



# United States Department of the Interior

FISH AND WILDLIFE SERVICE

Washington, D.C. 20240



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Mr. Horst Greczmiel  
Associate Director for NEPA Oversight  
NEPA Modernization (EMS-NEPA)  
722 Jackson Place N.W.  
Washington, D.C. 20503

Dear Mr. Greczmiel:

The Fish and Wildlife Service (Service) has reviewed the proposed guide on Aligning the Complimentary Processes of Environmental Management Systems (EMS) and the National Environmental Policy Act (NEPA). The document provides guidance to Federal agencies to assist them in recognizing the complementary relationship of EMS and NEPA and in aligning EMS elements with agency NEPA compliance activities.

The Service supports the development of management mechanisms whereby agencies can track the implementation of their commitments made under NEPA. We believe that developing tools to track the implementation and efficacy of agency commitments, while placing them within an adaptive management context is important for effective conservation of wildlife and their habitats. We believe the proposed document could be strengthened by providing guidance and emphasizing the need for improved: 1) coordination with Federal or State agencies with jurisdiction by law or special expertise; 2) communication with the public; and 3) consideration of the input of co-operating agencies. An EMS has no legal requirements to ensure that the appropriate coordination occurs. NEPA and CEQ's implementing regulations and guidance ensures that the necessary coordination and communication is undertaken. Therefore, we believe that it is important that the document clarifies that an EMS is not a functional equivalent of NEPA. The guidance should also clearly articulate that an EMS should be integrated with NEPA and should not supplant NEPA implementation. Our specific comments are included as an enclosure.

We appreciate the opportunity to provide comments on the proposed guidance. If you have any questions, please contact me at (703) 358-2183 or Pat Carter, Branch of Advanced Planning and Habitat Conservation (703) 358-1764.

Sincerely,

*Rolien Nims Elliott*  
for  
Chief of Division of Habitat and Resource  
Conservation

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**Fish and Wildlife Service Comments on CEQ Guide: Aligning the Complimentary Processes of Environmental Management Systems and the National Environmental Policy Act**

A specific area of concern with the proposed document is how the guidelines address communication with State and Federal agencies, and the public. In the table entitled, *Complementary Elements of the (NEPA) Environmental Management System and National Environmental Policy Act Processes, Communication*, page 10, Column 1, *EMS Element, Communication*, the document states that, "An organization has discretion about communicating externally on significant environmental aspects; however, Federal agencies are in a special position to emphasize the importance of ongoing communication and cooperation with the public and interested parties." In Column 2 the document states that, "Progress toward meeting ROD or FONSI requirements/commitments *may* (emphasis added) be shared with the public as part of the ongoing EMS communication procedures...." It further states that "Comments received during the NEPA review process *may* (emphasis added) provide useful insight when developing objectives..." and that "The EMS *can* (emphasis added) be used as a platform for ongoing communication and cooperation with the public and interested parties." Our primary concern is that the regulatory requirements for communication which are spelled out in column 3 are not incorporated into column 2, which represents examples of the complementary nature of an EMS and NEPA. If an agency adopts an EMS process that can be used to meet statutory or regulatory requirements, without incorporating the coordination/communication requirements of NEPA, the affected fish, wildlife, and plant resources may not be adequately addressed until a violation is discovered, or until ecosystems have been considerably degraded. We believe the usefulness of an EMS as a tool to foster the goals of NEPA would be improved if the coordination/communication requirements of NEPA are also requirements for those EMS activities that are related to the NEPA processes.

An EMS does not adequately address or recognize the complexities of biological systems within the context of an interagency process, and it is our understanding that it was not designed for that purpose. We believe it can be a useful tool for managing an agency's processes, but should not be used in lieu of the best available science, or the consultative process. Federal agencies may manage properties (lands, installations, or structures), but State Wildlife agencies, the Fish and Wildlife Service, and National Oceanic and Atmospheric Administration Fisheries have varying jurisdiction under numerous laws over the fish, wildlife, and plant species which may use or inhabit those properties. Under the proposed guidance, we believe an EMS could be used to circumvent the statutory authority and responsibilities of State and Federal Wildlife agencies regarding management of species. We recommend that the document be revised to provide additional wording cautioning against use of an EMS to supplant statutory or regulatory requirements or authorities, because EMS has not been demonstrated to be functionally equivalent to statutes or regulations. One of the key points of ISO14001, the standard for developing an EMS, is that it is voluntary.

Page 4, paragraph 2: The document states: "Finally, it is conceivable that a well constructed EMS can include all the elements of the NEPA process and serve as the basis for complying with NEPA requirements." This statement is confusing. If it means an agency can incorporate the results of a NEPA process, or incorporate the steps and timelines for the NEPA process into an EMS, that is supportable. But, if it means that an EMS has requirements comparable to NEPA;

or has statutory, enforceable requirements as a process, that is not accurate. It would be helpful if the intent of this statement is clarified.

Finally, we have concerns that an EMS could become an additional management layer that could take fiscal and staffing resources from fish and wildlife programs. We believe the proposed guidance would greatly enhance benefits to fish, wildlife, and plant resources if it encouraged agencies to focus more on reviewing existing monitoring and reporting tools to determine how best to incorporate the capabilities of an EMS and complement the requirements and processes of NEPA.