

Latest NEPA and Secretarial Order 3355 Compliance News

November
14, 2020

National HCP
Coalition Annual
Meeting



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Panel Introductions & Agenda



Facilitator

- **Trish Adams**, U.S. Fish and Wildlife Service

Panelists

- **Michelle Shaughnessy**, U.S. Fish and Wildlife Service, Division Chief, DC
- **Scott Blackburn**, U.S. Fish and Wildlife Service, National NEPA Coordinator, DC
- **Hova Woods**, Managing Director, Environmental Planning, ICF, IN

Agenda

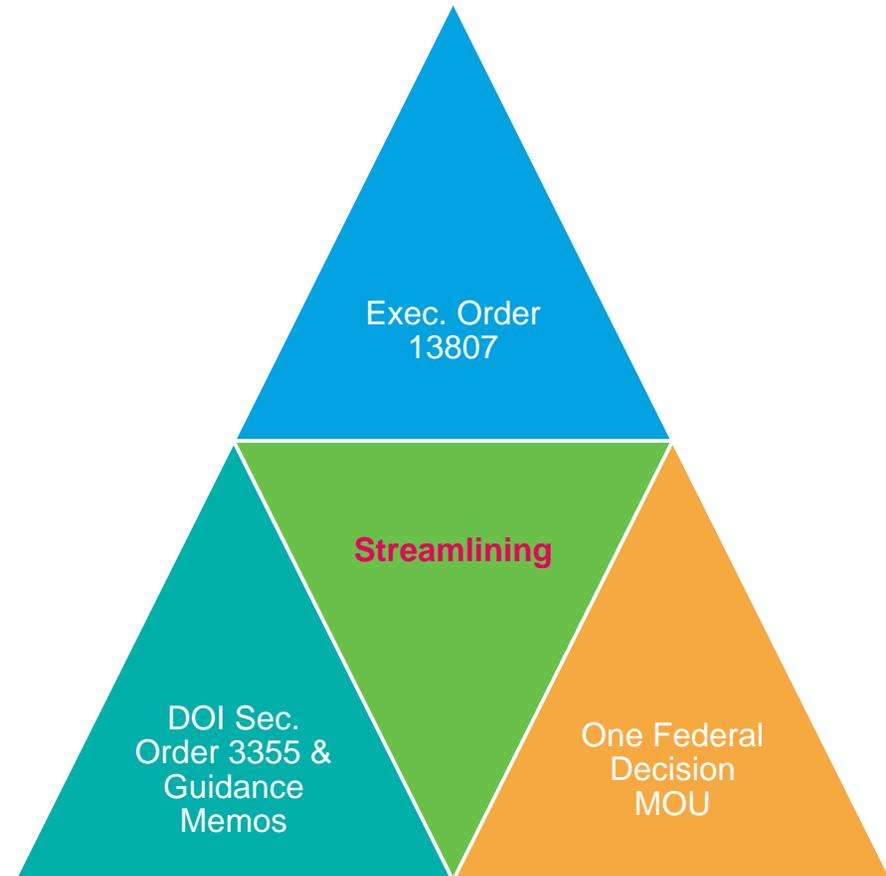
- Overview of Department of Interior (DOI) Secretarial Order (SO) 3355
- Q & A



NEPA Streamlining Basics



- **Executive Order 13807** - August 2017
- **Department of Interior Secretarial Order 3355** – August 2017
- **One Federal Decision MOU** – March 2018



DOI SO 3355 NEPA Guidance Memos



- Since DOI Secretarial Order 3355 was issued, DOI has issued:
 - 6 guidance memos
 - 1 Q&A

<https://edit.doi.gov/nepa/requirements-guidance/DOI-requirements>

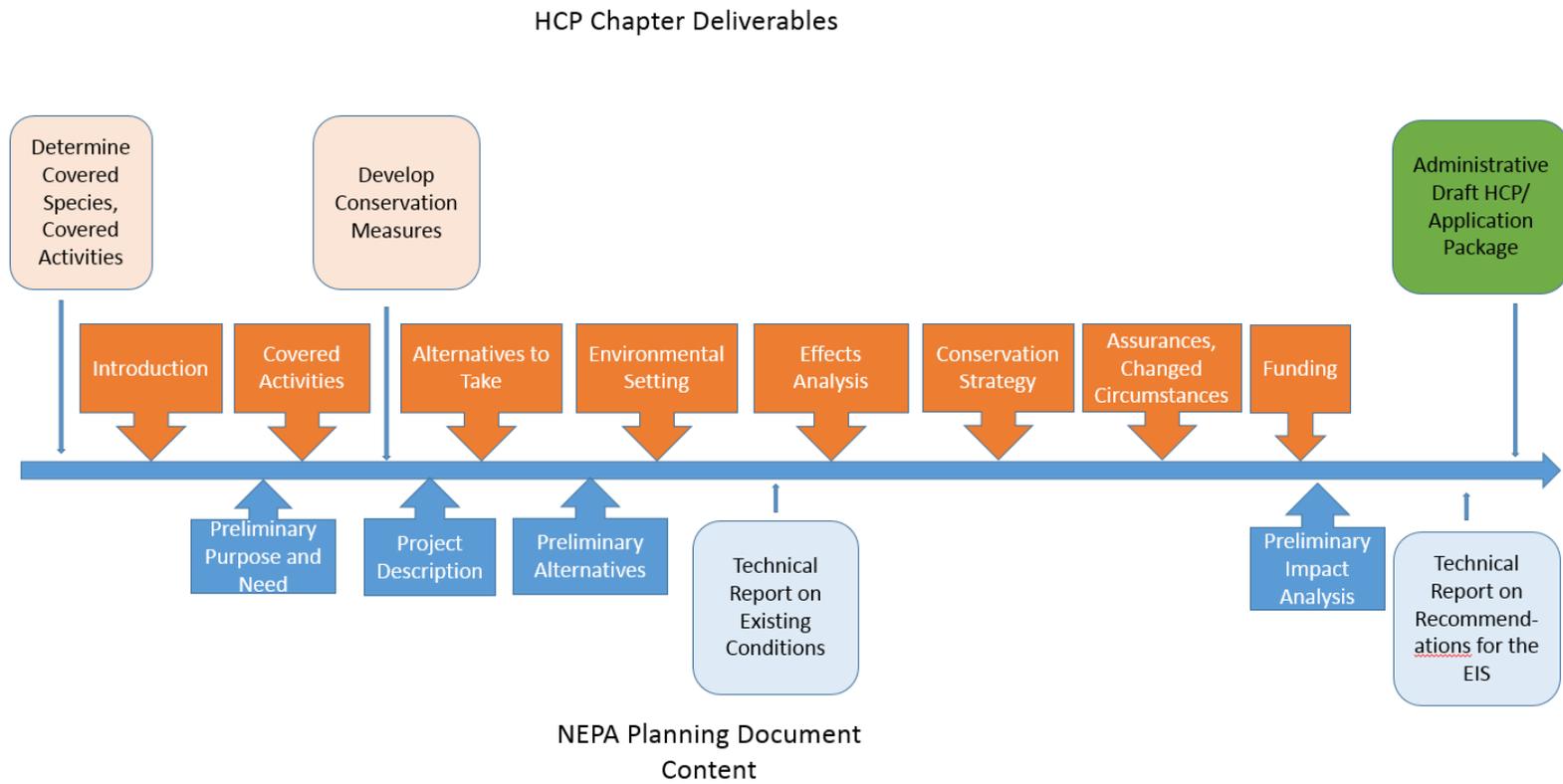
Guidance Memo	Date issued
Additional Direction for Implementing SO 3355	April 27, 2018
NEPA Document Clearance Process	April 27, 2018
Compiling Contemporaneous Decision Files	April 27, 2018
Procedures for Bureaus working as Cooperating Agencies	June 11, 2018
Q&A (on the 3 memos above dated April 27, 2018)	June 22, 2018
Reporting Costs Associated with Developing EISs	July 23, 2018
Additional Direction for Implementing SO 3355 re: EAs	August 6, 2018

DOI SO 3355: EIS and EA Basics

DOI SO 3355 Requirement	Environmental Impact Statement (EIS)	Environmental Assessment (EA)
Page Limit	150 pages – standard 300 pages – unusually complex (requires approved waiver ^a)	75 pages
Time Limit	1 year – from Notice of Intent (NOI) to Record of Decision (ROD)	6 months ^b
<p>^a There is a prescribed waiver process that requires approval by DOI.</p> <p>^b Starting point for EAs is described in DOI guidance memo.</p>		

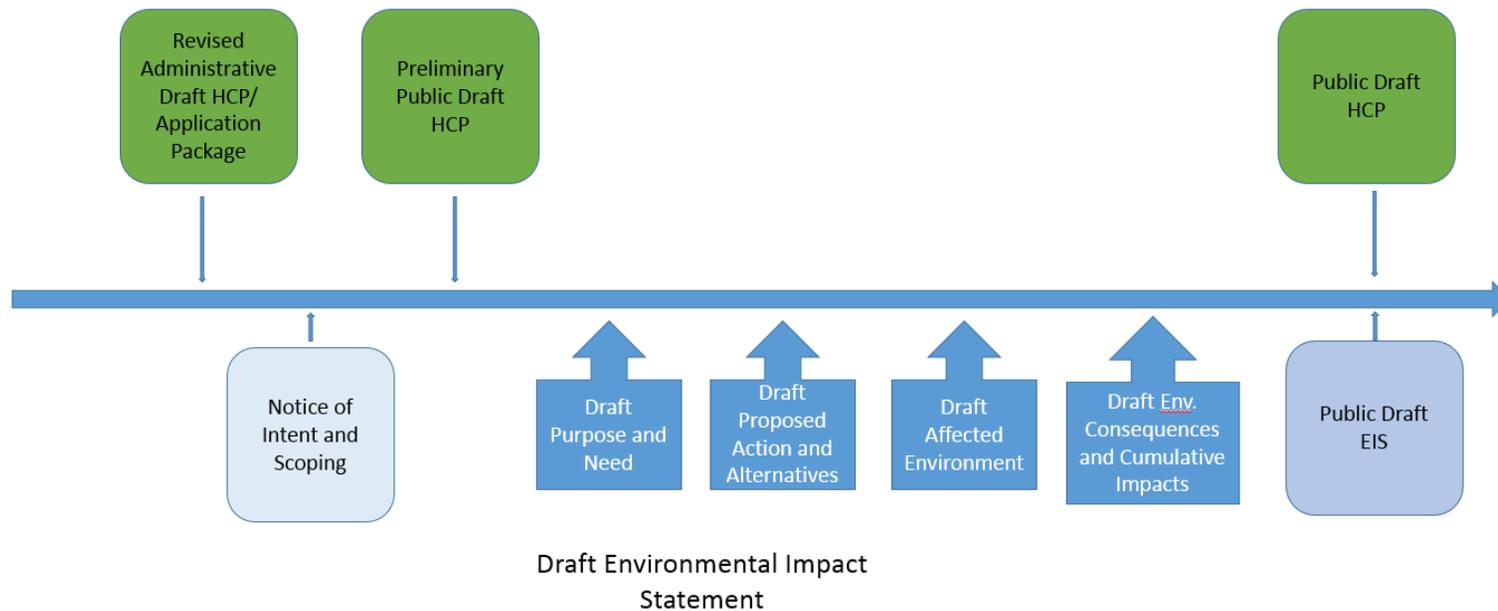


Pre-NEPA Planning Document



Pre-NEPA Planning Document

HCP Draft Deliverables



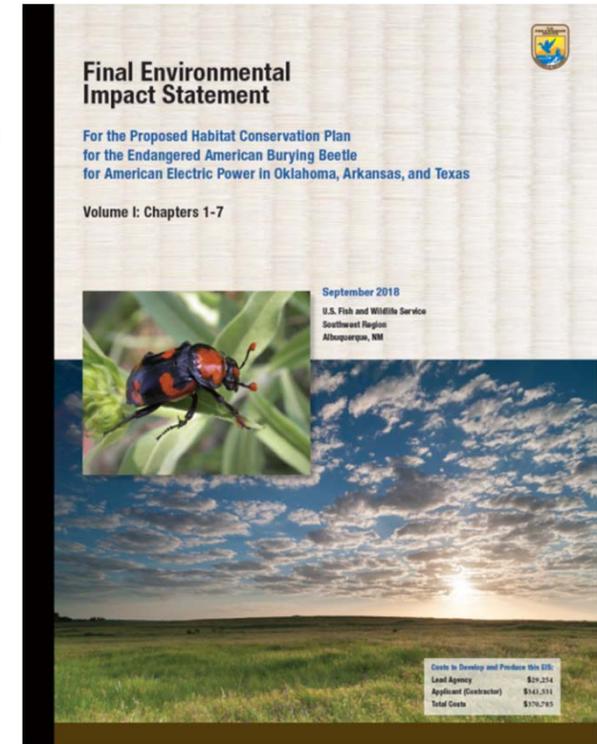
DOI SO 3355: Projects

EIS for the American Electric Power (AEP) American Burying Beetle HCP in Oklahoma, Arkansas and Texas

- Page length:
 - U.S. Fish & Wildlife Service's **first 150-page EIS**
- Timing – NOI was issued prior to SO 3355; **5 months from Draft EIS to Record of Decision & Incidental Take Permit (ITP):**
 - Draft EIS – July 2018
 - Final EIS – October 2018
 - Record of Decision – December 2018
 - ITP – December 2018

EIS for the AEP Multi-Species Multi-Regional HCP (11 states, 12 species)

- USFWS **First Pre-NEPA Planning Document in progress**



QUESTIONS



Questions – Part 1

- Does it make sense to do joint Federal/State environmental documents anymore?
- What happens if you amend an HCP and need to do Supplemental NEPA (you have an existing HCP with a ROD)?
- How have individual field offices responded to the Executive order and has it improved the timelines and process?

Questions – Part 2

- Is it common for Section 106 compliance for USFWS NEPA separate from the issuance from the ITP?
- Does SO 3355 have implications for the Final EIS DOI concurrence process? For example, is the duration of the DOI concurrence process similar to the draft HCP and EIS?
- Do you anticipate that EAs will be tracked by DOI similar to EISs?



Achieving Page Limits

- Streamlined approach to presentation of alternatives analysis (eliminated redundancy)
- Eliminate resource areas from further detailed study where there was no impact (e.g., geology)
- Remove text unnecessary for agency decision-making (i.e., lengthy description of regulations and statutes)
- Collaborative working sessions with Service to storyboard, discuss review comments, and make real-time decisions

NEPA Streamlining: Potential Benefits

✓ **Timeliness**

- Faster process
- Reliability in a schedule
- Clarity in the DOI concurrence process



✓ **Price**

- Potential for lower price overall, particularly for EAs
- Clarity in price once the application package is submitted to DOI Concurrence

✓ **Fewer Surprises from Public, Agency, and Other Stakeholder Involvement**

- For EIS projects you will likely go to Scoping meetings with more information than historically available. This could avoid surprises later in the process, such as the Comment period on the Draft EIS and HCP. Issues may be raised or even resolved earlier in the HCP and NEPA process.
- With page limits and shorter documents, the comments received on the Draft EA or EIS may be more focused.

NEPA Streamlining: Potential Drawbacks

■ Time Limit risks

- For EAs: Is there time to evaluate potential impacts and demonstrate a finding of no significant impact for each resource?
- For EISs: is there time for adequate public and stakeholder involvement requirements?
- Is there time to conduct the process in such a way that makes it vulnerable to legal challenges?
- Is it possible that frontloading the analysis and legwork could be considered pre-decisional?

■ Page limit risks

- With EA page limits, can you demonstrate a FONSI for each resource?
- For an EIS, can you support your analyses, consultations, findings, and decision?

■ Mid-stream Changes

- New guidance memos or changes in direction from agency leadership could cause project delays or increased costs due to changes required mid-stream on a project

