not it has been determined to have a potential environmental impact or a particular need to be discussed in depth. The grantee and/or their environmental consultant should arrange sections accordingly and not necessarily align with the below bullets.

- Soil, geology, seismicity
- Air quality
- Hazardous materials and waste management
- Noise and Vibration
- Public Services and Utilities
- Prime Farmland
- Surface and Ground Waters
- Wetlands and Waters of the US
- Floodplains
- Fish and Wildlife
- T&E species and critical habitat
- Essential Fish Habitat
- DOT Section 4(f) and parks/recreational resources
- Cultural and Tribal resources
- Traffic and safety
- Land Use and visual impacts

EIS's generally have more comprehensive requirements than EA's. In the event of a discrepancy with this document, the regulations pertaining to EIS format and content will take precedence.

NEPA is designed to empower government agencies to compare a range of alternatives in order to provide a range of data to support decision making. Every EA and EIS is required to include a description of a "No Action Alternative" (NAA). The NAA serves as an environmental baseline from which to compare various other alternatives. Even when the NAA is eliminated from consideration because it fails to meet the purpose and need of the project, the NAA should be referenced in the document as a comparison to the proposed project.

MARAD is required to review and approve the project's Purpose and Need, as well as reasonable alternatives. The grantee and/or their consultant should prepare the information as early as possible. We recommend this be submitted as soon as possible (refer to "NEPA level of review" section above).

Environmental effects for each resource area shall be evaluated in the context of both short term and long-term impacts. Typically, short term impacts will include the demolition and construction phases of a project, and are typically associated with acute and discrete impacts, such as emissions from construction equipment, loss of wetlands or habitat, and noise impacts due to construction. Long term impacts are associated with the operation of the project following initial construction and includes an analysis of the beneficial or detrimental changes to environmental resources including air quality, water quality, or ambient noise due to routine operations.

The grantee will be required to provide a detailed list of all local, state, and federal environmental permits required for the project. Information should include the Agency and type of permit, the current status of the permit, date of issuance, and date of expiration. A copy of the permit application and permit approval should also be provided to MAR410.1.

If your project requires an EA, MAR410.1 can provide a copy of recently completed EA. Please request a copy as soon as possible. The example EA represents an appropriate format and level of analysis and should be utilized for reference purposes.

The EA and EIS documents also need to follow MARAD's Style Guide.

Page Limits

NEPA limits EA's to 75 pages and EIS's to 150 pages (an EIS of extraordinary complexity has a 300 page limit). Pursuant to the regulations, page means 500 words and does not include explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information.

To comply with this requirement, documents should attempt to reduce extraneous data and needless information to the extent practicable. Where information can be consolidated, not repeated, and/or incorporated by reference, the document authors should strive to do so. Narratives should be written clearly and concisely with a goal toward brevity as much as practicable.

Resource areas that are not potentially impacted by the project may be consolidated and briefly explained why no impacts, if this is practicable. Each document will vary, but remember the goal is to be as brief, clear, and concise as possible.

Public Comment on EA's

The grantee may be required to provide a 30-day public review and/or comment period for EA's. Prior to initiating, the grantee will coordinate with MAR410.1 on the release of an approved draft of a Final document.

Documents should not be made available for public review and/or comment unless approved by MARAD.

When comments are received by the grantee, comments and responses will be compiled and made part of the official Final EA.

MARAD NEPA document review process

It is critical that the below steps are accurately followed. Failure to do so will result in the Draft EA being returned without having been reviewed.

When a Draft EA is ready for submittal to MARAD, it should be submitted electronically in Word format only. A Draft EA consists of a technically complete document, including attachments and/or appendices, that does NOT have any outstanding information or known data gaps.

Do not submit a partial Draft EA for review. Do not submit the Draft EA in pdf format.

The Draft EA should be submitted to the MAR410.1 Environmental Protection Specialist assigned to your project.

Comments will be returned as quickly as possible, generally a two week turnaround, but may take longer based on staffing, backlog, and size or complexity of the EA document. In some instances, reviews can take up to one or more months, therefore grantees are advised to plan accordingly. MAR410.1 will advise if the document is ready to be finalized or if additional round(s) of review is warranted. The grantee and/or their consultant will revise based on the comments.

Revised Draft EA's (all subsequent reviews after the initial review) shall be submitted in Word format with track changes. Comments from MARAD shall not be deleted; MARAD will resolve if the response is sufficient.

All appendices should be submitted in a single pdf, separate from the narrative of the document.

MAR410.1 will advise when it is appropriate for the grantee and/or their consultant to submit a final copy of the EA. The Final EA should be submitted in Word format with all appendices in a single pdf. If any edits are made during the concurrence process, MAR410.1 will provide an updated copy to the grantee and/or their consultant at the completion of the concurrence process.

All documents must be in compliance with Section 508 of the Rehabilitation Act of 1973.

Finding of No Significant Impact

Once the EA is finalized, MAR410.1 staff will prepare the FONSI, if appropriate. MAR410.1 will provide a copy of the tables included in the FONSI for appropriate formatting. This can be used in the EA document for consistency.

Once the Draft FONSI is complete, it will be submitted for internal MARAD concurrence. The grants program office and the grantee will be notified when concurrence is achieved and NEPA is considered complete.

Mitigation Monitoring

When mitigation measures are required as part of the FONSI, MARAD is obligated to monitor and enforce compliance with those mitigation measures. This will include any mitigation required by local, state, or federal permits issued for the project. The grantee is responsible for providing status updates in the Quarterly Reports and notification to MAR410.1 of any issues or concerns is strongly recommended. The grant agreement will have terms and conditions related to mitigation monitoring and compliance. Failure to maintain compliance could result in revocation of the grant agreement.

Adoption

If NEPA has previously been completed for the project under another federal agency action, MARAD is still required to complete NEPA for the project we are implementing under the grant program. MARAD may be able to adopt a previous NEPA document, but it will depend on multiple factors. Please be aware that a PERMIT, a state-level environmental analysis, and a Phase I/II Environmental Site Assessment are not the same as a federal NEPA analysis/document. For example, if a grantee has acquired a USACE permit, that permit does not satisfy NEPA. USACE may be able to provide the NEPA analysis that was done as part of the permit, and the grantee should make an attempt to acquire the NEPA analysis document, but the documents will need to be reviewed by MAR410.1 to determine if this is sufficient. Under this example, generally USACE Nationwide Permits do not contain sufficient analysis for MARAD adoption.

MARAD will not only need to evaluate the sufficiency of the analysis but will need to prepare our own FONSI or Record of Decision (ROD). All existing environmental analyses and/or permits should be provided to MAR410.1 as soon as possible upon grant award.

NEPA documents greater than 5 years old are generally unable to be adopted without supplemental updates.

Additional Information and Resources

The process for pre-NEPA investigations and purchase of long-lead time items can be found in the attachments.

Should there be any changes to the scope of the project post-NEPA completion, the grantee is responsible for notifying the grants program office and MAR410.1 so that the NEPA documents can be reviewed and a determination made if additional analysis is required.