

ITERATIVE NEPA AND COLLABORATION:

Proceedings of the iNEPA Workshop
February 10 and 11, 2014 • Salt Lake City, Utah



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Acknowledgements

The editor of this report would like to thank the following individuals for their assistance in reviewing previous versions of this document:

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EXECUTIVE SUMMARY

In 2008 the U.S. Forest Service (USFS) and the U.S. Department of the Interior updated their existing National Environmental Policy Act (NEPA) procedures (36 CFR 220; 43 CFR 46) to permit a more open, transparent and collaborative approach to carrying out the NEPA mandate. Dubbed “iterative NEPA,” or iNEPA by Forest Service practitioners, this approach reflects the incremental stages in which proposed actions and alternatives are improved throughout the NEPA process with stakeholders in order to meet diverse interests. This means a group of external and agency stakeholders can maximize their time and efforts and reduce the chance of developing alternatives that are ultimately not used because they meet only a particular stakeholder’s viewpoint. iNEPA can therefore provide for a more effective and meaningful decision-making process. Despite the potential benefits of utilizing the iNEPA approach, on-the-ground applications have been slow to come. The purpose of this workshop was to bring together a diverse spectrum of experienced NEPA practitioners to discuss ways to integrate the iterative process and methods of the iNEPA approach into agency practice.

In February 2014, individuals from the William D. Ruckelshaus Institute of Environment and Natural Resources (University of Wyoming), The Wallace Stegner Center for Land, Resources and Environment (University of Utah), Utah State University, USFS in Region 2, and the USFS Washington Office convened a two-day workshop entitled, “Improving Collaborative Decision-making through iNEPA.” Thirty practitioners from USFS and Bureau of Land Management (BLM) offices around the country attended the workshop. Participants explored the use of iterative processes in the implementation of NEPA to improve collaborative decision making. Although not required, iterative processes have long been an informal part of the implementation of NEPA. Working in iterative stages can improve federal agency proposed actions and alternatives throughout the NEPA process, and is a method that is therefore also particularly applicable to collaborative processes.



Practitioners attending this workshop engaged in collaborative learning regarding iNEPA and then applied their knowledge and experience to create strategies to improve the application of iNEPA.

The first part of the workshop focused on the fundamentals of iNEPA, which included:

1. An introduction to iNEPA
2. Collaboration and its relation to iNEPA
3. Legal sideboards relevant to iNEPA

During the second part of the workshop, participants learned about and discussed three NEPA processes where iterative and/or collaborative approaches are being used in Michigan, California, and Utah. All three scenarios provide examples of NEPA processes that used iterative and collaborative stages to design alternatives that were viable and acceptable to many stakeholders involved.

In the last part of the workshop, participants were divided into three workgroups to tackle the following questions:

1. How should we promote the use of collaborative iNEPA with outreach strategies? How can we facilitate learning about iNEPA within the organization?
2. Appropriate documentation of a NEPA process is a NEPA Best Practice and a challenge. There are reasons why documentation is important: what are they? How can we document the collaborative iNEPA process?
3. a) How can *existing* Collaborative iNEPA be supported in specific locations (e.g., Monroe Mountain, Utah, and Upper Monument Creek, Colorado)
b) What criteria should be used to determine whether iNEPA is the appropriate format to use?

The first work group suggested the development of digital resources where information can be found and shared, inclusion of iNEPA into training for both agencies and stakeholders, identifying iNEPA coaches, and developing support systems for practitioners. The second work group provided reasons why documentation is critical to iNEPA in terms of being legally compliant, aiding the collaborative process through transparency, and learning and creating viable alternatives. They also developed suggestions for generating documentation in efficient ways that aid legal compliance and collaboration. In the course of this discussion, agency staff and line officers identified a potential barrier to iNEPA and collaboration: the need for more information on how iNEPA processes can comply with FACA and NEPA requirements. Thus, documentation sharing is an important tool not only with stakeholders, but within the agencies as well.

The third workgroup's discussion focused on best practices for iNEPA that have emerged from experiences in California, Utah and Michigan. The best practices that resulted were:

1. Begin with a well-defined purpose and need (and/or desired outcomes).
2. Define a concrete and transparent goal.
3. Transparently communicate where collaboration can take place early in the process.
4. Secure full agency commitment to collaboration/iterative process.
5. Include a full spectrum of stakeholder interests.
6. Develop an understanding of the consensus-building potential for among stakeholders through e.g. a situation assessment.

7. Design the collaborative process to match each phase of collaborators' learning.
8. Consider the value of employing a third party neutral to diffuse polarizing issues.
9. Develop agency support for (collaborative) iNEPA.

Participants also identified iNEPA opportunities, challenges and potential solutions. The opportunities listed generally emphasize trust building, efficiency, capacity building among and within agencies and stakeholder groups, and more efficient future decision-making processes that may emerge from using collaborative iNEPA. Challenges include limited awareness of iNEPA, collaborative processes and related documentation. Solutions to meet the challenges included updated training materials, training for collaborative groups of agency staff and stakeholders, multiple forms of outreach, and general support through the ranks of the agency from the top down for collaborative and iterative approaches to compliance with NEPA.

Workshop participants reached three main conclusions. First, iNEPA can create efficiencies and flexibility, and when used with collaborative approaches, can increase trust, transparency and builds capacity for agencies and stakeholders to work on future complex issues. Second, the successful integration of iNEPA is dependent on active leadership within the agencies. Practitioners with agencies are often very interested and willing to adopt these newer approaches and can benefit from understanding and support from line officers or supervisors. Lack of training, resources and time can be impediments. Third, success using iNEPA is incumbent upon external stakeholders and iNEPA participants to understand the implementation and formal regulatory aspects of iterative and/or collaborative NEPA. Practitioners throughout the country internal and external to agencies want a more efficient and transparent NEPA process. It is a responsibility that must be borne by all who participate in these iterative and often collaborative processes.



Participants at the Salt Lake City workshop.



Note from the Editor

In 2008 the USFS and the U.S. Department of the Interior updated their existing NEPA procedures to encourage a more open, transparent and collaborative approach to carrying out the NEPA mandate. Dubbed iterative NEPA, or iNEPA, within the USFS specifically to reflect the incremental nature of the approach to collaboratively improve proposed actions and alternatives, iNEPA provides for a more efficient and meaningful decision-making process. Using iNEPA is a way for constituents and the USFS to work together to develop alternatives or one preferred alternative that promotes learning during the NEPA process and efficiently addresses stakeholder interests. Despite the potential benefits of using the iNEPA approach, agency practitioners have been slow to formally implement the updated procedures. The purpose of this workshop was to bring together NEPA practitioners to discuss ways to integrate iterative and collaborative methods into the NEPA work of agencies, and the USFS in particular.

The workshop resulted from the efforts of David Loomis, Regional NEPA Coordinator, and Julie Schaefer, Regional Social Scientist, both with USFS Region 2; Joe Carbone (Assistant Director for NEPA) and Megan Healy (NEPA Specialist) in the Washington USFS office; Steve Daniels with University Extension at Utah State University; Michele Straube with Wallace Stegner Center for Land, Resources and the Environment at the University of Utah; and myself. The three universities and the USFS all made contributions to the realization of that workshop and this report.

The workshop was predominantly attended by practitioners from the USFS and this document reflects that agency's approaches, language and documentation. It was also attended by BLM practitioners who shared information regarding their efforts to address their agency's new approaches to NEPA such as "Planning 2.0" (BLM has not taken on the "iNEPA" moniker). Although this document focuses heavily on the USFS, it is important to point out that BLM has also produced numerous documents pertaining to collaboration in its NEPA process as well as Desk Guides on Cooperating Agency Relationships. We have included links to several of these BLM documents in the references. For the many people and stakeholders who are involved in NEPA processes, these approaches by both BLM and the USFS represent an important step forward in the NEPA evolution.

In this document it should be noted that we use the words "collaborative" with a small "c" by way of an adjective or a noun indicating an informal collaborative process or, for instance, "a place-based collaborative." This is distinct from a "Collaborative" which can indicate a more formal, FACA-chartered process.

This report explains what iNEPA is, what its foundations are (Collaboration and NEPA), legal sideboards to take into consideration, how iNEPA has been implemented, and important information for NEPA practitioners. It also contains some considerations for decision makers and the public at large. The bottom line message is that iNEPA is easily implementable, can create efficiencies and long-term working relationships, but needs support and comprehension from agency leadership and other stakeholders involved. iNEPA can work and work well when supported by those involved, inside and outside of agencies. We hope this report will support that effort.

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THE FOUNDATION

iNEPA Basics

In 1970, Congress passed the National Environmental Policy Act (NEPA) thereby establishing the nation's first comprehensive environmental protection law. Under NEPA, federal agencies are required to consider the environmental impacts of proposed actions and to provide the public the opportunity to comment and participate in environmental decision making. Indeed, one of the primary goals of NEPA is to encourage meaningful public input and involvement in the process of evaluating the environmental impacts of proposed federal actions (CEQ 2007, 1). However, in the decades since NEPA was first signed into law, agencies have tended to focus more on meeting the procedural requirements of NEPA in an effort to avoid costly and time consuming litigation rather than making environmental decisions in accordance with the substantive goals of NEPA (Bergman and Kemmis 2000, 3). A 2005 National Environmental Conflict Resolution Advisory Committee (NECRAC) Report chartered by the U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation reflected on the state of the NEPA process 27 years after CEQ published its regulations. An important finding was that there is a need to ensure that the EIS/EA is used in "arriving at the decision" (Morris K. Udall Foundation 2005). To date, traditional NEPA practice has often failed to meaningfully incorporate public deliberation and opinion in environmental decision making.

To address this concern, in 2008 the U.S. Forest Service (USFS) and the U.S. Department of the Interior updated their existing NEPA procedures (36 CFR 22; 43 CFR 46) to permit a more open, transparent and collaborative approach when carrying out the environmental impact statement (EIS) and environmental assessment (EA) processes required by NEPA. As the USFS continues to improve integration between NEPA and its collaborative and cooperative decision-making processes, the agency has identified the need to provide NEPA documentation that reflects the way this interactive and incremental decision making occurs.

What is iNEPA?

Iterative NEPA (or iNEPA, 36 CFR 22) is a process of developing and incrementally improving proposed actions through collaboration with the public as agencies engage in the scoping, notice and comment processes required by NEPA regulations, and is intended to continuously improve proposed actions and alternatives throughout the NEPA process.

Origins of iNEPA

In 2008, the U.S. Forest Service and the U.S. Department of the Interior updated their existing NEPA procedures to permit a more open, transparent and collaborative approach to carrying out the NEPA mandate. The updated USFS procedures have since been dubbed iNEPA by Forest Service practitioners.

NEPA documents are often prepared defensively, to enhance the potential for success against litigation rather than to facilitate an informed decision process. The proposed iNEPA process enables interested parties to engage more effectively in the decision-making process rather than merely as commenters on proposals and documents. Rather than representing a document to be used only as a final agency decision, the EIS/EA analysis and development process can be used to allow the decision to evolve and improve incrementally. The EIS/EA would then be used as a tool to foster a collaborative and incremental decision-making process rather than an end in itself. The record would reflect a history of how the detailed statement was used in collaborative and incremental decision making and the final draft and final EIS/EA would address a focused agency action for a final decision.

While the regulation does not require a decision to be made collaboratively, it does allow the Agency to better meet the procedural requirements of Section 102(2) of NEPA, primarily the preparation of EISs, in the spirit of the Act's purpose in Section 101, which calls for the nation to protect its natural resources for future generations (Bergman and Kemmis 2000, 2). The intent is to use environmental information from multiple parties during the NEPA process rather than only at distinct comment periods for a draft and final impact statement. This provides efficient and effective use of an EIS/EA to improve agency decision making. Stakeholders are invited to regularly exchange and discuss issues, differences and agreements, and necessary environmental, social, and economic analyses while alternatives are explored, evaluated, and modified throughout the process. The intent is to focus on a deliberative public process and appropriate disclosure outlined in Section 102 of NEPA to promote the act's purposes.

Dubbed iterative NEPA, or iNEPA, to reflect the incremental process of improving proposed actions and alternatives through frequent engagement with stakeholders and the public, the intent of the iNEPA procedure is to provide agencies more flexibility in the NEPA process for developing meaningful alternatives with diverse stakeholders, ensuring that these alternatives actually address as many stakeholder interests as possible (Able 2014). Whereas a traditional approach to NEPA would typically engage the public during distinct scoping periods at the beginning, and comment periods on the Draft EIS/EA, with iNEPA, agencies are encouraged to adapt and modify proposals through a more flexible, incremental process of iteratively developing and improving proposed actions and alternatives in response to what they learn during analysis and public involvement in the process. This approach allows agencies to focus on a set of reasonable alternatives developed in collaboration with stakeholders as opposed to analyzing an extensive range of alternatives that have little opportunity for actual implementation on the ground. In turn, this process can increase efficiency and limit polarization among constituents and communities. At the same time, the process honors public involvement and collaboration throughout the NEPA process by continually demonstrating the agency's commitment to adjust proposals in response to public feedback, comments and concerns. Moreover, iNEPA provides for legal compliance with regulatory direction for evaluating alternatives as agencies seek to improve proposed actions and alternatives. In many ways, iNEPA aligns the NEPA process with modern decision-science practice.

While informal use of iterative procedures is common, agencies have been slow to adopt formal iNEPA procedures into everyday practice. Some NEPA practitioners have been reluctant to change the proposed action or alternatives following the scoping process. Instead, they add more alternatives to the document, with the consequence of increasing costs and delaying decisions.

The 2008 updates to agency NEPA procedures clarify that it is legally and institutionally appropriate to use an iterative approach to NEPA decision making, and that the approach falls within the legal boundaries set by the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR Parts 1500-1508). In the following section we describe how iNEPA opens up the NEPA process to collaboration, and highlight a few legal sideboards practitioners should consider when choosing to employ the iNEPA approach.



Why use iNEPA?

iNEPA provides agencies more efficiency and flexibility in the NEPA process for developing meaningful alternatives that address issues that are of actual concern to the public (Bergman and Kemmis 2000). By engaging in an iterative process of developing and incrementally improving proposed actions through collaboration with the public, iNEPA increases the overall efficiency of the NEPA mandate while limiting polarization of constituents around a given issue and providing for legal compliance with the law. In short, iNEPA provides for a more effective and meaningful decision-making process.

Collaboration and iNEPA

Iteration is the key characteristic of iNEPA. One important tool or mechanism that can be used at each iteration is collaboration. Collaboration is not always the most optimal tool to use (e.g., when a proposed action is relatively straightforward or non-contentious). The iNEPA process is intended to provide agencies with an efficient way to adjust proposals in response to public input received. Collaboration is the way an agency may choose to interact with the public in order to receive that input in a more meaningful manner (i.e., input that the public provides as the result of information sharing, learning and deliberation). Collaboration can afford agencies many potential benefits, including a fairer process, better integration among constituents and agencies, conflict prevention, improved fact-finding, increased social capital through trust building, easier implementation, enhanced environmental stewardship, and reduced litigation (CEQ 2007, 4-5). In the following section we introduce a basic model for collaboration and describe how this process relates to internal planning and decision making within the USFS. We introduce this model in three stages: 1) the basic premise behind combining a collaboration process with the USFS Planning Triangle; 2) the planning phases in detail, and 3) some observations in conclusion.

1. The Basic Premise

1.a Four Phases of Collaboration

The process of collaborative decision making is broken down into four sequential phases, patterned after a generic decision-making model such as Kolb (1984). The phases are (Figure 1):

- Idea generation
- Deliberation
- Implementation
- Evaluation

Even though these phases occur in an approximately linear, stepwise fashion, there are few distinct moments in which one ends and another begins, and the opportunity for iterative looping between phases is certainly possible.

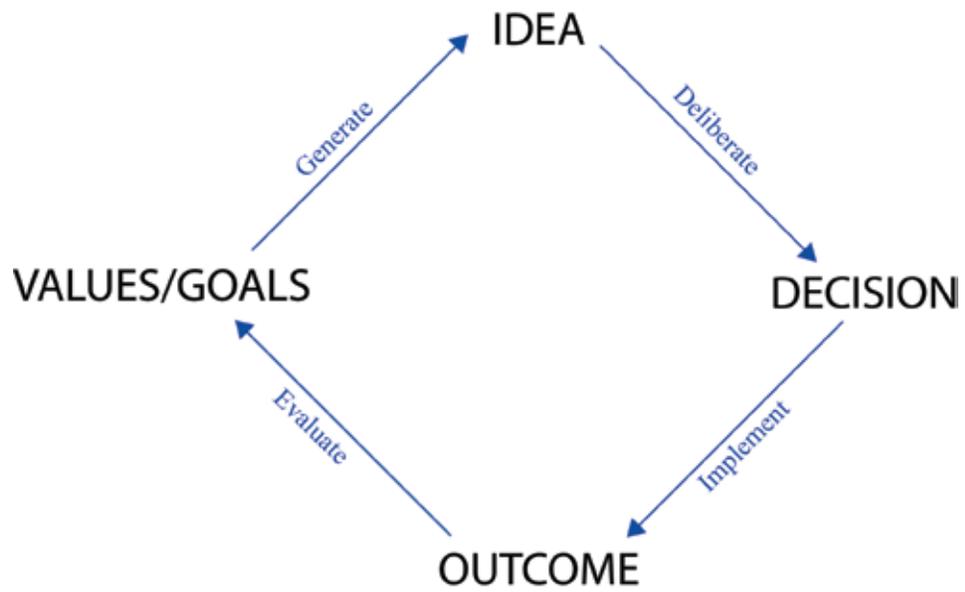


Figure 1: Collaborative process

1.b Collaboration and Existing Agency Planning Approaches

Every agency has its approaches to land management planning in the context of NEPA. The USFS has used a Planning Triangle (Figure 2) concept in both training and management for perhaps 30 years to describe basic planning concepts.

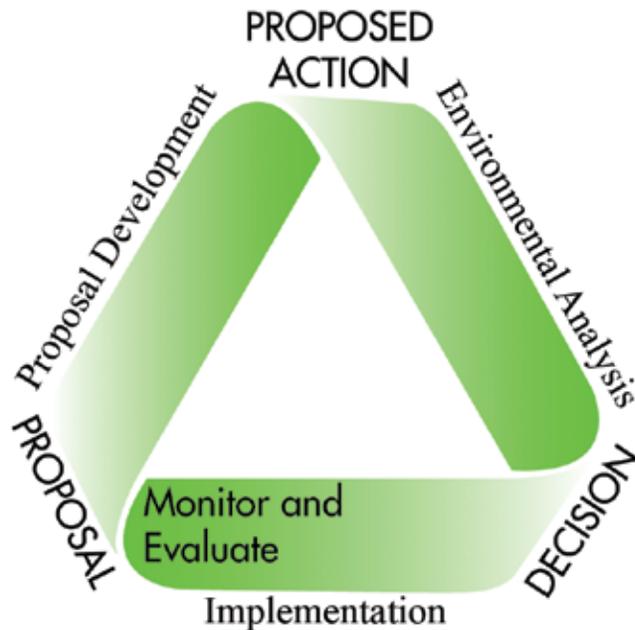


Figure 2: USFS Planning Triangle

Are the generic collaborative decision-making model and the USFS Planning Triangle compatible? By graphically merging these two models (Figure 3), it is clear there are far more similarities than differences between them. Both begin at the same point (a need or unmet goal), proceed to the formation of a proposal, structure that into a decision, implement it, and evaluate the outcome. Perhaps the biggest differences are that 1) the language of collaboration is more closely related to the issues at hand rather than USFS NEPA procedures, and 2) the outcome is more explicitly shown in the collaboration process than in the Planning Triangle. But the similarities between the two models make a fundamental point: there are no structural barriers to collaboratively engaging partners in the planning process more generally, and NEPA processes in particular.



Figure 3: USFS Planning Triangle and collaborative process

2. The Planning Phases in Detail

2.a Idea Generation

The first phase of collaborative decision making is the generation of an idea. It begins with the values and goals of the participants, which may be quite diverse and seemingly in conflict. Spending time to determine what the values and goals are is important. A potential risk of collaboration efforts is that they jump too quickly to developing solutions (the tactical “what” and “how” questions) and do not spend enough time creating a common problem definition or exploring stakeholder interests (the “why” questions) that motivate peoples’ willingness to be involved in the first place.

There are huge opportunities for collaboration during the generation phase. This is an opportunity for outreach into the various stakeholder networks. This is a key time for building trust and

Who can use iNEPA?

iNEPA is available to managers and decision makers in the USFS. Similar regulations apply to U.S. Department of the Interior agencies, including BLM, NPS, USFWS, BIA, USGS, who are responsible for carrying out the NEPA mandate.

strengthening relationships among stakeholders. Because there is not yet a specific proposal, the various interest groups may not yet have aligned into “sides” and the rhetoric has not yet become polarized. Joint data gathering has long been seen as a critical activity in environmental mediation (Bingham 1986), and those activities can help disparate parties coalesce around a shared commitment to action. The collaboration that occurs during the generation phase provides a critical foundation of shared understanding of the issues and an awareness of different groups’ interests that provides legitimacy for the proposal that moves forward.

In the parlance of the USFS Planning Triangle, the generation phase is the entire left side of the Triangle. The common NEPA-speak term is “purpose and need,” and for the USFS, that may come from a number of sources: Forest Plan direction, Congressionally established mandates, a request from a another agency, a permit application from a private party, a major change in conditions on the ground (like a significant wildfire), etc.

Parties might differ on how best to move forward, but this phase ends when all stakeholders agree to progress on an issue. In the generic collaborative decision-making language, this might be referred to as the idea; in NEPA language, it is referred to as the proposed action.

2.b Deliberate

The deliberation phase of collaborative decision making involving a federal agency such as the USFS converts the broad idea/Proposed Action into a specific implementable decision. This is the portion of the process to which NEPA applies the most explicitly.

- *CEQ Handbook*

Perhaps the single best resource for exploring the interaction between NEPA and collaboration is *Collaboration in NEPA: A Handbook for NEPA Practitioners* (CEQ 2007), which explores opportunities for collaboration during different NEPA activities. It also introduces the “Spectrum of Engagement in NEPA Decision-Making.” This model identifies four levels of potential public engagement for agencies: inform, consult, involve, and collaborate. At the “inform” level, the agency informs interested parties of its activities. At the “consult” level, the agency keeps interested parties informed, solicits their input, and considers their concerns and suggestions during the NEPA process. At the “involve” level, the agency works more closely with interested parties and tries to address their concerns to the extent possible given the agency’s legal and policy constraints. Finally, at the collaboration level, parties exchange information and work together towards agreement on one or more issues at one or more steps in the NEPA process (CEQ 2007, 13). Below we provide a list of NEPA-related activities that are specifically ripe for collaborative activities, including:

- *Collaborative Scoping*

Scoping is the process of determining the range of potential issues and impacts that a proposed action might create, and identifying the stakeholders with an interest in the proposed action and affected environment. Presumably, if the generation phase of the process has been conducted collaboratively, there should be a thorough understanding of the issues, the parties, and their interests at this point. Even so, the scoping portion of NEPA is an opportunity to deepen and expand the collaboration to new parties.

- *Collaborative Alternative Development*

NEPA requires that agencies examine a range of alternatives to a proposed action. The range of alternatives is important to the NEPA process because it helps to frame the issue in terms of what is possible. Although this is a fairly technical component of NEPA, there is a role for collaborative interaction in this phase. Collaborative partners outside the USFS can function like an extended Interdisciplinary (ID) team to include not only subject matter specialists from different disciplines but also representatives from interested stakeholder groups.

External stakeholders can contribute to the process of alternative development in myriad ways. It is here when agencies and citizen interests groups or collaborators can work together to improve proposed actions and to jointly develop alternatives. Collaborative alternative development can also allow decision makers to consider, discuss, and make iterative adjustments to the proposed action to address the concerns of the public without the need to develop new alternatives to the proposed action.

- *Collaborative Alternative Analysis and Deliberation*

This is another opportunity for meaningful collaboration, dialogue and interaction. Here, agencies can work with constituents, stakeholders, and other collaborative groups to analyze and refine alternatives. It may even be possible to combine parts of alternatives to create one preferred alternative that all stakeholders can support.

2.c Implement

A key to understanding the opportunities for collaborative implementation is in recognizing that there are some individuals and groups who have no interest in the abstract planning process, but who want to be involved in more on-the-ground involvement. Stakeholder groups like Boy Scouts, backcountry horse users and ATV riders might decide for any number of valid reasons not to become involved during NEPA, but could contribute when work needs to occur, for example monitoring. Again, if an agency thinks about the range of opportunities for collaborative partnerships as only relating to planning/NEPA, key opportunities might be missed to build relationships, create a sense of shared commitment, and mobilize non-agency resources.

2.d Evaluate

The final phase of both the generic collaboration model and the USFS Planning Triangle is evaluation and monitoring. The now well-established collaborative group of stakeholders can be asked to help develop a monitoring framework in the context of adaptive management to continue learning what projects obtain the results the EIS or EA hopes to achieve.

3. Conclusions

At the broadest level, NEPA and collaborative approaches share the same motivation: they can both promote good governance. They also share the goals of open discourse and thoughtful development of alternatives and the comparison of their impacts. These common philosophical roots help us understand why better integration of the two is possible.

At an operational level, NEPA and collaborative processes can be qualitatively different. NEPA processes can feel more than a little structured and routinized—the same things are done every time,

Is iNEPA always the right approach?

iNEPA might not be appropriate at all times, and in all situations. Agencies should consider the complexity of the(ir) proposal, as well as the context and other intensity factors in determining whether to employ the iNEPA approach.



in the same sequence, and in much the same way. This is the result of the layers of CEQ regulations, case law, formal agency guidance and informal agency practice. They have collectively formed to ritualize NEPA into a standardized communication methodology, and both agency personnel and external parties know the steps of the dance. It also leaves a great deal of process control in the hands of the responsible agency.

As it is conventionally practiced, NEPA is predictable and ritualized in ways that collaborative processes rarely are. Collaborative processes on the other hand are less predictable and more flexible in process.

The authority that agencies have to utilize iNEPA closes the gap between conventional NEPA and collaborative decision processes. It creates the discretion that allows NEPA to be more fluid and responsive to emergent issues and information. It allows NEPA practitioners to be more flexible and creative as the learning unfolds.

Legal Sideboards

Over the last 40 years, NEPA has improved transparency and inclusiveness of federal environmental decision making by requiring agencies to notify the public of major environmental actions and providing opportunity for public comment (Bergman and Kemmis 2000, 1). Looking to the future, NEPA practice can be even more effective by incorporating modern decision science. For example, today the majority of constituents communicate with federal agencies electronically. The iterative approach of iNEPA can readily accommodate this form of communication and exemplifies how NEPA is intended to work by promoting public feedback. Agencies are encouraged to adapt and modify proposals and develop alternatives in response to what they learn during analysis and public involvement in the process. In turn, this can increase the efficiency of the decision-making process while at the same time helping to limit polarization of constituents around specific alternatives. Still, there are a number of legal sideboards NEPA practitioners should be aware of when choosing to employ the iNEPA approach. Several are listed below.

Federal Advisory Council Act (FACA)

An important legal sideboard affecting collaboration and iNEPA is the Federal Advisory Committee Act, or FACA (Pub.L. 92-463). FACA was passed by Congress in 1972 and is intended to ensure that citizen involvement in federal decisions is equitable, and that no one individual or group has undue influence (USFS 2011). FACA prescribes procedural requirements for certain interactions between federal agencies and advisory committees and controls the creation of membership in the committees. Under FACA, a committee qualifies as an advisory committee if either the President or the executive (i.e. the Secretary of Interior or the Secretary of Agriculture) established or utilizes the committee. As a means to prevent undue influence on the agency, FACA outlines standards for establishing advisory committees, restricts the length of time that a committee may be in existence, requires either a federal officer or employee to be involved with advisory committee meetings, and ensures that advisory committee meetings and documents are open to the public.

FACA does not prohibit agencies from collaborating. There is no reason agencies cannot work collaboratively while meeting the requirements of FACA, but practitioners do need to be aware of FACA rules and plan the process in a way that does not violate the law or unwittingly trigger

the FACA procedural requirements. Alternately, the agency may choose to conduct collaboration through a formal federal advisory committee, following the correct process for getting the committee chartered and otherwise complying with FACA requirements.

When applied to collaborative NEPA efforts, there are two primary ways to comply with FACA. If the agency acts as convener of the collaborative group seeking to provide consensus recommendations and is actively involved in selecting the stakeholders and setting the group's discussion agendas, it should create a FACA-chartered committee according to the stipulations in the Act. Alternatively, a third-party organization(s) can be the convener and organizer of a consensus-seeking group, with the federal agency participating as a fellow stakeholder and in a technical resource capacity while retaining their decision-making capacity. In such cases the creation of a FACA compliant federal committee is not required.

Reasonable range of alternatives

Under Section 102 of NEPA, agencies are required to consider a range of alternatives in the environmental impact statement for every proposed major federal action that will significantly affect the quality of the human environment. Consideration of a range of alternatives is considered the "heart" of the environmental impact statement and is central to a rational decision-making process. Under current regulations, an EIS will examine a no-action alternative, all reasonable courses of action, and mitigation measures required by, but not part of, the proposed action. The agencies are required to "rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives that were eliminated from detailed study, briefly discuss the reasons for their having been eliminated" (40 CFR 1502.14) Ultimately, the range of alternatives are intended to help make decisions based on an understanding of the environmental consequences, and in so doing, the agency must "carefully weigh environmental considerations and consider potential alternatives to the proposed action" (40 CFR 1502.14). In the iNEPA context, agencies can iteratively, and in collaboration with other stakeholders, focus on one particular alternative that meets as many interests as possible, but they must also continue to analyze a reasonable range of alternatives if available.

"Substantial" changes

Another important legal sideboard to consider when working collaboratively with stakeholders and the public is the issue of "substantial" changes to proposed alternatives, which may trigger additional public notice and comment requirements. Although there is no hard and fast rule about what constitutes a substantial change, the key is whether or not the change in the proposal is so substantial that the public has not had the opportunity to meaningfully participate in the NEPA process. In these cases the agency might need to provide the public with an additional review period.

Federal Advisory Council Act (FACA)

The Federal Advisory Committee Act (FACA, Pub.L. 92—643, 6 October 1972) is the federal law that governs federal advisory committees. The Act permits 1) the formation of committees to areas that are essential; and 2) to advise the officers and agencies of the executive branch of the government. In particular the law has special emphasis on open meetings, chartering, public involvement, and reporting.

CASE STUDIES OF iNEPA IN PRACTICE

Examples of collaborative process in NEPA implementation are on the rise. The following case studies show how collaborative approaches have been used in a process similar to iNEPA.

Grand Island, Michigan

In 2009, the Munising Ranger District on the Hiawatha National Forest in Alger County, Michigan, released a proposal to develop a large garage to provide parking on Grand Island National Recreation Area (the Grand Island Tour Vehicle Garage and Storage Project). Rather than hold the public scoping and 30-day notice periods required by NEPA sequentially and at separate times, officials held the

scoping and 30-day notice periods concurrently allowing stakeholders and the public to provide input throughout the process. This allowed decision makers to consider, discuss, and make iterative adjustments to the proposed action to address the concerns of the public without the need to develop new alternatives to the proposed action.

Modifications included:

- Changing the orientation of parking spaces from diagonal to perpendicular to meet the needs of Grand Island residents.
- Increasing the number of long-term parking spaces to provide more parking for Grand Island residents.
- Adjusting parking time limits to coincide with the passenger ferry schedule.
- Providing vegetation to screen the parking project from nearby homes.
- Adjusting watershed protection measures

to include placement of fill and drainage structures to address concerns about the high water table in the spring.

These features were not included in the original proposed action, and were added only after the USFS engaged the public through the scoping process. Whereas the traditional approach to NEPA would require that officials develop alternatives for proposed changes and fully analyze each alternative, an iterative approach permitted officials to make improvements to the proposed action, thereby limiting the number of alternatives that had to be considered. In turn, this approach resulted in more meaningful engagement with constituents while at the same time saving the agency valuable time and money.

What made this iNEPA example successful:

- The agency was willing to accept public input during scoping and to modify the proposal based on public feedback;



The Grand Island parking area before the Grand Island Tour Vehicle Garage and Storage Project. Photo courtesy of the Munising Ranger District.

- The agency engaged the public to modify the existing proposed action without the need for unrealistic alternatives;
- The agency used an internal USFS EA template, which allowed for efficient and complete documentation of iterative changes;
- The agency adequately documented all changes in the Decision Rationale;
- The agency fully incorporated public input without triggering FACA.

West Hoover, California

In 2005, officials with the Bridgeport Ranger District on the Humboldt-Toiyabe National Forest near the California-Nevada border issued a proposal to expand snowmobile access to 40,000 acres of land that included critical aquatic refuges in the West Hoover Wilderness Study Area bordered by the Pacific Crest National Scenic Trail, National Park and USFS wilderness areas, and the U.S. Marine Corp Training Center. The project was authorized through an EA, Finding of No Significant Impact (FONSI) and Decision Notice, and was subsequently appealed and litigated by the Natural Resources Defense Council and the Sierra Club in the California East District Court. The court issued a summary judgment in favor of the USFS and the way it used public involvement to iteratively improve the proposed action, resulting in successful implementation of the project on the ground.

The iterative process that was upheld by the Court began with an internal analysis performed by USFS officials followed by engagement with stakeholders throughout the public scoping period. Based on this analysis and collaboration, the USFS narrowed the proposed action from 40,000 acres to 7,000 acres and from a year-round travel management project to winter use only. Two alternatives (proposed action and no action) were developed and analyzed through the NEPA process. All modifications to the proposed action were made in response to collaboration with stakeholders. While additional alternatives were initially considered, none was carried forward for detailed analysis. The proposed action was then opened to a formal 30-day comment period. Following public comment, additional internal analysis, and discussions with stakeholders, the proposal was further improved by making boundary adjustments along the Pacific Crest Trail and implementing measures to limit the potential for impacts to wilderness, wildlife and other uses of the area. USFS officials engaged in additional collaborative activities with the U.S. Marine Corps to develop education and signage programs, the California Nevada Snowmobile Association, Pacific Crest Trail Association, and Mono County to adjust boundaries to minimize impacts, and Yosemite National Park to develop measures to reduce potential violations of wilderness areas.



View of the Humboldt-Toiyabe National Forest. Photo courtesy of the Bridgeport Ranger District.

What made this iNEPA example successful:

- The proposed action was developed and modified through collaboration with stakeholders, thereby increasing efficiency and limiting the cost of analysis;
- The agency avoided developing alternatives merely for the sake of alternatives;
- Some interest groups chose not to collaborate, thinking they would gain more from litigation. The documentation that all stakeholders had been invited and of changes that resulted from public input helped produce a summary judgment in favor of the USFS;
- The agency accepted public input throughout the NEPA process and documented changes based on the feedback they received.

Monroe Mountain, Utah

In 2012, the Richfield Ranger District on the Fishlake National Forest in Sevier and Piute Counties, Utah, issued a plan to restore approximately 55,000 acres of aspen ecosystems on Monroe Mountain.

The project, known as the Monroe Mountain Aspen Ecosystems Restoration Project, was intended to address aspen decline resulting from conifer encroachment and overgrazing, and restore aspen communities using a combination of mechanical and prescribed fire treatments.

Since 2011, forest officials have met on a monthly basis with the Monroe Mountain Working Group (MMWG) – a collaboration of stakeholders including several organizations, private property owners, and livestock permittees – to develop and improve a set of alternatives for future land management. Modifications to the Monroe Mountain Aspen Ecosystems Restoration Project that have resulted from the collaboration include reducing the project size from 55,000 acres to 45,000 acres, as well as instituting boundary changes to provide mechanical buffers around private property.



View of the Fishlake National Forest. Photo courtesy of the Richfield Ranger District.

What made this iNEPA example successful:

- The Monroe Mountain Working Group was formed specifically to work jointly with the USFS to achieve aspen restoration on Monroe Mountain. There has been more timely communication and mutual learning than could have occurred in a relatively brief comment period on the draft EIS.
- The agency fine-tuned alternatives in response to community input before moving on to write the draft EIS. All included alternatives were viable.
- Stakeholder groups and the agency were in agreement about the purpose and need for the project, although differences did arise in what each wanted to accomplish, including variations in the intensity of prescribed fire and mechanical treatments and size of the project (41k to 48k acres, originally 55k).
- The MMWG was involved from the start, and helped develop the proposed action based on the purpose and need.



Workshop participants imagined a future where federal agency NEPA analysis is conducted in an iterative and collaborative manner, resulting in timely decisions with public support. To realize that aspiration and for iNEPA to take root, a number of conditions must be cultivated. Lessons learned from the pioneering efforts of iNEPA practitioners and workshop participants reveal a set of opportunities and challenges for iNEPA to move forward.

Opportunities

- The iNEPA approach can be used with and without formal collaboration.
- A third-party neutral assessment of collaborative or iterative potential (often referred to as a situation or conflict assessment) can lead to a successful iNEPA process design. Training to create internal capacity for such assessments would also be a benefit.
- The iNEPA approach exemplifies the decision-making process envisioned in the NEPA-authorizing statute.
 - It creates the opportunity to reach decisions using the best information and creative ideas available, integrating those gathered by the agency with those received from the public.
 - It builds trust and long-term working relationships with the agency's public(s).
 - It promotes collaborative learning with the agency's public(s).
 - It can reduce time and money spent on unproductive analysis and documentation of NEPA alternatives that are un-implementable.
 - It helps to focus public input on the most likely alternatives, making public input more useful to agency decision making and potentially reducing public frustration.

- iNEPA provides a way of continuously and incrementally integrating public input into agency decision making.
 - The iterative exchange of information with the public can begin early in the NEPA process (as early as defining purpose and need) and continue throughout.
 - The agency can consider internal and external input concurrently as it develops and improves on a proposed action and alternatives.
 - The agency can demonstrate the immediate impact of public comments by changing or improving alternative(s) under consideration.
 - The iNEPA process increases transparency and accountability.
 - iNEPA constitutes “adaptive” decision making.
- The iNEPA process allows agencies to focus analysis and public comment on alternatives that actually might be implemented, rather than on impossible or polarizing alternatives.
- iNEPA builds flexibility into the NEPA process.
 - The agency can use the iterative process to develop multiple alternatives, each of which explores different options.

Challenges

- Some staff and the public are unfamiliar with iNEPA. Some public interests do not recognize the opportunities of an iterative process and are distrustful of collaboration, resulting in their reliance on old habits of “waiting in the wings” to file critical public comments and/or litigate as opposed to engaging in collaborative process.
- Current agency NEPA training has limited discussion of opportunities for iteration and collaboration found in revised regulations and the original NEPA statute.
- Some agency staff have a limited understanding of NEPA and FACA. Existing resources (e.g., the 10 FACA Questions document) can help staff design a process that is iterative and collaborative and in compliance with both statutes.
- Agency staff need to provide timely and accurate documentation of their iterative thinking to ensure that the public understands any changes in approach and are able to provide valuable input. The agency may need to provide notice at the beginning of a NEPA process that “iteration” is possible, to help the public understand the full scope of potential opportunities for comment.
- Agency staff have little guidance to determine when “iterative” changes to a proposed action or alternatives are “substantial” enough to require a modified or supplemental scoping, notice or draft EIS/EA, thus triggering a need for additional “meaningful opportunity” for public involvement.
- Some agency staff perceive iNEPA to be more time-consuming than NEPA-as-usual, particularly if it is paired with formal collaboration, although this concern does not appear to be substantiated by current anecdotal evidence. iNEPA is intended to create better decisions, increased buy-in, and reduced chances of successful challenges to a final decision. iNEPA can result in increased efficiencies in the implementation phase of a decision. The time investment required to implement iNEPA for a project is specific to each case and not easily generalized across projects.



NEXT STEPS AND RECOMMENDATIONS FROM PRACTITIONERS

Participants addressed three specific questions on iNEPA outreach and education, and ways to integrate the iterative process into agency practice. The practitioner recommendations below represent next steps for advancing iNEPA more broadly.

1. How should we promote the use of collaborative iNEPA with outreach strategies? How can we facilitate learning about iNEPA within the organization?

Key recommendations:

- Develop a digital clearinghouse/message and discussion board where agency personnel can go to find information and resources related to iNEPA
- Integrate iNEPA into existing training
- Designate iNEPA coaches and establish a support system for iNEPA practitioners

Practitioners also recommended developing training materials with specific information on what constitutes a “substantial” change in the NEPA process and a Frequently Asked Questions (FAQ) resource related to iNEPA. Finally, the group recommended involving stakeholders to help them learn the benefits of iNEPA and to develop a standard language that can be used in scoping letters.

2. Appropriate documentation of a NEPA process is a NEPA Best Practice and a challenge. There are reasons why documentation is important: what are they? How can we document the collaborative iNEPA process?

Adequately documenting NEPA activities and decision making is key to the NEPA process for a number of reasons, including:



- Showing the thought process behind how decisions were made, including how public comment and input was considered;
- Providing evidence that the agency was not arbitrary or capricious and that all legal requirements of NEPA were met;
- Providing a record of decision making and NEPA processes for internal continuity and consistency;
- Sharing both internally and externally to stakeholders and new agency members (e.g., managers, ID team members, collaborators) to demonstrate how decisions were made;
- Increasing transparency and building trust with constituents and other collaborators by providing evidence of the work conducted by staff and personnel, and that all public input and comments were considered by the agency;
- Providing evidence that the NEPA process was open and inclusive;
- Aiding and supporting the process of developing alternatives, as well as project analysis and decision making.

In addition to describing why documentation is important, workshop participants also offered insight on what is currently working well with regard to documenting the NEPA process:

- One important tool identified by participants was the use of dedicated record coordinators to document meetings and help tell the “whole story.”
- Another useful tool the participants identified was the development of scoping reports to disseminate information, present outcomes of stages in the NEPA process, and to demonstrate how public comment and input was considered by the agency.
- Additionally, participants cited the administrative record as an important tool that can be used to help document the NEPA process, and noted the importance of including issues and alternatives considered but not further analyzed as a means to demonstrate an agency’s deliberations and thought processes in how decisions were made.

Practitioners also discussed a number of challenges to documenting the NEPA process.

- Among the biggest challenges described by participants was not having enough time, money, or agency personnel to adequately document all activities related to the iNEPA process.
- Workshop participants also identified fears of being pre-decisional, triggering FACA, losing decision space (the number of options that can be used to resolve issues is reduced), and dissent and opposing science as specific challenges to documenting iNEPA.

Practitioners emphasized the importance of good note taking to capture public comment and increase transparency. They suggested having computer stations at public meetings as a way for the agency to capture public comment and feedback. Additionally, the participants said that using ‘Memo to File’ documents throughout the entire process could help keep track of what was deliberated and concluded at meetings, i.e. creating a file for documents and regularly adding Memo’s that record conversations, events and other information.

In terms of activities that could be carried out during the NEPA process to enhance learning and transparency, practitioners discussed:

- The practice of publishing interim updates and alternatives and getting public feedback. This allows for greater collaboration with constituents and may also help the agency narrow down the alternatives.

- Describing the role of public input in the final decision would further demonstrate transparency on behalf of the agency and could help to create a more efficient NEPA process.
- Similarly, workshop participants suggested adding an “alternatives development” section to the Record of Decision. Participants also emphasized the importance of making sure the decision maker is present throughout the entire NEPA process.

One point that was made at each phase of the discussion was the importance of keeping line officers (someone within the USFS National Forest System with authority, e.g., a District Ranger, Forest Supervisor, or Regional Forester) engaged, informed and, if unfamiliar with procedures, educated. The phrase “as above, so below” was used to emphasize the importance that if iNEPA is to be carried out efficiently and successfully, line managers need to be familiar with, and support, methods that encourage transparency, consistency and inclusion.

3. a) *How can existing Collaborative iNEPA be supported in specific locations (e.g., Monroe Mountain, Utah and Upper Monument Creek, Colorado)*

b) What criteria should be used to determine whether iNEPA is the appropriate format to use?

This group’s answer to both questions was to outline Best iNEPA Practices. In answer to the second question, workshop participants felt that iNEPA should be used as a standard operating procedure. Here too, group members felt that the most effective way to support iNEPA as a standard operating procedure was to deliberate and outline Best iNEPA Practices. These were:

- Begin with a well-defined purpose and need (and/or desired outcomes).
- Define a concrete and transparent goal.
- Transparently communicate where collaboration can take place early in the process. This includes identifying what the bottom-line objectives of a proposal are, identifying what the decision-making space is (e.g., the laws, regulations that need to be adhered to, budget and staff available, and possibly time considerations) and identifying where flexibility is (and is not) possible.
- Secure full agency commitment to collaboration/iterative process. This entails identifying the staff that will be involved at all levels, ensuring management buy-in and ensuring flexibility in time schedules (e.g., for developing alternatives).
- Include a full spectrum of stakeholder interests.
- Develop an understanding of the consensus-building potential among stakeholders through a situation assessment or similar approach.
- Design the collaborative process to match each phase of collaborators’ learning.
- Consider the value of employing a third party neutral to diffuse polarizing issues.
- Ways to develop agency support for collaborative iNEPA include:
 - Incorporate iNEPA into NEPA and line officer trainings to validate the idea and success of being iterative. Training opportunities include:
 - Develop an average timeline for iNEPA (to help line officers prioritize and accurately allocate resources);

- Establish collaboration and iteration as a NEPA best practice and “tell the story”. Possible methods to achieve this include providing recognition of effective iNEPA examples, issuing a top management “directive” to use iNEPA and collaboration and publishing information regarding iNEPA pilots and case studies.
- Develop a community of practice and provide peer learning opportunities, including using eForest; PALS (Project Activity Levels), a universal read-only access to existing information repositories and develop a network of iNEPA coaches, mentors, subject matter experts, and champions (including line officers). It will be important to ensure transfer of institutional knowledge as experienced agency staff retire;
- Educate stakeholders about how they can be most helpful in an iterative process (e.g, timeline regarding when to collaborate and potential benefits of collaboration);
- Improve technology to communicate across agency partners and among stakeholders (e.g, blog group discussions, wiki’s, naming site, SharePoint sites, Facebook).



CONCLUSIONS

The National Environmental Policy Act calls for a sustainable relationship between United States citizens, the land and its resources. The decisions that this Act addresses are almost always complex and touch on passionately held values. Given a new technological landscape, growing numbers and diversity of affected stakeholders, and ever-present scientific complexity and uncertainty, environmental decision making is bound to be complex and often contentious. Implementation of NEPA must adapt to and incorporate this complexity as well, a charge thoughtfully explored by participants of the *Iterative NEPA and Collaboration* workshop. What resulted was a trove of lessons learned and reflections on the next steps that are required to realize the aspirations of iNEPA:

1. iNEPA can create efficiencies and flexibility, and when used with collaborative approaches, can increase trust, transparency and capacity for future complex issues.

Although a number of challenges internal and external to the agencies need to be addressed to optimize the opportunities that iNEPA presents, iNEPA is a viable approach that can create benefits that are often not realized with older methods. After discussing the fundamentals, the case histories, the documentation aspects, opportunities, challenges and solutions, it became clear that iNEPA creates a way to engage in EIS/EA processes that are more efficient and responsive, allows for adaptive management, and saves resources. When used in concert with collaboration, the resulting information sharing and transparency will have a greater potential to increase trust, which in turn also creates efficiencies, and creates collaborative capacity for future projects that will require similar methods, stakeholders and information-sharing.

2. *The opportunities and benefits of iNEPA will only be realized through full and active leadership within the agencies.*

Practitioners internal to the USFS are willing and interested to adopt newer approaches to NEPA planning such as iNEPA and collaboration but internal barriers including lack of leadership support, available resources and time can limit their ability to do so. Although efforts are underway within federal agencies to provide support and information regarding iterative and collaborative approaches to NEPA such as iNEPA and Planning 2.0, the staff will need their supervisors and line officers to know what this entails and provide their staff with the resources, training and time to execute these types of NEPA planning processes. For example, there is still a need to facilitate the use of iNEPA within USFS institutional frameworks. Therefore, adequate resources, improved understanding, and communication both horizontally and vertically within agencies, are critical to realize the benefits of iNEPA.

One of the key roles for leadership in encouraging the adoption of iNEPA is in *managing risk*. Federal agencies operate in a litigious environment, and that creates an understandable tendency to make safe choices. Trying something new, like iNEPA, can be the safe choice if agency leaders at all levels create an environment in which NEPA coordinators, other practitioners, and Forest Service planning team leaders know that they will be supported for taking prudent risks. By providing this type of safety net, agencies can embrace the inclusivity, transparency and efficiencies of iNEPA, and innovation will come quickly.

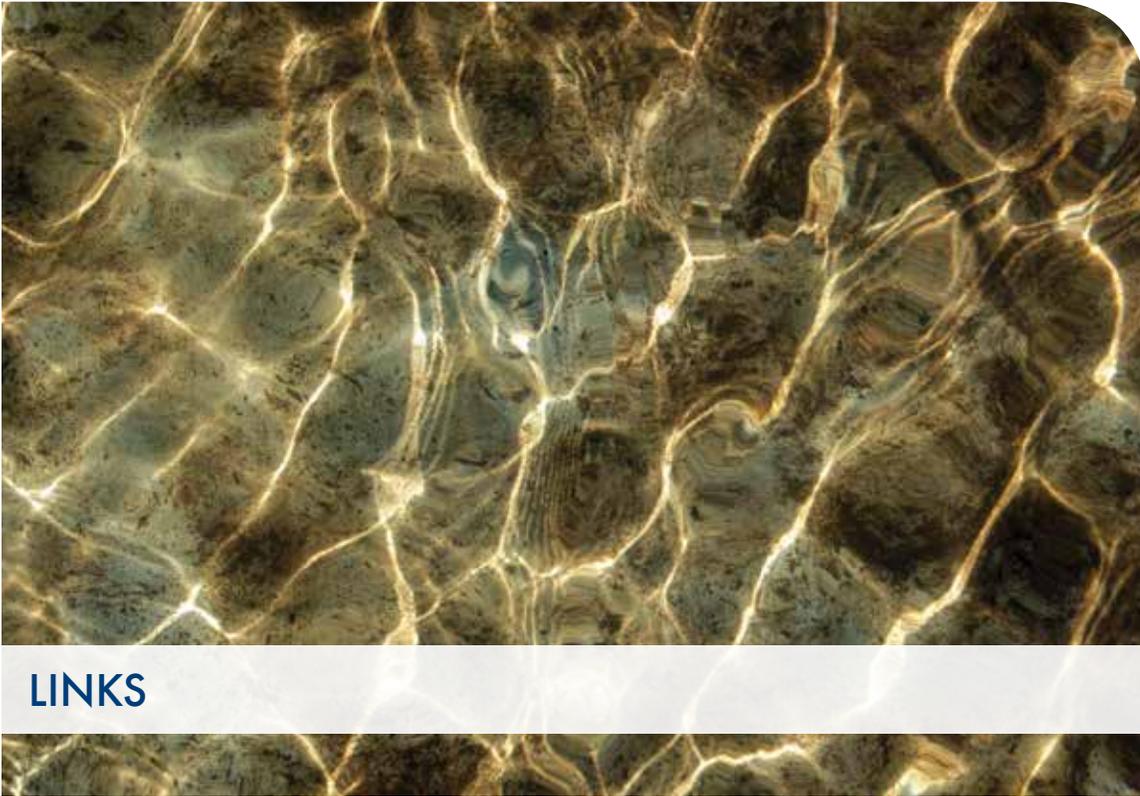
3. *It is incumbent upon external stakeholders and collaboration participants to also understand the implementation and formal regulatory aspects of iterative and/or collaborative NEPA.*

Internally and externally to the land management agencies, there is an increased demand for efficiency and transparency in NEPA processes. Having addressed what this will require within the agencies, it is also reasonable to expect stakeholders and participants in these processes to also be familiar with the regulatory and collaborative aspects of iNEPA. This familiarity will emerge over time, but again, to realize the efficiencies and benefits sooner, offering outreach, training, information, blogs, and other outreach to external stakeholders regarding iNEPA can help agency constituents understand how they can be effective participants in the process. In return, it should be expected of stakeholders to become familiar with these newer approaches through these outreach efforts in order to help realize those efficiencies and sharing of information.



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LINKS

Regarding USFS Planning Documents

National Environmental Policy Act

<http://www.epw.senate.gov/nepa69.pdf>

National Environmental Policy Act Procedures Update in Federal Register http://www.fs.fed.us/emc/nepa/nepa_procedures/includes/fr_2007_nepa_procedures.pdf

Key Principles and Practical Advice for Complying with FACA

http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5203270.pdf

Regarding BLM Planning Documents

Cooperating Agencies

http://www.blm.gov/wo/st/en/prog/planning/cooperating_agencies0.html

Collaborative Stakeholder Engagement and ADR Program

<http://www.blm.gov/wo/st/en/prog/planning/adr.html>

ADR Program Site Map

http://www.blm.gov/wo/st/en/prog/planning/adr/adr_conflict_prevention.html

Collaborative Stakeholder Working Groups

http://www.blm.gov/wo/st/en/prog/more/adr/natural_resources/stakeholder_working.html



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