

The National Environmental Policy Act of 1969 (NEPA) was perhaps the most significant and far-reaching of numerous statutes enacted during the 1970s, a period that some have called the "Environmental Revolution" in American politics and legislation. Most importantly, NEPA required the preparation of an environmental impact statement (EIS) of the environmental effects of significant federal actions. In this commentary, RFF Visiting Scholar Lynn Scarlett describes the difficult and as-yet unfinished evolution of the EIS requirement from a contentious process toward one characterized by much more meaningful public participation as well as more collaborative interaction among interested parties.

The National Environmental Policy Act: Enhancing Collaboration and Partnerships

Lynn Scarlett

Forty years ago, the U.S. Congress enacted the National Environmental Policy Act (NEPA). In the intervening years, the act has become the bedrock for evaluating environmental and other social and economic impacts of federal actions. Equally significant, NEPA lays out the central architecture for agency collaboration, cooperation, and public participation in evaluating federal actions. A 1997 report by the Council of Environmental Quality (CEQ; see Further Reading) called this cooperative framework the act's "most enduring legacy." In particular, the NEPA process contains three elements essential to its role in facilitating collaboration: 1) public information and input; 2) interagency coordination; and 3) interdisciplinary place-based approaches to decisionmaking. Despite these requirements, achieving robust public participation and collaborative engagement has not been easy. For over four decades, critics have pointed to missed opportunities and, sometimes, to an emphasis on procedural fidelity rather than meaningful collaboration.

Others criticized NEPA processes for failing to attract broad citizen participation, placing limits on citizen involvement, and bringing in the public only after preparing draft documents. Despite these criticisms of NEPA processes, both the agencies and stakeholders have been working to improve them within the current regulatory framework.

Consider these "big picture" dynamics. First, the decisionmaking setting increasingly involves ecosystem-based, large-landscape-scale planning and actions. For example, Everglades restoration projects involve multiple agencies and communities, affect public and private lands, and impact millions of acres. Second, federal agencies are increasingly engaged in partnerships with state, local, and tribal governments and other organizations that leverage resources and skills. Put another way, agency cultures are shifting toward network cultures. Third, the public, frustrated with traditional passive participation centered on commenting on proposed agency actions, has pressed for and pioneered more collaborative decision processes. In 1992, when the Quincy Library Group in California undertook a collaborative process to craft a forest management plan, it made national headlines. Nearly two decades later, collaborative processes to find common ground in resource

management decisions have spread across the nation. Policymakers, in the rules, processes, and guidelines for implementing NEPA, have both responded to and mirrored these broader decisionmaking trends. Though challenges remain, cooperation, collaboration, and active public engagement are central features of 21st-century NEPA implementation.

The 1997 CEQ report was the first of four key steps in this trajectory. Much of the report focused on streamlining processes. Implicit in the streamlining was, however, greater coordination, including with state agencies, where relevant. The report also examined ways to breathe life into NEPA as a process for strategic planning, including use of ecosystem-based regional planning.

Additionally, the report directly addressed the issue of coordination, proposing that agencies coordinate and share information and planning responsibilities with federal and other agencies. The 1997 report set the stage for strengthening NEPA collaborative processes and was, in many ways, a precursor to subsequent actions by the Bush administration.

In a second step, on January 30, 2002, CEQ convened a NEPA Task Force that made intergovernmental collaboration a significant part of its focus. The NEPA Task Force report suggested that lead agencies should actively “identify other agencies that might have an interest in the new or revised proposal or project.” The report suggested use of a variety of tools, including training, facilitators, interagency work groups, and cooperative agreements to foster collaboration through all phases of NEPA processes.

A third impetus to greater NEPA interagency and public coordination and collaboration came with the 2005 presidential Executive Order 13352 on cooperative conservation. Though it did not specifically focus on NEPA processes, it raised the bar for federal agencies, directing that they strengthen their processes for coordination, collaboration, and cooperation with one another, nonfederal agencies, tribes, and the public.

A fourth impetus was the NEPA Report of the National Environmental Conflict Resolution Committee. The committee found a significant nexus between the provisions of Section 101 of NEPA, which describes the goal of the act as creating conditions in which “man and nature can exist in productive harmony,” and the fundamentals of conflict resolution, including consideration of multiple values and sustained engagement of all parties in decisionmaking processes.

With these four documents providing both rationale and support, agencies enhanced their commitments to collaboration and coordination in both policy and substance. Several of the policies and regulations highlighted below illustrate this evolving emphasis.

NEPA directives issued in 2003 by the Department of the Interior were among the first formal federal policies to support active community (and nonfederal) agency collaboration to shape NEPA alternatives rather than be confined to commenting on agency-generated options. The directives, developed into regulations in 2008, outlined three main provisions. First, bureaus “should initiate the scoping process with full and direct involvement by the community.” Second, when feasible and practicable, “one alternative evaluated in the NEPA analysis should be the community alternative if one exists.” Third, when feasible and practicable, “the community alternative should be designated as the bureau’s preferred alternative in the NEPA process, so long as a consensus exists within the

community for support of that alternative.” Other provisions qualified and explained this general guidance.

Similarly, the Bureau of Land Management (BLM) issued new land-use planning regulations that clarified and strengthened the role of cooperating agencies, giving managers the responsibility to offer cooperating agency status in the various steps of BLM’s planning process. In addition, the new rules required managers to offer cooperating agency status to eligible agencies for all resource management plans.

BLM’s land-use planning process results in a dual-purpose document—a resource management plan and an environmental impact statement as required under NEPA. In effect, the rules mandate collaboration with cooperating agencies at most stages of planning, providing the same eligibility to tribes, states, local governments, and federal agencies. The requirement to offer cooperating agency status applies to all environmental impact statements. BLM’s regulations thus go beyond CEQ’s general NEPA regulations: they require the offer of cooperating agency status to eligible participants, whereas the CEQ only encourages it.

CEQ also weighed in with a draft handbook in 2007 on collaboration in NEPA. The draft handbook, while not policy, nonetheless established a strong marker reinforcing the view that NEPA is intended to generate “meaningful public input and involvement in the process of evaluating the environmental impacts of proposed federal actions.” The handbook begins with an attention-grabbing admission that the regulatory requirements for collaboration with other agencies and participation by the public at all stages are “rarely realized.” To foster more meaningful collaboration, several practical measures are advanced, including options to convene “state of the science” workshops in the context of NEPA decisions to build understanding and agreement on relevant resource conditions. While offering suggestions, the handbook also underscores that there is considerable flexibility in how collaboration can occur within a NEPA context. One size does not fit all.

As an example of how these cooperative processes may be leading to greater creativity in developing institutions and approaches to solving resource conflicts, consider the emergence of “shared governance” frameworks in some resource management initiatives. The Platte River Recovery Implementation Plan, designed to protect and recover four endangered species within the Platte River Basin that involves three states, many irrigation districts, several federal agencies, power utilities, and others, established the independent Headwaters Corporation to serve as the program manager and coordinator, rather than the more traditional approach, in which the regulating authority—the U.S. Fish and Wildlife Service—serves as project manager. The purpose of this governing structure was to sustain a neutral convening context for ongoing stakeholder participation.

At its inception, NEPA set forth both principles and processes intended to engage public and private-sector participants in processes associated with federal agency planning, infrastructure development, and resource management. But procedures developed over the first several decades of NEPA implementation often failed to engage participants beyond passive commentary on management options and related impact analysis. Two criticisms of these processes, in particular, underscore their limitations as means of enhancing public engagement, interagency cooperation, and

public-private collaboration. First, public engagement often occurred after problem scoping and development of management alternatives, limiting opportunities for creative, collective identification of management options. Second, agencies only infrequently took advantage of NEPA provisions to identify and invite cooperating agencies—especially within states, local governments, and tribes—to participate in scoping decisions and sharing relevant scientific and other information.

The press for robust collaborative processes in natural resources settings has given rise to changes in federal policy and practice that engage stakeholders earlier in decision processes and, more profoundly, establish shared governance in formal or quasi-formal institutions. With these changes, attention is turning to results. Are these processes resulting in less conflict, more durable outcomes, greater social trust, and positive environmental outcomes? The empirical record is sparse. While some research on social trust shows positive results from collaborative endeavors, few efforts to assess environmental outcomes have been undertaken. Some critics speculate a tradeoff between durability and environmental quality, anticipating that collaborative processes result in lowest-common-denominator solutions. But the U.S. Government Accountability Office and others have reported positive environmental outcomes, though their sample was small and selective. Ultimately, the use and expansion of collaborative processes may hinge on the social, economic, and environmental outcomes that result from them. That record remains a work in progress—one yet to be well examined.

Further Reading

Council on Environmental Quality (CEQ). 1997. *The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-five Years*. Washington, DC: CEQ.

———. 2007. *Collaboration in NEPA: A Handbook for NEPA Practitioners*. Revised Draft, March 16. Washington, DC: CEQ.

McKinney, Matt, Lynn Scarlett, and Dan Kemmis. 2010. *Large Landscape Conservation: A Strategic Framework for Policy and Action*. Cambridge, Mass.: Lincoln Institute.

NEPA Task Force. 2004. *Modernizing NEPA Implementation*.
<http://ceq.hss.doe.gov/ntf/report/index.html>.

National Environmental Conflict Resolution Advisory Committee. 2004. *National ECR Advisory Report* (NEPA Report). <http://www.ecr.gov/Resources/NationalECRAdvisoryReportIntro.aspx>