

NEPA, Environmental Review, and Permitting

Katie Renshaw

Chief, Environmental Review & Coordination Section
Office of General Counsel
National Oceanic & Atmospheric Administration

The content and views contained in this presentation are solely my own and do not represent those of the U.S. Government, nor is anything in this presentation an official government position or statement.

Overview

- NEPA as a Gateway to Environmental Permitting
- FAST-41
- Recent NEPA developments
 - 2020 Regulations
 - Phase 1
 - Fiscal Responsibility Act of 2023
 - Phase 2
- Major Themes of Reforms
- Future NEPA and permitting frontiers
- Resources

NEPA as a Gateway to Federal Permitting

- NEPA is commonly referred to as an “umbrella” statute
- Projects will go through multiple overlapping review processes under different statutory authorities, and different federal agencies in addition to NEPA
- EXAMPLE—[Atlantic Shores South](#) (offshore wind):
 - Outer Continental Shelf Lands Act approval (BOEM)
 - Endangered Species Act Consultations (NMFS & FWS)
 - National Historic Preservation Act Review (BOEM)
 - Outer Continental Shelf Air Permit (EPA)
 - Magnuson Stevens Fishery Conservation Management Act Essential Consultation (NMFS)
 - Section 10 Rivers and Harbors Act of 1899 and Section 404 Clean Water Act Permit (USACE)
 - Section 408 Clean Water Act Permit (USACE)
 - Marine Mammal Protection Act Authorization (NMFS)



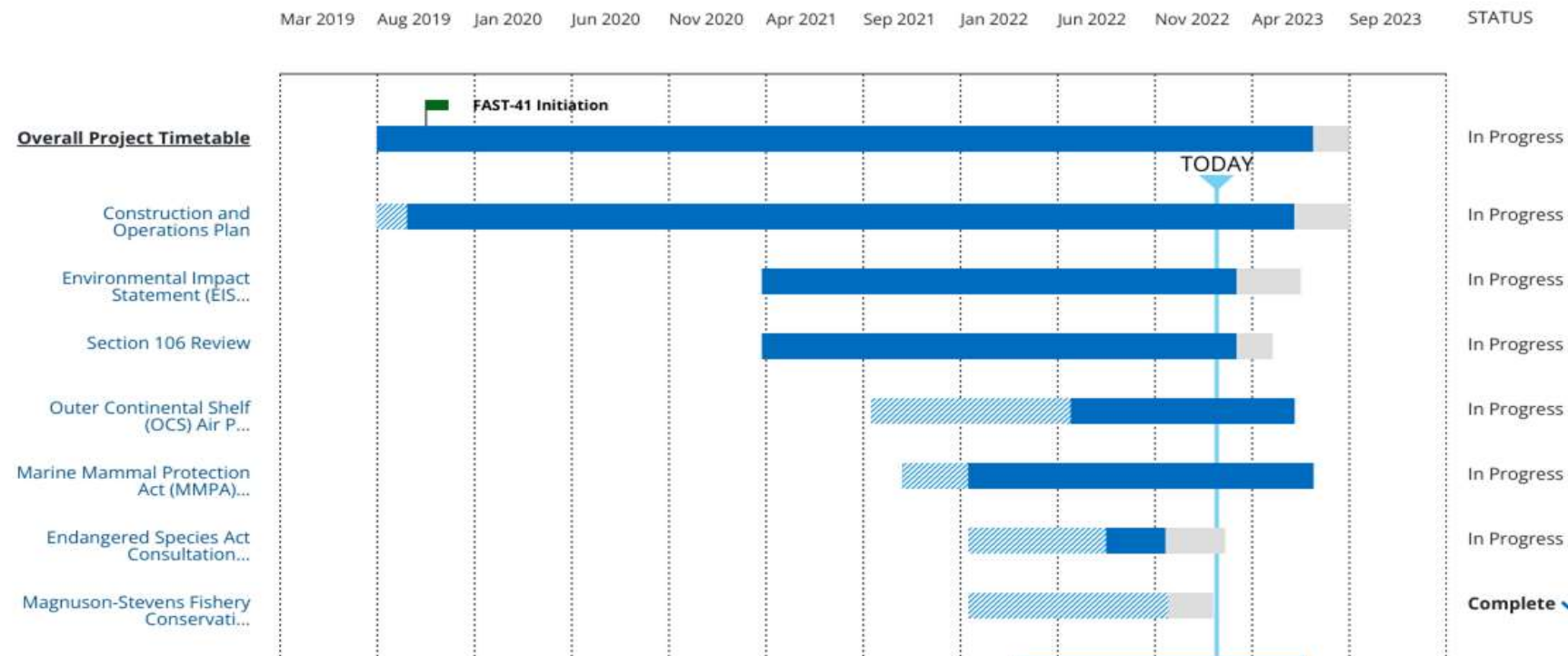
FAST-41: A Warm-Up to NEPA Revisions

- **Fixing America's Surface Transportation Act (FAST Act)**
- Enacted in 2015, helps ensure a deliberate, transparent, and predictable Federal environmental review and permitting process for certain large, complex infrastructure projects
- Amended by the Infrastructure Investment and Jobs Act/Bipartisan Infrastructure Law (2021)
- Title 41 of the FAST Act (FAST-41) establishes coordination practices for covered infrastructure projects
- Tracks permitting milestones on public-facing Permitting Dashboard
- Increased scrutiny for missing milestones
- Created the Permitting Council

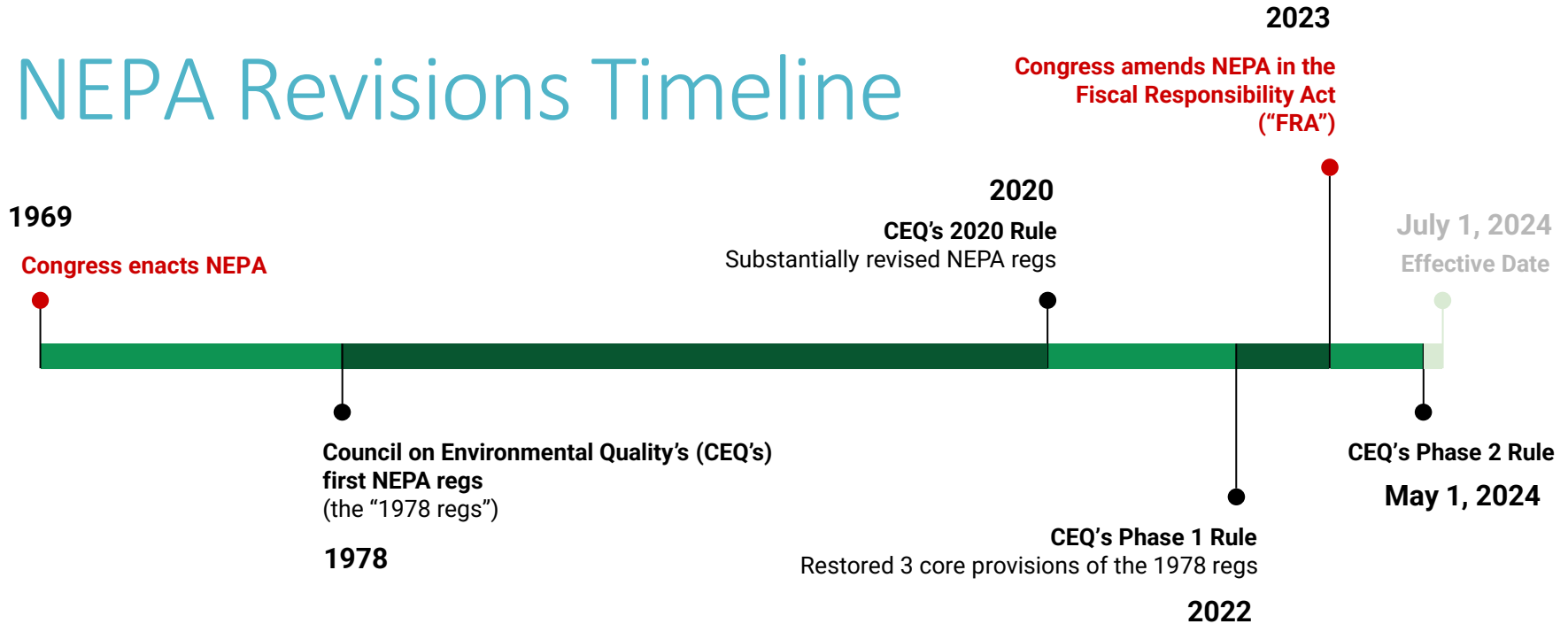
Permitting Timetable

The permitting timetable below displays data as reported by agencies. Dates for Environmental Review and Permitting processes (Actions) that are in 'Planned' status are subject to change and are not indicative of a project's final schedule.

- For information about extensions, select an Action from the timetable below and select 'View Action Details' at the bottom of the page.



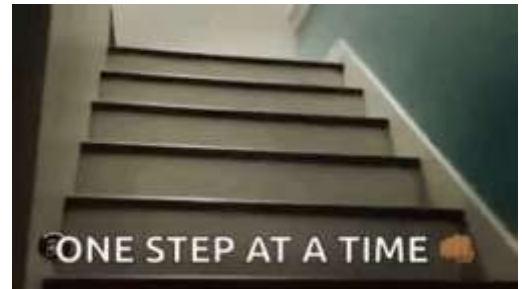
NEPA Revisions Timeline



2020 NEPA Regulations & “One Federal Decision”

- On July 16, 2020, CEQ issued a [Final Rule](#) overhauling the NEPA implementing regulations, which became effective on September 14, 2020.
- This rulemaking included major changes to the regulatory framework for NEPA including but not limited to:
 - Timelines for NEPA Reviews
 - *2 years from Notice of Intent to Record of Decision for an EIS*
 - *1 year from the decision to prepare an EA to the finalization of an EA*
 - Page Limits
 - Deletion of language around the need to evaluate cumulative effects
 - Provisions to limit judicial review
 - Stricter requirements around public engagement
- “One Federal Decision”--regulations also codified a requirement that agencies prepare a single EIS and ROD for actions

Phase 1



- On April 20, 2022, CEQ finalized [Phase 1](#) of their revisions to the 2020 regulations
- Phase 1 was limited in scope to
 - modifications to purpose and need requirements and related reasonable alternatives provision;
 - restoration of flexibility for agency procedures; and
 - restoration of requirement to consider cumulative effects

Fiscal Responsibility Act 2023

- On June 3, 2023, President Biden signed the Fiscal Responsibility Act of 2023 (FRA) into law, which included several amendments to NEPA
 - Timelines
 - Requirements for a single NEPA document
 - Page limits
 - Provisions intended to codify key case law limitations
 - *Analysis limited to reasonably foreseeable environmental impacts*
 - *Only reasonable alternatives must be analyzed*
 - Programmatic review provisions
 - Provides avenue to use other agency categorical exclusions
 - New NEPA definitions



Phase 2/Bipartisan Permitting Reform Implementation Rule

- [Published](#) on May 1, 2024
- Provisions to implement the Fiscal Responsibility Act NEPA Amendments
- Measures intended to improve efficiency and effectiveness
- Climate change and environmental outcomes
- Public engagement, transparency and environmental justice
- Removal of certain provisions from the 2020 regulations

Major Shared Themes

Efficiency

Transparency

Quality of Documents/Analysis

“Modernization”

Coordination

Council on Environmental Quality
Executive Office of the President

NATIONAL ENVIRONMENTAL POLICY ACT
IMPLEMENTING REGULATIONS



40 CFR Parts 1500–1508
(July 2024)

What's Next?

- Agency implementation of revised regulations
- Emphasis on digitization, e-NEPA
 - EXAMPLE 1: [DOT Modernizing NEPA Challenge](#)
 - EXAMPLE 2: Section 110 FRA/NEPA directed CEQ to conduct a study and submit a report to Congress on the potential for online and digital technologies to address delays in reviews and to improve public access and transparency under NEPA including, but not limited to a unified permitting portal
- Continued movement towards interagency partnership and collaboration
 - EXAMPLE 1: [DOE Coordinated Interagency Transmission Authorizations and Permits Program](#)
 - EXAMPLE 2: [BOEM Notice of Intent Checklist for Offshore Wind projects](#)
- AI & NEPA

Useful Resources

- [NEPA.gov](https://www.nepa.gov)
- permits.performance.gov

THANK YOU !!