



## Pending Deadlines

### **USFWS/NMFS – Endangered Species Act Process**

Comment periods close Aug. 21, 2023.

- [Rulemaking Homepage](#)
- Section 4 E&T Species Listing and Delisting
  - [Proposed Rule](#)
  - [Comment Docket](#)
- Section 7 Interagency Consultation
  - [Proposed Rule](#)
  - [Comment Docket](#)
- “Blanket Rule” Protections for Threatened Species
  - [Proposed Rule](#)
  - [Comment Docket](#)

### **OPC – Sustainable Ocean Economy National Strategy RFI**

Comment period closes Sep. 14, 2023 ([extended](#)).

- [Request for Information](#)
- [Comment Docket](#)

### **OMB – Proposed Ecosystem Services Valuation Guidance**

Comment period closes Sep. 18, 2023.

- [Proposed Guidance](#)
- [Request for Comments](#)
- [Comment Docket](#)

### **NOAA - Equitable Delivery of Climate Services RFI**

Comment period closes Sep. 21, 2023.

- [Request for Information](#)
- [Comment Docket](#)

### **CEQ – NEPA Phase 2 Proposed Rule**

Comment period closes Sep. 29, 2023.

- [Proposed Rule](#)
- [Comment Docket](#)

### **EPA – Clean Water Act Section 404 Assumption Proposed Rule**

Comment deadline TBA.

- [Rulemaking Page](#)
- [Proposed Rule](#) (pre-publication notice)

## Recent CSO Letters/Comments

- [Comment to FEMA on Community Disaster Resilience Zones RFI](#) (Jul. 25, 2023)
- [Comment to OPC on Ocean Justice Strategy RFI](#) (Jul. 24, 2023)

## Issue Updates

### CEQ – NEPA Phase 2 Proposed Rule

#### Update

On Jul. 31, 2023, the Council on Environmental Quality (CEQ) issued a National Environmental Policy Act (NEPA) Implementation Regulations Phase 2 [proposed rule](#). Significant changes under the proposed rule include a codified definition for “environmental justice” that calls for more explicit consideration of impacts on burdened communities, requiring assessment of both the impacts of the proposed action on climate change as well as reasonably foreseeable effects of climate change on the proposed action, broadening consideration of context and intensity to include multiple geographic and time scales, and creating greater flexibility for agencies to promulgate and use categorical exclusions. The Rule also invites agencies to pursue “innovative approaches” to NEPA compliance when addressing “extreme environmental challenges” due to climate change.

A redline of changes from current regulations under the proposed rule is available [here](#). Virtual meetings will be held in late August and September. Comments may be submitted via [Regulations.gov](#) through Sep. 29, 2023.

#### Context

CEQ announced plans for a two-phase rulemaking in 2021. The [“Phase 1” rule](#), issued Apr. 20, 2022, reversed several changes made through a [2020 rule](#), including restoring language about the scope of environmental analyses (“purpose and need”) and consideration of direct, indirect, and cumulative impacts, as well as confirming that CEQ’s regulations serve as a floor rather than a ceiling for federal environmental reviews.

NEPA was amended in the 2021 Bipartisan Infrastructure Law to require lead agencies to set joint review schedules and to impose presumptive two-year, 200-page limits on certain Environmental Impact Statements (EISs). The 2023 Fiscal Responsibility Act (aka debt ceiling bill) made further amendments, including extending presumptive two-year, 150-page limits to all EISs and creating a new cause of action for project sponsors to challenge agency delays.

## BOEM – NOI Checklist Guidance Issued

### Update

On Aug. 3, 2023, BOEM issued two guidance documents for offshore wind development. The [“NOI Checklist” Guidance](#) sets out information and stakeholder engagement requirements for submission of Construction and Operations Plans. The [Marine Acoustic Modeling and Measurement Guidelines](#) provide recommendations for acoustic and exposure modelling of construction impacts.

### Context

BOEM regulations set out process and information requirements for offshore wind leasing and development. The NOI Checklist does not have regulatory effect but provides a basis for determining informational completeness for COP submissions. CSO submitted [comments](#) on the [draft NOI Checklist](#) in December 2022.

BOEM is also developing a final version of its Renewable Energy Modernization Rule and guidance for compensatory mitigation for fisheries impacts.

## OMB – Draft Ecosystem Services Valuation Guidance Issued

### Update

On Aug. 1, 2023, Office of Management and Budget (OMB) and Office of Science and Technology Policy (OSTP) [released](#) a draft for first-ever federal [guidance](#) for accounting for ecosystem services in benefit-cost analysis. The draft guidance sets out procedures to aggregate and compare monetized, quantified, or qualitatively described impacts on natural, built, and social systems. The new requirements would be applicable to benefit-cost analysis for both federal rulemaking (under OMB Circular A-4) and federal investment (under OMB Circular A-94).

OMB has issued a [Request for Information](#) seeking feedback on the draft. Comments may be submitted via [Regulations.gov](#) through Sep. 18, 2023.

### Context

OMB, OSTP, and the Commerce Department issued a [national strategy for natural capital accounting](#) in January 2023 to develop statistics for environmental-economic decisions. On Apr. 6, 2023, the

White House issued E.O. 14094, “[Modernizing Regulatory Review](#),” implementing a range of equity, efficiency, and transparency policies for the federal rule making process, and OMB concurrently issued proposed updates to Circulars A-4 and A-94. Public comment on the draft circulars closed on Jun. 6, 2023.

Circular A-94 does not apply to water resource projects (including USACE Civil Works projects), which are instead covered by the 2013 [Principles, Requirements, and Guidelines for Federal Investments in Water Resources](#) (PR&G). USACE has indicated that it intends to issue a rulemaking this year setting agency-specific procedures to implement the PR&G, addressing similar questions of economic valuation for coastal infrastructure investments.

## **EPA – Proposed Clean Water Act 404 Assumption Rule Released**

### **Update**

On Jul. 19, 2023, EPA [announced](#) a proposed rule to streamline and clarify the process for states and tribal nations to assume enforcement of the Clean Water Act (CWA) permitting process for discharges of dredged or fill material. The proposed rule would clarify standards for identifying “retained waters” to be managed by the U.S. Army Corps of Engineers, sets requirements for compensatory mitigation, and provides an approach for greater-than-five-year permitting. More information is available in an agency [factsheet](#).

The [proposed rule](#) has not been formally issued through the Federal Register; it will be open for public comment for 60 days from publication.

### **Context**

Three states have assumed the CWA 404 dredge-and-fill permitting program, compared with 47 states that have assumed the CWA 402 National Pollutant Discharge Elimination System.

The scope of wetlands covered under the CWA, including Section 404, was limited in the U.S. Supreme Court's May 25, 2023, decision in [Sackett v. EPA](#). EPA and USACE have [announced](#) that they intend to issue a final rule by Sep. 1, 2023 to amend the Jan. 18, 2023 "[Revised Definition of 'Waters of the United States'](#)" rule to comply with the *Sackett* decision.

## NOAA – RFI on Equitable Delivery of Climate Services Issued

### Update

On Jul. 20, NOAA issued a [Request for Information](#) on how to enhance NOAA's delivery of climate data, information, science, and tools accounting for the needs and priorities of a diverse set of user communities as they engage in climate preparedness, adaptation, and resilience planning. Regional listening sessions will be held through August starting August 3, 2023; register [here](#). Comments may be submitted via [Regulations.gov](#) through Sep. 21, 2023.

### Context

NOAA implements its goal of centering equity in its climate service delivery, established in the [2022 NOAA Strategic Plan](#), through the Climate Ready Nation initiative. In addition to the climate focused national RFI, NOAA has issued a [regional RFI](#) to advancing equity and Environmental Justice in the Southeast through living marine resource conservation and management.

## ACHP - Policy Statement on Climate Change and Historic Preservation Adopted

### Update

On Jun. 16, 2023, the Advisory Council on Historic Preservation (ACHP) adopted [a Policy Statement on Climate Change and Historic Preservation](#). The statement articulates a series of policy principles for mitigation information, planning, equity, flexibility, education, and collaboration.

### Context

The ACHP is an independent agency created by the National Historic Preservation Act (NHPA) which sets [minimum procedural standards](#) for federal agency to meet NHPA analysis requirements ("Section 106 reviews"). The new policy statement applies to the consideration of climate change issues during section 106 reviews.