



**Gulf Coast Ecosystem Restoration Council
Record of the Establishment of
National Environmental Policy Act Procedures and Categorical Exclusions
February 2016**

Overview

In May 2015, the Gulf Coast Ecosystem Restoration Council (Council) finalized policies and procedures for addressing the requirements of the National Environmental Policy Act (NEPA). These policies and procedures (referred to as “NEPA Procedures”) are required by the Council on Environmental Quality’s (CEQ) NEPA regulations. The Council uses the NEPA Procedures as it fulfills its obligations under the Council-Selected Restoration Component of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (“RESTORE Act” or “Act”). The following document describes the Council’s process for developing the NEPA Procedures and the Categorical Exclusions (“CEs” or “Cat Ex”) contained therein.

Background

On July 6, 2012, the President signed the RESTORE Act into law. The Act establishes a new trust fund in the Treasury of the United States, known as the Gulf Coast Restoration Trust Fund (Trust Fund). Eighty percent of the administrative and civil penalties paid by responsible parties after July 6, 2012, under the Federal Water Pollution Control Act in connection with the *Deepwater Horizon* Oil Spill will be deposited into the Trust Fund. Under terms described in the Act, amounts in the Trust Fund will be available for projects and programs that restore and protect the environment and economy of the Gulf Coast region.

The Council was established by the RESTORE Act and is comprised of the Governors of the States of Texas, Louisiana, Mississippi, Alabama and Florida, the Secretaries of the U.S. Departments of Agriculture, the Army, Commerce, Homeland Security and the Interior, and the Administrator of the U.S. Environmental Protection Agency. The Secretary of the Department of Commerce chaired the Council during the period covered by this administrative record.

The Council is responsible for administering 60 percent of the total funding allocated from the Trust Fund: 30 percent (plus interest) under the Council-Selected Restoration Component and 30 percent under the Spill Impact Component. The Council must comply with NEPA when approving activities for funding under the Council-Selected Restoration Component. The Funded Priorities List (FPL) sets forth the activities to be funded under this Component. More detail on the Act, the Council and the FPL can be found at <https://www.restorethegulf.gov/>.

Process for Developing the NEPA Procedures

The Council is by design a collaborative body. Council actions typically undergo rigorous internal review by all Council members. The Council's NEPA Procedures were produced through an internal review process that included extensive input and involvement from all Council members. The involvement of the federal members in the process enabled the Council to develop policies and CEs that are built upon the substantial NEPA expertise of these agencies.

The Council is served by an Executive Director and his/her staff. Council staff served the central, coordinating role in the development of the NEPA Procedures. Staff was responsible for managing the overall process, drafting iterations of the NEPA Procedures, engaging the members, making independent recommendations and ensuring effective intra-Council communications. Staff also addressed member input on the NEPA Procedures and mediated among the membership to resolve any divergent views.

The Council began drafting its NEPA Procedures in early 2013. Council staff developed a rough draft of the NEPA Procedures using existing NEPA policies of federal member agencies as a starting point. The Council formed a Regulatory Efficiencies Workgroup (REW) comprised of agency staff from all Council members. REW members had technical and legal expertise pertaining to environmental compliance and/or related matters (e.g., coastal restoration). The REW was the primary venue for intra-membership reviews of successive drafts of the NEPA Procedures.

In addition to the knowledge each member of the REW brought to the effort of writing the Council's NEPA Procedures, REW members were able to "reach back" into their respective agencies to bring in additional regulatory expertise as needed. While a Council member may have had one or two active participants in the REW, those individuals often leveraged experience from throughout his/her agency, including both headquarters and regional/field components. The ability to access expertise throughout the member agencies helped ensure that the Council's NEPA Procedures were developed with broad, thorough and effective interagency review.

In addition to working with the REW, Council staff also remained engaged with senior member representatives through periodic meetings of a management-level team referred to as the Steering Committee. The Council's Steering Committee is generally comprised of senior managers from the eleven members. It is responsible for a broad range of activities, including developing policy recommendations pertaining to project review, approval and environmental compliance. Council staff periodically briefed the Steering Committee on the development of the NEPA Procedures, seeking policy feedback and guidance when needed. Between the REW and the Steering Committee, the process of developing the NEPA Procedures engaged all Council members at various organizational levels. Communications among the members occurred through conference calls, emails and in-person meetings.

Using this iterative, collaborative and multi-level process, Council members came to concurrence on draft NEPA Procedures in January 2015. The Council published the draft NEPA Procedures in the *Federal Register* on January 16, 2015, for a 30-day public review and comment period. The Council received one comment letter, representing the combined comments of five nongovernmental environmental organizations. These organizations generally supported the NEPA Procedures and offered constructive recommendations intended to enhance the effectiveness of the

Council's environmental compliance activities. The Council received no objections to the draft NEPA Procedures.

Coordinating with all Council members, Council staff developed responses to the public comments and revised the Procedures as needed, including the Council's responses to the public comments in the preamble. In early April 2015, all eleven Council members concurred on the final NEPA Procedures. The Council subsequently provided the final NEPA Procedures to CEQ, as required by CEQ's NEPA regulations. In a letter dated April 29, 2015, CEQ informed the Council that the NEPA Procedures conformed to NEPA and the CEQ regulations. Based on internal Council concurrence, the absence of public concerns or objections, and CEQ's approval, the Council published its final NEPA Procedures in the *Federal Register* on May 5, 2015. The Council's [NEPA Procedures](#) were then posted on the Council's website.

Categorical Exclusions

Following is a list of the CEs established in the Council's NEPA Procedures, along with brief explanations of the rationale behind these CEs.

Section 4(d)(1)-(2): Administrative and Routine Office Activities; and Regulation, Monitoring, and Oversight of RESTORE Act Activities:

Examples of activities that might fall under these CEs include:

- Administrative procurements (e.g., for general supplies) and contracts for personnel services.
- Routine fiscal and administrative activities involving personnel (e.g., recruiting, hiring, detailing, processing, paying, supervising and recordkeeping).
- Routine procurement of goods and services to support operations and infrastructure, including routine utility services and contracts, conducted in accordance with applicable procurement regulations, executive orders and policies.
- Routine administrative office functions (e.g., recordkeeping; inspecting, examining, and auditing papers, books, and records; processing correspondence; developing and approving budgets; and responding to requests for information).
- Routine activities and operations conducted in an existing structure that are within the scope and compatibility of the present functional use of the building, will not result in a substantial increase in waste discharge to the environment, will not result in substantially different waste discharges from current or previous activities, and will not result in emissions that exceed established permit limits, if any.
- Council meetings, hearings, site visits, technical assistance, public affairs activities, and/or training in classrooms, meeting rooms, other facilities or via the Internet. These activities might be conducted within Council-controlled space, space controlled by other parties or in remote locations.
- Promulgation or publication of regulations, procedures, manuals and guidance documents that are of an administrative, financial, legal, technical or procedural nature.
- Internal orders and procedures that need not be published in the *Federal Register* under the Administrative Procedure Act, 5 U.S.C. §§ 500 *et. seq.*
- Preparation of studies, reports, or investigations that do not propose a policy, plan, program or action.

As noted above, the initial draft of the Council’s NEPA Procedures was developed based on existing NEPA policies and procedures of other federal agencies. There was no desire to “reinvent the wheel,” hence the Council used publicly available NEPA policies and procedures as a template. This included CEs for activities that are commonly performed by federal agencies (e.g., routine administrative office functions, meetings, training, etc.) and which are generally viewed as not having the potential for significant environmental effects, either individually or cumulatively. For example, the following member agency CEs cover a number of activities similar to those listed above: [National Oceanic and Atmospheric Administration](#) (e.g., 6.03c.3(i)); [Environmental Protection Agency](#) (e.g., 6.204(a)(2)(i) and 6.204(a)(2)(iii)); [U.S. Department of Agriculture](#) (e.g., 1b.3(a)(1), 1b.3(a)(2) and 1b.3(a)(4)); and [Department of Interior](#) (e.g., 46.210(a), 46.210(c), 46.210(i) and 46.210(j)). With the use of any CE, the Council considers whether there may be extraordinary circumstances that could warrant further NEPA analysis (in the form of an Environmental Assessment or Environmental Impact Statement) for an activity that would otherwise be eligible for one of the aforementioned CEs. Although documentation is not required for use of these two CEs, the Council may choose to do so for the purposes of public transparency.

Section 4(d)(3): Council Activities for Planning, Research or Design Activities (Documentation Required)

This CE involves:

- Funding or procurements for activities which do not involve or lead directly to ground-disturbing activities which may have significant effects individually or cumulatively, and do not commit the Council or its members to a particular course of action affecting the environment, such as grants to prepare environmental documents, planning, technical assistance, engineering and design activities, or certain research.

The Council is authorized to support ecosystem restoration planning projects. Council financial support for planning projects does not in any way guarantee or otherwise commit the Council to funding the implementation of such projects, unless the Council has explicitly also approved implementation funding in the particular case. The Council may use the CE found at Section 4(d)(3) in connection with the approval of planning activities that may entail environmental compliance components, including the preparation of NEPA documentation to support possible implementation of the activity being planned. This could also include engineering and design activities that are typically done in coastal restoration planning efforts conducted by the federal government.

This CE may cover activities that include field data collection (e.g., surveys, data collection, field visits, etc.) typical to ecosystem restoration planning projects and generally viewed as having minimal potential for adverse impacts. In developing this CE, the Council again drew upon the collective experience of its membership with respect to NEPA compliance for the types of covered activities covered therein. For example, the following member agency CEs include activities similar to those covered by this Council CE: [Environmental Protection Agency](#) (e.g., 6.204(a)(2)(iii)); [Department of Interior](#) (e.g., 46.210(e)); and [U.S. Department of Agriculture](#) (e.g., 1b.3(a)(3)). As noted above, the Council reviews each specific use of this CE to determine whether there is the potential for extraordinary circumstances that would disqualify a particular activity from coverage under this CE.

Section 4(d)(4): Council Funded Activities that Fall Under a CE of a Federal Council Member (Documentation Required)

This CE involves:

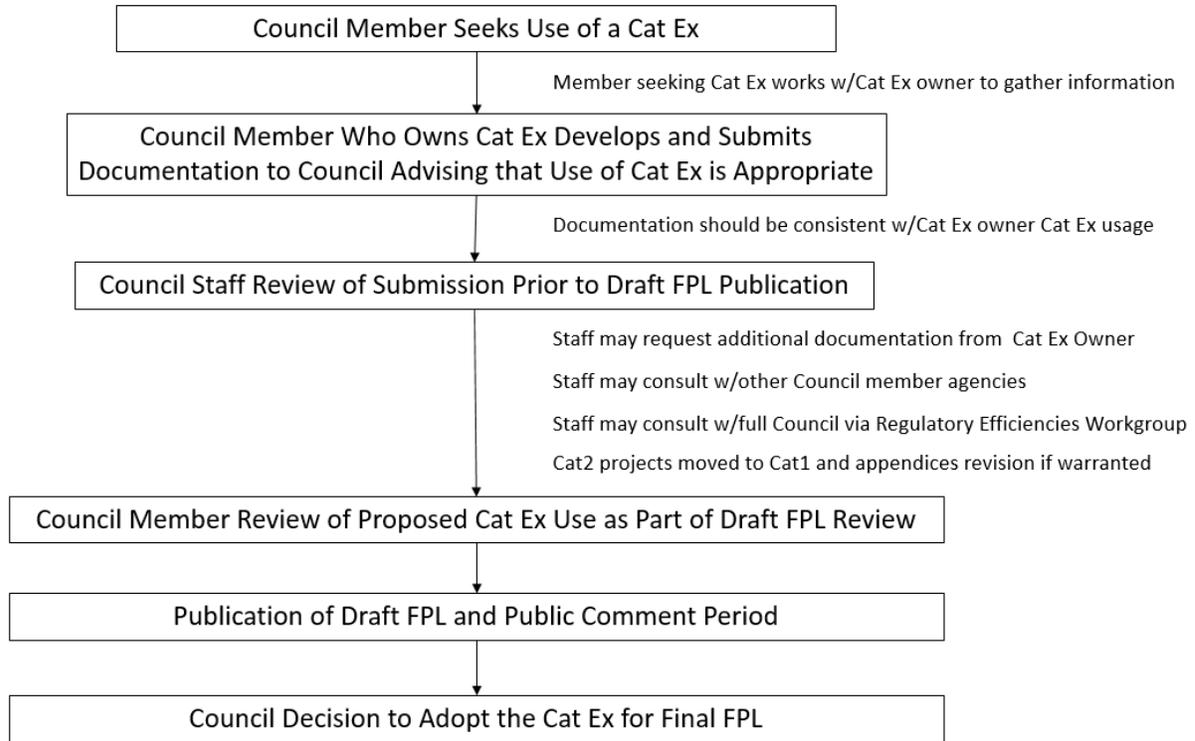
- Any environmental restoration, conservation, or protection activity that falls within a CE established by a federal agency Council member, provided no extraordinary circumstances preclude the use of the CE and the federal agency that established the CE is involved in the Council action. A federal agency Council member is involved in the Council action when that federal agency advises the Council that use of the CE would be appropriate for the specific action under consideration by the Council. Use of this CE will be documented following the procedures described in subsection 4(f).

This CE was created as an innovative way to help expedite coastal restoration projects, where appropriate, by leveraging the NEPA tools, experience and administrative records of Council member agencies. This CE is based on the premise that there is no material difference in terms of potential environmental impacts between a coastal restoration activity conducted independently by a member federal agency and the same activity if instead funded by the Council. If an activity is appropriately covered by a member CE, it would be inefficient and unnecessary to require additional NEPA compliance documentation above and beyond what is needed to ensure it fits within the given CE.

The collective experience and historical knowledge of each of the federal member agencies is at the Council's disposal. This CE is limited to CEs of member agencies, and is further limited by requiring that the Council only consider using a member CE after that member has informed the Council in writing that the specific activity in question fits fully within the given CE, that the activity has not been inappropriately segmented to fit within the definition of the CE (i.e., the activity must have independent utility), and that there are no extraordinary circumstances that would preclude use of the CE in the specific instance. Such a recommendation from a federal member is then reviewed internally by the Council staff and the full Council membership to ensure that the Council as a whole agrees with the application of the member CE to the specific Council activity. This internal Council review adds rigor above and beyond the analysis typically performed when a federal agency is determining whether to use a CE for a specific action. Typically, federal agencies do not coordinate with six federal agencies and five States prior to determining whether to use a CE. The internal Council review in such cases provides checks and safeguards not normally associated with the use of CEs.

The Council developed the following flow chart to guide internal review of the proposed use of member CEs as it developed its Initial FPL. As with all elements of the Initial FPL development process, the internal CE review process is subject to Council review and potential revision. In any case, the Council is ultimately responsible for making an independent determination as to the appropriateness of using a member CE. (The term "Cat1" refers to FPL activities eligible for funding approval; "Cat2" refers to FPL activities being considered for potential future funding.)

Process for Council Use of a Member’s Categorical Exclusion (Cat Ex)



Categorical Exclusion Documentation

If pursuant to Section 4(f) of the NEPA Procedures, the Council must document use of a CE or if it otherwise chooses to document use of a CE, the Council will use the attached form. In addition to covering the requirements pertaining to extraordinary circumstances, segmentation and use of a member CE where appropriate, the Council’s CE form also provides an opportunity for additional information pertaining to compliance with other environmental laws (such as the Endangered Species Act or “ESA”). Once the CE form is approved and signed pursuant to the Council’s [Standard Operating Procedures](#), the Council may attach, as appropriate, additional environmental compliance information, potentially including letters regarding ESA review, documentation regarding the use of a member CE, consultations with a State Historic Preservation Office and the like.

Transparency and Public Engagement

The Council is committed to public transparency. On December 9, 2015, the Council approved its [Initial FPL](#), thereby approving funding for a range of projects and programs. The Council used CEs under Sections 4(d)(2)-(4) of the NEPA Procedures to comply with NEPA for some of these activities. The CE documentation for the Initial FPL can be found at the Council’s [FPL Environmental Compliance Library](#). The Council had earlier provided the public with an opportunity to review and comment on the draft FPL, including the proposed use of member CEs for certain projects and programs being considered for funding. The Council received public support for the use of member CEs. Providing opportunities for the public to comment on the proposed use of CEs creates transparency and public engagement opportunities not typically found when agencies are using CEs. While this is not required by law,

regulation or its NEPA Procedures, the Council remains open to providing similar public review opportunities, where appropriate, when CEs are being considered in association with activities in future FPLs.

Periodic Review of Categorical Exclusions

According to the November 2010, [CEQ guidance on CEs](#), in some cases it may be appropriate for agencies to track and periodically assess use of a CE to ensure that cumulative impacts do not rise to a level that would warrant further NEPA analysis and documentation. These periodic reviews might also identify instances where it would be appropriate to expand the description of the category of actions included in a CE and/or revise the list of potential extraordinary circumstances. Consistent with the CEQ guidance, at least every seven years the Council will review its CEs and extraordinary circumstances to ensure that they remain current and appropriate.