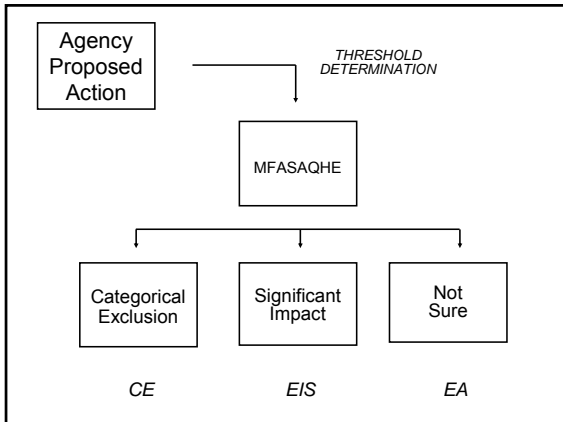


Lecture 13 overview

1. Overview of process
2. Threshold determination
3. Categorical Exclusions
4. Environmental Assessments
5. Environmental Impact Statements



MFASQAHE

§102(2)(c): include in every . . . major Federal actions significantly affecting the quality of the human environment, a detailed statement . . . on --

'Major'

Two views:

1. Related to amount of planning, resources, time or expenditures involved
2. Action has *significant* effect on the environment

Minnesota

*Minnesota Public Interest
Research Group v. Butz*
8th Circuit Court, 1974

Plaintiffs sought to stop timber sales due to lack of an EIS by the Forest Service

Forest Service said MFASEQHM created two tests:

- whether there is a major federal action
- whether the impact of that action on the environment is major

Minnesota

Ruling:

MFASEQHE involved only one concept:

"To separate the consideration of the magnitude of federal action from its impact on the environment does little to foster the purposes of the Act . . .

it would be possible to speak of a 'minor federal action significantly affecting the quality of the human environment,' and to hold NEPA inapplicable to such an action.."

Minnesota

Ruling:

Rejected the conclusion that there was no effect on the "human" environment because there were no human users of the area

NEPA is concerned with indirect effects as well as direct effects. There has been increasing recognition that man and all other life on this earth may be significantly affected by actions which on the surface appear insignificant."

'Federal'

May depend on several factors:

1. Federal funding:

- Must be substantial
- Filing documents to gain eligibility
- Cannot withdraw funds '*piecemealing*'

2. Federal control:

- Power to approve or deny
- Action to impose condition

'Federal'

3. Federal permits:

- Independent of funding if approval required
- Scale of project relative to portion that needs approval

4. Federal projects and proposals:

- Proposed legislation
- Rule making
- Implementation of statutory programs
- Treaties

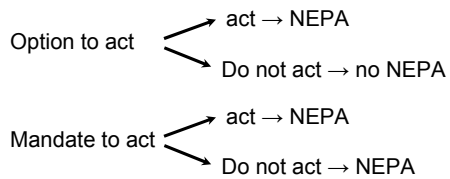
'Action'

Triggered by many activities:

- Procedural regulations
- Proposed legislation
- Funding, controlling, approving or permitting non-Federal projects
- Action may be positive or negative

'Action'

Related to discretion to conduct activity:



NMFS Groundfish



Magnuson-Stevens Fishery & Conservation Act (1976):

- 1996: amendments mandated the identification of 'essential fish habitat' (EFH)
- 1998: NMFS developed a generic EFH for all 7 regions
- *American Oceans Campaign v. Daley* (1999)
- Court Order: NMFS must prepare regional EISs on EFH designations

'Affecting'

Environmental effects:

Refers to *direct* and *indirect* impacts by proposed project on environment

Direct: caused by action & occur at same time & place

Indirect: caused by action but occur at later time & greater distances

Environmental effects

Reasonably foreseeable: not highly speculative or indefinite

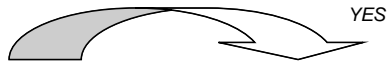
Factors:

- Confidence of prediction
- Availability of knowledge
- Feasibility of looking at effects later & responding

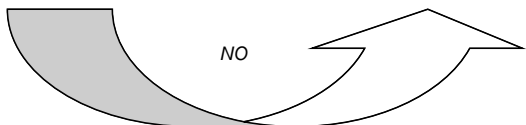
Reasonably foreseeable?



Reasonably foreseeable?



Reasonably foreseeable?



Life of the Land v. Brinegar, 1973

Reasonably foreseeable

Common indirect effects:

- Induced changes in land use patterns
- Population density
- Population growth rate
- Effects on water, air and ecosystems
- Public loss of knowledge about a resource

'Human Environment'

1. NEPA does not require assessment of *every impact*, only those affecting the environment
2. Applies to physical environment and *causally linked* changes in the human environment

Physical environment

Must effect *status quo*

Thus, *status quo* must be determined

- Bridge destroyed by hurricane
- *Status quo*: area with old bridge
- May change *status quo* if:
 - Continues degradation
 - Prevents recovery
 - Affects new areas

Human environment

Impacts on human health & welfare must be linked to physical changes

Socio-economic impacts only not considered

Aesthetic values rarely protected

Human environment

Historical & cultural resources:

NHPA: *National Historic Preservation Act*
NAGPRA: *Native American Graves Protection & Repatriation Act*
AIRFA: *American Indian Religious Freedom Act*
ARPA: *Archeological Resources Protection Act*
ADPA: *Archeological Data Preservation Act*
ASA: *Abandoned Shipwrecks Act*
EOs: 12898: Environmental Justice
13006: Historic Buildings
13007: Indian Sacred Sites

Human environment

Typical effects claimed:

Noise	Traffic
Crime	Congestion
Sewage	Employment
Stress	Effects on social systems

Metropolitan Edison

*Metropolitan Edison v.
People Against Nuclear Energy*
Supreme Court, 1983

- PANE challenged NRC finding not to consider potential *psychological stress* from restarting Three Mile Island
- Would cause "serious damage to the stability, cohesiveness, and well-being of neighboring communities"

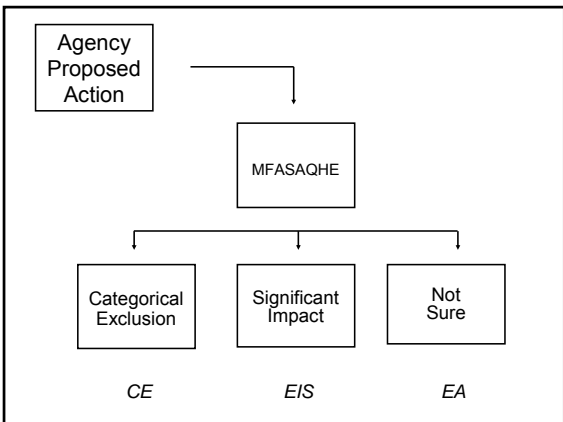
Metropolitan Edison

Ruling:

- NEPA does not require agencies to evaluate the effects of risk.
- direct effects of this action include release of low-level radiation, increased fog, and the release of warm water, all of which effects the NRC has considered
- The terms "effects" and "impact" in 102(C) should include a requirement of a reasonably close causal relationship between the physical environment and the effect.

Clark County Amphitheater?





Categorical exclusions (CX)

Category of actions which do not individually, or cumulatively, have a significant effect

Procedures shall provide for *extraordinary circumstances* under which normally excluded actions may have a significant environmental effect (e.g., ESA)

Categorical exclusions (CX)

Army Corp of Engineers:

- Activities at completed Corps projects: routine operation and maintenance actions, erosion control, painting, repair, rehabilitation, replacement of existing structures and facilities such as buildings, roads, levees, groins and utilities, and installation of new buildings utilities, or roadways in developed areas.
- Minor maintenance dredging
- Exchanges of excess real estate for projects

Categorical exclusions (CX)

SEPA: Clark County, WA:

- Construction of single family dwelling
- Maintenance & repair of roads
- Hazardous tree removal
- Ongoing projects

EISs

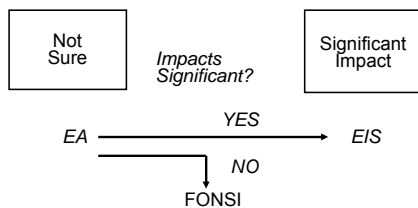
Major tool for MFASEQHE
Conducted when impacts are known to be significant
CEQ: <150 pp, often greatly exceeding
May take 1-4 years to complete process

EISs

NOI: Notice of Intent
DEIS: Draft EIS
FEIS: Final EIS
SEIS: Supplemental EIS (SDEIS or SFEIS)
LEIS: Legislative EIS
PEIS: Programmatic EIS
ROD: Record of Decision

Environmental Assessments

Used to determine 'significance' of impacts



Environmental Assessments

U.S. Navy:

Typical EAs:

- Dredging projects in previously dredged areas
- Use of wetlands
- Housing projects

Typical EISs:

- Large-scale dredging projects
- Major construction in wetlands & tidelands
- New major housing or base projects

Environmental Assessments

Includes > 90% of all NEPA documents

- 10-20,000/yr vs. 500/yr EIS

CEQ: < 15-50 pp

May take 6 mo-2 years to complete

Large gray area:

- evaluate on a case-by-case basis
- largest source of legal challenges

Environmental Assessments

DEA: Draft EA

FEA: Final EA

FONSI: Finding of no significant impact

Mitigated FONSI: impacts mitigated below significance

NOI: Notice of Intent

Next Time. . .

- Agency Implementation
- Reading:
 - Jain et al., 7.1-7.7
