

Treasury's Coronavirus Capital Projects Fund Environmental Checklist

This is a reference document that lists environmental laws that may apply to any eligible project. The following questions will aid entities in identifying the environmental laws that may apply; however, the entity must perform the proper due diligence to ensure their project complies with all applicable laws. Additionally, recipients must retain records, permits, and documentation necessary to evidence compliance with all environmental requirements.

FEDERAL LAWS

1.1 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) provides a national policy that encourages “productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man...” The NEPA requires that all federal agencies use a systematic, interdisciplinary approach for protection of the human environment; this approach will ensure the integrated use of the natural and social sciences in any planning and decision-making that may have an impact upon the environment. The NEPA also requires the preparation of a detailed Environmental Impact Statement (EIS) on any major federal action that may have a significant impact on the environment.

- 1) Will the proposed activity be under the permitting authority of any federal agency?
Yes No
- 2) Will the proposed activity receive federal assistance (other than Coronavirus Capital Projects Fund funding)?
Yes No
- 3) Will the proposed activity be subject to any federal regulatory decision or approval?
Yes No
- 4) Has a NEPA or NEPA-like review been independently prepared for this proposed eligible activity or is a NEPA review underway?
Yes No

If the answer to any of these questions is “yes,” contact the relevant federal agency or agencies for further guidance on environmental compliance. Additional information concerning NEPA can be found at: <https://ceq.doe.gov/>.

1.2. COASTAL ZONE MANAGEMENT ACT (CZMA)

Capital Projects Fund grant applications may be subject to the review provisions of Section 307 of the Coastal Zone Management Act (CZMA) and implementing regulations 15 C.F.R. Part 930. Questions as to the applicability of the CZMA consistency provisions should be directed to the Office of Ocean and Coastal Resource Management/Coastal Services Center within the National Oceanic and Atmospheric Administration. A federal consistency determination or certification may be required from the state coastal zone management program, based on the following questions:

- 1) Will the proposed activity occur in or near the state designated coastal zone
(<http://coastalmanagement.noaa.gov/mystate/docs/StateCZBoundaries.pdf>)?
Yes No
- 2) Is the activity likely to have reasonably foreseeable effects on any land or water use or natural resource of the designated coastal zone?
Yes No

If the answer to either of these questions is “yes,” contact the State Coastal Zone Management Program (<https://coast.noaa.gov/data/czm/consistency/media/state-fc-contacts.pdf>) for further guidance on federal consistency requirements in your state. Additional information on federal consistency can be found at: <https://coast.noaa.gov/czm/consistency/>.

1.3 ENDANGERED SPECIES ACT (ESA)

Section 7 of the Endangered Species Act (ESA) imposes a duty on federal agencies to ensure their actions are not likely to adversely affect threatened or jeopardize the continued existence of any species listed as threatened or endangered, or that would result in the destruction or adverse modification of the critical habitat of a listed species. A Section 7 consultation may be required if a threatened or endangered species or critical is present.

- 1) Will the proposed activity occur in proximity to threatened or endangered species or critical habitat as defined by the ESA and under the jurisdiction of the National Marine Fisheries Service (NMFS) (<https://www.fisheries.noaa.gov/species-directory/threatened-endangered>) or the U.S. Fish and Wildlife Service (USFWS) (<https://www.fws.gov/endangered/>)?
Yes No
- 2) Will the proposed activity potentially affect threatened or endangered species or critical habitat as defined by the ESA and under the jurisdiction of National Marine Fisheries Service (NMFS) or U.S. Fish and Wildlife Service (USFWS)?
Yes No

If the answer to either of these questions is “yes,” contact the regional office of USFWS (<http://www.fws.gov/offices/>) and/or NMFS (<https://www.fisheries.noaa.gov/contact-directory/regional-offices>) to determine if consultation is required. Most consultations are conducted informally with the federal agency or a designated non-federal representative. Non-federal representatives may be involved in the informal consultation process and may request and receive species lists, prepare the biological assessment, and provide information for the formal consultation. However, the USFWS requires the action agency to designate formally the non-federal representative in writing. Moreover, the ultimate responsibility for Section 7 obligations remains with the action agency. Additional information concerning Section 7 consultations can be found in the Endangered Species Act Consultation Handbook at: <http://www.fws.gov/policy/m0002.html>.

1.4 MAGNUSON – STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT (MSA)

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) is the primary law that governs marine fisheries managements in U.S. federal waters. Consultation with the NMFS may be required if Essential Fish Habitat (EFH) is present where project activity will occur. The trigger for EFH consultation is a federal agency’s determination that an action or proposed action, funded, authorized, or undertaken by that agency may adversely affect EFH.

- 1) Will the proposed activity occur in proximity to EFH as identified by the nearest Regional Fishery Management Council (<https://www.habitat.noaa.gov/apps/efhmapper/>)?
Yes No
- 2) Will the proposed activity potentially adversely affect EFH?
Yes No

If the answer to either of these questions is “yes,” contact the nearest regional office of the NMFS (<https://www.fisheries.noaa.gov/contact-directory/regional-offices>) or Regional Fishery Management Council (<http://www.fisherycouncils.org/>) to determine if consultation is required. Additional information concerning EFH can be found at: <https://www.fisheries.noaa.gov/national/habitat-conservation/essential-fish-habitat>. Information about consultations can be found in the Essential Fish Habitat Consultation Guidance at: <https://www.fisheries.noaa.gov/national/habitat-conservation/consultations-essential-fish-habitat#the-consultation-process>.

1.5 MARINE MAMMAL PROTECTION ACT (MMPA)

The Marine Mammal Protection Act prohibits actions that may result in take of any marine mammal. Taking is defined as “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.” Any Agency actions with the potential to take a marine mammal require consultation with NMFS (for seals, sea lions, whales, dolphins, and most marine mammals) or FWS (sea otters, polar bears, walruses, manatees, and dugongs) following a process similar to ESA Section 7 consultation.

- 1) Will the proposed activity occur in proximity to any known marine mammals (<https://www.fisheries.noaa.gov/species-directory>)?
Yes No
- 2) Will the proposed activity likely result in the take of a marine mammal?
Yes No

If the answer to either of these questions is “yes,” contact the nearest regional office of NMFS (<https://www.fisheries.noaa.gov/contact-directory/regional-offices>) to determine if a permit is required. Additional information concerning marine mammal permits can be found at: <https://www.fisheries.noaa.gov/insight/understanding-permits-and-authorizations-protected-species> and <https://apps.nmfs.noaa.gov/index.cfm>.

1.6 CLEAN WATER ACT (CWA)

A separate type of permit is required to dispose of dredge or fill material in the Nation’s waters, including wetlands. Authorized by Section 404 of the Act, this permit program is administered by the U.S. Army Corps of Engineers (USACE), subject to and using environmental guidance from the Environmental Protection Agency (EPA). Some types of activities are exempt from permit requirements, including certain farming, ranching, and forestry practices that do not alter the use or character of the land; some construction and maintenance; and activities already regulated by States under other provisions of the Act.

A permit may be required from the USACE for the disposal of dredge or fill material in the nation’s waters, including wetlands.

- 1) Will the proposed activity result in any disposal of dredge or fill material to the nation’s waters or wetlands?
Yes No

If the answer to this question is “yes,” contact the Regulatory Program of the nearest District Office of the USACE (<http://www.usace.army.mil/Locations.aspx>) for further guidance on Section 404 permits.

A Water Quality Certification (Section 401) is required for activities that may result in a discharge into navigable waters, including wetlands, watercourses, and natural or man-made ponds. A National Pollution Discharge Elimination System (NPDES) permit may also be required for such discharges.

- 1) Will the proposed activity result in any discharge to navigable waters?
Yes No

If the answer to this question is “yes,” contact your state water quality agency for additional guidance. Additional information concerning Section 401 or NPDES requirements can be found at: <https://www.epa.gov/cwa-401/overview-cwa-section-401-certification> and <https://www.epa.gov/npdes/npdes-permit-basics>.

1.7 CLEAN AIR ACT (CAA)

Clean Air Act (CAA), 42 U.S.C §§ 7409, 7410, 7502-7514, 7571-7574, requires establishment of National Ambient Air Quality Standards (NAAQS) and designation of areas based on achievement of these standards. It also requires preparation of a State Implementation Plan for Air Quality (SIP). In Section 176(c) of the CAA, federal agencies must demonstrate that their actions conform to these SIPs (or the Tribal or Federal equivalent of a SIP). The CAA also requires emission limits to be controlled and regulated through permit requirements set by states or Tribes. Special conditions may be required on projects that could affect air quality.

- 1) Will the proposed activity result in any direct or indirect emissions within a non-attainment area (<https://www.epa.gov/green-book>)?
Yes No

If the answer to this question is “yes,” contact the nearest state air quality agency (<http://www.4cleanair.org>) for further guidance on determining conformity with the state implementation plan.

1.8 NATIONAL HISTORIC PRESERVATION ACT (NHPA)

Pursuant to 54 U.S.C. § 300101, the National Historic Preservation Act (NHPA) establishes federal government policy with regards to historic preservation. Section 106 of NHPA (54 U.S.C § 306108) requires that “the head of any federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, take into account the effect of the undertaking on historic properties; and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to such undertaking.” Special conditions may be required on projects that could affect historic resources.

- 1) Will the proposed activity occur near property listed or eligible for listing in the National Register of Historic Places (<https://www.nps.gov/subjects/nationalregister/index.htm>), or near property otherwise protected by section 106 of the

National Historic Preservation Act (<http://www.nps.gov/history/local-law/nhpa1966.htm>) or a similar State Preservation Act?

Yes No

If the answer to this question is “yes,” contact the U.S. Advisory Council on Historic Preservation (<http://www.achp.gov>), or your state historic preservation office (<http://www.ncshpo.org/>) for further guidance concerning compliance requirements.

1.9 COASTAL BARRIER RESOURCE ACT (CBRA)

The Coastal Barrier Resources Act (CBRA) of 1982 (16 U.S.C. 3501 et seq.) protects undeveloped coastal barriers and related areas by prohibiting direct or indirect Federal funding that might support development in these areas. The act lists exceptions to the limitations on Federal expenditures and financial assistance within the CBRS. No exception may be implemented, however, without first consulting with the FWS.

- 1) Is the proposed activity located on an undeveloped coastal barrier designated by the Coastal Barriers Resources Act (<http://www.fws.gov/cbra/>)?

Yes No

If the answer to this question is “yes,” contact the nearest Regional Office of USFWS (<http://www.fws.gov/where>) for further guidance.

1.10 RIVERS AND HARBORS ACT

Section 10 of the Rivers and Harbors Act of 1899 requires authorization from the Secretary of the Army, acting through the Corps of Engineers, for the construction of any structure in or over any navigable water of the United States. The law applies to any dredging or disposal of dredged materials, excavation, filling, rechannelization, or any other modification of a navigable water of the United States, and applies to all structures, from the smallest floating dock to the largest commercial undertaking. A permit may be required from the USACE if the proposed activity involves any work in, over, or under navigable waters of the United States.

- 1) Will the proposed activity involve any work (including structures) that will occur in, over or under navigable waters of the United States?

Yes No

If the answer to this question is “yes,” contact the Regulatory Program of the nearest District Office of the USACE (<http://www.usace.army.mil/Locations.aspx>) for further guidance on Section 10 permits. The USACE can authorize activities by a standard individual permit, letter-of-permission, nationwide permit, or regional permit. The USACE will make the determination on what type of permit is needed.

1.11 RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

The Resource Conservation and Recovery Act (RCRA) gives EPA the authority to control hazardous waste from cradle to grave. This includes the generation, transportation, treatment, storage, and disposal of hazardous waste. A RCRA permit may be required from the EPA or designated state agency for the long-term storage, treatment, or disposal of hazardous materials or petroleum products.

- 1) Will the proposed activity include the long-term storage of hazardous materials or petroleum products?

Yes No

If the answer to this question is “yes,” contact the nearest RCRA Regional Office of the EPA or state authorized agency (<https://www.epa.gov/hwgenerators/links-hazardous-waste-programs-and-us-state-environmental-agencies>) for further guidance on RCRA compliance.

1.12 COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA)

The Comprehensive Environmental Response, Compensation, and Liability Act -- otherwise known as CERCLA or Superfund -- provides a Federal "Superfund" to clean up uncontrolled or abandoned hazardous-waste sites as well as accidents, spills, and other emergency releases of pollutants and contaminants into the environment. Special provisions and requirements may apply if the proposed activity involves a Superfund site (<http://www.epa.gov/superfund/sites/index.htm>).

- 1) Will the proposed activity involve a known Superfund site (<https://www.epa.gov/superfund/search-superfund-sites-where-you-live>)?
Yes No

If the answer to this question is “yes,” contact the nearest Regional Office of the EPA (<https://www.epa.gov/aboutepa/regional-and-geographic-offices>) for further guidance on CERCLA requirements.

1.13 WILD AND SCENIC RIVERS ACT

The Wild and Scenic Rivers Act prohibits federal support for actions such as the construction of dams or other instream activities that would harm the free-flowing condition, water quality, or outstanding resource values of a designated Wild and Scenic River. Designation of a river neither does nor inherently prohibit development. “The Act purposefully strives to balance dam and other construction at appropriate sections of rivers...”

- 1) Is the proposed activity located on a designated Wild and Scenic River (<http://www.rivers.gov/index.php>)?
Yes No

If the answer to this question is “yes” contact the nearest Regional Office of the USFWS (<http://www.fws.gov/where>) for further guidance.

1.14 SAFE DRINKING WATER ACT (SDWA)

The Safe Drinking Water Act (SDWA) authorizes the EPA to set national health-based standards for drinking water to protect against both naturally-occurring and man-made contaminants that may be found in drinking water. EPA, states, and water systems then work together to make sure that these standards are met. A permit may be required if the proposed activity will involve underground injection which may impact drinking water sources.

- 1) Will the proposed activity involve underground injection which may impact drinking water sources?
Yes No

If the answer to the question is “yes,” contact the nearest state drinking water or underground injection control program (<https://www.epa.gov/uic>). For more information see: <http://water.epa.gov/lawsregs/guidance/sdwa/>.

1.15 FARMLAND PROTECTION POLICY ACT (FPPA)

The Farmland Protection Policy Act (FPPA) is intended to minimize the impact Federal programs have on the unnecessary and irreversible conversion of farmland to nonagricultural uses. It assures that to the extent possible federal programs are administered to be compatible with state, local units of government, and private programs and policies to protect farmland. For the purpose of FPPA, farmland includes prime farmland, unique farmland, and land of statewide or local importance. Farmland subject to FPPA requirements does not have to be currently used for cropland. It can be forest land, pastureland, cropland, or other land, but not water or urban built-up land. For more information, visit: <https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/landuse/fppa/>.

- 1) Is the proposed activity for new construction, acquisition of undeveloped land or change in use of land or property?
Yes No

If the answer to the question is “no,” the FPPA does not apply. If the answer to the question is “yes,” to determine any necessary next steps, contact the local National Resource Conservation Service District Conservationist (https://www.nrcs.usda.gov/wps/portal/nrcs/detail/soils/contactus/?cid=nrcs142p2_053951).

EXECUTIVE ORDERS

Executive Orders (E.O.) are directives from the President of the United States to federal agencies and officials.

2.1 E.O. 11988, as amended by E.O. 13690 – Floodplain Management

E.O. 11988 requires federal agencies to avoid, to the extent possible, the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. To this effect, an 8-step process must be followed for projects that may have potential impacts to or within floodplains (https://emilms.fema.gov/is_0253a/groups/74.html). On January 30, 2015, in amending and building upon E.O. 11988, the President issued E.O. 13690, establishing Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input. Order 13690 and the associated Federal Flood Risk Management Standards (FFRMS) reinforce the important tenets and concepts articulated in Order 11988. When avoiding the floodplain is not

possible, E.O. 13690 calls for agencies to make efforts to improve the resilience of communities as of federal actions. Importantly, Order 13690 established a new standard against which federal agencies are to evaluate the potential impacts of flooding on federal investments, the FFRMS. This standard set a higher vertical elevation and a greater horizontal extent to the floodplain to be considered.

- 1) Is the proposed activity located in a designated floodplain or have the potential to affect or be affected by a floodplain on a National Flood Insurance Program map: (<https://msc.fema.gov/portal/home>)?
Yes No

If the answer to this question is “yes,” contact the nearest Regional Office of the Federal Emergency Management Agency (<http://www.fema.gov/regional-operations>) for further guidance.

2.2 E.O. 11990 – WETLAND PROTECTION

This E.O. requires agencies to minimize the destruction, loss, or degradation of wetlands, and to preserve and enhance the natural beneficial values of wetlands. Similar to E.O. 11988, the 8-step process is followed to consider how actions affect wetlands.

- 1) Is any portion of the proposed activity in wetlands?
Yes No

If the answer to this question is “yes,” provide documentation in the grant application demonstrating that: (1) there is no practicable alternative, and (2) the proposed activity includes all practicable measures to minimize harm to wetlands.

2.3 E.O. 12898 – ENVIRONMENTAL JUSTICE

This E.O. requires that "each federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations." Thus, as appropriate, analysis of environmental justice concerns should be integrated during the review process.

- 1) Will the proposed activity have disproportionately high and adverse human health or environmental effects on minority or low-income populations?
Yes No

If the answer to this question is “yes,” see the Council on Environmental Quality website for further guidance on Environmental Justice: <https://ceq.doe.gov/nepa-practice/justice.html>, <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>, and https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf

2.4 E.O. 13089 – CORAL REEF PROTECTION

This E.O. requires that any actions that are authorized or funded by federal agencies not degrade the condition of coral reef ecosystems.

- 1) Will the proposed activity involve a coral reef ecosystem or National Marine Sanctuary (<http://sanctuaries.noaa.gov>)?
Yes No

If the answer to this question is “yes,” contact the National Oceanic and Atmospheric Administration Coral Reef Conservation Program (<http://www.coralreef.noaa.gov>) for further guidance. Additional information regarding E.O. 13089 can be found at: <https://www.govinfo.gov/content/pkg/FR-1998-06-16/pdf/98-16161.pdf>.

2.5 E.O. 13112 – INVASIVE SPECIES

This E.O. requires agencies to prevent the introduction of invasive species and provide for their control.

- 1) Will the proposed activity have the potential to introduce or cause the spread of an invasive species? For more information on invasive species, see <https://www.invasivespeciesinfo.gov/>.
Yes No

If the answer to this question is “yes,” provide documentation demonstrating that the benefits of the activity clearly outweigh the potential harm caused by invasive species, and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

2.6 E.O. 13186 – RESPONSIBILITIES OF FEDERAL AGENCIES TO PROTECT MIGRATORY BIRDS

This E.O. requires the incorporation and promotion of migratory bird conservation considerations into all agency activities.

- 1) Is the proposed activity likely to occur during a time of the year when migrating birds are in the vicinity? For more information on migratory birds, see <http://www.fws.gov/migratorybirds>.

Yes No

If the answer to this question is “yes,” contact the nearest Regional Office of the U.S. Fish and Wildlife Service (<http://www.fws.gov/where>) for further guidance. Additional information regarding E.O. 13186 can be found at: <https://www.fws.gov/birds/policies-and-regulations/administrative-orders/executive-orders.php>.