

**Gulf Coast Ecosystem Restoration Council**  
**National Environmental Policy Act Implementing Procedures**  
**May 6, 2026**

**PART 1—PURPOSE AND POLICY**

**§ 1.1 Purpose and policy.**

(a) The purpose of these procedures is to integrate the National Environmental Policy Act (NEPA) into the Gulf Coast Ecosystem Restoration Council’s (Council) decision-making processes. Specifically, the procedures: describe the process by which the Council determines what actions are subject to NEPA’s procedural requirements and the applicable level of NEPA review; ensure that relevant environmental information is identified and considered early in the process in order to ensure informed decision making; enable the Council to conduct coordinated, consistent, predictable and timely environmental reviews; reduce unnecessary burdens and delays; and implement NEPA’s mandates regarding lead and cooperating agency roles, page and time limits, and sponsor preparation of environmental documents.

(b) *Procedural and Interpretive Rule.* This document sets forth the Council’s procedures and practices for implementing NEPA. It further explains the Council’s interpretation of certain key terms in NEPA. It does not, nor does it intend to, govern the rights and obligations of any party outside the Federal government. It does, however, establish the procedures under which the Council will typically fulfill its requirements under NEPA.

(c) *Consultation with the Council on Environmental Quality (“CEQ”).* In addition to the process for establishing or revising categorical exclusions set forth in §2.4(b) and (d), the Council will consult with CEQ while developing or revising their proposed NEPA implementing procedures, in accord with NEPA § 102(2)(B), 42 U.S.C. § 4332(2)(B).

**§ 1.2 Applicability.**

(a) *Applicability.* These NEPA procedures apply to Council funding approvals made pursuant to the “Council-Selected Restoration Component” (33 U.S.C. § 1321(t)(2)) of the *Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012*, (33 U.S.C. § 1321(t)) (“RESTORE Act” or “Act”).

(b) *Authority.* NEPA imposes certain procedural requirements on the exercise of the Council’s existing legal authority in relevant circumstances. Nothing contained in these procedures is intended or should be construed to limit the Council’s other authorities or legal responsibilities.

## PART 2—NEPA AND AGENCY PLANNING

### § 2.1 Determining when NEPA applies.

- (a) The Council will determine that NEPA does not apply to a proposed agency action when:
- (1) The activities or decision do not result in final agency action under the Administrative Procedure Act, *see* 5 U.S.C. § 704, or other relevant statute that also includes a finality requirement;
  - (2) The proposed activity or decision is exempted from NEPA by law;
  - (3) Compliance with NEPA would clearly and fundamentally conflict with the requirements of another provision of law;
  - (4) In circumstances where Congress by statute has prescribed decisional criteria with sufficient completeness and precision such that the Council retains no residual discretion to alter its action based on the consideration of environmental factors, then that function of the Council is nondiscretionary within the meaning of NEPA § 106(a)(4) and/or § 111(10)(B)(vii) (42 U.S.C. § 4336(a)(4) and § 4336e(10)(B)(vii), respectively), and NEPA does not apply to the action in question;
  - (5) The proposed action is an action for which another statute’s requirements serve the function of agency compliance with the Act; or
  - (6) The proposed action is not a “major Federal action.” The terms “major” and “federal action,” each have independent force. NEPA applies only when both of these two criteria are met. While such a determination is inherently bound up in the facts and circumstances of each individual situation, and is thus reserved to the judgment of the Council in each instance, the Council provides its officers and the public at large with the following interpretive guidance:
    - (i) The Council anticipates, on the basis of its experience, that the following types of action are generally “major”: Council funding approvals made pursuant to the Council-Selected Restoration Component of the RESTORE Act.
    - (ii) NEPA does not apply to “non-Federal actions.” Therefore, under the terms of the statute, NEPA does not apply to actions with no or minimal Federal funding, or with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project. NEPA § 111(10)(B)(i), 42 U.S.C. § 4336e(10)(B)(i). A but-for causal relationship is insufficient to make an agency responsible for a particular action under NEPA. *See Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004). By the same token, minimal Federal funding or involvement, which may in a causal sense be a but-for cause of an action, does not by itself convert that action into a Federal action within the meaning of the language of the statute.
  - (7) In addition to the illustrative general categories set forth in NEPA § 111(10), 42 U.S.C. § 4336e(10), the Council has determined that its approval of funding pursuant to the “Spill Impact Component” (33 U.S.C. § 1321(t)(3)) of the RESTORE Act is not subject to NEPA because it is “nondiscretionary” pursuant to Section 2.1(a)(4) above. Under the RESTORE Act, the Council has no role in the design or selection of Spill Impact Component activities; those activities are undertaken solely by the state members of the Council. The RESTORE Act specifies specific criteria for an activity to be eligible for Spill Impact Component funding; when these criteria are met, the Council has no authority or discretion to reject a Spill Impact Component activity, to select or designate alternative versions of the activity, or to select or designate alternative activities; the Council retains no residual discretion to alter its action based on the consideration of environmental factors.
  - (8) The issuance or update of the Council’s NEPA procedures is not subject to NEPA review.

(9) In determining whether NEPA applies to a proposed agency action, the Council will consider only the action or project at hand.

## **§ 2.2 Determine the appropriate level of NEPA review.**

(a) If the Council determines under § 2.1 that NEPA applies to a proposed activity or decision, the Council will then determine the appropriate level of NEPA review in the following sequence and manner. At all steps in the following process, the Council will consider the proposed action or project at hand and *its* effects.

(1) If the Council has established, or adopted pursuant to NEPA § 109, 42 U.S.C. § 4336c, a categorical exclusion that covers the proposed action, the Council will analyze whether to apply the categorical exclusion to the proposed action and apply the categorical exclusion, if appropriate, pursuant to § 2.4(e).

(2) If another agency has already established a categorical exclusion that covers the proposed action, the Council will consider whether to adopt that exclusion pursuant to § 2.4(c) so that it can be applied to the proposed action at issue, and to future activities or decisions of that type.

(3) If the proposed action warrants the establishment of a new categorical exclusion, or the revision of an existing categorical exclusion, pursuant to § 2.4(b), the Council will consider whether to so establish or revise, and then apply the categorical exclusion to the proposed action pursuant to § 2.4(e).

(4) If the Council cannot apply a categorical exclusion to the proposed action consistent with paragraphs (a)(1)-(a)(3), the Council will consider the proposed action's reasonably foreseeable effects consistent with paragraph (b), and then will:

(i) if the proposed action is not likely to have reasonably foreseeable significant effects or the significance of the effects is unknown, develop an environmental assessment, as described in § 2.5; or

(ii) if the proposed action is likely to have reasonably foreseeable significant effects, develop an environmental impact statement, as described in part 3 of these procedures.

(b) When considering whether the reasonably foreseeable effects of the proposed action are significant, the Council will analyze the potentially affected environment and degree of the effects of the action. The Council may use any reliable data source and will not undertake new research unless it is essential to evaluating alternatives and the cost and time of obtaining it are not unreasonable.

(1) In considering the potentially affected environment, the Council may consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources.

(2) In considering the degree of the effects, the Council may consider the following, as appropriate to the specific action:

(i) Both short- and long-term effects.

(ii) Both beneficial and adverse effects.

- (iii) Effects on public health and safety.
- (iv) Economic effects.
- (v) Effects on the quality of life of the American people.

### **§ 2.3 NEPA and agency decisionmaking.**

(a) The Council comprises the states of Alabama, Florida, Louisiana, Mississippi and Texas, the Environmental Protection Agency, and the Departments of Army, Interior, Agriculture, Commerce, and Homeland Security. The Council approves funding for Council-Selected Restoration Component projects and programs (collectively referred to as “activities”) via a voting process in which each state member has one vote and the federal members, represented by the Chair, have one aggregate vote. For an activity to be approved for funding under the Council-Selected Restoration Component it must receive the affirmative vote of at least three states and the Chair.

The Council votes to approve groups of projects and programs for Council-Selected Restoration Component funding in what is called a Funded Priorities List (FPL). The Council periodically amends FPLs to approve implementation funding for projects or modify activities already approved in an FPL. Prior to voting on an FPL or FPL amendment, the Council seeks and considers public input. Throughout this process, the Council is focused on the environmental effects of the ecosystem restoration and protection projects under consideration.

Council members sponsor the specific activities in an FPL. Pursuant to the RESTORE Act, once an activity is approved by the Council, the sponsoring member assumes primary authority and responsibility for the given activity. The Council may approve funding for the planning portion of a project or program, including engineering and design, and environmental permitting and compliance. The Council may also approve funding for the implementation/construction phase of an activity. The Council must address all applicable environmental laws, including NEPA, prior to approving Council-Selected Restoration Component funding for the implementation/construction phase of a project or program.

Council members that sponsor Council-Selected Restoration Component activities are responsible for assisting the Council in complying with NEPA and other applicable laws. In some cases, the sponsor of a project or program first seeks approval of planning funds to conduct engineering and design and environmental compliance for the given activity. The sponsor uses these planning funds to assist the Council in addressing NEPA and other applicable environmental laws. State sponsors may prepare NEPA documentation on behalf of the Council, subject to Council review as appropriate. If the sponsor subsequently seeks Council approval of implementation funding for the activity, the Council will consider using the NEPA documentation prepared by the sponsor during the planning phase. When deciding whether to use a NEPA document to support approval of implementation funding for an activity, the Council coordinates among its members, and ensures the NEPA document covers the activity in question.

(b) While a NEPA review is ongoing and no issuance of a record of decision or finding of no significant impact, or a categorical exclusion determination, as applicable, has occurred, the Council will not vote to approve Council-Selected Restoration Component funding for implementation actions that would:

- (1) have an adverse environmental effect; or
- (2) limit the choice of reasonable alternatives.

(c) If the Council is considering an application from a non-Federal sponsor and becomes aware that the sponsor is about to take an action subject to the Council’s jurisdiction that would meet either of the criteria

in §1.3(b), the Council will promptly notify the sponsor that the Council will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. This section does not preclude development by sponsors of plans or designs or performance of other activities necessary to support an application for Federal, State, Tribal, or local permits or assistance. When considering a proposed action for Federal funding, the Council may authorize such activities, including, but not limited to, acquisition of interests in land (e.g., fee simple, rights-of-way, and conservation easements), purchase of long lead-time equipment, and purchase options made by sponsors.

(d) For proposed actions that are initially developed by sponsors (*i.e.*, Council members), the Council will:

(1) coordinate with the sponsor at the earliest reasonable time in the planning process to inform the entity what information the Council might need to comply with NEPA and establish a schedule for completing steps in the NEPA review process, consistent with NEPA's statutory deadlines and any internal agency NEPA schedule requirements; and

(2) begin the NEPA process by determining whether NEPA applies, as described in § 2.1, and if it does, determine the appropriate level of NEPA review, as described in §2.2, as soon as practicable after receiving the complete application. An applicant or a contractor hired by the sponsor Council member may prepare an environmental assessment or environmental impact statement under the sponsor's supervision. The Council's procedures for applicant-prepared environmental assessments and environmental impact statements are included in part 6 of these procedures.

## § 2.4 Categorical exclusions.

- (a) This section describes the process the Council uses for establishing and revising categorical exclusions, for adopting other agencies' categorical exclusions, and for applying categorical exclusions to a proposed agency action. The Council's categorical exclusions, including CEs the Council established and substantiated consistent with its NEPA procedures, legislative CEs, and CEs adopted from other agencies, are listed in subsection (g).
- (b) To establish or revise a categorical exclusion, the Council will determine that the category of actions normally does not significantly affect the quality of the human environment. In making this determination, the Council will:
- (1) Develop a written record containing information to substantiate its determination;
  - (2) Consult with CEQ on its proposed categorical exclusion, including the written record, for a period not to exceed 30 days prior to providing public notice as described in subparagraph (3); and
  - (3) Provide public notice in the *Federal Register* of the Council's establishment or revisions of the categorical exclusion and the location (*e.g.*, website) of availability of the written record.
- (c) Consistent with NEPA § 109, 42 U.S.C. § 4336c, the Council may adopt a categorical exclusion listed in another agency's NEPA procedures. When adopting a categorical exclusion, the Council will:
- (1) Identify the categorical exclusion listed in another agency's NEPA procedures that covers its category of proposed or related actions;
  - (2) Consult with the agency that established the categorical exclusion to ensure that the proposed adoption of the categorical exclusion is appropriate;
  - (3) Provide public notification (at [www.restorethegulf.gov](http://www.restorethegulf.gov) and via stakeholder listserv) of the categorical exclusion that the Council is adopting, including a brief description of the proposed action or category of proposed actions to which the Council intends to apply the adopted categorical exclusion; and
  - (4) Document the adoption of the categorical exclusion in the Council's implementing procedures.
- (d) To remove a categorical exclusion from these NEPA procedures, the Council will:
- (1) Develop a written justification for the removal;
  - (2) Consult with CEQ on its proposed removal of the categorical exclusion, including the written justification, for a period not to exceed 30 days prior to providing public notice as described in subparagraph (3); and
  - (3) Provide public notice of the Council's removal of the categorical exclusion and the written justification in the *Federal Register*.
- (e) If the Council determines that a categorical exclusion covers a proposed Council action, the Council will evaluate the action for extraordinary circumstances that indicate a normally excluded agency action is likely to have a reasonably foreseeable significant adverse effect.

- (1) If an extraordinary circumstance is not present, the Council will determine that the categorical exclusion applies to the proposed agency action and conclude review.
- (2) The Council will determine that the categorical exclusion applies to the proposed agency action and conclude review if the Council either:
  - (i) Determines that, notwithstanding the extraordinary circumstance, the proposed agency action is not likely to result in reasonably foreseeable adverse significant effects; or
  - (ii) Modifies the proposed agency action to avoid those effects.

If the Council determines that it cannot apply the categorical exclusion to the proposed action, the Council will prepare an environmental assessment or environmental impact statement, as appropriate.

(3) The Council may apply multiple categorical exclusions in combination to cover a single agency action. In some circumstances, the combination of categorical exclusions can cover all aspects of the action and support the agency's determination that the project as a whole is not likely to have a reasonably foreseeable significant adverse effect. When an agency completes its NEPA review of a proposed action using multiple categorical exclusions, it should concisely document their use and consider whether extraordinary circumstances prevent their application for the given activity.

(4) The Council will document its evaluation of the applicability of a categorical exclusion in each of the following cases:

- (i) For any application of a categorical exclusion designated by the Council as requiring documentation, as indicated in paragraph (g) of this section, and
- (ii) For any case in which the Council determines that applying a categorical exclusion is appropriate consistent with paragraph (e)(2).

(5) The Council uses a standardized form for documenting its use of categorical exclusions, where required by these procedures. This form lists potential extraordinary circumstances to be considered by the Council and may include appendices, where appropriate, to substantiate the Council's findings regarding the applicability of the categorical exclusion to the given activity. The Council will post final categorical exclusion forms and associated documentation at [www.restorethegulf.gov](http://www.restorethegulf.gov).

(f) *Applying legislative categorical exclusions.* If the Council determines that a categorical exclusion established through legislation, or a categorical exclusion that Congress through legislation has directed the Council to establish, covers a proposed agency action, the Council will conclude its review consistent with applicable law. If appropriate, the Council may examine extraordinary circumstances, modify the proposed agency action, or document the determination that the legislative categorical exclusion applies, consistent with paragraph (e) of this section and the legal authority for the establishment of the legislative categorical exclusion.

(g) *Reliance on categorical exclusion determinations of other agencies.* The Council may also rely on another agency's determination that a categorical exclusion applies to a particular proposed agency action if the agency action covered by that determination and the Council's proposed action are substantially the same, or if the Council's proposed action is a subset of the agency action covered by that determination. The Council will document its reliance on another agency's categorical exclusion determination using the form described in section (e)(5) above.

(h) The Council has established the following categorical exclusions:

- (1) *Council Activities for Planning, Research or Design Activities (Documentation Required):*

- (i) Funding for planning, engineering and design, research and other activities which do not involve or lead directly to ground-disturbing activities that may have significant effects individually or cumulatively, and do not commit the Council or its applicants to a particular course of action affecting the environment. Use of this categorical exclusion will be documented following the procedures described in section (e)(5) above.
- (2) *Council Funded Activities that Fall Under a CE of a Federal Council Member (Documentation Required):*
  - (i) Any environmental restoration, conservation, or protection activity that falls within a categorical exclusion established by a federal agency Council member, provided that no extraordinary circumstances preclude the use of the categorical exclusion and the federal agency that established the categorical exclusion is involved in the Council action. A federal agency Council member is involved in the Council action when that federal agency advises the Council that use of the categorical exclusion would be appropriate for the specific action under consideration by the Council. Use of this categorical exclusion will be documented following the procedures described in section (e)(5) above.

### **§ 2.5 Environmental assessments.**

(a) *Generally.* If an action is subject to NEPA, as determined following the procedures in § 2.1, and unless the Council finds that the proposed action is excluded from having to prepare an environmental assessment or environmental impact statement pursuant to a categorical exclusion as determined following the procedures in § 2.4, or by another provision of law, the Council will prepare an environmental assessment with respect to a proposed agency action that does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown. The Council is mindful of Congress' direction that environmental assessments are to be "concise." NEPA § 106(b)(2); 42 U.S.C. § 4336(b)(2).

(b) *Elements.* For the purpose of providing evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact, environmental assessments will:

- (1) Briefly discuss the:
  - (i) Purpose and need for the proposed agency action based on the Council's statutory authority. When the proposed agency action concerns the Council's duty to act on an application for authorization, the purpose and need for the proposed agency action will also be informed by the goals of the applicant;
  - (ii) Alternatives to the extent required by NEPA § 102(2)(H), 42 U.S.C. § 4332(2)(H); and
  - (iii) The reasonably foreseeable effects of the proposed agency action and the alternatives considered.

(c) *Scope of analysis.*

- (1) In preparing the environmental assessment, the Council will focus its analysis on whether the environmental effects of the action or project at hand are significant.
- (2) Similarly, the Council will document in the environmental assessment where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographical territory of the project or might materialize later in time.

(d) *Page limits.*

- (1) The text of an environmental assessment are strictly prohibited from exceeding 75 pages, not including citations or appendices.
- (2) Appendices are to be used for voluminous materials, such as scientific tables, collections of

data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment. Appendices are not to be used to provide additional substantive analysis that would circumvent congressionally mandated page limits.

(3) Environmental assessments will be formatted for an 8.5"x11" page with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material do count towards the page limit. When an item of graphical material is larger than 8.5"x11", each such item will count as one page.

(4) *Certification Related to Page Limits.* The breadth and depth of analysis in an environmental assessment will be tailored to ensure that the environmental analysis does not exceed this page limit. In this regard, as part of the finalization of the environmental assessment, a responsible official will certify (and the certification will be incorporated into the environmental assessment) that the Council has considered the factors mandated by NEPA; that the environmental assessment represents the Council's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects the Council's expert judgment; and that any considerations addressed briefly or left unaddressed were, in the Council's judgment, comparatively not of a substantive nature that meaningfully informed the consideration of environmental effects and the resulting decision on how to proceed.

(e) *Deadlines.* As the Supreme Court has repeatedly held, NEPA is governed by a "rule of reason." Congress supplied the measure of that reason in the 2023 revision of NEPA by setting the deadlines in NEPA § 107(g) of NEPA, 42 U.S.C. § 4336a(g). These deadlines indicate Congress's determination that an agency, working within Congress's allocation of resources, has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual circumstances. In such circumstances, an extension will be given only for such time as is *necessary* to complete the analysis. Thus:

(1) The Council or Council member sponsoring the proposal will complete the environmental assessment not later than the date that is 1 year after the date on which the Council formally determines that an environmental assessment is required for the given action. Where a Council member is preparing the environmental assessment for Council use, the deadline will not be established until funding to support preparation of the environmental assessment has been awarded to that member. The end date for the environmental assessment is the date on which the final document is presented to the Council for use in association with the associated funding proposal.

(2) The environmental assessment will publish (unless the deadline is extended pursuant to the provision below), at the latest, on the day the deadline elapses, in as substantially complete form as is possible.

(3) *Deadline extensions.* If the Council determines it is not able to meet the deadline prescribed by NEPA § 107(g)(1)(B), 42 U.S.C. § 4336a(g)(1)(B), it must consult with the applicant, if any, pursuant to NEPA § 107(g)(2), 42 U.S.C. § 4336a(g)(2). After such consultation, if needed, and for cause stated, it may establish a new deadline. Cause for establishing a new deadline is only established if the environmental assessment is so incomplete, at the time at which the Council determines it is not able to meet the statutory deadline, that issuance pursuant to subsection (4) below would, in the Council's view, result in an inadequate analysis. Such a new deadline must provide only so much additional time as is necessary to complete such environmental assessment. The announcement of the new deadline will specify the reason why the environmental assessment was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline.

(4) *Certification Related to Deadline.* When the environmental assessment is published, a responsible official will certify (and the certification will be incorporated into the environmental assessment) that the resulting environmental assessment represents the Council's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; that, in the Council's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the Council's judgment, the analysis contained therein is adequate to inform and reasonably explain the Council's final decision regarding the proposed federal action.

#### **§ 2.6 Findings of no significant impact.**

(a) The Council will prepare a finding of no significant impact if the Council determines, based on the environmental assessment, not to prepare an environmental impact statement because the proposed action or project at hand will not have significant effects. The finding of no significant impact will:

(1) Include the environmental assessment or incorporate it by reference;

(2) Succinctly document the reasons why the Council has determined that the selected alternative will not have a significant effect on the quality of the human environment;

(3) State the authority for any mitigation that the Council has adopted and any applicable monitoring or enforcement provisions. If the Council finds no significant effects based on mitigation, the mitigated finding of no significant impact will state any mitigation requirements enforceable by the agency or voluntary mitigation commitments that will be undertaken to avoid significant effects;

(4) Identify any other documents related to the finding of no significant impact; and

(5) State that an environmental impact statement will not be prepared, concluding the NEPA process for that action.

(b) The Council will post findings of no significant impact and associated environmental compliance documentation at [www.restorethegulf.gov](http://www.restorethegulf.gov).

#### **§ 2.7 Lead and cooperating agencies.**

In many instances, a proposed activity or decision is undertaken in the context which entails activities or decisions undertaken by other federal agencies (*e.g.*, where multiple federal authorizations or analyses are required with respect to a project sponsor's overall purpose and goal). These activities and decisions are "related actions," in that they are each the responsibility of a particular agency but they are all related in a matter relevant to NEPA, *e.g.*, by their relationship with one overarching project. In such instances, Congress has provided that the multiple agencies involved shall determine which of them will be the lead agency pursuant to the criteria identified in NEPA § 107(a)(1)(A), 42 U.S.C. § 4336a(a)(1)(A). When serving as the lead agency, the Council is ultimately responsible for completing the NEPA process; when serving as the lead agency, the Council will also determine and document the scope of the project at hand. When a joint lead relationship is established pursuant to NEPA § 107(a)(1)(B), 42 U.S.C. § 4336a(a)(1)(B), the Council and the other joint lead agency or agencies are collectively responsible for completing the NEPA process.

#### **§ 2.8 Notices of intent and scoping.**

(a) As a preliminary step in determining whether, in conjunction with a proposal that is not excluded pursuant to a categorical exclusion, the Council will prepare an environmental assessment or an environmental impact statement, the Council will determine and document the scope of the project at hand.

(b) *Notice of intent.* As soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an environmental impact statement, the Council or Council member sponsoring the proposal will publish a notice of intent to prepare an environmental

impact statement. If the Council or Council member sponsoring the proposal determines that it will prepare an environmental assessment for a proposed action, the Council or Council member sponsoring the proposal may publish notice of intent to publish an environmental assessment.

(1) The notice of intent for an environmental impact statement will include a request for public comment on alternatives or effects and on relevant information, studies, or analyses with respect to the proposed agency action. NEPA § 107(c); 42 U.S.C. § 4336a(c).

(2) In addition to a request for comment required for notices of intent for environmental impact statements, notice of intent for any environmental document may include:

- (i) The purpose and need for the proposed action;
- (ii) A preliminary description of the proposed action and alternatives the environmental impact statement will consider;
- (iii) A brief summary of expected effects;
- (iv) Anticipated permits and other authorizations (*i.e.*, anticipated related actions);
- (v) A schedule for the decision-making process;
- (vi) A description of the public scoping process, including any scoping meeting(s);
- (vii) Contact information for a person within the Council or Council member sponsoring the proposal who can answer questions about the proposed action and the environmental impact statement; and
- (viii) Identification of any cooperating and participating agencies (*i.e.*, agencies responsible for related actions), and any information that such agencies require in the notice to facilitate their decisions or authorizations

(c) *Scoping*. The Council or Council member sponsoring the proposal may use an early and open process to determine the scope of issues for analysis in an environmental document, including identifying substantive issues that meaningfully inform the consideration of environmental effects and the resulting decision on how to proceed, and eliminating from further study non-substantive issues, and determining whether connected actions should be addressed in the same environmental document. Scoping may begin as soon as practicable after the proposal for action is sufficiently developed for consideration. Scoping may include appropriate pre-application procedures or work conducted prior to publication of the notice of intent.

## **PART 3 —ENVIRONMENTAL IMPACT STATEMENTS**

### **§ 3.1 Preparation of environmental impact statements.**

(a) The Council or Council member sponsoring the proposal will prepare an environmental impact statement only with respect to proposed agency actions that otherwise require preparation of an environmental document and that have a reasonably foreseeable significant effect on the quality of the human environment. NEPA § 106(b)(1); 42 U.S.C. § 4336(b)(1). Whether an impact rises to the level of “significant” is a matter of the Council’s expert judgment.

(b) During the process of preparing an environmental impact statement, the Council or Council member sponsoring the proposal:

(1) Will obtain the comments of:

- (i) any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact of the action or project at hand or is authorized to develop and enforce environmental standards that govern the action or project at hand.
- (ii) Appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards.

(2) May request the comments of:

- (i) State, Tribal, or local governments that may be affected by the proposed action;
- (ii) Any agency that has requested it receive statements on actions of the kind proposed;
- (iii) The applicant, if any; and
- (iv) The public, including by affirmatively soliciting comments, for a minimum of 30 days, in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action.

(c) This process of obtaining and requesting comments pursuant to (b) above may be undertaken at any time that is reasonable in the process of preparing the environmental impact statement. The Council will ensure that the process of obtaining and requesting comments pursuant to (b) above, and its analysis of and response to those comments, does not cause the Council to violate the congressionally mandated deadline for completion of an environmental impact statement.

(d) The Council or Council member sponsoring the proposal will address any significant comments received consistent with paragraph (b) of this section in the environmental impact statement.

(e) Public comments on Council NEPA documentation can be submitted using one of the two methods below: By Email: To [restorecouncil@restorethegulf.gov](mailto:restorecouncil@restorethegulf.gov) or by U.S. Mail: Gulf Coast Ecosystem Restoration Council, 500 Poydras Street, Suite 1117, New Orleans, LA 70130

### **§ 3.2 Purpose and need.**

The statement will include the purpose and need for the proposed agency action based on the Council’s statutory authority. When the proposed agency action concerns the Council’s duty to act on an application for authorization, the purpose and need for the proposed agency action will also be informed by the goals of the applicant.

### **§ 3.3 Analysis within the environmental impact statement.**

(a) The environmental impact statement will include a detailed statement on:

- (1) reasonably foreseeable environmental effects of the proposed agency action;
- (2) any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;

- (3) a reasonable range of alternatives to the proposed agency action, including an analysis of any adverse environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are, in the Council's expert judgment, technically and economically feasible, and meet the purpose and need of the proposal;
- (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and
- (5) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented; and
- (6) Any means identified to mitigate adverse environmental effects of the proposed action. The Council is mindful in this respect that NEPA itself does not require or authorize the Council to impose any mitigation measures.

(b) *Scope of analysis.*

- (1) In preparing the environmental impact statement, the Council will focus its analysis on whether the environmental effects of the action or project at hand are significant.
- (2) Similarly, the Council will document in the environmental impact statement where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographical territory of the project or might materialize later in time.

(c) *Proportionate analysis.* Environmental impact statements will discuss effects in proportion to their significance. With respect to issues that are not of a substantive nature and do not meaningfully inform the consideration of environmental effects and the resulting decision on how to proceed, there will be no more than the briefest possible discussion to explain why those issues are not substantive and therefore not worthy of any further analysis. Environmental impact statements will be analytic, concise, and no longer than necessary to comply with NEPA in light of the congressionally mandated page limits and deadlines.

**§ 3.4 Page limits.**

(a) *Page limits.* Except as provided in paragraph (b), the text of an environmental impact statement will not exceed 150 pages, not including citations or appendices.

(b) An environmental impact statement for a proposed agency action of extraordinary complexity is strictly prohibited from exceeding 300 pages, not including any citations or appendices. The Council or Council member sponsoring the proposal will determine at the earliest possible stage of preparation of an environmental impact statement whether the conditions for exceeding the page limit in paragraph (a) are present.

(c) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment. Appendices are not to be used to provide additional substantive analysis that would circumvent the congressionally mandated page limits.

(d) Environmental impact statements will be prepared on 8.5"x11" paper with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information. When an item of graphical material is larger than 8.5"x11", each such item will count as one page.

(e) *Certification Related to Page Limits.* The breadth and depth of analysis in an environmental impact statement will be tailored to ensure that the environmental impact statement does not exceed these page limits. In this regard, as part of the finalization of the environmental impact statement, a responsible

official will certify that the Council has considered the factors mandated by NEPA; that the environmental impact statement represents the Council's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects the Council's expert judgment; and that any considerations addressed briefly or left unaddressed were, in the Council's judgment, comparatively unimportant or frivolous.

### **§ 3.5 Deadlines.**

As the Supreme Court has repeatedly held, NEPA is governed by a "rule of reason." Congress supplied the measure of that reason in the 2023 revision of NEPA by setting the deadlines in NEPA § 107(g), 42 U.S.C. § 4336a(g). These deadlines indicate Congress's determination that an agency, working within Congress's allocation of resources, has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual circumstances. In such circumstances, an extension will be given only for such time as is *necessary* to complete the analysis. Thus, the Council will complete the environmental impact statement not later than the date that is 2 years after the sooner of:

- (a) The date on which the Council formally determines that an environmental impact statement is needed for a given Council project or program and the sponsoring member has received the associated federal financial assistance award providing Council funding to support preparation of the NEPA document, or
- (b) The date on which the sponsoring member is informed that an environmental impact statement is required by either the Council or a federal agency with responsibility for authorizing the given activity, provided the sponsoring member has received the associated federal financial assistance award providing Council funding to support preparation of the NEPA document. The end date for the environmental impact statement is the date upon which the final document is presented to the Council for use in association with the associated funding proposal.
- (c) The environmental impact statement will publish (unless the deadline is extended pursuant to the provision below) on the day the deadline elapses, in as substantially complete form as is possible.
- (d) If the sponsoring Council member determines it is not able to meet the deadline prescribed by NEPA § 107(g)(1)(A), 42 U.S.C. § 4336a(g)(1)(A), it must consult with the Council ~~applicant, if any,~~ pursuant to NEPA § 107(g)(2), 42 U.S.C. § 4336a(g)(2). After such consultation, if needed, and for cause stated, it may establish a new deadline based on the minimum time necessary to complete any analysis required for complying with NEPA in the given case. Cause for establishing a new deadline is only established if the environmental impact statement is so incomplete, at the time at which the Council determines it is not able to meet the statutory deadline, that issuance pursuant to subsection (c) above would, in the Council's view, result in an inadequate analysis. Such a new deadline must provide only so much additional time as is necessary to complete such environmental impact statement. The announcement of the new deadline will specify the reason why the environmental impact statement was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline.
- (e) When the environmental impact statement is published, a responsible official will certify (and the certification will be incorporated into the environmental impact statement) that the resulting environmental impact statement represents the Council good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; and that, in the Council's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the Council's judgment, the analysis contained therein is adequate to inform and reasonably explain the Council's final decision regarding the proposed federal action.

### **§ 3.6 Publication of the environmental impact statement.**

The Council will publish the entire environmental impact statement. Council NEPA documents will

be available to the public at [www.restorethegulf.gov](http://www.restorethegulf.gov).

## **PART 4—EFFICIENT ENVIRONMENTAL REVIEWS**

### **§ 4.1 Programmatic environmental documents and tiering.**

(a) The Council may prepare environmental documents for programmatic Federal actions, such as the adoption of new agency programs. The Council may evaluate the proposal(s) in one of the following ways:

- (1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.
- (2) Generically, including actions that have relevant similarities, such as common timing, effects, alternatives, methods of implementation, media, or subject matter.
- (3) By stage of technological development.

(b) Consistent with NEPA § 108, 42 U.S.C. § 4336b, and § 4.2, after completing a programmatic environmental assessment or environmental impact statement, the Council may rely on that document for 5 years if there are not substantial new circumstances or information about the significance of adverse effects that bear on the analysis. After 5 years, as long as the Council reevaluates the analysis in the programmatic environmental document and any underlying assumption to ensure reliance on the analysis remains valid and briefly documents its reevaluation and explains why the analysis remains valid considering any new and substantial information or circumstances, the Council may continue to rely on the document.

### **§ 4.2 Reliance on existing environmental documents.**

(a) The Council may rely on an environmental impact statement, environmental assessment, or portion thereof, provided that the statement, assessment, or portion thereof meets the standards for an adequate statement or assessment under these procedures. When relying on an environmental impact statement, environmental assessment, or portion thereof, the Council will cite, briefly describe the content and relevance to the environmental document, and may make modifications that are necessary to render the relied-upon document, or portion thereof, fit for fulfilling NEPA's analytic requirements for the action at hand.

(b) *Substantial Similarity.*

- (1) If the actions covered by the original environmental impact statement or environmental assessment and the proposed action are substantially the same, the Council will republish the relied-upon statement or assessment.
- (2) If the actions are not substantially the same, the Council may modify the statement or assessment as necessary to render the statement fit for fulfilling NEPA's analytic requirements for the action at hand, and publish the relied-upon statement or assessment, as modified. Where appropriate, the Council may solicit comment to the extent that solicitation of comment will assist the Council in expeditiously adapting the relied-upon statement or assessment so that it is fit for the Council purposes.

### **§ 4.3 Publishing predecisional documents**

During the process of preparing any environmental document provided for by these procedures, the Council may publish such draft, predecisional materials as in its judgment may assist in fulfilling its responsibilities under NEPA and these procedures. In such cases, the document(s) will be available at [www.retorethegulf.gov](http://www.retorethegulf.gov) and stakeholders will be notified via the Council's stakeholder listserv.

### **§ 4.4 Combining documents.**

The Council will combine, to the fullest extent practicable, any environmental document with any other agency document to reduce duplication and paperwork.

#### **§ 4.4 Incorporation.**

(a) The Council may incorporate material, such as planning studies, analyses, or other relevant information, into environmental documents by reference when the effect will be to cut down on bulk without impeding the Council and public review of the action. When incorporating material by reference, the Council will cite, briefly describe the content and relevance to the environmental document, and make the materials reasonably available for review by potentially interested parties. The Council will not use incorporation as a means to evade the statutory page limits.

#### **§ 4.5 Supplements to environmental documents.**

The Council will prepare supplements to environmental documents only if a major Federal action remains to occur, and:

- (a) The Council makes substantial changes to the proposed action that are relevant to environmental concerns; or
- (b) The Council decides, in its discretion, that there are substantial new circumstances or information about the significance of the adverse effects that bearing on the proposed action or its effects.

#### **§ 4.6 Integrity and completeness of information.**

- (a) The Council will not undertake new scientific and technical research to inform its analyses unless that is essential to a reasoned choice among alternatives and the overall costs and time frame of such undertaking are not unreasonable. Rather, the Council will make use of reliable existing data and resources.
- (b) When the Council is evaluating an action's reasonably foreseeable effects on the human environment, and there is incomplete or unavailable information that cannot be obtained at a reasonable cost or the means to obtain it are unknown, the Council will make clear in the relevant environmental document that such information is lacking.

#### **§ 4.7 Integrating NEPA with other environmental requirements.**

- (a) To the fullest extent possible, the Council will prepare environmental documents concurrently with and integrated with analyses and related surveys and studies required by other Federal statutes.
- (b) The Council will combine an environmental document prepared in compliance with NEPA with any other agency document to reduce duplication and paperwork. Thus, the Council may combine an environmental document with related plans, rules, or amendments as a single consolidated document.
- (c) If comments on a notice of intent or other aspects of a scoping process identify consultations, permits, or licenses necessary under other environmental laws, the environmental document may contain a section briefly listing the applicable requirements and how the Council has or will meet them (*e.g.*, permits applied for or received, consultations initiated or concluded).

**§ 4.8 Elimination of duplication with State, Tribal, and local procedures.**

(a) The Council may cooperate with State, Tribal, and local agencies that are responsible for preparing environmental documents.

(b) To the fullest extent practicable unless specifically prohibited by law, the Council will cooperate with State, Tribal, and local agencies to reduce duplication between NEPA and State, Tribal, and local requirements, including through use of studies, analysis, and decisions developed by State, Tribal, or local agencies. Such cooperation may include:

- (1) Joint planning processes;
- (2) Joint environmental research and studies;
- (3) Joint public hearings (except where otherwise provided by statute); or
- (4) Joint environmental documents.

**§ 4.9 Unique identification numbers.**

For all environmental documents, the Council will provide a unique identification number for tracking purposes, which the Council will reference on all associated environmental review documents prepared for the proposed agency action and in any database or tracking system for such documents. The Council will coordinate with the CEQ and other federal agencies to ensure uniformity of such identification numbers across federal agencies.

**§ 4.10 Emergencies.**

Where emergency circumstances make it necessary to take an action with reasonably foreseeable significant environmental effects without observing the provisions of these procedures, the Council will consult with the CEQ about alternative arrangements for compliance with NEPA § 102(2)(C), 42 U.S.C. § 4332(2)(C).

## **PART 5—AGENCY DECISION MAKING**

### **§ 5.1 Decision documents.**

At the time of its decision on its proposed action, the Council may prepare and timely publish a concise public decision document or joint decision document notifying the public that the decisionmaker has certified that the Council has considered all relevant information raised in the NEPA process and that the NEPA process has closed.

### **§ 5.2 Filing requirements.**

The Council will file environmental impact statements together with comments and any responses, where applicable, with the Environmental Protection Agency (EPA), Office of Federal Activities for publication in the *Federal Register*.

## **PART 6—PROCEDURES FOR PROJECT SPONSOR-PREPARED NEPA DOCUMENTS**

### **§ 6.1 Procedures for project sponsor-prepared environmental documents.**

In accordance with NEPA § 107(f), 42 U.S.C. § 4336a(f), the Council has established procedures allowing project sponsors (i.e., Council members), or contractors hired by project sponsors, to prepare NEPA documents under Council supervision.

- (a) The Council will independently evaluate the environmental document and will take responsibility for its contents.
- (b) The Council will assist project sponsors and project sponsor-hired contractors by providing guidance and outlining the types of information required for the preparation of the environmental document. The Council may also provide appropriate guidance and assist in environmental document preparation, to the extent that the Council resources and policy priorities admit. The Council will work with the project sponsor to define the purpose and need, and, when appropriate, to develop a reasonable range of alternatives to meet that purpose and need.
- (c) The Council will develop and modify, as appropriate, a schedule for preparation of the environmental document. Major changes to the schedule or related matters will be documented through written correspondence.
- (d) The Council may request from a project sponsor environmental information for use by the Council in preparing or evaluating an environmental document. This may include a decision file consisting of any factual, scientific, or technical information used, developed, or considered by the project sponsor or project sponsor-hired contractor in the course of preparing the environmental document, including any correspondence with the Council or with third parties.

## PART 7—DEFINITIONS

### § 7.1 Definitions.

As used in these implementing procedures, terms have the meanings provided in NEPA § 111, 42 U.S.C. § 4336e. In addition:

- (a) *NEPA* means the National Environmental Policy Act, as amended (42 U.S.C. § 4321, *et seq.*).
- (b) *Authorization* means any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law in order to implement a proposed action.
- (c) *Connected action* means a separate Federal action within the authority of the Council that is closely related to the proposed agency action and should be addressed in a single environmental document because the proposed agency action:
  - (1) Automatically triggers the separate Federal action, which independently would require the preparation of additional environmental documents;
  - (2) Cannot proceed unless the separate Federal action is taken previously or simultaneously; or
  - (3) Is an interdependent part of a larger Federal action that includes a separate Federal action, which mutually depend on the larger Federal action for their justification.
- (d) *Effects* or *impacts* means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.
  - (1) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects. Effects appropriate for analysis under NEPA may be either beneficial or adverse, or both, with respect to these values.
  - (2) A “but for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to its limited statutory authority or would occur regardless of the proposed action.
- (e) *Human environment* means comprehensively the natural and physical environment and the relationship of Americans with that environment. (*See also* the definition of “effects” in paragraph (e) of this section.)
- (f) *Jurisdiction by law* means agency authority to approve, veto, or finance all or part of the proposal.
- (g) *Mitigation* means measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in an environmental document or record of decision and that have a nexus to those effects. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation. Mitigation includes:
  - (1) Avoiding the impact altogether by not taking a certain action or parts of an action.
  - (2) Minimizing effects by limiting the degree or magnitude of the action and its implementation.
  - (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
  - (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
  - (5) Compensating for the impact by replacing or providing substitute resources or environments.

(h) *NEPA process* means all measures necessary for compliance with the requirements of section 2 and title I of NEPA § 102(2), 42 U.S.C. § 4332(2).

(i) *Notice of intent* means a public notice that an agency will prepare and consider an environmental document.

(j) *Participating agency* means a Federal, State, Tribal, or local agency participating in an environmental review or authorization of an action.

(k) *Publish* and *publication* mean methods found by the agency to efficiently and effectively make environmental documents and information available for review by interested persons, including electronic publication.

(l) *Related action* means an action undertaken by an agency, *e.g.*, a permitting action, some other type of authorization action, an analysis required by statute, or the like, that bears a relationship to other actions undertaken by other agencies relevant to NEPA, *e.g.*, that a set of related actions are all related to one overarching project.

(m) *Reasonable alternatives* means a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant.

(n) *Reasonably foreseeable* means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.

(o) *Scope* consists of the range of actions, alternatives, and effects to be considered in an environmental document. The scope of an individual statement may depend on its relationships to other statements.

(p) *Tiering* refers to the coverage of general matters in broader environmental impact statements or environmental assessments (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basin-wide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.

**PART 8—Severability.**

**§ 8.1 Severability.**

The sections of these procedures are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is the Council's intention that the validity of the remainder of those parts will not be affected. The remaining sections or portions therein shall continue in effect.