Appendix D: Environmental and Historic Preservation Compliance

The following laws and Executive Orders (EOs) are commonly encountered federal requirements that were established to help protect the environment and preserve the Nation's historic and archaeological resources. FEMA reviews each PA project to ensure the work complies with applicable federal environmental and historic preservation (EHP) laws, their implementing regulations, and applicable EOs. Compliance with all federal and state, local, Tribal Nation, and territorial (SLTT) laws is a requirement of every FEMA award. SLTT laws, such as hazardous material management laws, vary by location and are not included in this appendix.

FEMA prepares a greensheet at the beginning of each emergency or disaster declaration with specific information relevant to each state and area. These greensheets are FEMA's disaster-specific guidance for applicants about key aspects of EHP reviews. Greensheets briefly discuss the relevant laws and project types that might trigger application of those laws and informs applicants of federal and SLTT laws that must be followed.

I. National Environmental Policy Act

Section 102 of the National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions.[490] The White House Council on Environmental Quality publishes its NEPA regulations in Title 40 of the Code of Federal Regulations (C.F.R.) Parts 1500–1508. The U.S. Department of Homeland Security publishes policies and procedures for implementing NEPA and provides specific processes that FEMA must follow before funding a project. The NEPA process ensures consideration of environmental consequences of the project before decisions are made and involves the public. Effective April 11, 2025, interim final rule removed the implementation of NEPA regulations. For more information related to the interim rule, published at Federal Register: Removal of National Environmental Policy Act Implementing Regulations.

II. National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA)[491] requires FEMA to consider the effects an undertaking will have on historic properties and provide the Advisory Council on Historic Preservation the opportunity to comment on the effects of the undertaking.[492] Historic properties include buildings, structures, sites, including archaeological resources, objects, and districts included in, or eligible for inclusion in, the National Register of Historic Places.[493] FEMA fulfills its Section 106 responsibilities through

[490] 42 United States Code (U.S.C.) § 4332.
[491] For more information, refer to: National Historic Preservation Act
[492] 16 U.S.C. § 470f.
[493] For more information, refer to: National Register of Historic Places (U.S. National Park Service).

consultation with outreach to the State Historic Preservation Office (SHPO), Tribal Historic Preservation Office (THPO), and other consulting parties, including the subrecipient and recipient, and in many cases FEMA is able to streamline and accelerate the compliance process through utilizing programmatic agreements executed with the SHPO/THPO and the recipient. When FEMA funded undertakings result in adverse effects to historic properties, Section 106 of NHPA requires FEMA to consult with the SHPO/THPO and other consulting parties to resolve the adverse effects through avoidance, minimization, or compensation measures.

III. Endangered Species Act

The Endangered Species Act (ESA) requires federal agencies to use their authorities to conserve federally listed threatened and endangered species (listed species) and critical habitats. FEMA must also consult with the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS), also known as NOAA Fisheries, to ensure that proposed projects will not jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat for listed species.[494]

IV. Clean Water Act

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants in the waters of the United States (e.g., rivers and streams, lakes and ponds, coastlines, wetlands, estuaries) and sets quality standards for surface waters. The CWA makes it unlawful to discharge any pollutant from a specific source into navigable waters without the appropriate CWA permits from the U.S. Army Corps of Engineers (USACE) or state regulatory agency.[495] In addition, the CWA requires authorization for dredging or filling in waters (including disposal of dredged material). Applicants must ensure applicable permits are acquired prior to beginning work. Documentation of this must be provided to FEMA and may include statements of compliance with nationwide permits (NWPs) or Individual Section 404 permits. Common work activities that may require permits under the Clean Water Act include those that involve the repair of bridges, stream crossings, docks, piers, and/or marinas.

V. Rivers and Harbors Act

The Rivers and Harbors Act requires that authorization be obtained from USACE to construct any structure in or over any navigable water, including authorization for projects involving constructing or modifying bridges and causeways over navigable waters or constructing any dam or dike in a navigable water. Typically, requests for this type of authorization are handled together with requests for authorization of projects under Section 404 of the CWA. Common work activities that may require permits under the Rivers and Harbors Act include those that involve the repair of docks, piers, and/or marinas.

[494] 16 U.S.C. § 1536; Endangered Species Act Section 7.
[495] 33 U.S.C. § 1251 et seq.

VI. Safe Drinking Water Act

The purpose of the Safe Drinking Water Act is to protect public health by ensuring the quality of drinking water. The law authorizes the U.S. Environmental Protection Agency (EPA) to, among other things, set standards for the levels of individual contaminants allowed in drinking water. Additionally, it allows the EPA to designate as aquifers that serve as the sole or principal source of drinking water for a particular area as "sole source aquifers". For any financial assistance project that has the potential to contaminate an aquifer and that is located in the identified review area for a "sole source aquifer", FEMA must consult with EPA before funding the project.

VII. Clean Air Act

The Clean Air Act (CAA) protects the Nation's air through the reduction of smog and atmospheric pollution. Air quality compliance often requires specific measures to be implemented, such as dust abatement, vehicle emissions control, fuel storage, and distribution procedures. There may be additional requirements in "nonattainment areas" (defined as those areas that do not meet national standards for air quality and, therefore, require more rigorous compliance measures).[496] For projects where there is an impact to air quality, applicants should coordinate with and obtain any permits from applicable state or local environmental agencies approving the action.

VIII. Coastal Barrier Resources Act

The Coastal Barrier Resources Act (CBRA)[497] established the John H. Chafee Coastal Barrier Resources System (CBRS), which consists of relatively undeveloped coastal barriers along the Atlantic, Gulf, Great Lakes, and Caribbean coasts. CBRA minimizes adverse impacts to these areas by restricting federal assistance that encourages development within the CBRS. USFWS publishes maps designating these areas.[498] FEMA must consult with USFWS prior to providing PA funding for work within the CBRS.[499]

IX. Migratory Bird Treaty Act

The Migratory Bird Treaty Act makes it unlawful to pursue, hunt, take, capture, kill, or sell migratory birds listed in the statute without a waiver from USFWS.[500] The statute does not discriminate between live or dead birds and also grants full protection to any bird parts including feathers, eggs, and nests. FEMA consults with USFWS regarding projects likely to trigger compliance with this Act.

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[496] 42 U.S.C. § 7401 et seq.
[497] 16 U.S.C. § 3501 et seq.
[498] 16 U.S.C. §§ 3501 and 3503. The U.S. Fish and Wildlife Service publishes Coastal Barrier Resource System maps at: http://www.fws.gov/.
[499] 16 U.S.C. § 3505.
[500] 16 U.S.C. §§ 703–712.

X. Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act prohibits any person from pursuing, capturing, killing, wounding, disturbing, or otherwise taking bald eagles or golden eagles, including their parts (e.g., feathers), nests, or eggs, unless authorized by a permit from the USFWS. The prohibition on disturbance applies to nests and previously used nest sites when eagles are not present, if, an eagle were to return, such alterations would lead to injury, death, or nest abandonment. FEMA consults with the USFWS regarding projects where impacts to bald or golden eagles may occur.

XI. Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act is the primary law for managing and maintaining sustainable fisheries in waters of the United States. The Magnuson-Stevens Fishery Conservation and Management Act protects essential fish habitat, which includes the waters and substrate necessary to maintain healthy fisheries. FEMA must consult with NMFS when any proposed PA project could have an adverse effect on "essential fish habitat" (defined as any impact that reduces quality or quantity of essential fish habitat).[501]

XII. Marine Mammal Protection Act

The Marine Mammal Protection Act prohibits, with certain exceptions, the "take" of marine mammals in U.S. waters or by U.S. citizens on the high seas. The law prohibits attempts to hunt, capture, kill, or harass any marine mammals. The law authorizes NMFS or USFWS (depending on the species in question) to issue incidental take permits and incidental harassment authorizations. FEMA will consult with the USFWS/NMFS regarding projects where impacts to marine mammals may occur.

XIII. National Marine Sanctuaries Act

The National Marine Sanctuaries Act (NMSA), which is part of the Marine Protection, Research and Sanctuaries Act, authorizes the Secretary of Commerce to designate and manage areas of the marine environment as National Marine Sanctuaries (NMS), which NOAA administers. Activities within each NMS are governed by regulations. A "sanctuary resource" is defined as any living or nonliving resource of a NMS that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the sanctuary. The National Marine Sanctuaries Act prohibits destroying, injuring, or causing the loss of any "sanctuary resource". A permit is required to conduct any activity within a sanctuary that is otherwise prohibited.

[501] 16 U.S.C. §§ 1801–1884.

XIV. Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) provides for the management of the Nation's coastal resources. The CZMA establishes a voluntary partnership between the federal government and coastal and Great Lakes states. It requires participating states to develop state coastal zone management plans. PA projects located in, or near, established coastal zone management areas must be consistent with the enforceable policies of the state's federally approved coastal zone management program.[502] Before approving a project in a coastal zone management area, FEMA consults with the state agency overseeing the implementation of the CZMA plan to ensure the project is consistent with the program's provisions.

XV. Farmland Protection Policy Act

The Farmland Protection Policy Act is intended to minimize the extent to which federal programs contribute to the conversion of prime or unique farmland, or land of statewide or local importance, to nonagricultural uses and to ensure that federal programs are administered in a manner that, to the extent practicable, will be compatible with state, local, and private programs and policies to protect farmland. The Farmland Protection Policy Act and U.S. Department of Agriculture (USDA) implementing procedures require FEMA to evaluate whether projects it funds irreversibly convert such farmland to nonagricultural uses and to consider alternative actions that could avoid adverse effects. For projects that have the potential to irreversibly convert such farmland, FEMA must consult with the USDA Natural Resources Conservation Service (NRCS) to identify potential impacts to that farmland.[503]

XVI. Wild and Scenic Rivers Act

The Wild and Scenic Rivers Act protects the free-flowing condition of rivers and tributaries that are part of the National Wild and Scenic Rivers System (System) or are under study for inclusion in the System because of their scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values. Note: the rivers and tributaries under study are listed on the Nationwide Rivers Inventory or have been formally identified as Study Rivers. If a proposed project is located on a river or tributary covered by the Wild and Scenic Rivers Act whether as a designated river, a Study River, or a river on the Nationwide Rivers Inventory, FEMA must review it for compliance with the Wild and Scenic Rivers Act and consult with the managing agency for the affected designated river or tributary.[504]

XVII.Resource Conservation and Recovery Act

The Resource Conservation and Recovery Act (RCRA) established a framework for federal, state, and local cooperation for controlling the management of hazardous and non-hazardous solid waste. EPA's role is to establish minimum regulatory standards, usually implemented by the states, which can establish their own requirements for solid waste management. RCRA requires the safe disposal of waste materials, promotes

[502] 16 U.S.C. § 1451 et seq.
[503] 7 U.S.C. § 4201 et seq.
[504] 16 U.S.C. § 1271 et seq.

the recycling of waste materials, and encourages cooperation with local agencies.[505] FEMA may require proof of compliant disposition in the form of state debris management permits/forms, landfill permit information, written statements from appropriate authorities, or project specific permits and plans.

XVIII. Comprehensive Environmental Response, Compensation and Liability Act

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as Superfund, authorizes the federal government to respond to releases or threatened releases of hazardous substances into the environment through short-term removals and long-term remedial response actions. Superfund also triggered the development of the National Priorities List, a list of national priorities among the sites with known or threatened releases of hazardous contaminants. The 1986 amendments to CERCLA included the Emergency Planning and Community Right-to-Know Act (EPCRA) which, among other things, creates mechanisms to help local communities plan for chemical emergencies. FEMA will consult with EPA on projects affected by a Superfund site.

XIX. Executive Order 11988, Floodplain Management

EO 11988 requires federal agencies to minimize or avoid, to the extent possible, the long- and short-term adverse impacts associated with occupancy and modifications of floodplain and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. It requires federal agencies to use a systematic decision-making process to evaluate the potential effects of projects located in, or affecting, floodplains; document each step of the process; and involve the public in the decision-making process. This process is designed to:

- Reduce flood loss risks;
- Minimize the impacts of floods on human safety, health, and welfare; and,
- Restore and preserve the natural and beneficial functions of floodplains.

FEMA publishes its implementing regulations for EO 11988 in 44 C.F.R. Part 9, Floodplain Management and Protection of the Wetlands. These regulations set forth the policy, procedures, and responsibilities to implement and enforce the EO, including the decision-making process, which is referred to as the 8-step process.[506]

XX. Executive Order 11990, Protection of Wetlands

EO 11990 requires federal agencies to avoid to the extent possible, the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative. To meet these objectives, EO 11990 requires federal agencies to use a systematic decision-making process to evaluate the potential

[505] 42 U.S.C. § 6901 et seq.
[506] 44 C.F.R. § 9.6.

effects of projects in, or affecting, wetlands; document each step of the process; and involve the public in the decision-making process.

FEMA publishes its implementing regulations for EO 11990, Protection of Wetlands in 44 C.F.R. Part 9, Floodplain Management and Protection of the Wetlands. These regulations set forth the policy, procedures, and responsibilities to implement and enforce the EO, including the decision-making process, which is referred to as the 8-step process.

XXI. Executive Order 13112, Invasive Species

EO 13112 requires agencies to use their programs and authorities to help prevent the introduction, establishment, and spread of invasive species; respond to invasive species outbreaks; restore native species in areas invaded by invasive species; promote public education related to invasive species control; and avoid authorizing, funding, or carrying out activities that promote the introduction, establishment, or spread of invasive species. FEMA will consult with state and local environmental and debris management agencies to ensure projects are in compliance with EO 13112.