



2017



NOAA's Acquisition and Grants Office
presents

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A decorative graphic consisting of a blue wavy line, a dashed blue line forming a path, and a blue puzzle piece, all positioned below the word "Charting". A stylized black bird in flight is positioned above the word "Waters".

A Map To Financial Assistance

Silver Spring, MD

Seattle, WA



2017



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A Map To Financial Assistance

NOAA NEPA Updates for Financial Assistance

Presented By: Katie Renshaw, NOAA NEPA Coordinator



Overview

1. NEPA 101
2. Applicability of NEPA to Federal Financial Assistance
3. Documentation
4. Recent Developments in NEPA at NOAA

What is the National Environmental Policy Act?



The purposes of this Act are:

To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

Sec. 2 [42 USC § 4321]



Credit: USDA

NEPA's Primary Objectives

- Disclose, analyze, and consider environmental information as a criteria when making decisions.
- Inform the public of potential impacts and alternatives and involve the public in decision making.

Sources of NOAA NEPA Implementation Requirements

- CEQ Regulations For Implementing The Procedural Provisions of NEPA
 - (40 CFR Parts 1500-1508)
- Department Administrative Order 216-6, Implementing the National Environmental Policy Act (**January 18, 2017**)
- NOAA Administrative Order 216-6A, Compliance with the National Environmental Policy Act; Executive Orders 12114 Environmental Effects Abroad of Major Federal Actions; 11988 and 13690, Floodplain Management; and 11990, Protection of Wetlands (Apr. 22, 2016)
- Companion Manual to NAO 216-6A (**January 13, 2017**)

When Does NEPA Apply?

- “major Federal actions significantly affecting the quality of the human environment”
 - Sec. 102(C), 42 U.S.C. § 4332(C)
- **MAJOR FEDERAL ACTION** = “actions with effects that may be major and which are potentially subject to **Federal control** and **responsibility**”
- Actions=policies, plans, programs and projects
- Significantly= determined by considering context and intensity
- Affecting= “will or may have an effect”
- The human environment= the natural and physical environment and the relationship of people to that environment

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Major Federal Actions Include Projects or Programs Entirely or Partially:

- Funded By
- Assisted By
- Regulated By
- Conducted By
- Approved By
- Permitted By



- A Federal Agency

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When NEPA Applies: Financial Assistance Awards

If NOAA has sufficient **decision-making authority to approve or deny** financial assistance awards, **impose conditions on the award** (other than standard administrative conditions), or ongoing authority to **substantially control or otherwise direct** the non-Federal action after the financial assistance award is made, then NEPA compliance is necessary prior to the issuance of the financial assistance award. When considering the proposed action of issuing a financial assistance award under NEPA, the decision maker must consider the impacts of the activities to be funded by the award.

Companion Manual to NAO 216-6A, § 2.C

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When NEPA Applies: Financial Assistance Awards

- Non-Federal actors are not required to complete the NEPA process.
- **BUT!** In some cases, NOAA will not have all the information required to understand the potential effects of the action proposed in a Financial Assistance Award application.

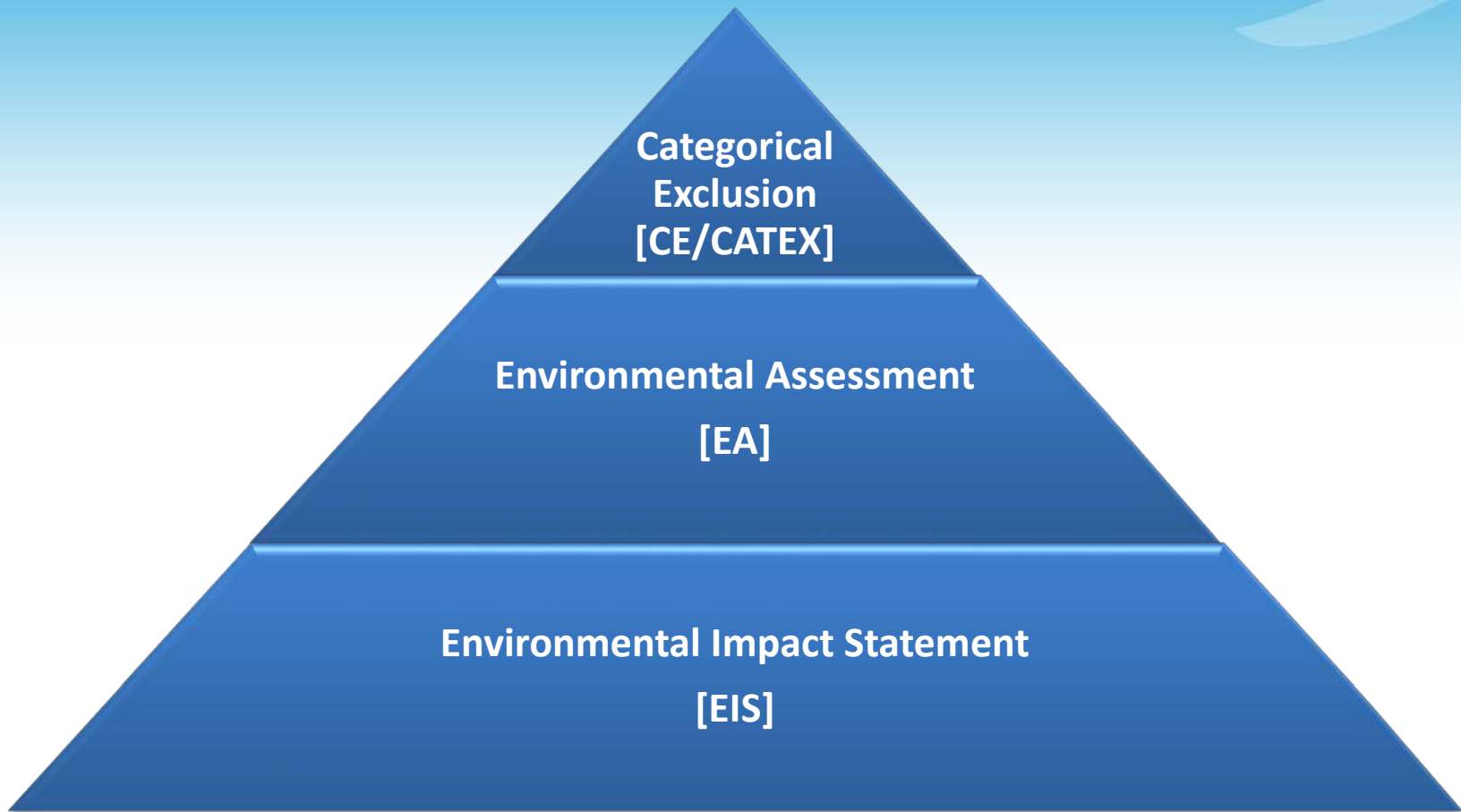
See the *Environmental Compliance Questionnaire for National Oceanic and Atmospheric Administration Federal Financial Assistance Applicants*

(at <http://www.nepa.noaa.gov/questionnaire.pdf>)

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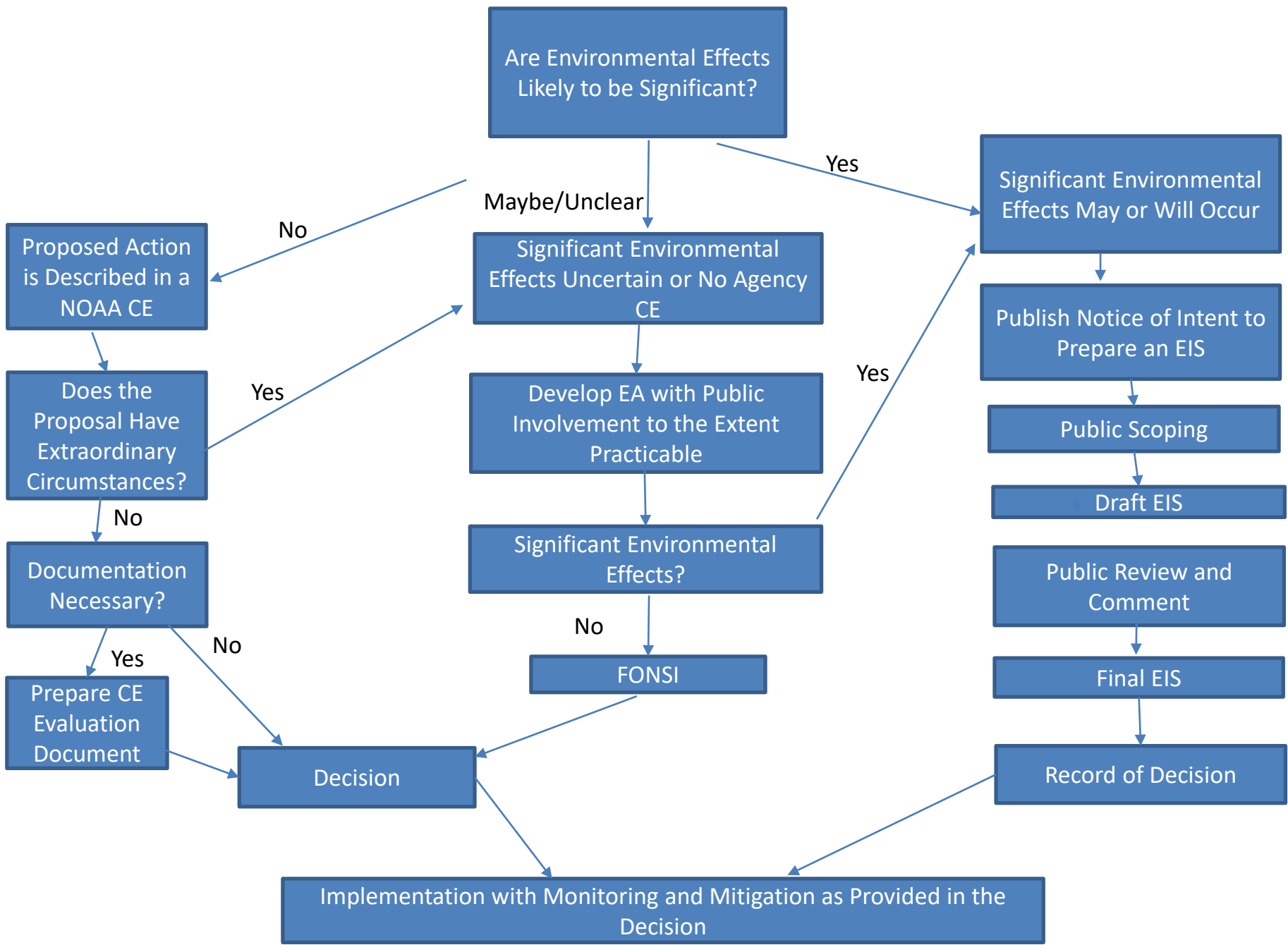


Hierarchy Of NEPA Analyses and Documentation Processes:



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Categorical Exclusion (CE / CATEX)

40 CFR 1508.4

Companion Manual §4

- Categories of actions
- Shown to not have significant effects
- Administratively promulgated
- Subject to Extraordinary Circumstances - when a normally excluded action may have significant environmental effect
- Majority of grant projects qualify for a CE
- Documentation?



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Documenting Use of CEs

- Document evaluating appropriate use of a CE should include:
 - A description of the proposed action
 - CE category number and text
 - Brief summary of the review conducted to determine whether extraordinary circumstances exist
- Can take the form of a memo, checklist or other document, so long as the above components are included
- Before the action is implemented, the **decision maker** must sign the CE document

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Environmental Assessment (EA)

40 CFR 1508.9

Companion Manual §§ 6-7

- Concise document
 - Purpose and need for proposed action
 - Consideration of effects of proposal and reasonable alternatives
- Provides evidence and analysis for determining whether to prepare an EIS
- Involve public to the extent practicable
- If no significant impacts are found, results in a Finding of No Significant Impacts (FONSI)

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Environmental Impact Statement (EIS)

40 CFR 1502.3

Companion Manual §§ 6 & 8

- Comprehensive action-forcing device for actions with significant environmental effects
- Includes:
 - impacts (direct, indirect and cumulative),
 - actions (connected, cumulative and similar)
 - reasonable alternatives (no-action)
- Procedural steps focus on issue identification and analysis.

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EIS: The Process

- Notice of Intent—40 CFR 1508.22
- Scoping—40 CFR 1501.7
- Draft Environmental Impact Statement—40 CFR 1502.9
- Final Environmental Impact Statement
- Record of Decision
- Supplemental Environmental Impact Statement

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Who Can Prepare NEPA Documents?



EA

The lead agency or applicant can prepare

EIS

The lead agency or consultant (not applicant) can prepare
Parts of the EIS can be prepared by joint or cooperating agencies

Third Party Contracts

Federal agency selects consultant [40 CFR 1506.5(c)]
For EIS, consultant signs disclosure statement of no conflict of interest

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NAO 216-6A

- Issued on April 22, 2016
- Establishes NOAA's policy and procedures for compliance with:
 - National Environmental Policy Act (NEPA)
 - Council on Environmental Quality (CEQ) regulations (40 CFR 1500-1508)
 - Executive Order (EO 12114), *Environmental Effects Abroad of Major Federal Actions*
 - EO 11988 and 13609, *Floodplain Management*
 - EO 11990, *Protection of Wetlands*
- Authorizes development of a Companion Manual, to provide additional, specific policies pursuant to NEPA and related authorities

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NAO 216-6A: Roles and Responsibilities

- Delegates responsibility to oversee the NOAA NEPA program to the **NOAA General Counsel**, who in turn may delegate these responsibilities to appropriate staff, including to a **NOAA NEPA Coordinator**
- Line Office AAs and Staff Office Directors are responsible for overseeing the use of NEPA as a decision making tool in their respective offices, including designating a Line/Staff Office NEPA Coordinator to assist with NEPA compliance
 - Additional Line/Staff Office NEPA Coordinators may also be named for individual programs or regions

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NAO 216-6A: Roles and Responsibilities

*The Decision Maker for a matter is the individual who has the **authority** and **responsibility** to make the NOAA decision that is being informed by the NEPA process, and the decision maker is responsible for ensuring that the NEPA process is fully and effectively conducted to support that decision making*

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Companion Manual

- Effective **January 13, 2017**: Notice of Availability of Final Revision to NOAA's NEPA procedures published in the ***Federal Register***
- Contains revised NEPA procedures—replacing procedures in 1999 NAO 216-6
- Completes revision process begun in 2008 with several objectives including:
 - Update NOAA's NEPA structure to reflect current organizational setting
 - Incorporate guidance developed by CEQ
 - Review and revise NOAA's Categorical Exclusions (CEs) to better meet the agency's decision needs, and provide proper support via an administrative record
 - Revise format and content to promote clarity and ease of use

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Revised Categorical Exclusions

- Guidance on application of CEs is consolidated in a single place in the manual. Former 5.05 was substantially revised.
- CE may be applied when:
 - The proposed action falls within one of the CEs included in Appendix E
 - The proposed action is not part of a larger action, and can therefore be reviewed independently from other actions under NEPA; and
 - There are no extraordinary circumstances that may require further analysis in an EA or EIS

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Documenting Use of CEs

If NOAA has sufficient **decision-making authority to approve or deny** financial assistance awards, **impose conditions on the award** (other than standard administrative conditions), or ongoing authority to **substantially control or otherwise direct** the non-Federal action after the financial assistance award is made, then NEPA compliance is necessary prior to the issuance of the financial assistance award. When considering the proposed action of issuing a financial assistance award under NEPA, the decision maker must consider the impacts of the activities to be funded by the award.

Companion Manual to NAO 216-6A, § 2.C

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Categorical Exclusions—Language Specific to Financial Assistance Awards

New language specific to application of CEs for financial assistance awards—generally, the relevant CE is the one that covers the underlying activity:

When considering whether a proposed action to provide a financial assistance award could be categorically excluded, the decision maker should look at whether the activity to be funded falls within one of the established CEs.

Companion Manual § 4

Young Atlantic Sturgeon
NMFS permit #1420
Image: University of Georgia



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Categorical Exclusions—Language Specific to Financial Assistance Awards

New guidance regarding applying CEs to financial assistance awards that cover multiple activities:

If applicable, individual CEs may be applied to individual tasks within a single financial assistance award. The CEs may be documented in a single evaluation document prepared for the entire financial assistance award, as long as individual tasks are similar, but not connected actions as defined by 40 C.F.R. 1508.25, and the tasks within the award do not have cumulatively significant impacts.

Companion Manual § 4

Image: NOAA Coastal Resilience Grants Program



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Extraordinary Circumstances

- Previously termed “exceptions for Categorical Exclusions” at 5.05c, now called “extraordinary circumstances” consistent with CEQ regulations.
- Companion Manual explains that “the mere presence of one or more extraordinary circumstances does not preclude the use of a CE,” rather it necessitates closer consideration of the appropriateness of a CE (akin to a “red flag”).

Companion Manual § 4.A

Image: National
Marine Sanctuaries



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Revised Categorical Exclusions

- Appendix E of the Companion Manual contains a new list of 52 discrete CEs divided into 8 categories:
 - Trust Resource Management Actions
 - Trust Resource Authorization and Permitting Actions
 - Habitat Restoration Actions
 - Additional External Funding
 - Research Actions
 - Real and Personal Property Improvement, Maintenance, and Construction Actions
 - Operational Actions
 - Acquisition and Real Property Actions
- *These new CEs replace all CEs in the 1999 NAO as of **January 13, 2017.***
- NOAA's revised CEs are now all fully supported by a comprehensive administrative record

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Resources

- NEPA.gov: <https://ceq.doe.gov/>
 - Maintained by CEQ contains current developments, relevant laws, regulations, guidance, and EOs. Also has links to all Federal agency NEPA implementing procedures
- NOAA NEPA Resources:
 - <http://www.nepa.noaa.gov/> (public facing website)
 - <https://sites.google.com/a/noaa.gov/nepanews/> (intranet)
 - Both maintained by NOAA NEPA (GC Environmental Review and Coordination) and provide links to NOAA and DOC specific NEPA resources including contact info for NEPA support in all line offices

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