

CHAPTER 4 5 NOV 1979

ENVIRONMENTAL ASSESSMENTS
AND STATEMENTS (EAs/ESs)

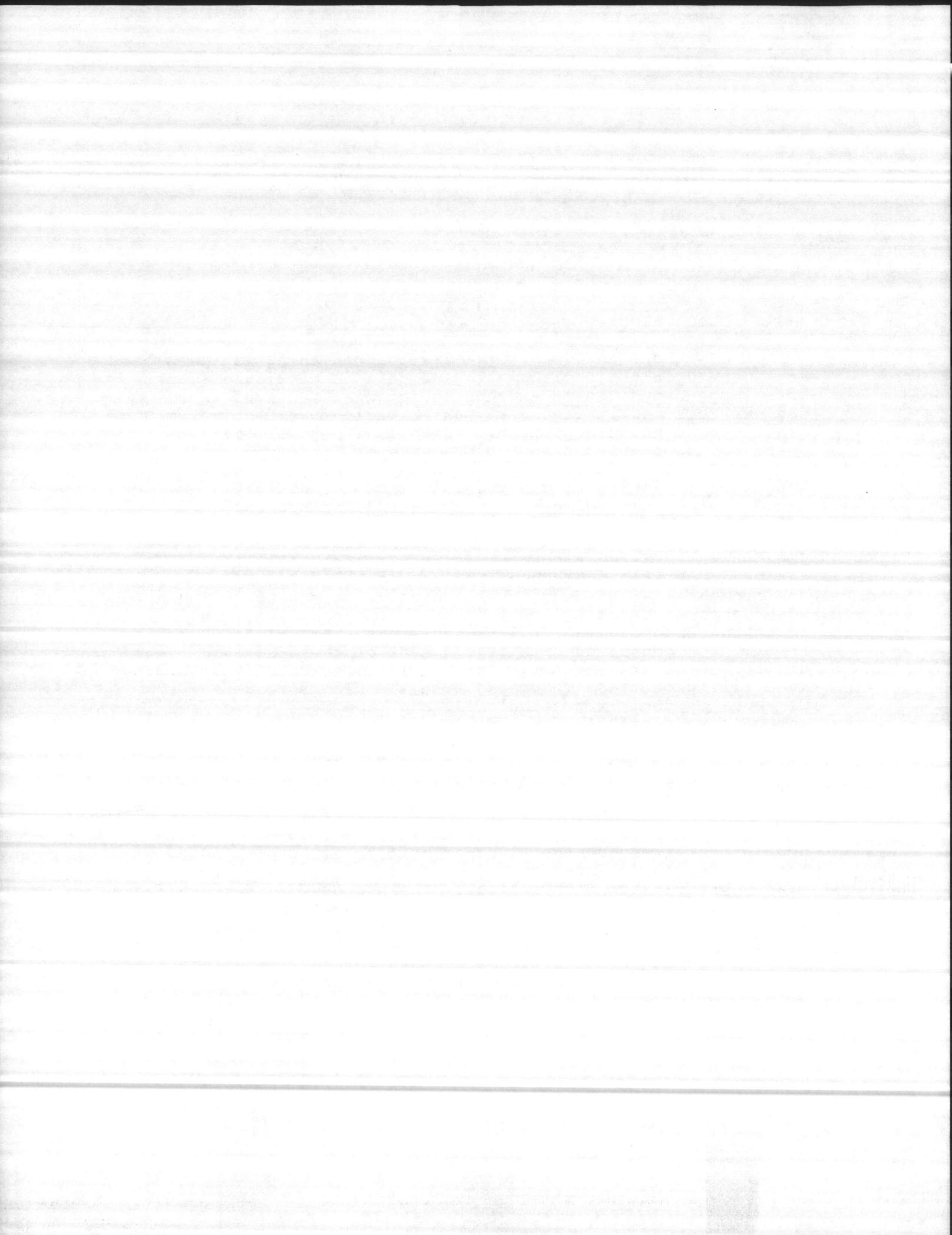
PART 1

GENERAL INFORMATION

4101. Discussion

a. There is a basic premise that anything man does has an impact upon the environment, and this is particularly true of a large organization engaged in national defense. For obvious reasons, it is clearly unrealistic to expect voluminous statements discussing the environmental impact of every operation of the Department of Defense or its components. Nevertheless, it is equally fallacious to assume that any operation is immune to the provisions of the National Environmental Policy Act (NEPA). Navy programs and projects are vulnerable to serious delays or curtailment if environmental impact is not considered and that consideration is not documented. If environmental impact is adequately assessed early enough then subsequent design can be guided by environmental - and many other - considerations to minimize adverse environmental impact in relation to all factors impinging upon program/project decisions. Additionally, such information can be used in development of the draft and final environmental statements (ES's), if it is eventually determined that filing of these documents with the EPA is required. Comments on the draft/ final ES's can then be incorporated into the program/project's final design, insofar as practical and if applicable. In this manner, the intent of the Congress is met, adverse environmental impacts are minimized (in balance with other factors) and the program/project itself is less vulnerable to costly delays.

Perhaps the single most important point is that completion of environmental documentation is not an end to itself, but is intended to be integrated into the decision-making process for Navy actions. The purpose is to present and forecast an analysis of environmental impacts and their reasonable alternatives. By doing this and by having the necessary documents available to the decisionmaker at the earliest possible point in the action's decision process, the intent of NEPA and the legal interpretation of the adequacy of the impact documentation have been significantly enhanced.



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b. The National Environmental Policy Act (NEPA) establishes as Federal policy the use of:

"All practicable means and measures...to foster and promote the general welfare, (and) to create and maintain conditions under which man and nature can exist in productive harmony..."

To this end, NEPA further states:

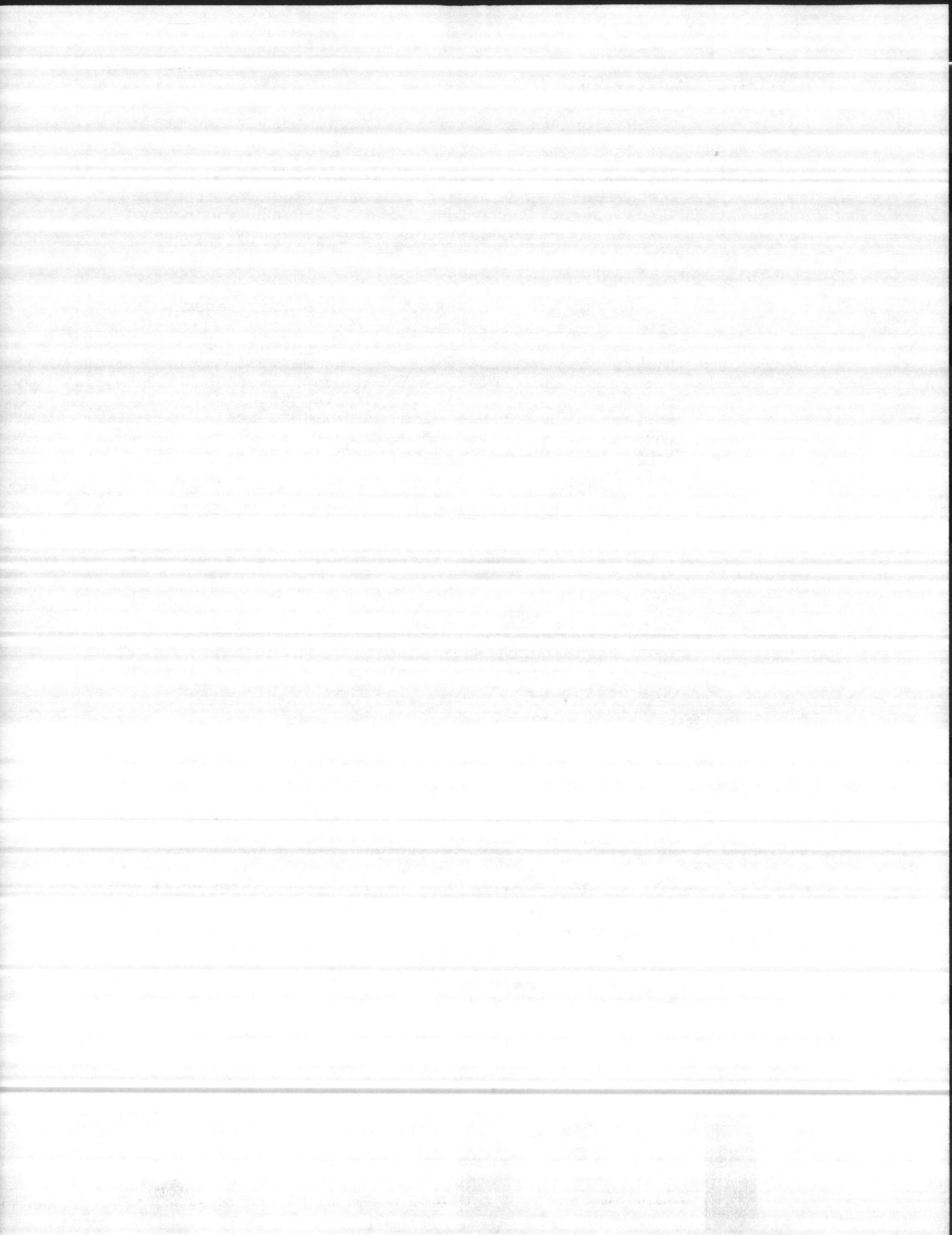
"...to the fullest extent possible...all agencies of the Federal Government shall utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences of the environmental design arts in planning and in decision making which may have an impact on man's environment...(and shall) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on...(1) the environmental impact of the proposed action..."

In implementing NEPA, the Council on Environmental Quality (CEQ) states:

The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore and enhance the environment."

Consequently, the Navy cannot commence work on major projects and programs having a significant impact on the quality of the human environment until the public has had at least ninety days to examine both draft and final statements...and if the final ES follows the draft by more than sixty days, the review time is extended (by thirty days) as well. This requirement does not apply to continuing actions even though an environmental statement is being submitted for the first time or is being revised. In addition, a waiver from the review process may be obtained from the CEQ when emergency circumstances warrant. This latter course of action is to be considered rare, and can only be obtained by the submission of a request to CNO (Op-45).

Finally, it must be pointed out that the ultimate arbiter of the adequacy of any environmental assessment (EA) or statement rests with the courts. Hence, all documents



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are vulnerable in this regard. Implementation of the statement process for various "actions" is also occasionally influenced by strategic, budgeting, security classification or congressional interests and decisions. These influences notwithstanding, all echelons of command must continuously strive for early consideration (and documentation) of environmental "considerations" so that the naval mission is not severely delayed or impaired.

c. Applicability of NEPA to Federal Agencies. The requirements of this chapter apply to any action affecting the environment inside the United States, its territories and possessions. By Executive Order 12114 of January 4, 1979, and DoD Directive 6050.7 the Navy, proposing to take major Federal actions having significant effects on the environment outside the geographical borders of the United States, and its territories and possessions, must take environmental considerations into account when making decisions which have extraterritorial application. Procedures to be followed when a proposed Navy action affects the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica); or a foreign nation are in Appendix I.

d. Definitions. Basic definitions pertinent to the Navy Environmental Protection Program are included in the CEQ Regulations at Title 40, Code of Federal Regulations (CFR), Part 1508 (40 CFR 1508), Appendix I. However, the following definitions are cited in this part due to the importance of understanding the procedures involved in the preparation and processing of environmental assessments and statements.

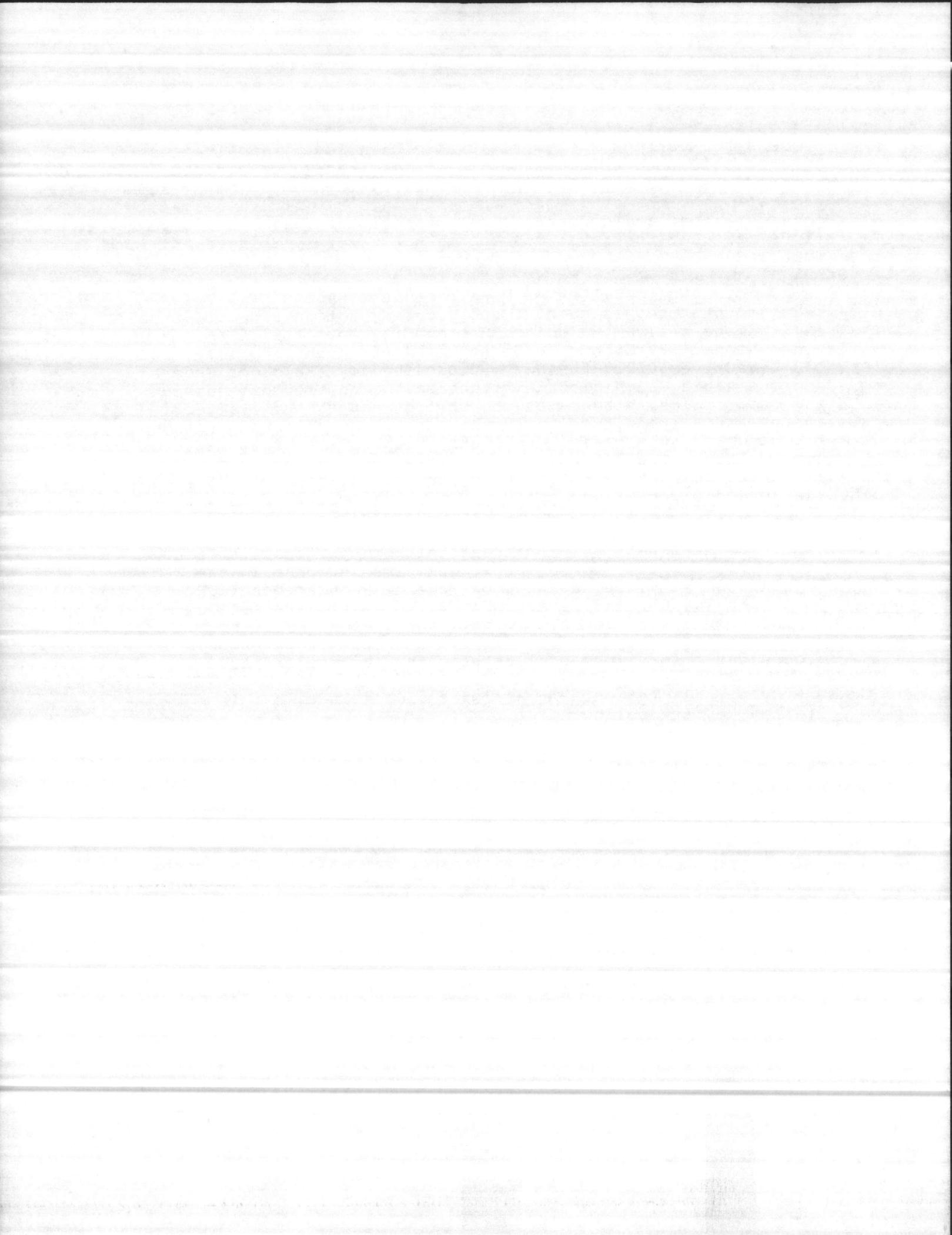
(1) Action. An action could include, but is not limited to, the following:

(a) recommendations or reports relating to legislation, including those for appropriations.

(b) urgent and special projects that do not require appropriations approval through the budget process.

(c) establishment or modifications of policies, regulations, instructions, manuals or major policy statements.

(2) Categorical exemptions (exclusion). A category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of the regulations and for which,



therefore, neither an environmental assessment nor an environmental statement is required.

(3) Preliminary environmental assessment. A preliminary environmental assessment (PEA) is an initial evaluation of the impact of an action on the environment generally using the procedures described in Parts 2 and 8. PEAs shall be performed for all actions having the potential for environmental impact. In this sense "having the potential" may usually be interpreted as a proposal for alteration, no matter how slight, of a natural system (in its existing condition) and/or the effect of an introduced presence on the natural system.

"(4) Environmental assessment. An environmental assessment (EA)

(a) means a concise public document for which the Navy is responsible which serves to:

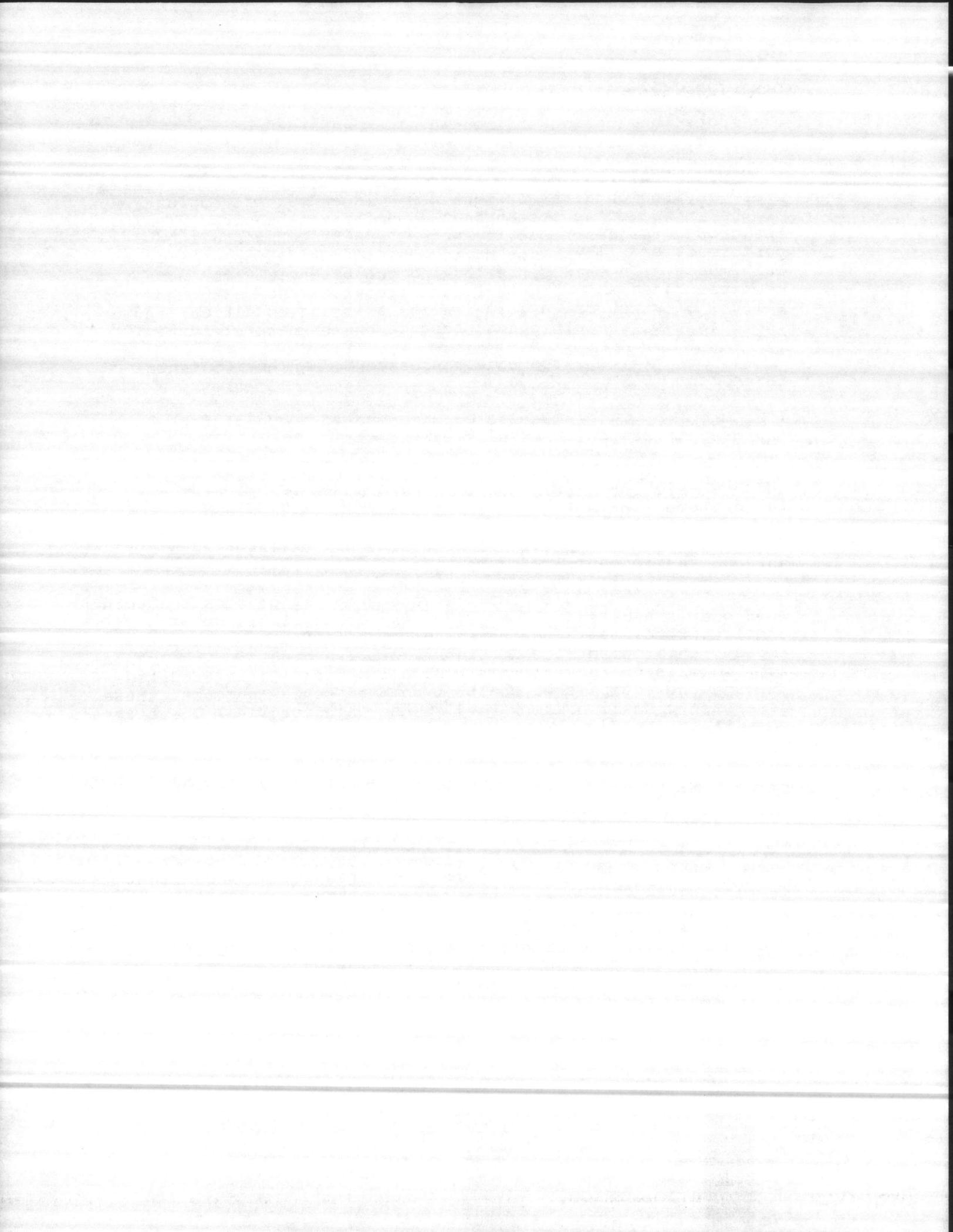
(i) briefly provide sufficient evidence and analysis for determining whether to prepare an environmental statement or a finding of no significant impact.

(ii) aid the Navy's compliance with NEPA when no environmental statement is necessary.

(iii) facilitate preparation of a statement when one is necessary, i.e., when the contemplated action is considered to have a potential for significant environmental impact, environmental controversy, or resulting from the mandatory submission requirements. Before a decision is rendered through the established chain of command review process, these assessments shall be forwarded to the Chief of Naval Operations (Op-45) for review.

(b) shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(e) of the Act, of the environmental impacts of the proposed action and alternatives, and a listing of the agencies and persons consulted." (40 CFR 1508.9.

In this regard, experience has shown that certain naval actions, by their very nature, require review by CNO, and accordingly EAs are normally required for those actions (see paragraph 4302b). The requirement for CNO review does not suggest automatic referral of the EA for further development into an environmental statement.



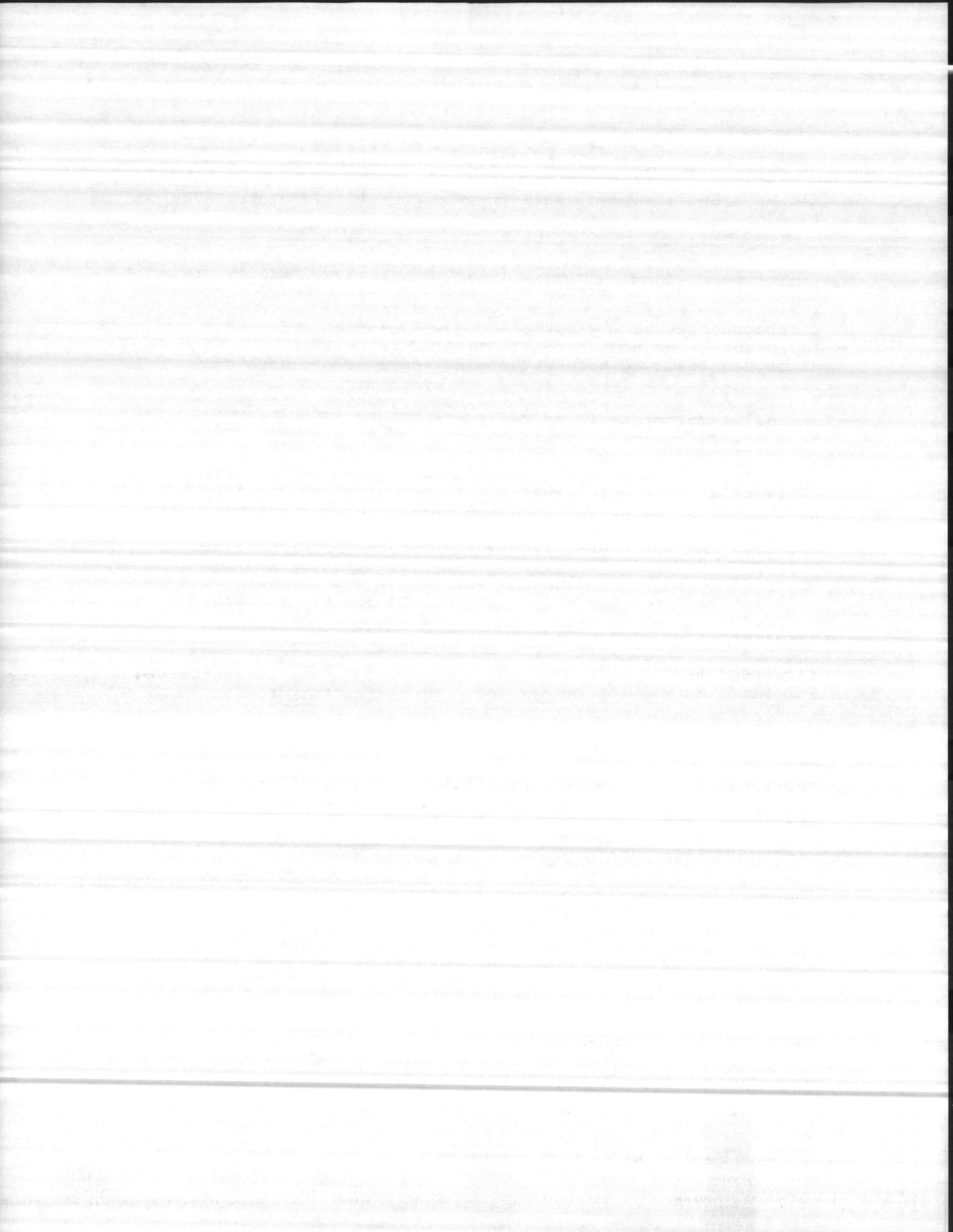
(5) CNO Review Panel. A selected group of professional personnel established as discussed in Part 6, and convened, as required to critique the content of submitted EAs/DESS and recommend subsequent disposition/processing to CNO (Op-45).

(6) Finding of no significant impact (FNSI). A document by "which the Navy (after CNO review) briefly presents the reasons why an action not otherwise excluded will not have a significant effect on the human environment and for which an environmental statement therefore will not be prepared." The FNSI "shall include the environmental assessment or a summary of it and shall note any other environmental related documents." (40 CFR 1508.13) If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference. A FNSI may be one result of a CNO review of an environmental assessment (EA).

(7) Draft environmental statement (DES). Those statements which are prepared for actions which potentially have a significant impact on the quality of the human environment or which are potentially controversial in environmental effects, and which are filed with the EPA and distributed to cognizant Federal, state, local and private agencies, organizations and individuals for review and comment. In addition to those normally required, as identified, draft environmental statements include those environmental assessments which have been (a) recommended for draft status by the CNO Review Panel, (b) approved by CNO and SECNAV, and (c) forwarded to EPA and other appropriate agencies, organizations and individuals, for review and comment before preparation of a final environmental statement.

(8) Final environmental statement (FES). A completed statement, normally a separate, and additional document (from the draft), which incorporates all pertinent comments and information made as a result of review of the DES and which is also filed with the EPA.

(9) Public record of decision (PRD). A concise summary for the public record of the decision made by an agency (Navy) among the alternatives presented in a FES. The document, to be prepared in CNO; will state the decision, identify the alternatives considered (including that which was environmentally preferable) and discusses other considerations (than the environment) that influenced the decision identified. Those proposals to minimize environmental harm, if applicable, will be identified as well as those that are not capable of being implemented. Additionally, any monitoring associated with mitigation shall be addressed.



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(10) Supplemental environmental statement (SES). A document describing environmental impacts of a project or proposal which is prepared when substantial changes are made in the proposed action, or significant new information becomes available. A supplement may be prepared at any time after preparation and filing of a draft or final statement, and is filed with the EPA (as with a DES) and distributed to recipients of the DES and FES.

4102. Responsibilities.

The Navy's program to implement NEPA and the CEQ Regulations (40 CFR 1500-1508 (1978)) covers the myriad of decisions being made on a daily basis throughout the Navy. Consideration of environmental factors at the earliest practicable stage in the planning process to implement the goals of NEPA, must be a way of life for managers in the chain of command and must complement other requirements needed in the decision making process, as mission, function, technology, cost effectiveness, etc. The primary administrative and funding effort to meet NEPA requirements have been and will remain the responsibility of the major claimants. The requirement for an assessment "at the earliest practicable stage" reinforces that funding for EA/ES preparation must be budgeted as a normal operational requirement.

To implement the foregoing concerns, the following responsibilities are assigned:

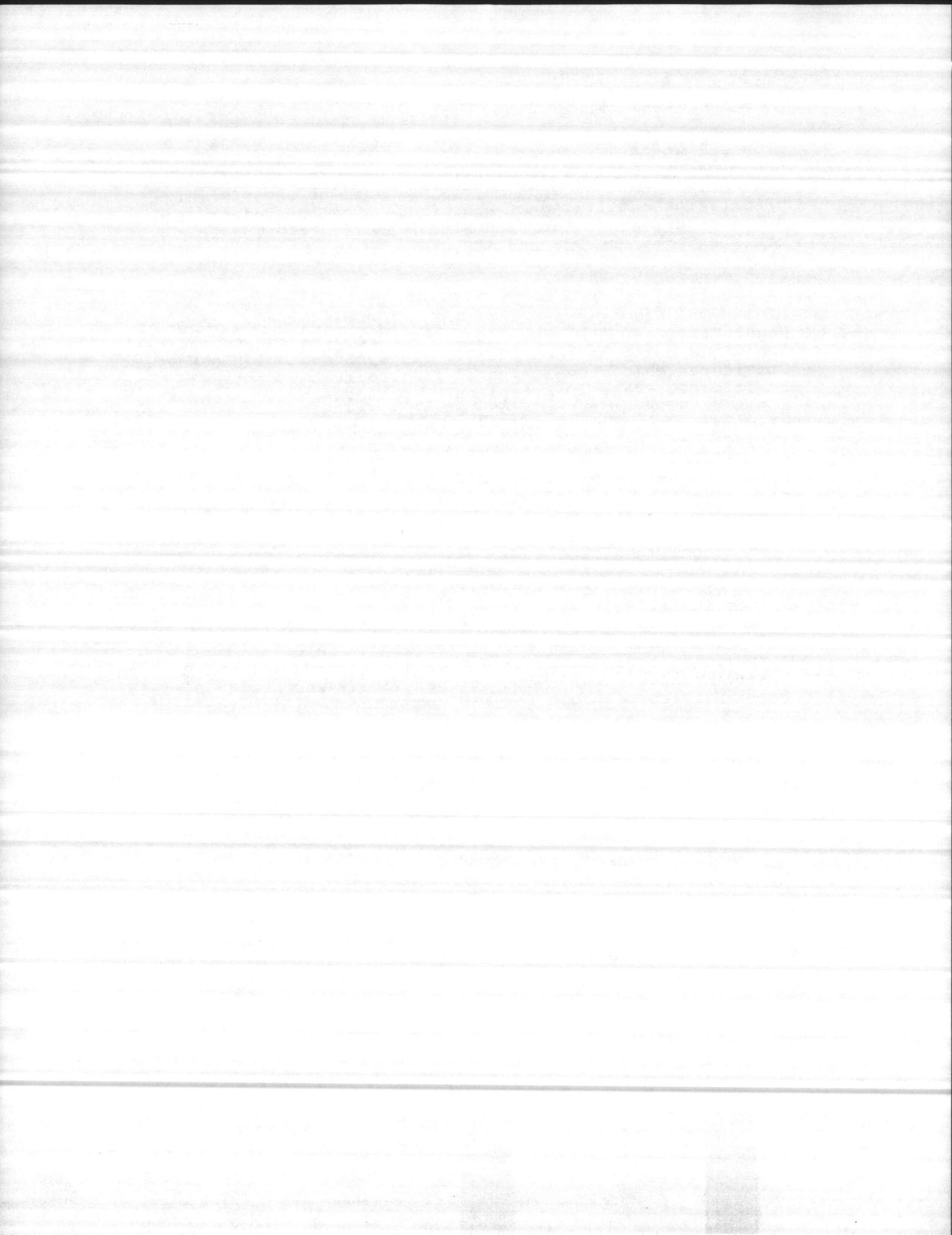
a. DCNO (Logistics). The Deputy Chief of Naval Operations (Logistics) (Op-04), and specifically, the Environmental Protection and Occupational Safety and Health Division (Op-45) is responsible for NEPA compliance, which includes:

(1) Implementing Navy policy regarding the protection of the environment, to include NEPA compliance.

(2) Advising commands in cases of necessity of the requirement for submitting environmental assessments or draft environmental statements.

(3) Participating in the review of documents submitted for CNO decision, which include assessments of environmental impact.

(4) Coordinating CNO review of environmental assessments and statements through the CNO Environmental Impact Review Panel.



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(5) Coordination with the President's Council on Environmental Quality, the Environmental Protection Agency, the Assistant Secretary of Defense (MRA&L), the Deputy Under Secretary of the Navy (DUSN), the Assistant Secretary of the Navy (MRA&L), and other DoD components and Federal agencies concerned with environmental matters.

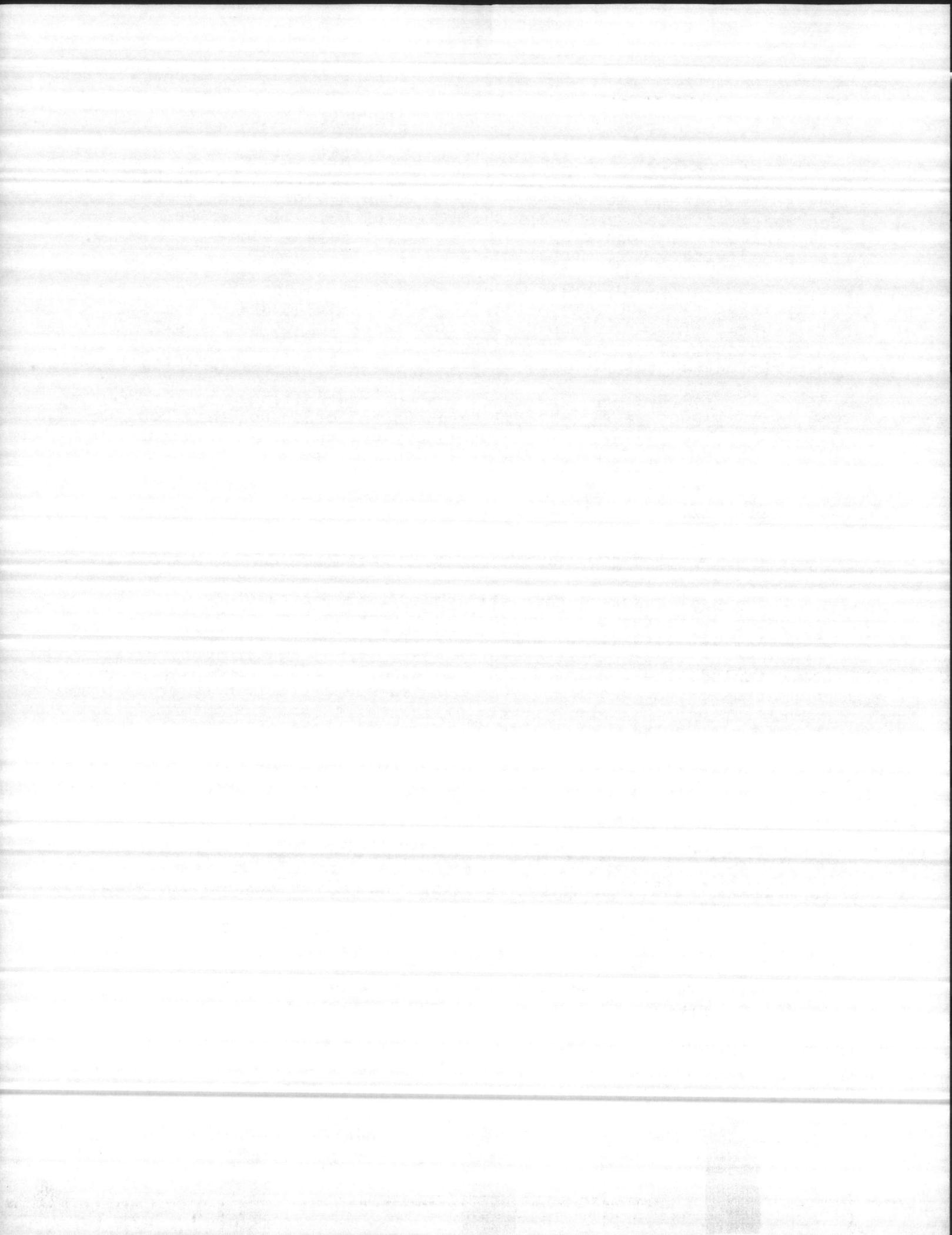
(6) Coordinating with the Chief of Information for the release to the public of environmental assessments, statements, final findings of no significant impact and other environmental documents, according to the Freedom of Information Act and other applicable Federal law.

(7) Provide assistance for actions initiated by private persons, state or local agencies and other non-Navy/DoD entities for which Navy involvement may be reasonably foreseen.

(8) Identify major decision points wherein environmental effects shall be considered as associated with naval actions.

b. Major Claimants, commanders, commanding officers and subordinate commands are to comply with this instruction by:

(1) Ensuring that all appropriate instructions including those requiring written justification for projects or programs, collectively or separately, involving RDT&E, MCON, O&MN, urgent minor construction requests, land acquisitions, etc., include the requirement and funding for environmental documentation, as required. Not only should a preliminary assessment of impact be made at the initial planning stage, such as during the facility study in the instance of MCON projects, but at each following significant step or decision milestone in the development of a program or project as warranted. It is important to note here that the intent of NEPA is to encourage participation of Federal, State involved agencies and affected citizens in the assessment procedure, as appropriate. The lack of such coordination has been a significant point raised in subsequent litigation as well as a gap in information supplied for established review procedures. Accordingly, early contact with those affected is encouraged. It is believed that the establishment of a dialogue in most instances is mandatory if NEPA is to be implemented. This dialogue should be sufficiently detailed and documented to identify significant impact/controversy which; at the time, seemingly cannot be overcome by appropriate planning and design of the action, or are external to Navy control.



5 NOV 1979 (2) Conducting assessments of the environmental effects of current and proposed actions in accordance with the criteria of Parts 2 and 3. If a draft environmental statement is required, it should be prepared and submitted in accordance with the provisions of Part 4 of this chapter. Draft statements should be submitted to CNO (Op-45) no later than 30 September for new projects or programs included in the upcoming budget year.

(3) For training exercises off military property, submissions should be made at least 120 days before the authorization of the exercise in question. If it is not possible to prepare statements within the time periods identified, CNO (Op-45) is to be so informed, preferably in writing. Pertinent sections of assessments of environmental impact prepared for training maneuvers should also be incorporated into applicable operational plans.

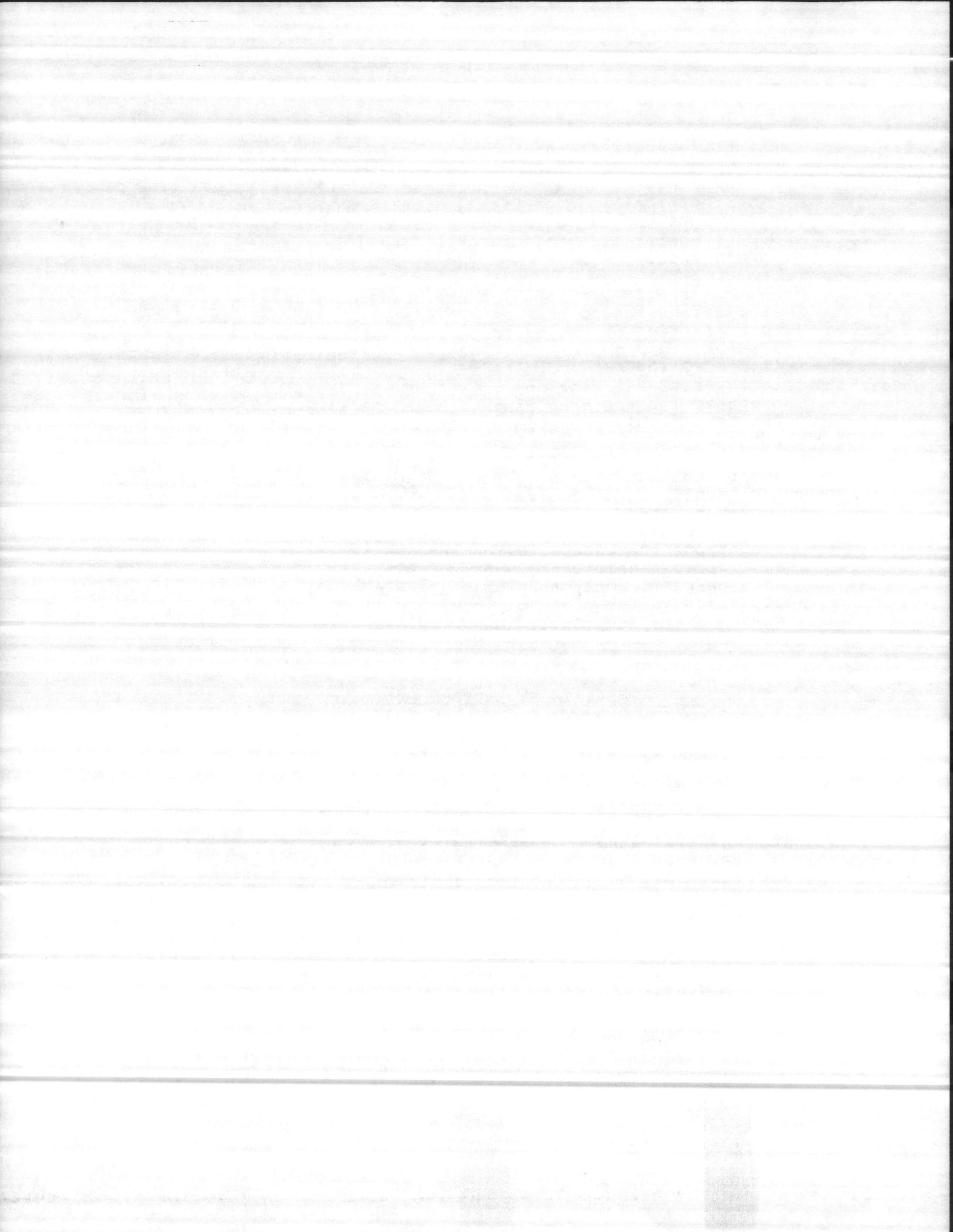
(4) Encouraging by all means possible, a sense of environmental responsibility and awareness among personnel to implement most effectively the spirit of the NEPA. It is incumbent upon all personnel, who are engaged in any activity or combination of activities which significantly affect the quality of the human environment, to be aware of actions considered significant, and exceptions identified in Part 3 of this chapter. Only through alertness, foresight, and notification through the chain of command will the eventual goals of NEPA and the Navy Environmental Protection Program be realized.

PART 2

PRELIMINARY ENVIRONMENTAL ASSESSMENTS

4201. Discussion.

Every action or proposed action by the Navy has the potential, however remote, to affect the environment under a given set of circumstances. The degree to which a Navy action must be evaluated to determine its environmental impact depends in part upon whether the action, based upon past experience, normally does not affect the environment, has the potential to violate environmental laws, or could result in a degree of degradation of environmental quality, or has the potential for significant degradation of environmental quality and could result in environmental controversy. In order to sensitize commanders to the necessity for an evaluation of the environmental consequences of a proposed action, and to assist



in determining what degree of examination those concerns merit (none, assessment or statement), all applicable actions will minimally receive the benefit of a preliminary environmental assessment (PEA).

4202. Guidelines and Standards

a. Implementation of the PEA. At the lowest level possible, appropriate commanders will conduct a brief review of proposed actions to determine the potential impact on the environment if the action is approved. The detail included in the PEA is to be consistent with the scope of the endeavor addressed and sufficient to guide the decision maker in choosing the degree of environmental scrutiny to which the proposed action is entitled, i.e., categorical exemption, ES or EA. To the extent practicable it should enable a preliminary review of the criteria discussed in Parts 3 and 4, and also serve to alert the responsible action authority of the need for mitigating measures, if required.

b. Documentation. PEAs are not normally forwarded to CNO. Decisions relative to the impact or controversy are to be made within the chain of command at the appropriate level. Compliance with the minimal requirements of the PEA shall be demonstrated by a brief written memorandum to file, or other appropriate, locally required procedures. To the maximum extent possible the generation of new documents should be avoided. Where locally utilized formats or other memoranda currently serve to alert decision makers to the need for consideration of environmental impacts there is no need to implement additional forms or procedures. However, in any case the PEA must assess and document the probable impact of the action contemplated.

c. Utilization of the PEA. Following review of the PEA, the appropriate authority will determine whether the proposed action falls within a categorical exemption, or is one which requires an environmental statement, or assessment and act accordingly.

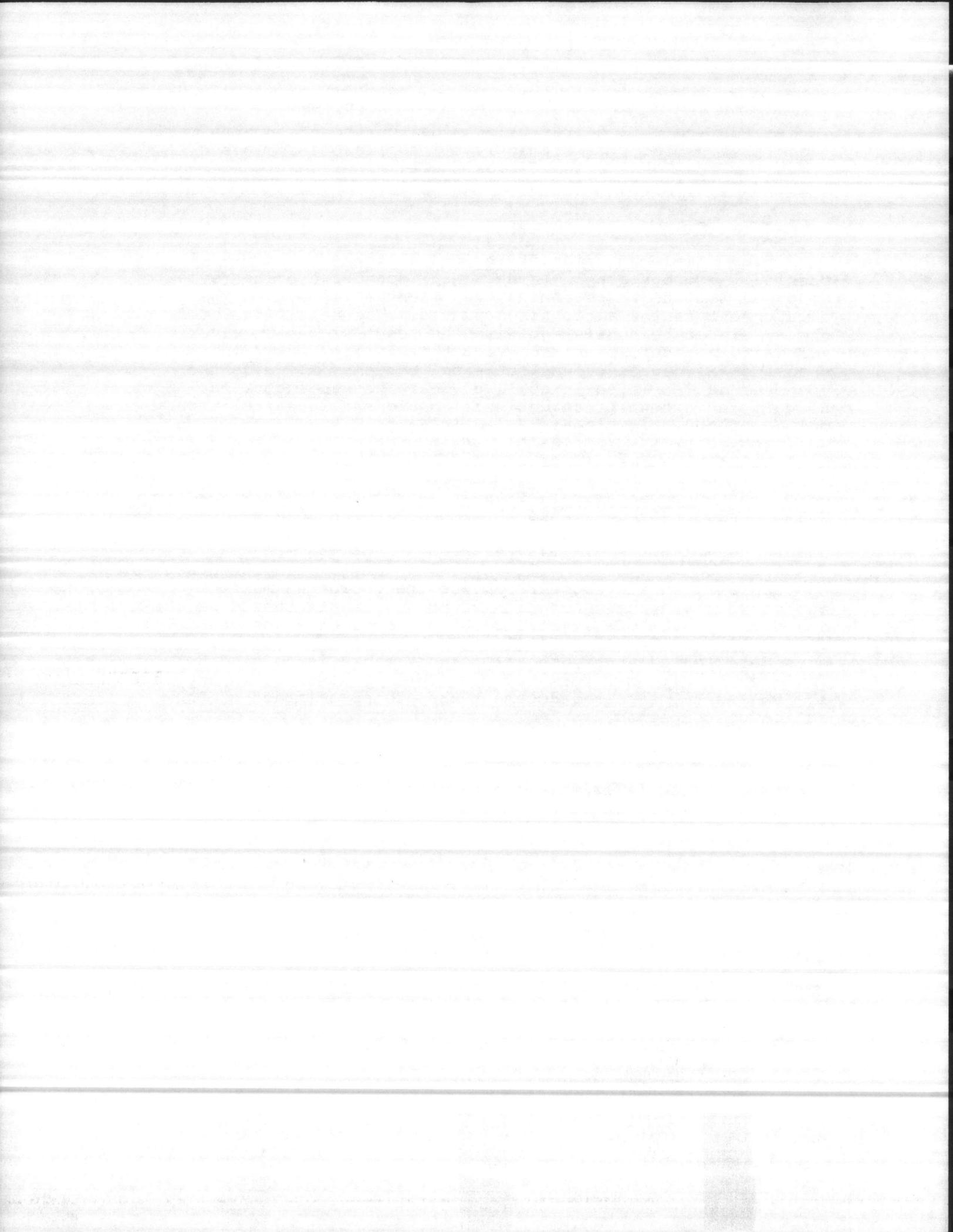
PART 3

ENVIRONMENTAL ASSESSMENTS

NECESSITY AND PREPARATION

4301. Discussion

As a general rule, an environmental assessment, as



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defined in paragraph 4101(d)(3), is an analysis of the environmental impacts of a proposed action. It is prepared when the Navy does not know beforehand whether the proposal will significantly effect the environment or be controversial with respect to environmental effects. The assessment will not only help the Navy comply with NEPA when no ES is necessary, but may also contribute to the preparation of an ES when one is necessary.

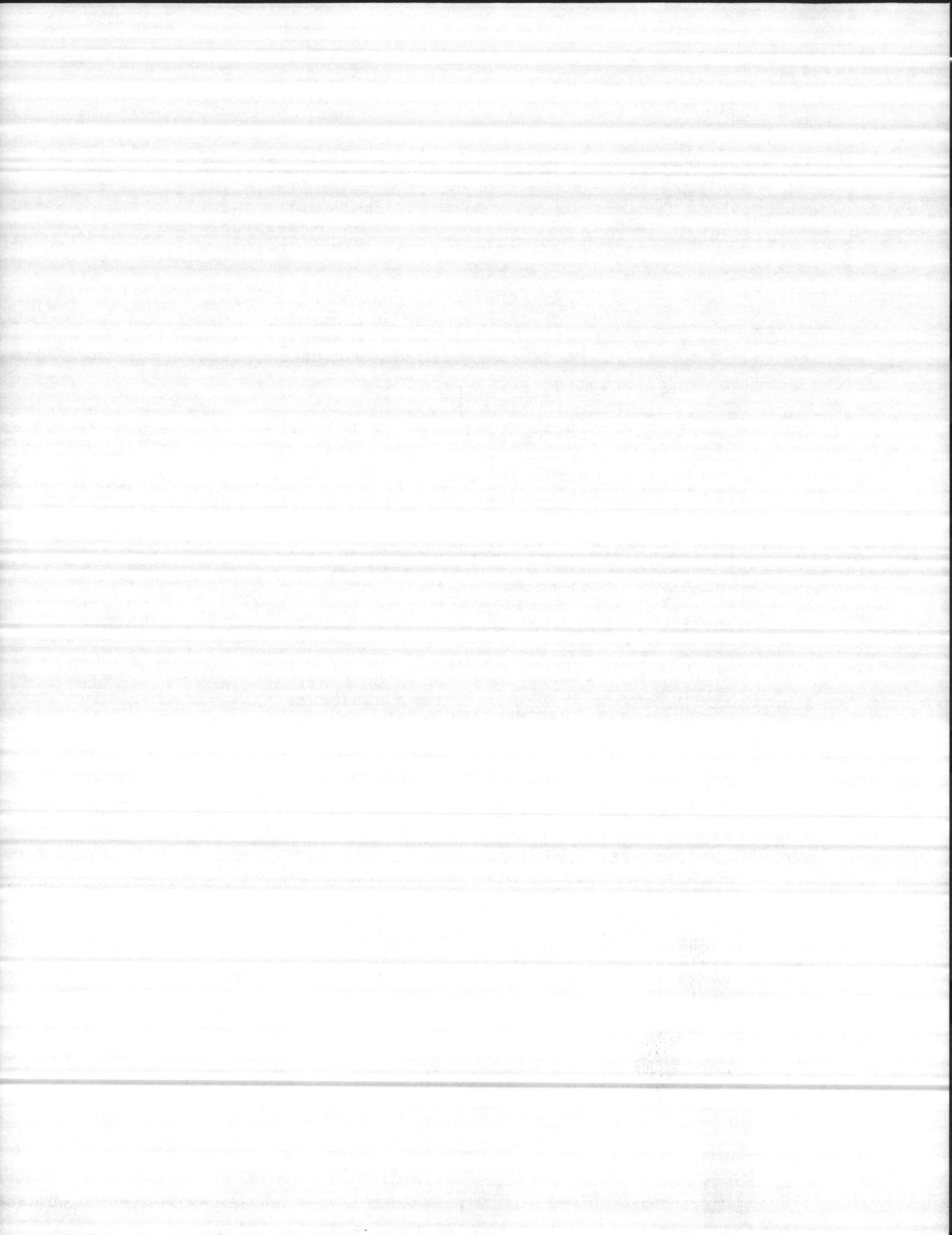
An assessment of an action shall be made by the major claimant, or other designated or subordinate command, unless it has been determined by appropriate authority that an environmental statement will be prepared or the action falls within the scope of one or more categorical exclusions.¹

4302. Guidelines and Standards

a. Categorical exclusions. A categorically excluded action is one which, based on the following criteria and past experience, does not normally significantly impact on the quality of the human environment. Categorical exclusions are granted for those kinds of Navy actions, which, among other factors, minimally effect the quality of the human environment; do not result in any significant change from the conditions existing at the site of their impact; and those whose effect is primarily economic or social. The following are examples of action which, under normal conditions, are categorically excluded from the necessity for an environmental assessment or statement:

(1) an action, the effects of which, are included in a previously written assessment, or draft or final environmental statement. A new evaluation of the effects of such an action is not required unless the environmental effects will be markedly different from those predicted in the original assessment or statement.

¹ To effect NEPA compliance, environmental planning is considered integral with the development of master plans. Accordingly, a necessary input to these plans is an assessment of the impact on the environment using the same logic established for the preparation of environmental statements. Master plans will be reviewed for content in this regard to insure that environmental aspects are included.



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(2) emergency activities (e.g., riot control or search and rescue (SAR) activities) do not require assessments or an environmental statement. Emergency situations generating a response by naval authorities which result in significant harm to the environment shall be reported to CNO (Op-45) who will facilitate consultation with CEQ.

(3) routine movement of mobile sources

(4) routine maintenance and repair

(5) reductions in force (RIFs)

(6) continuing actions if there is no substantial, adverse change from previously existing conditions.

(7) minor training exercises on military property

(8) land and facility transfers to another Federal agency wherein the General Services Administration (GSA) is the action agency

(9) regulations which do not significantly effect the quality of the human environment in their implementation

(10) routine procurements

(11) basic and applied scientific research normally confined to the laboratory in question

(12) mission realignment wherein no substantive change to operations is proposed.

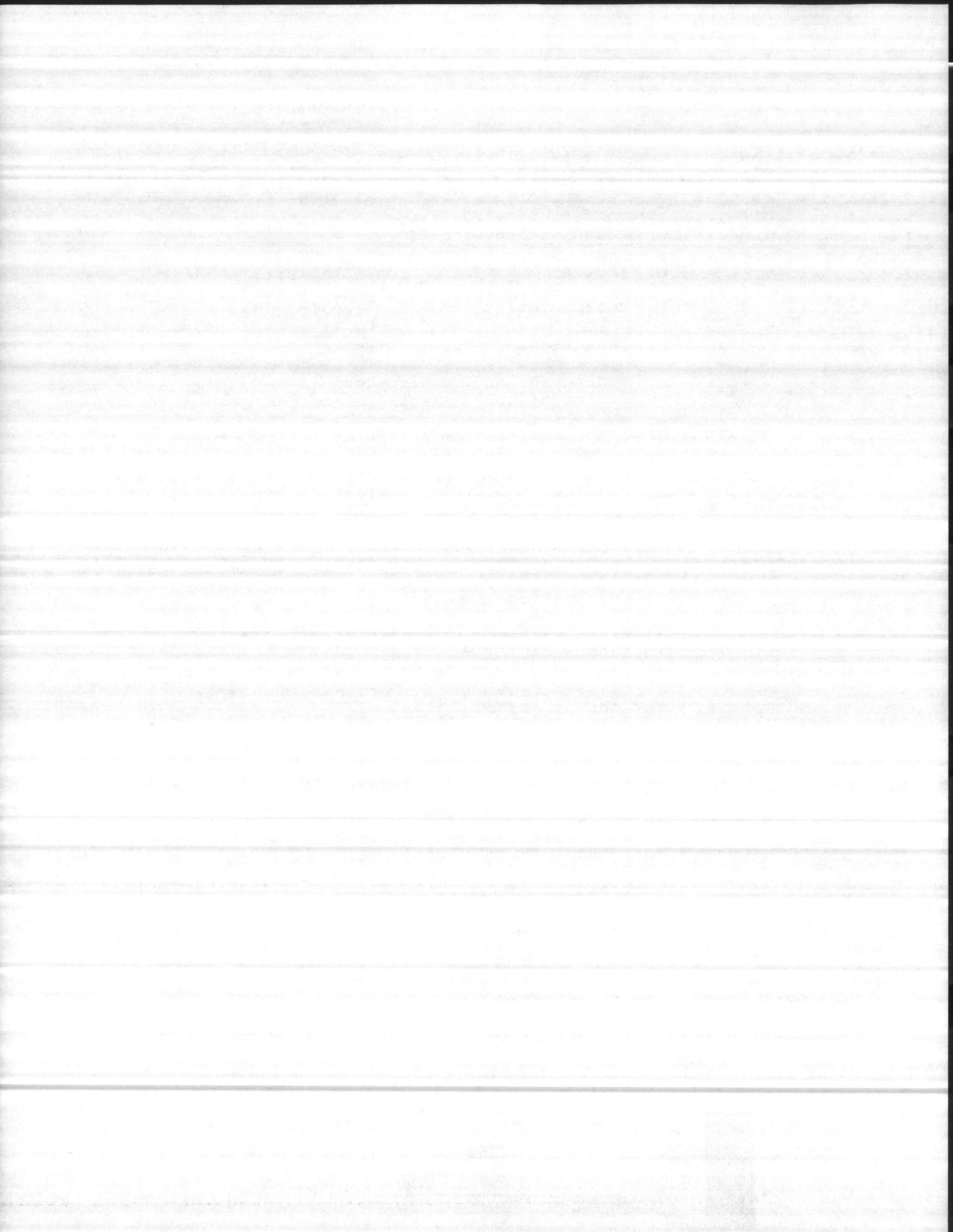
b. Required Assessments (EA's)

Assessments will be made for those actions which normally have the potential for violation of environmental laws or could result in a degree of degradation of environmental quality. The following are examples of actions which, under normal conditions, would require preparation of an EA.

(1) training exercises on non-military property

(2) major training exercises on military property

(3) dredging projects that increase water depth over previously dredged or natural depths, and/or require new spoil area designations except where prior negotiations with the Corps of Engineers indicate no EA required for the purposes of permit authorization



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(4) proposed utilization of tidelands and fresh-water wetlands specifically designated of importance

(5) real estate acquisitions or outleases of land, excluding agriculture or grazing lands, involving:

(a) new ingrats/outgrants only, i.e., not renewals or continuances wherein land usage remains the same

(b) fifty acres or more (when acreage exceeds 50 by slight amount consult CNO)

(c) notwithstanding (5)(a) or (b), any acquisition of any size or ingrats/outgrants which may be considered environmentally controversial, regardless of the appropriation or intended utilization

(6) major (greater than 50 units with the same caveat as with 5(b)) family housing projects, noting the increment being addressed against the deficiency at the time of submission

(7) new target ranges or range mission changes which would increase environmental impact

(8) exercises conducted at the request of States (as ship sinkings for artificial reefs) wherein environmental impact might be expected

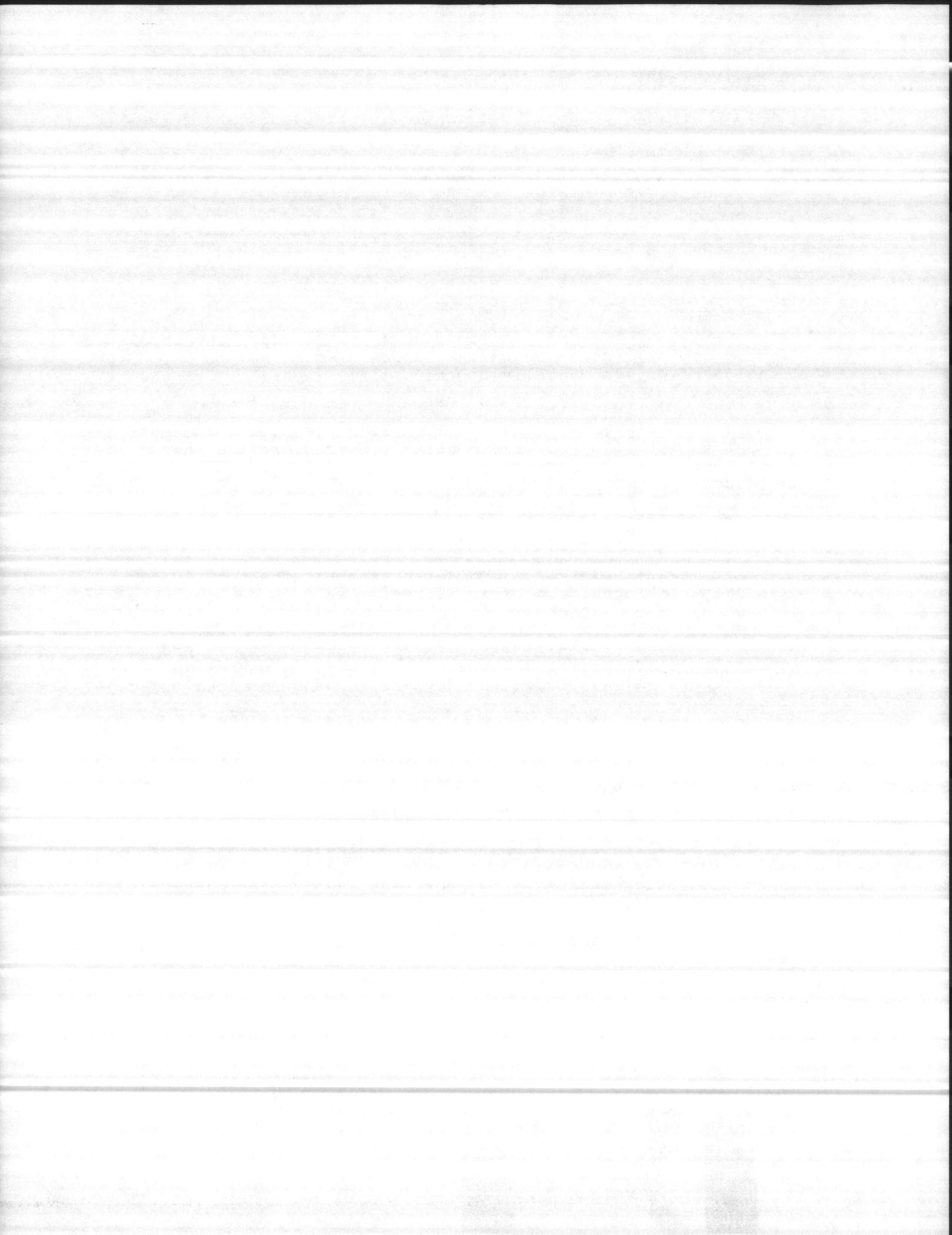
(9) low altitude aircraft training routes and/or special use airspace and warning areas wherein overflights impact persons, wildlife (particularly endangered species) or property.

(10) new sanitary landfills

(11) disposal of biological or chemical munitions, pesticides, or herbicides other than in the manner in which they are authorized for use or disposal

(12) mission changes, base closures/relocations/consolidations and deployments which would cause major long term population increases or decreases in affected areas.

(13) any activity proposed in a designated or recommended "critical" habitat of an endangered species, except where prior negotiations with the Fish and Wildlife Service/National Marine Fisheries indicate no EA required for the



purposes of continued operations and compliance with the Endangered Species Act.

Note: Associated but separate need for a "biological assessment" and consultation in compliance with the Endangered Species Act is discussed in Chapter 10.

(14) any activity proposed which would adversely affect historical or cultural sites either now cited on the National Register of Historical Places or deemed eligible for inclusion on the National Register. (See Chapter 10 for additional details.

(15) closure or limitation of access to any areas that were open previously to public use, such as roads or recreational areas

(16) construction or any other action affecting an EPA designated aquifer or recharge zone (as specified by Section 1424(e) of the Safe Drinking Water Act, P.L. 91-532)

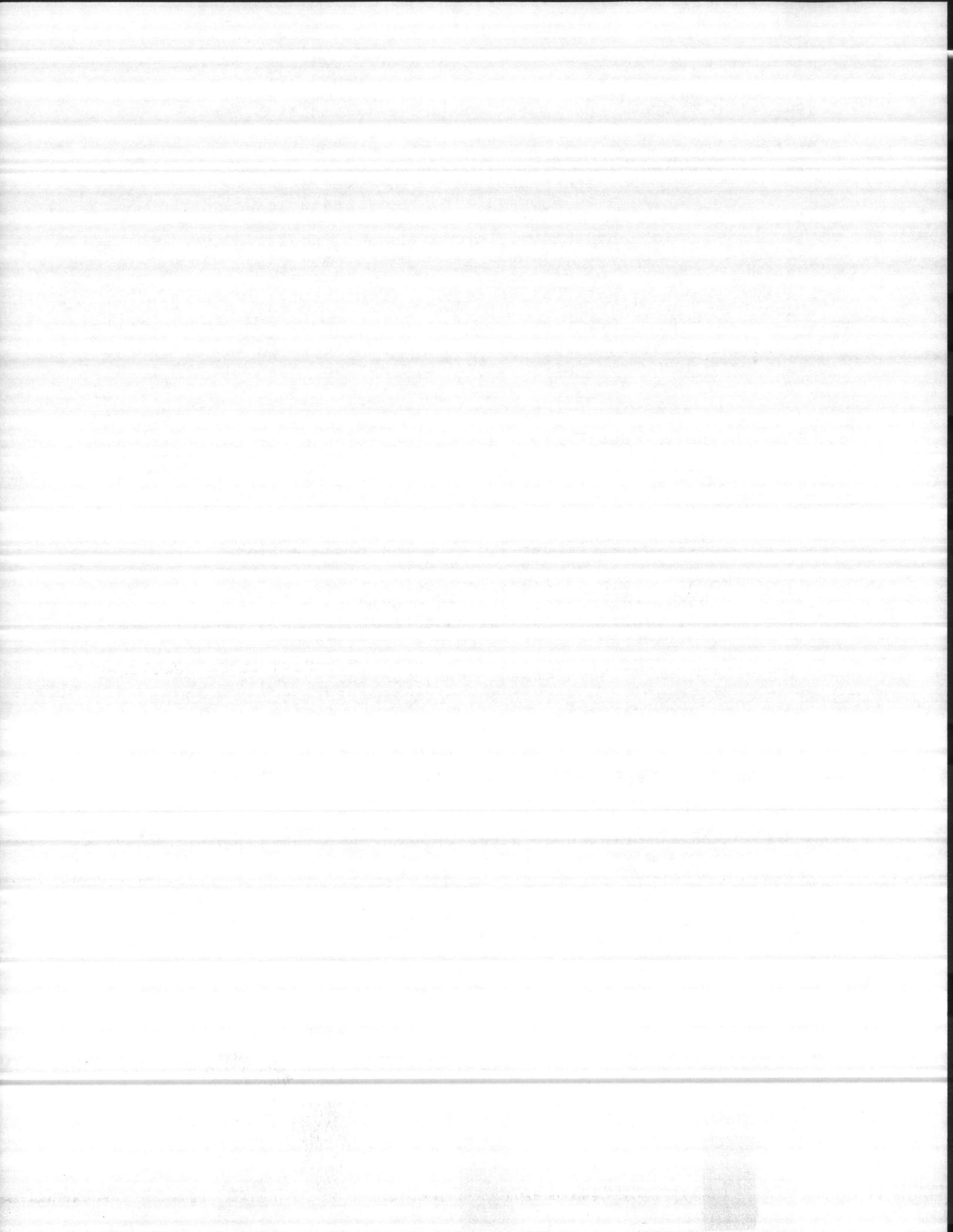
(17) irreversible conversion of "prime or unique farmland" to other uses unless "other national interests override the importance of preservation or otherwise outweigh the environmental benefits derived from their protection."

Note: To ascertain if lands involved are appropriately classified, initial contact should be made with the U. S. Department of Agriculture (USDA) Land Use Committee in the affected State. This committee may be located by contacting either the chairman of the USDA rural development committee in the State or the State soil conservation services (SCS) office outlined in appendix "C".

(18) transportation of hazardous substances, conventional munitions or other wastes for intentional disposal into the oceans by any naval unit

(19) award or termination of contracts involving substantial quantities of natural resources, wherein Navy is the contracting agency

(20) new, revised or established regulations, directives or policy guidance concerning activities that are likely to have significant environmental effects



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(21) any action, the environmental effect of which is likely to become the subject of controversy by people who will be affected by the action

(22) weather modification projects

c. Coordinating doubtful cases with CNO (Op-45); modifications to the assessments and categorical exclusions lists.

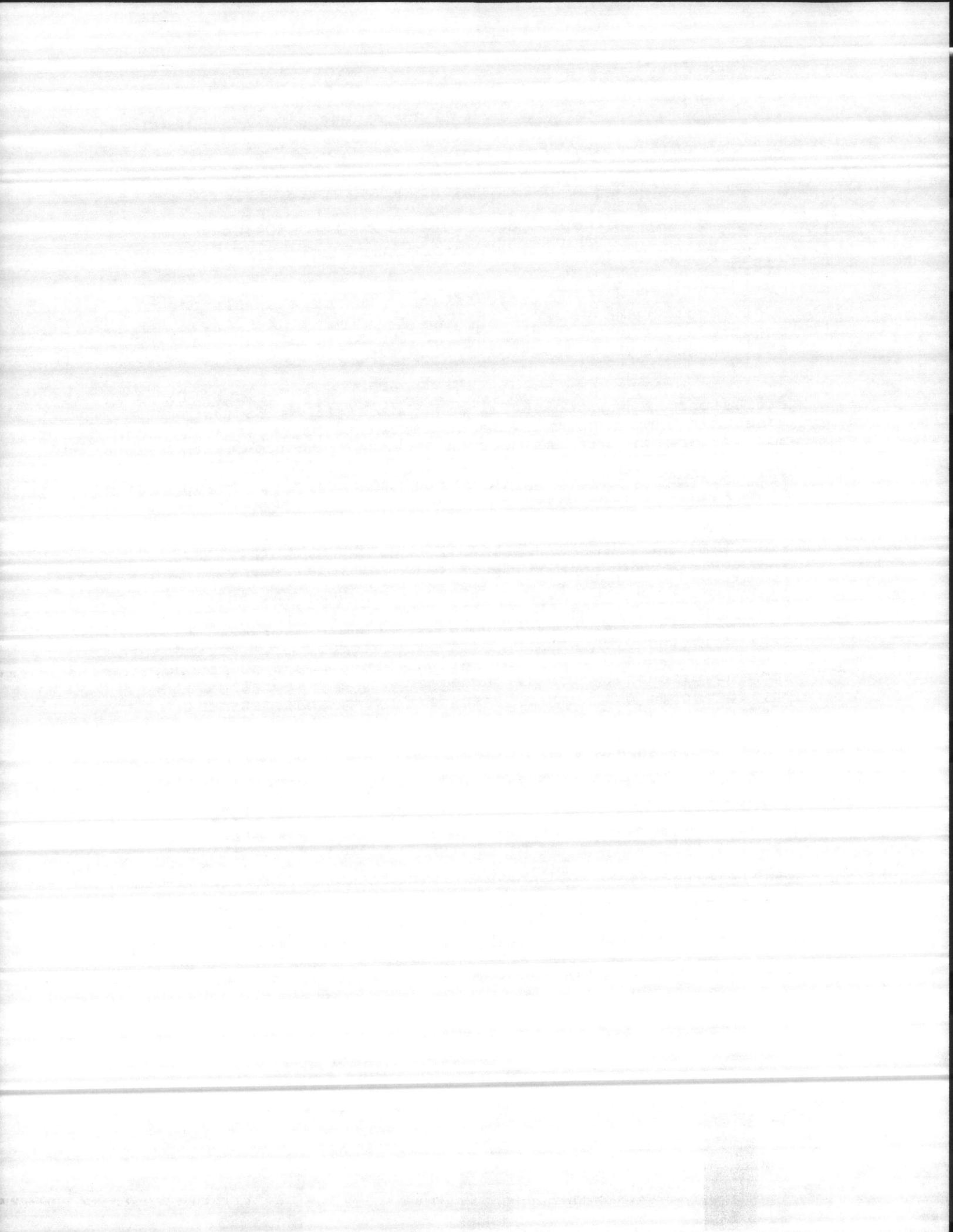
(1) If, after careful review of the PEA, paragraph 4201, doubt remains as to what future course of action is required, the command responsible for preparation of the PEA shall contact CNO (Op-45).

(2) Undoubtedly the lists of categorical exclusions, paragraph 4302a, and those actions for which assessments must normally be submitted, paragraph 4302b, are not exhaustive. If, based upon experience, responsible commands determine that the list(s) should be expanded, they are encouraged to submit their recommendations with supporting documentation to CNO (Op-45).

d. Public and other agency participation in EA preparation. To the extent practicable, the commands shall involve appropriate environmental agencies, applicants and the public in the preparation of environmental assessments. However, it should be noted that there is no authority for the payment of the expenses incurred by such other agencies, or members of the public in the presentation of their information. Furthermore it is not mandatory for the responsible command to conduct the scoping process, which is required in the preparation of environmental statements, when developing an assessment.

e. Content of Environmental Assessments. Environmental assessments should conform to the format provided for environmental statements. The assessment shall briefly discuss the need for the proposal, reasonably available alternatives to it, the environmental impacts of the proposal and a listing of the agencies and persons consulted. (40 CFR 1508.9(A))

f. Processing of Environmental Assessments. All EAs shall be forwarded to CNO (Op-45) for review and appropriate disposition, which may include returning the assessment to the originator for further development as an environmental statement in accordance with Part 4 of this Chapter, or the drafting of a "finding of no significant impact and dissemination of the public in accordance with regulations" 40 CFR 1501.4 and 1506.6.



g. Project Delay. Ordinarily if a proposed action will not have a significant impact upon the quality of the human environment, the command responsible for implementation of the proposed action need not delay commencement of the project. However, "when the proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement, or the nature of the proposed action is potentially controversial or one without precedent, then the Finding of no Significant Environmental Impact must be made available to the public (including state and area wide clearinghouses) for thirty days before the Navy may make a final determination for further consideration and action may begin." Under these circumstances the cognizant command will avoid any substantial or irretrievable commitment of resources toward the proposed project which may not begin until after the expiration of the thirty day period. (40 CFR 1501.4(e)(2)).

h. Assistance in the preparation of EA's. Addressees may request copies of individual assessment/statement submissions from CNO (Op-45), keeping in mind that the supply is limited and that only those statements that have a direct bearing on the action being contemplated should be requested.

It is evident from the examples cited that statements involving facilities per se, draw heavily on NAVFACENGCOM capabilities, especially the engineering field divisions (EFDs). Addressees should also be cognizant of the Naval Environmental Protection Support Service (NEPSS) Program, which can provide many of the basic inputs applicable to assessments. Inquiries should be directed to the Navy Environmental Support Office, Code 25, Naval Construction Battalion Center, Port Hueneme, California, 93043, or to the regional environmental support office at the appropriate EFD. Naval Legal Service Offices (NLSOs) are also available for consultation as deemed applicable.

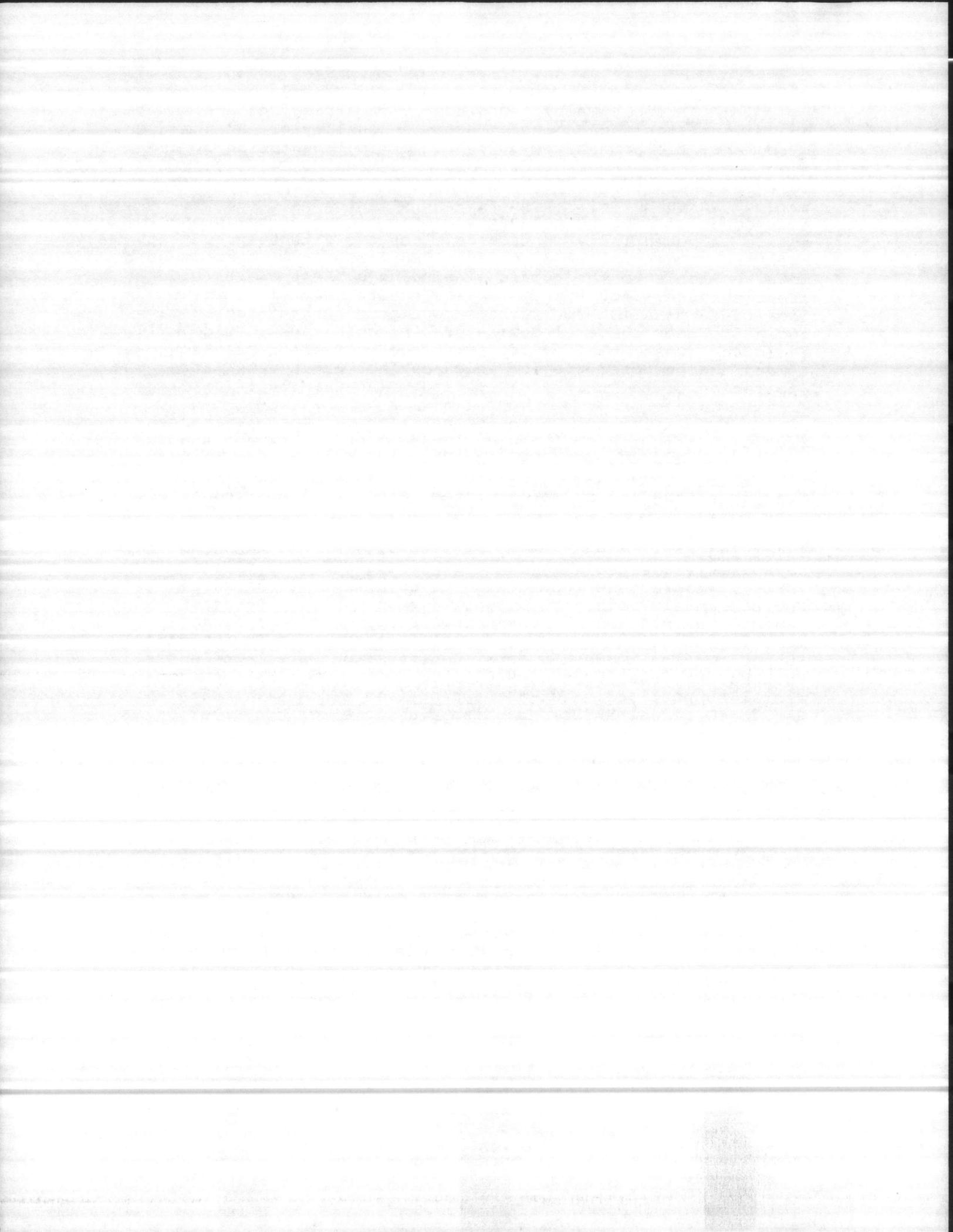
PART 4

ENVIRONMENTAL STATEMENTS

PREPARATION AND PROCESSING

4401. When to Prepare an Environmental Statement (ES)

An environmental statement will be prepared for every recommendation or report on proposals for legislation and other major Federal actions undertaken by the Navy which significantly affects the quality of the human environment, or is



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highly controversial with respect to environmental effects, unless otherwise provided in these procedures or other applicable law.

It is difficult to state precisely which actions are "major Federal actions," or "significant," or likely to be "highly controversial," primarily because of the immense variety of possible actions and the differing value judgments of participating individuals. With respect to environmental controversy the individual authorized to make the analysis shall make a finding as to the environmental controversy involved. The determination should be focused on the environmental nature of the controversy, if any, and in this respect, the term "controversial" refers to cases where a substantial dispute exists as to the size, nature or effect of the Federal action, rather than the existence of opposition to a use, the effect of which is relatively undisputed. The fact that local opposition may exist with respect to a project or proposal does not necessarily make the project controversial "in environmental effects".

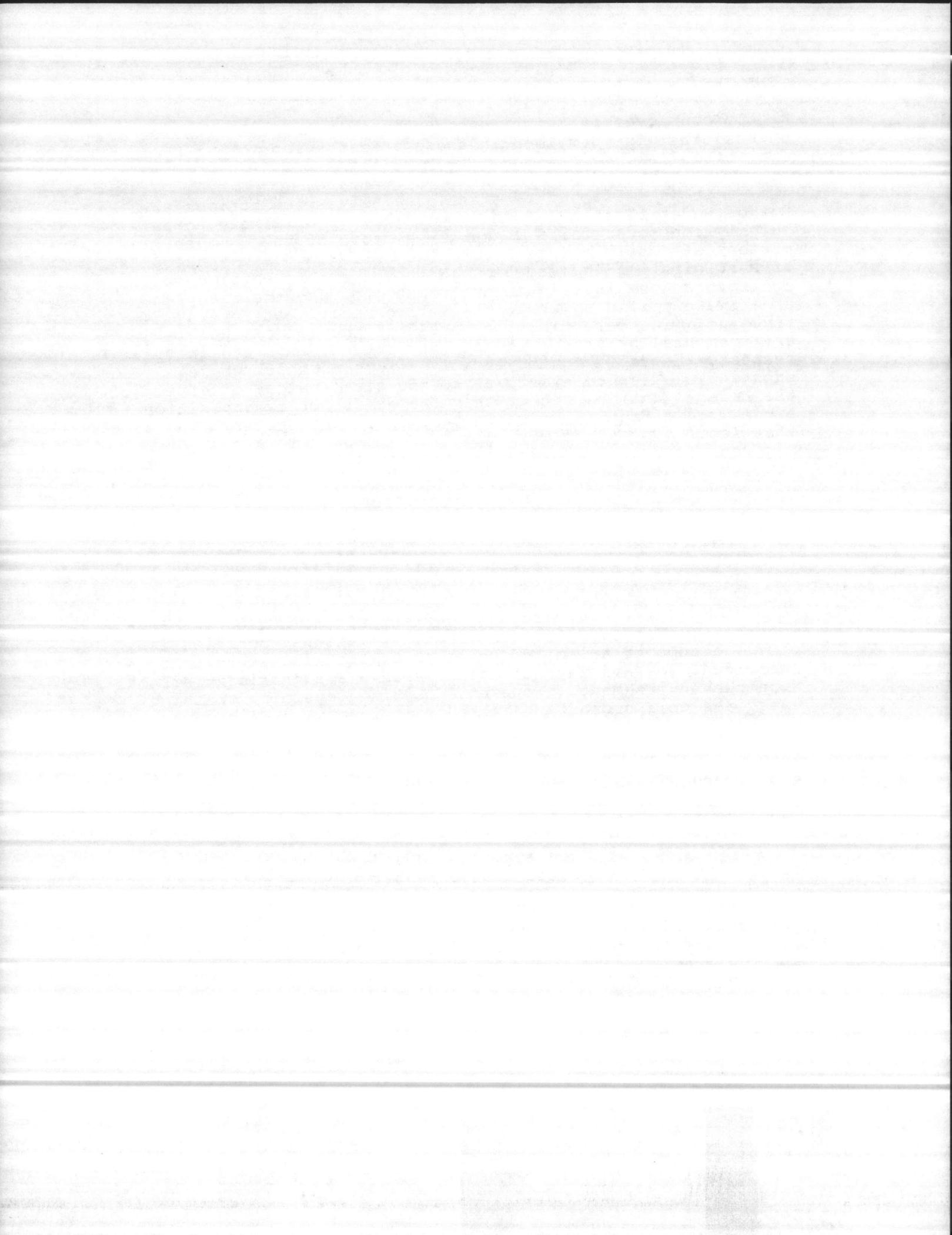
4402. Guidelines and Standards

a. General. The following general guidelines may be used in judging the significance of the effect of an action on the environment.

(1) The geographical extent of the action is often important. For example, construction, land use modification, etc., to support a limited maneuver or training exercise by an individual command may not normally have a significant effect upon the environment. However, doctrine governing training exercises on a broad geographic scale involving diverse natural areas would be more likely to have a significant effect on environmental quality. Such an action could be the subject of a "generic", "programmatic" or "tiered" ES as now identified in the CEQ regulations. Determinations whether to prepare a "generic", "programmatic" or "tiered" statement should be based upon the following factors:

(a) When actions, considered together, have cumulative or synergistic environmental impacts.

(b) When sequential steps or phases, or other proposals which may compound the effects of a present action, including those related activities of other Federal agencies, are involved.



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(2) The long-term impact of the action should be considered. An objective overview should be maintained toward the magnitude of environmental effects of both the immediately contemplated action and of future actions for which the proposed action may serve as a precedent, and which may result in a cumulatively significant impact.

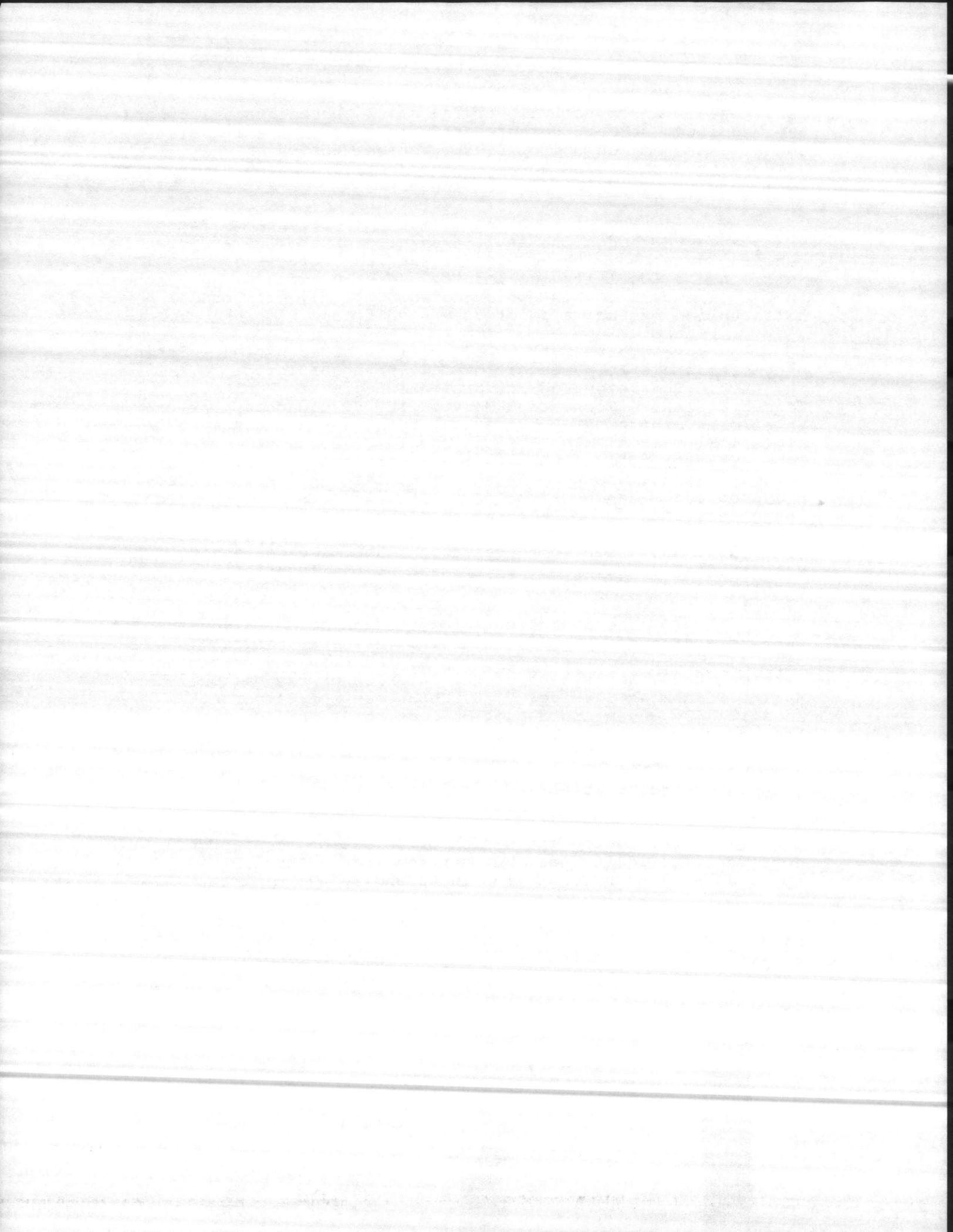
(3) The risk potential must be evaluated. For example, even though the environmental impact of an efficiently run fuel depot may not be significant, the effects of an oil spill on the local fishing industry, or the surrounding beaches in the case of a tourist-oriented economy, may well render construction of such a depot very significant.

(4) There must be a review of sites having existing or possible historic, architectural, or archeological interest. The Keeper of the National Register, Heritage Conservation and Recreation Service, U. S. Department of the Interior, Washington, D. C. 20240, maintains a register of historical places. The Council should be contacted as well as local (state) offices wherein the geographical location of the action is contemplated. In addition, the National Park Service has prepared a handbook for assistance in preparing environmental statements for cultural resources. The handbook is available from the Interagency Services Division, Office of Archeology and Historic Preservation, Heritage Conservation and Recreation Service, U. S. Department of the Interior, Washington, D.C., 20240.

(5) The impact on endangered animal or plant species must be addressed, particularly if a "critical habitat" has been established for such species by the Fish and Wildlife Service, U. S. Department of the Interior or the National Marine Fisheries Service, U. S. Department of Commerce. Additionally, even if the action does not significantly affect the environment of endangered or threatened species, there is the requirement for a biological assessment under procedures of the Endangered Species Act (see Chapter 10, Part 6 for additional responsibilities in regard to protection of endangered species).

(6) In the evaluation of an action the factors considered could include, but not necessarily be limited to the applicable factors identified in Appendix "B".

b. Actions For Which Draft Environmental Statements Must Be Submitted to CNO (Op-45). Experience has shown that certain types of naval actions, due to the potential for



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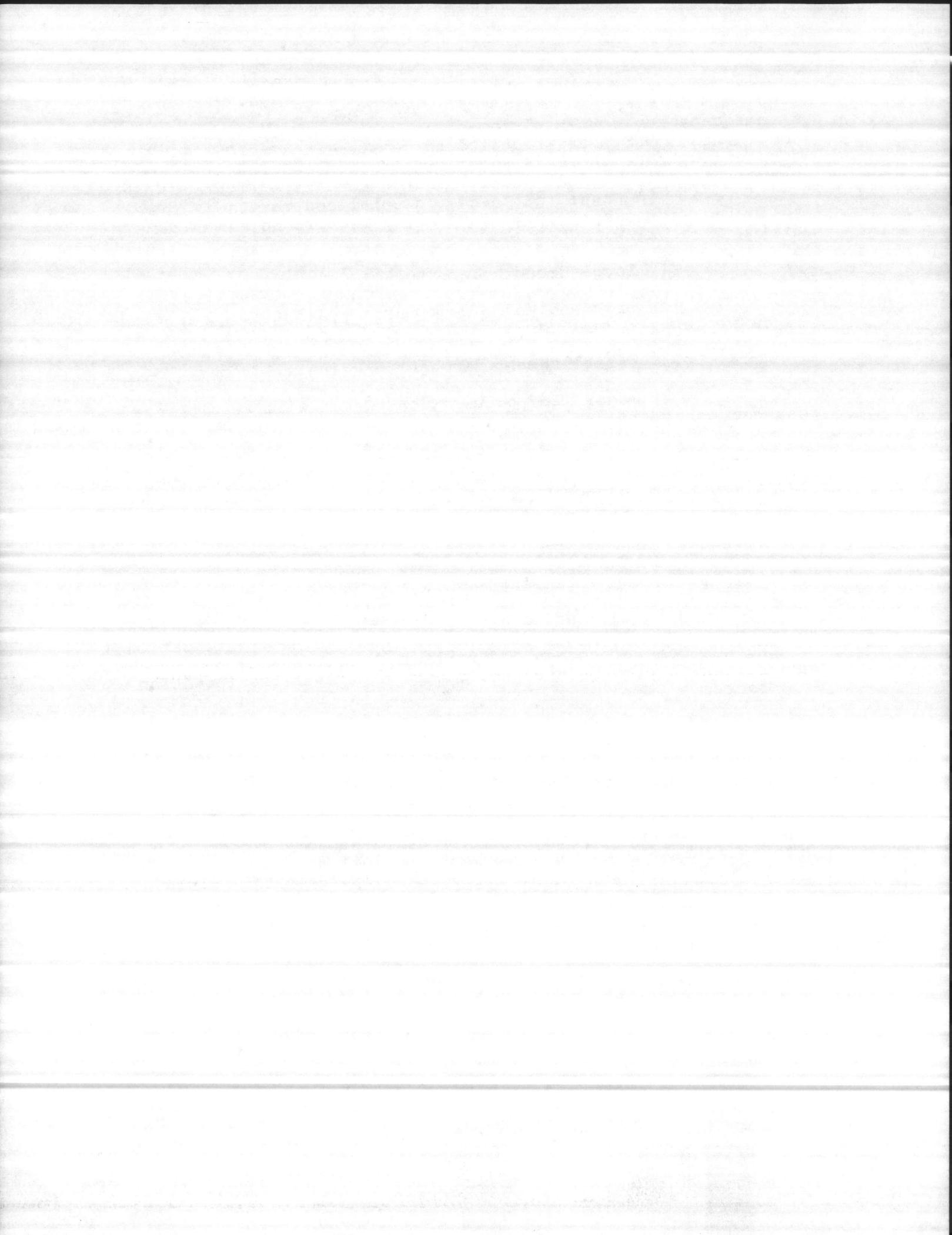
significant environmental impact, may be controversial. Accordingly, DES's are required to be submitted to CNO (Op-45) for review where there is substantial potential for significant effect of environmental quality and/or the action, if approved, could result in significant environmental controversy. The following listed actions will normally require an automatic filing of a DES with CNO (Op-45):

- (1) large dredging projects
- (2) proposed major construction and filling in tide-lands/wetlands
- (3) establishment of major new installations
- (4) major land acquisitions which will result in a changed use of the property
- (5) major weapons systems requiring Defense Systems Acquisition Review Council (DESARC) review. When an action is among those listed above, closely analogous to the same, or, as the result of an EA, it has been identified as one which may have significant environmental impacts or is environmentally controversial, the major claimant or other designated or subordinate command will prepare a DES incorporating procedures as outlined in the following sections.

c. Scoping. As soon as practicable after the cognizant command has determined that an ES is required and notification to CNO has been effected, the following efforts will be undertaken to provide the public with notice of the intention to process a DES.

(1) In all cases notice shall be mailed to those who have requested it on a specific action. (40 CFR 1506.6(B)(1)).

(2) In the case of an action with effects of national concern, notice shall include publication in the Federal Register, which shall be coordinated with CNO (Op-45), and by mail to national organizations reasonably expected to be interested in the matter. It may also include listing in the 102 MONITOR published by the EPA. CNO (Op-45) shall maintain and disseminate to affected commands a list of potentially interested national organizations, including those organizations which have requested that notice be regularly provided. (40 CFR 1506.6(B)(2)).



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"(3) In the case of an action with effects primarily of local concern, the notice may include:

(a) Notice to state and area wide clearinghouses pursuant to OMB Circular A-95 (Revised).

(b) Notice to Indian tribes when effect may occur on reservations.

(c) Following the affected state's public notice procedures for comparable actions.

(d) Publication in local newspapers (in papers of general circulation rather than legal papers).

(e) Notice through other local media.

(f) Notice to potentially interested community organizations including small business associations.

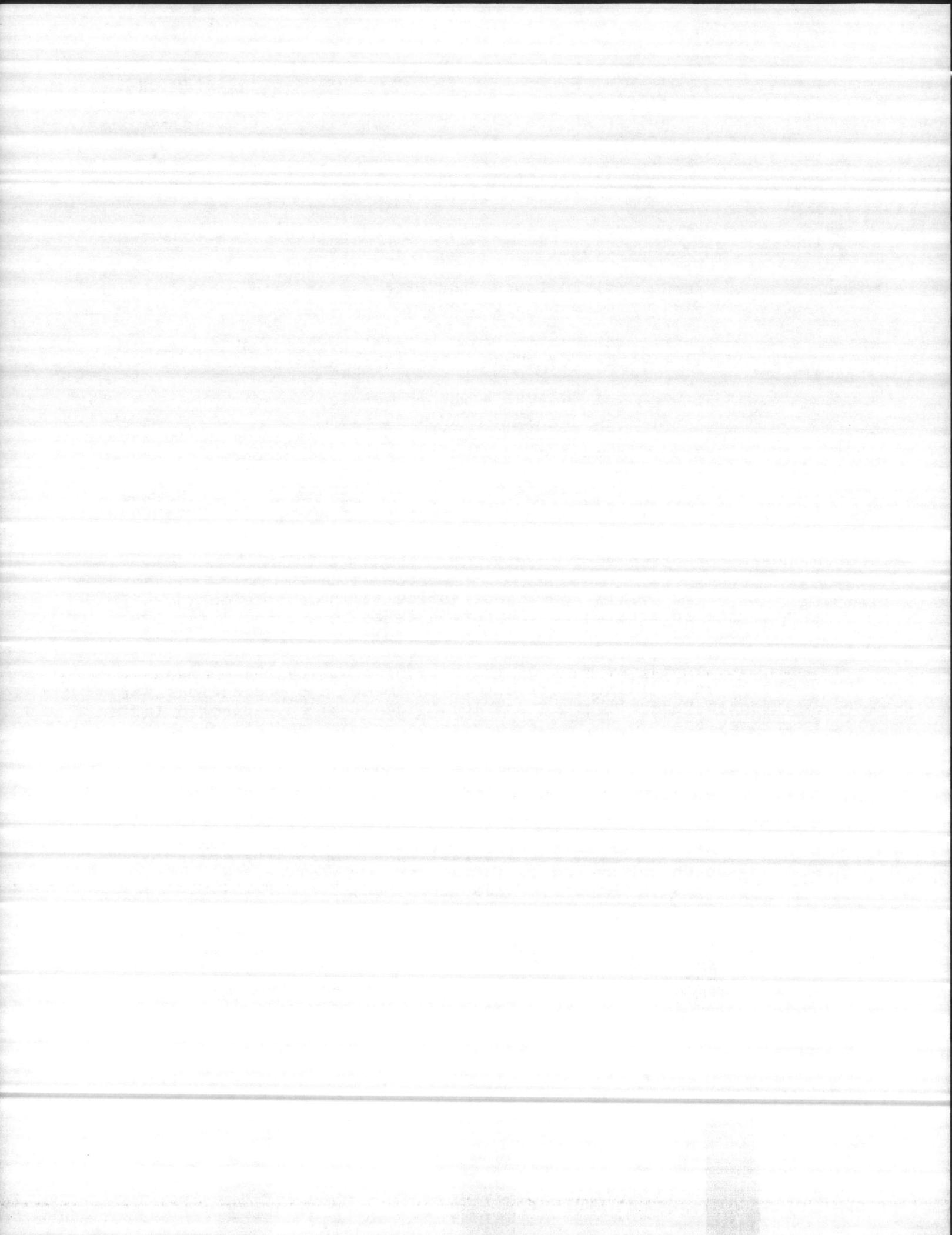
(g) Publication in newsletters, if applicable, that may be expected to reach potentially interested persons.

(h) Direct mailing to owner and occupants of nearby or affected property.

(i) Posting of notice if applicable on and off the site in area where the action is to be located." (40 CrR 1506.6(B)(3))

(4) As part of the foregoing notice the command shall, at a minimum, solicit the comments and suggestions "of affected Federal, state and local agencies, any affected Indian tribes, the proponent of the action if any, and any other interested persons (including those who might not be in accord with the action on environmental grounds)." (40 CFR 1501.7(A)(1))

Note: If the proposed action is specifically authorized under criteria established by Executive Order or statute to be classified in the interest of national defense or foreign policy and is in fact properly classified pursuant to such Executive Order or statute, the foregoing notice and participation requirements shall be disregarded. However, if it is reasonably possible, consistent with applicable Executive Orders, statutes or departmental regulations to segregate the classified aspects of the proposed actions from the unclassified and permit



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meaningful participation in a discussion of the environmental impacts, then the notice and participation requirements described above must be followed to the extent classified information will not be compromised.

(5) The command "shall after consideration of response received, determine the scope and the significant issues to be analyzed in depth in the environmental impact statement. It shall further identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (paragraph 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

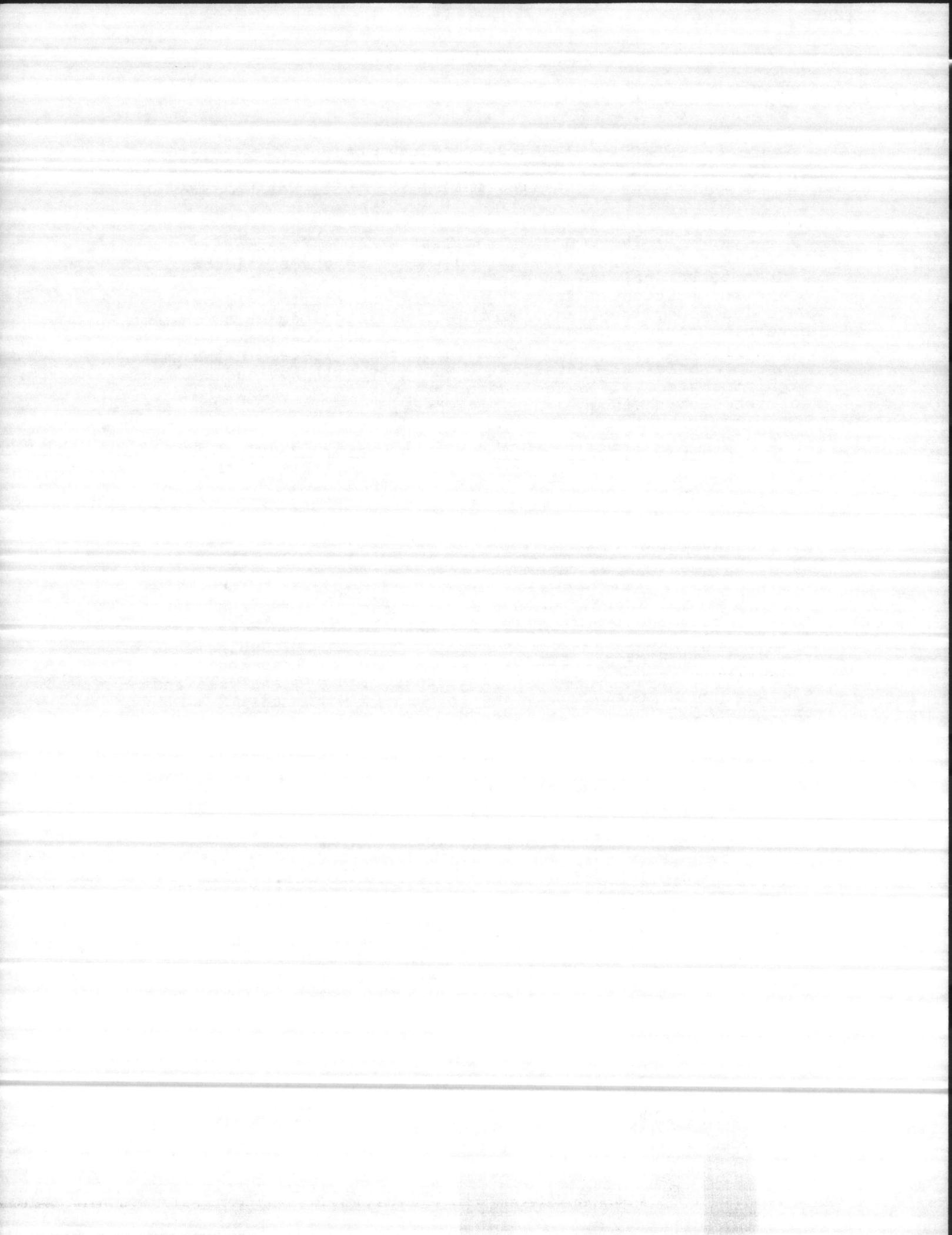
(6) Allocate assignments for preparation of the ES among the lead and cooperating agencies if applicable while retaining responsibility for the statement.

(7) Identify any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(8) Identify other environmental review and consultation requirements (as for example section 7 of the Endangered Species (ESP) Act and the compliance requirements of the National Historic Preservation Act so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement.

(9) Indicate the relationship between the timing of the preparation of the environmental analysis and the command's tentative planning and decision making schedule." (40 CFR 1501.7(a)(2)-(7)).

The functions identified to be performed in the preceding paragraphs may be carried out in the context of a public, informal meeting at which written responses or oral presentations resulting from the public notices may be received. Such meetings may be held whenever practicable, but they are not mandatory. There is no authority for the payment of expenses incurred by any person(s) in the preparation and presentation of information at these meetings. In the event a meeting is not held, the issues addressed shall be resolved by



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the cognizant command based upon responses to notices processed and documented.

d. Time Limits

Commands commencing the preparation of an ES are encouraged to set time limits appropriate to individual actions with due regard for operational requirements and the public and agency comment periods required by law.

State or local agencies or members of the public may request the cognizant command to set time limits on the NEPA process."

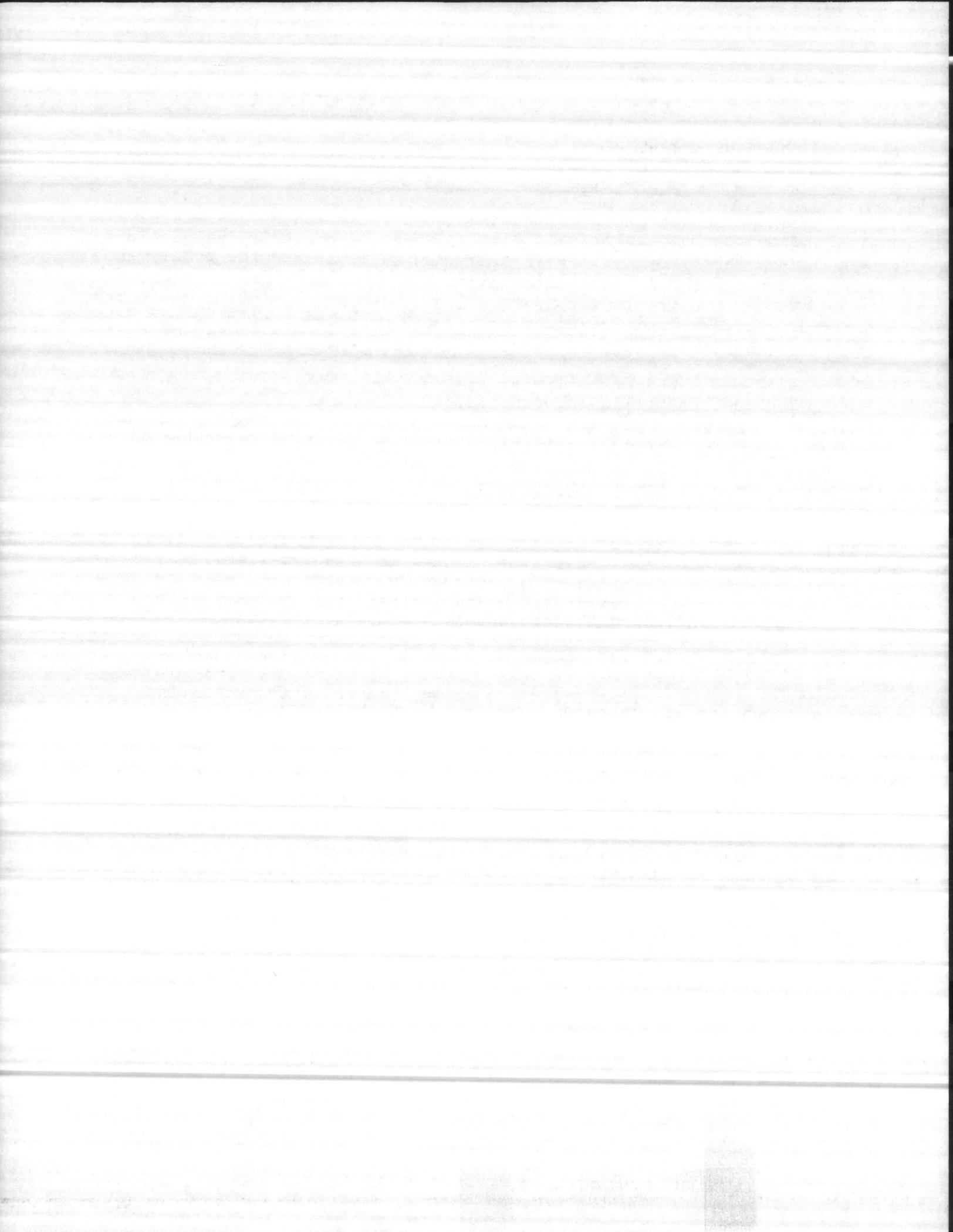
When time limits are to be set, the command may consider the following factors:

(1) In determining time limits (required to complete the ES) the command may consider the following factors:

- "(a) potential for environmental harm
- (b) size of the proposed action
- (c) state-of-the-art of analytic techniques
- (d) degree of public need for the proposed action, including the consequences of delay
- (e) number of persons and agencies affected
- (f) degree to which relevant information is known and if not known, the time required for obtaining it
- (g) other time limits imposed on the agency by law, regulations or Executive Order." (CFR 1501.8(B)(1)).

(2) Time limits may be also set for the NEPA process as a whole..., which may include:

- (a) decision on whether to prepare an ES, if not already decided
- (b) determination of the scope of the environmental impact statement
- (c) preparation of the draft environmental impact statement



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(d) review of any comments on the draft environmental impact statement from the public and agencies

(e) preparation of the final environmental impact statement

(f) review of any comments on the final environmental impact statement

(g) decision on the action based in part on the environmental impact statement." (40 CFR 1501.8(B)(2)).

e. General Objectives

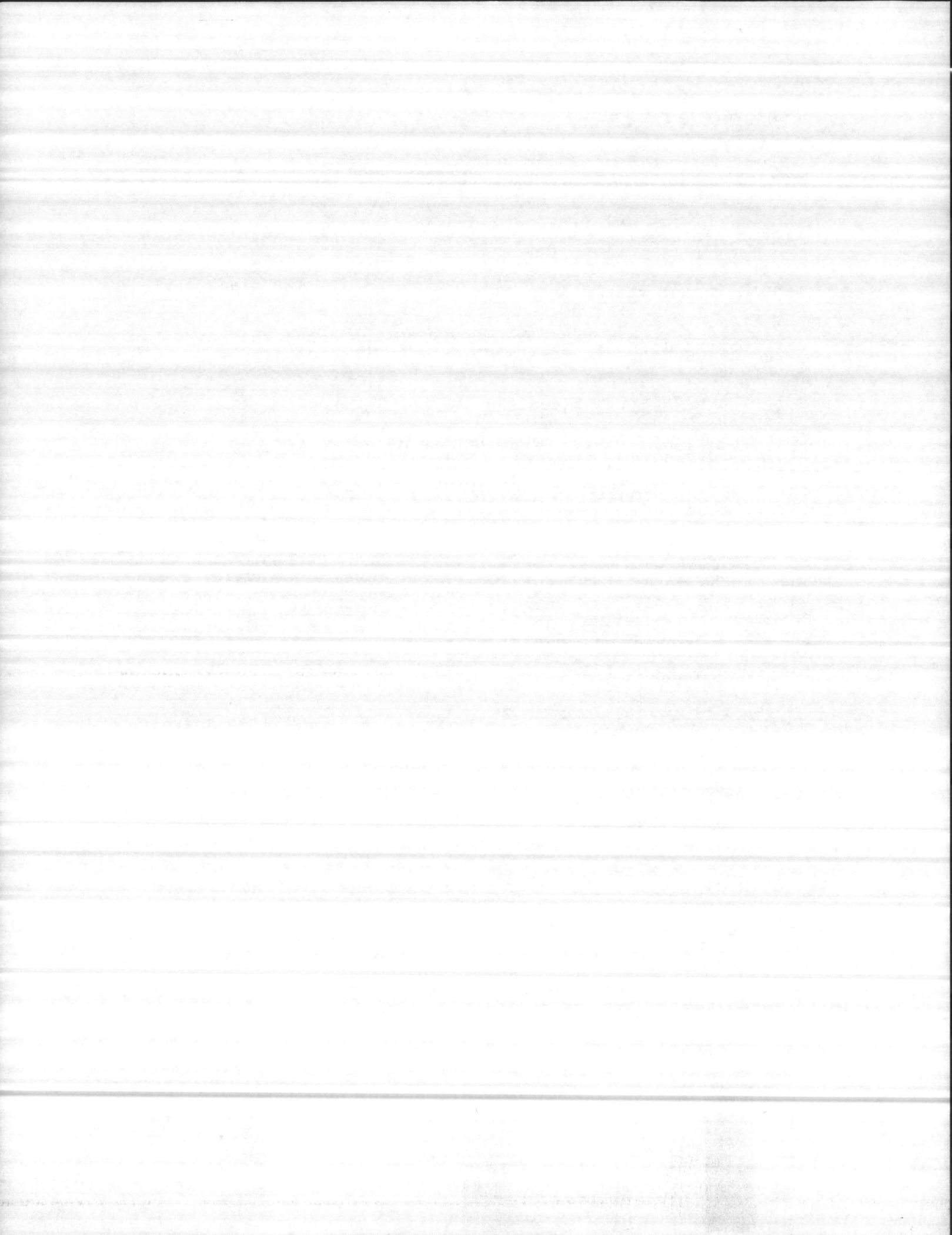
(1) The primary purpose of an ES is to serve as an action forcing device to insure that the policies and goals of the NEPA are infused into the ongoing programs and actions of the Navy. It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Statements shall be concise, clean and to the point, and shall be supported by evidence that the Navy, as a whole, and the responsible command in particular, has made the necessary environmental analyses. To achieve the goal of a concise and useful statement, major claimants, designated or subordinate commands shall prepare ES's in the following manner:

(a) ES's shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact there should be only enough discussion to show why more study is not warranted.

(c) ES's shall be kept concise and no longer than absolutely necessary to comply with NEPA, these regulations and those promulgated by the CEQ which are applicable to the Department of the Navy. Length should vary first with potential environmental problems and then with project size.

(d) ES's shall state how alternatives considered in it and decisions based upon it will or will not achieve the requirements of section 101 and 102(1) of the act and other environmental laws and policies.



(e) The range of alternatives discussed in ES's shall encompass those to be considered by the ultimate Navy decision maker, or as directed by the lead agency if the Navy is a cooperating agency.

(f) Cognizant commands shall not commit resources prejudicing selection of alternatives before making a final decision.

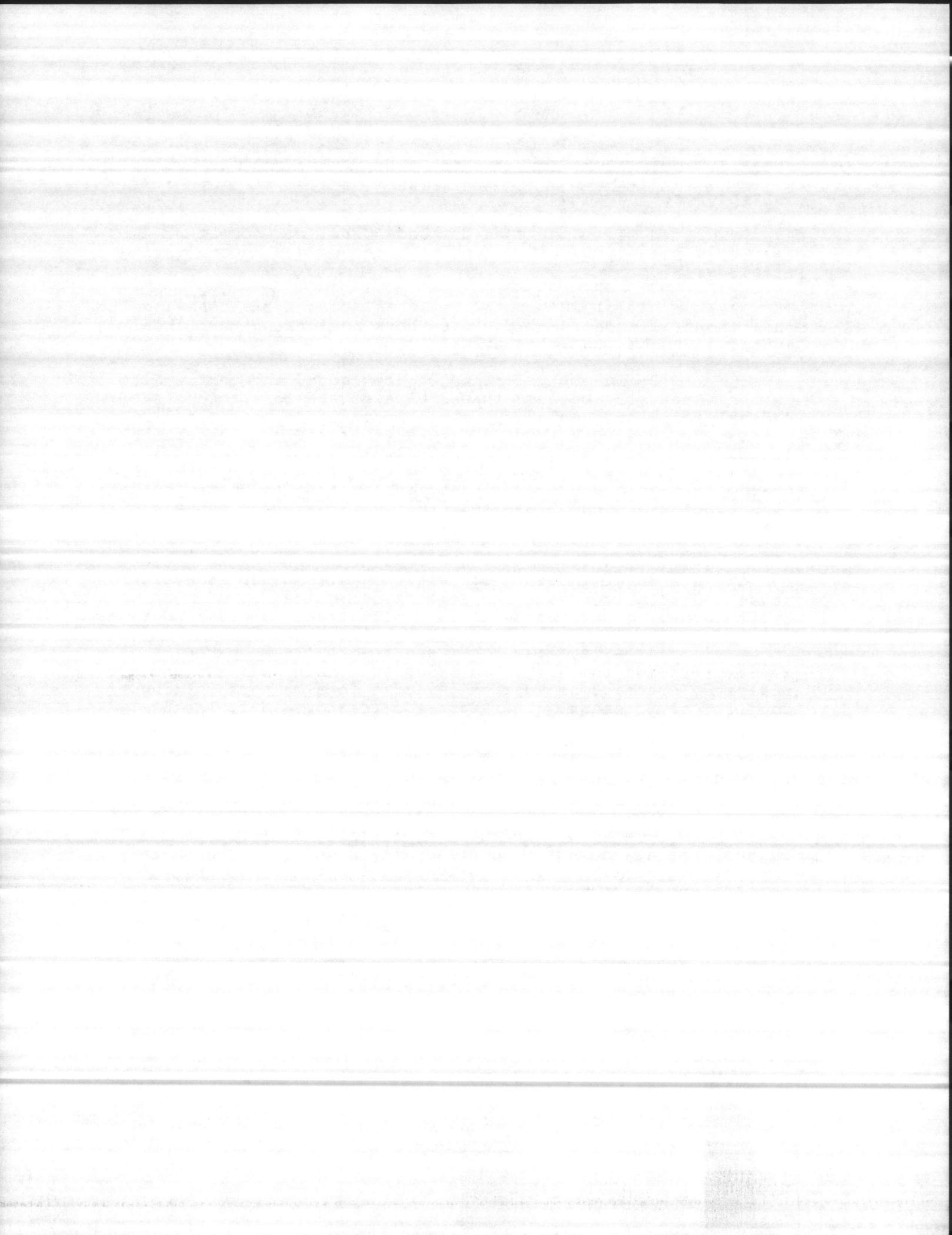
(g) ES's shall serve as a means of assessing the environmental impacts of proposed Navy actions, rather than justifying decisions already made.

(2) In amplification of the above, the text of the ES shall normally be less than 150 pages and for proposals of unusual scope or complexity, shall normally be less than 300 pages. Every effort should be taken to restrict the document to only the pertinent facts and exclude purely extraneous material not directly applicable to the expected impact. The statement must contain sufficient information and baseline data to support the conclusions reached. Data may be appended to the statement as appendices, unless too bulky.

(3) In developing and obtaining information needed for the statement informal consultation with other Federal, state and local agencies, as well as communication with environmental groups and citizens' organizations, is encouraged.

(4) ES's, like EA's, are frequently prepared by contractors for the Navy. In order to obtain fair and unbiased analyses, contractors must be selected in a manner avoiding any conflict of interest. Therefore, contractors shall execute disclosure statements specifying they have no financial or other interest in the outcome of the project. Furthermore, it is essential that the contractor's efforts be closely monitored throughout the contract to not only produce an adequate assessment/statement, but also to avoid extensive, time-consuming, costly revisions (to obtain an adequate product) frequently occasioned by a tardy review of a partially finished product. Further, managers must be continuously involved as technical support organizations frequently lack the detailed chain of command knowledge necessary to guide contractor efforts.

(5) To eliminate duplication with state and local procedures, and unless barred from doing so by some other law, commands shall cooperate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and state and local requirements. Such cooperation shall include



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- (a) joint planning processes
- (b) joint environmental research and studies
- (c) joint public hearings (except where otherwise provided by statute).
- (d) joint environmental assessments
- (e) joint environmental statements, however, the Navy must be accorded the position of joint lead agency or coordinating agency.

(6) The major claimant, designated or subordinate command may adopt a Federal DES or FES or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement.

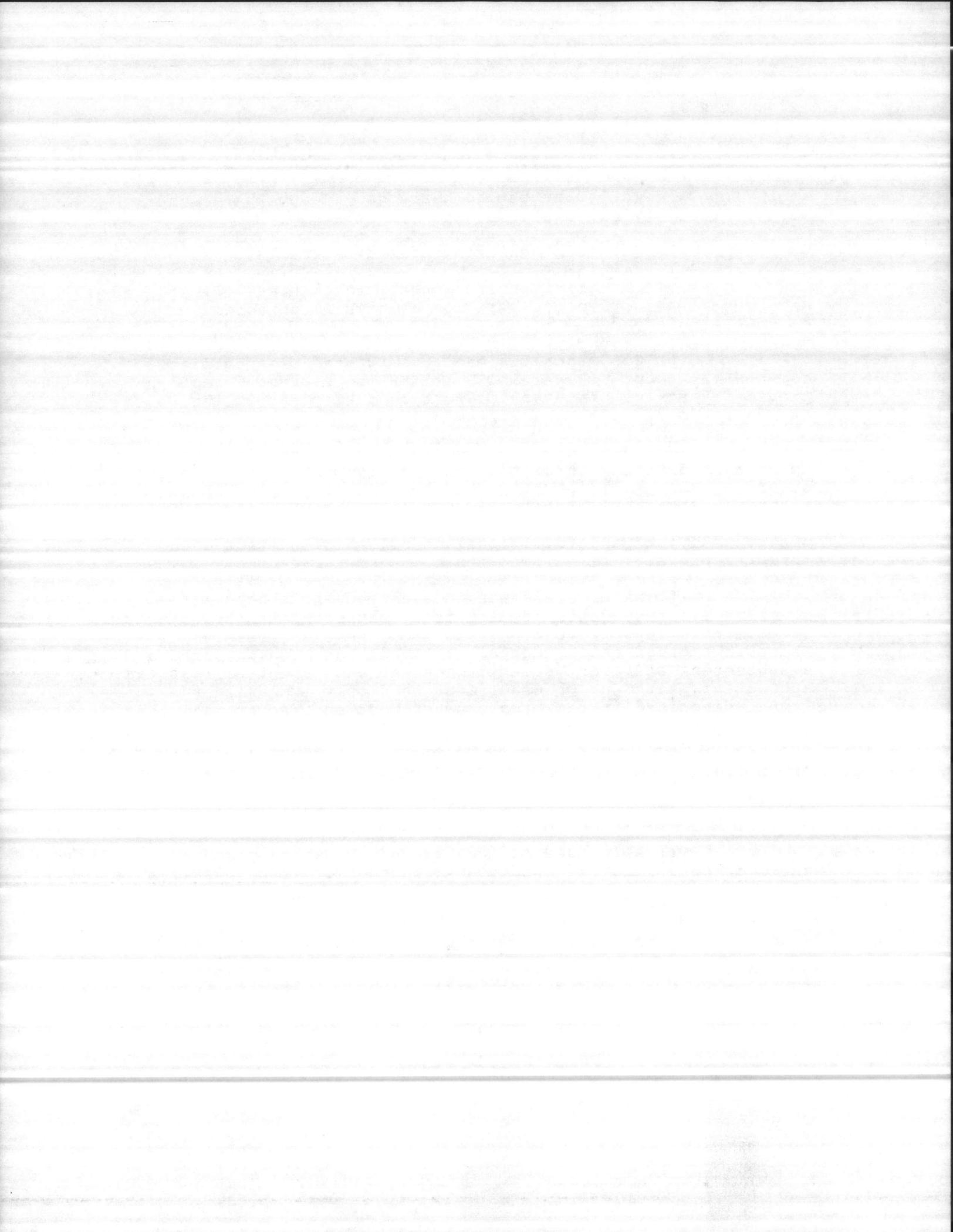
(7) Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the responsible major claimant shall advise CNO (Op-45), who will facilitate additional consultation with the CEQ about alternative arrangements. "Advise" and "additional consultation" do not mean "prior approval".

(8) Major claimants, designated and subordinate commands are encouraged to tier their environmental statements to eliminate repetitive discussions of the same issue. Whenever a broad environmental statement has been prepared and a subsequent statement or environmental assessment follows the issues discussed in the broader statement and incorporate the discussions by reference. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions." (See generally 40 CFR 1502).

f. Format

(1) All pages of the original document prepared shall be on 8 x 10 1/2 inch bond, although it is permissible to use fold-out sheets as long as the 10 1/2 inch vertical dimension is retained.

(2) For each EA, DES and FES prepared, an estimate of preparation costs against the categories identified below shall be prepared and submitted with, but not affixed to, the basic document:



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- (a) Directly associated research costs.
- (b) Contract and consultant costs directly related.
- (c) Indirect, but related, costs.

(3) The following format will be utilized for all assessments and statements:

(a) "Cover Sheet. The cover sheet shall not generally exceed one page and shall include:

(i) A list of the responsible contributors including the lead agency and any cooperating agencies.

(ii) The title of the proposed action that is the subject of the environmental analysis (and if appropriate the titles of related cooperating agency actions), together with the state(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(iii) The name, address and telephone number of the person at the responsible command who can supply further information.

(iv) A designation of the analysis as an assessment, draft or final environmental statement or draft or final supplement.

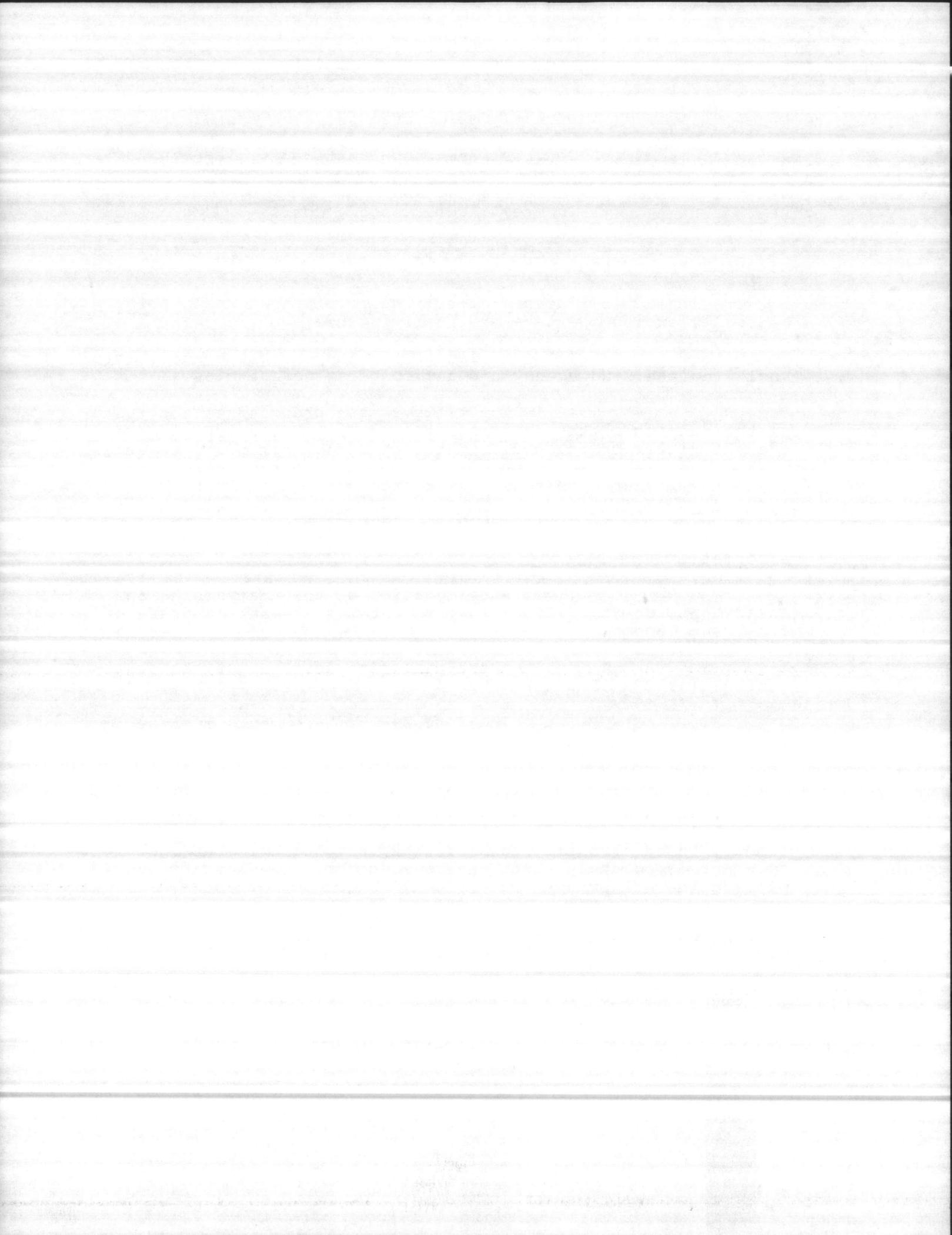
(v) A one paragraph abstract of the statement." (40 CFR 1502.11)

(vi) The date by which comments must be received, calculated in accordance with the procedures set out in paragraph 4402j(1)(b).

(b) "Summary. Each environmental analysis (statement) shall contain a summary which adequately and accurately summarizes the statement." (40 CFR 1502.12) The summary sheet(s) shall appear at the very beginning of the document immediately after the cover sheet. The summary must provide the following:

(i) Indication of whether the analysis is an assessment or a draft or final environmental statement.

(ii) The name of the action and whether it is administrative or legislative.



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(iii) A brief description of the action and what geographical region (including state and county, as applicable) is particularly affected.

(iv) A summary of the environmental impact, particularly adverse environmental effects, and major mitigating actions required.

(v) A list of alternatives considered.

(vi) A statement as to whether the action is anticipated to have significant environmental impact or will be environmentally controversial.

(vii) For draft statements, list all Federal, state and local agencies from which comments have been requested. For final statements, list all Federal, state and local agencies and other sources from which written comments have been received.

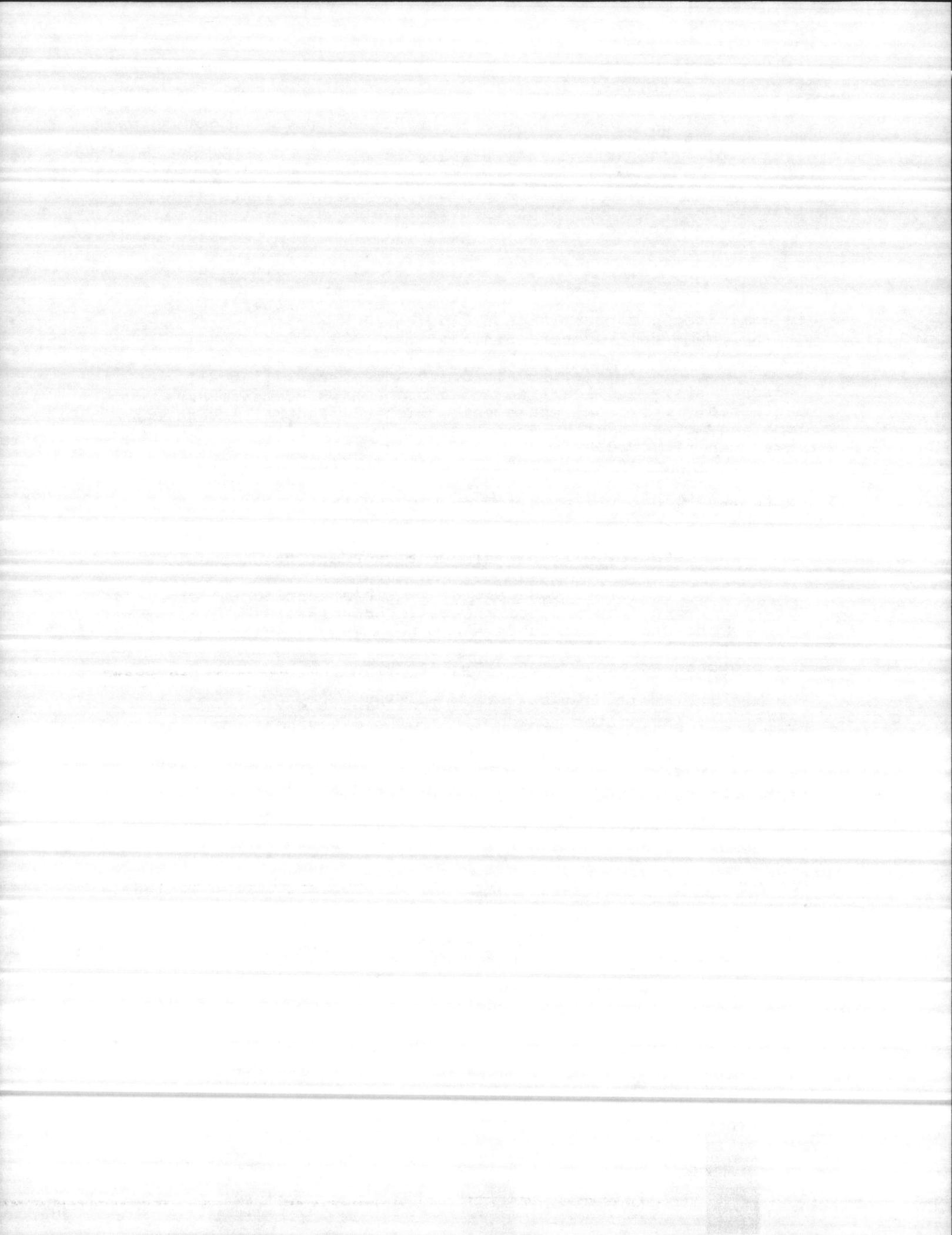
(viii) The date the draft and final statements were made available to the CEQ and the public (Op-45 action).

The summary will normally not exceed fifteen pages.

(c) Purpose and Need. This section (which actually begins the body of the basic document) "shall briefly specify the underlying purpose and need (background) to which the Navy is responding in presenting the alternatives including the proposed action." (40 CFR 1502.13)

(d) "Alternatives Including the Proposed Action. This section is the heart of the environmental assessment or statement. Based on the information and analysis presented in the sections entitled EXISTING ENVIRONMENT (subsection e) and the ENVIRONMENTAL CONSEQUENCES (subsection f), it should present the environmental impacts of the proposal and the alternatives in comparative (matrix) form, thus sharpening the issues and providing a basis for choice among the options by the decision maker and the public." (40 CFR 1502.14)

Alternatives to the proposed action include, where relevant, those not within the existing authority of the Navy. A rigorous exploration and objective evaluation of the environmental impacts of all reasonable alternative actions are essential, particularly those that might enhance environmental quality or avoid some or all of the adverse environmental

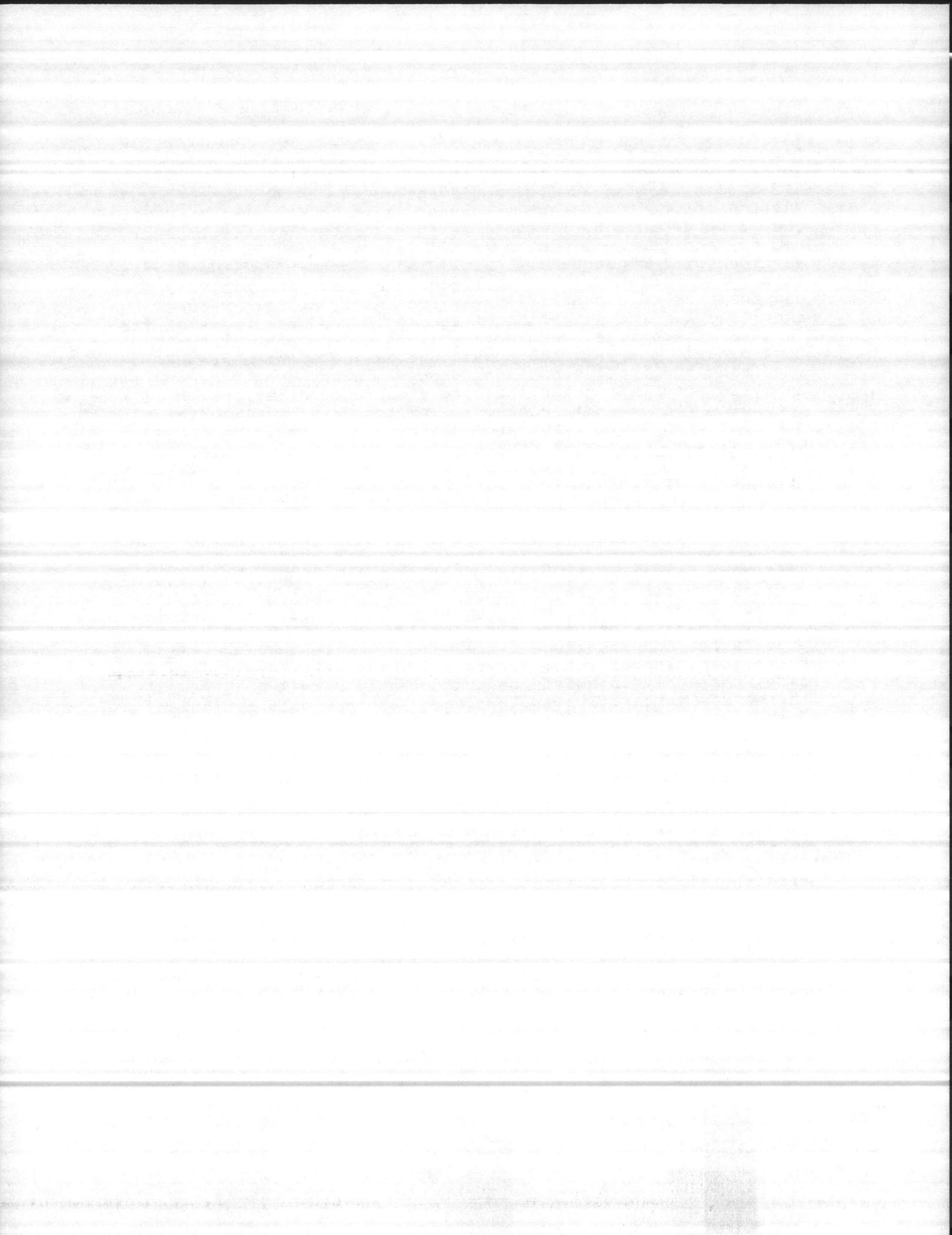


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effects. Sufficient analysis, if applicable, of such alternative and their environmental benefits, costs and risks should accompany the proposed action through agency review process. "If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the analysis as an aid in evaluating the environmental consequences." ... (W)hen a cost-benefit analysis is prepared, discuss the relationship between the analysis and any analysis of unquantified environmental impacts, values and amenities... (T)he weighting of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be where there are important qualitative considerations. In any event the analysis should at least indicate those considerations, including factors not related to environmental quality which are likely to be relevant and important to a decision." (40 CFR 1502.23) This will prevent premature foreclosure of options which might enhance environmental quality or have less detrimental effects.

Examples of alternatives include: the alternatives of taking no action or of postponing action pending further study; selecting actions of a significantly different nature which would provide similar benefits with different environmental impacts; different designs or details of the proposed action which would present different environmental impacts (including mitigation measures) and measures to provide for compensation of fish and wildlife losses, including the acquisition of land, waters and interests therein. In each case, the analysis should be sufficiently detailed to reveal the Navy's comparative evaluation of the proposed action and each reasonable alternative. In all cases, however, the alternative of not proceeding with the project or proposal must be evaluated.

(e) Existing Environment of the Proposed Action. This statement shall succinctly describe the environment of the area affected as it exists prior to a proposed action, i.e., a "baseline" description from which to compare the probable impact, including other Federal activities in the area(s) related to the proposed action and any reasonably anticipated non-Federal activities which are similar to the proposed action. The descriptions shall be no longer than necessary to understand the effects of the proposed action. The interrelationship and cumulative environmental impacts of the proposed action and the aforementioned related activities shall be presented in the analysis (statement). The amount of



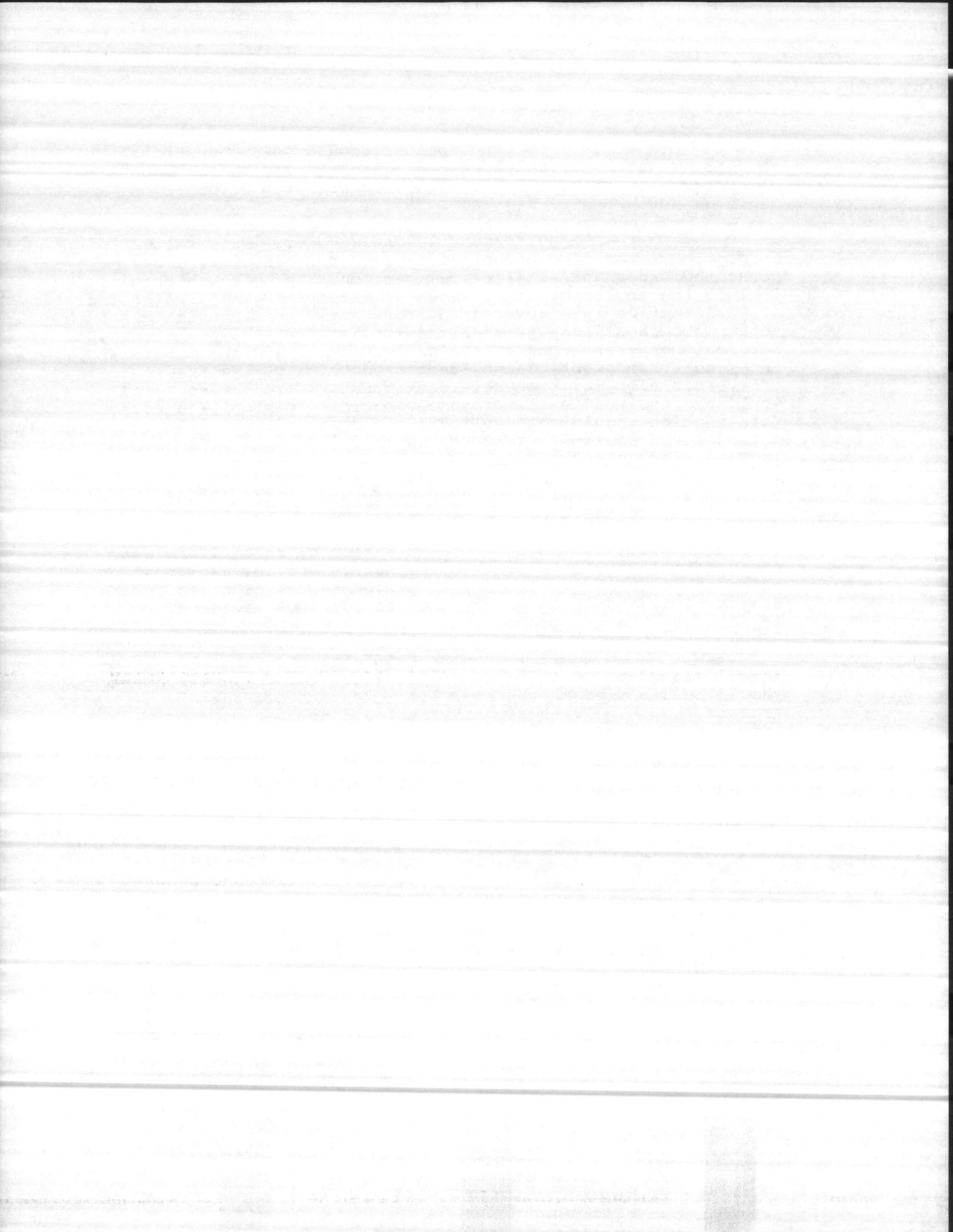
detail provided in such descriptions should be commensurate with the extent and impact of the action, and with the amount of information required at the particular level of decision making. (40 CFR 1502.15)

(f) Environmental Consequences. This section forms the scientific and analytic basis for the comparisons presented under the alternatives section. The discussion will include the environmental impacts of alternatives including the proposed action, any adverse environmental impacts which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate the discussions in the alternatives section. (CEQ Regulations 1502.16) It shall include discussions of:

(i) Direct effects and their significance, i.e., an assessment of the positive and negative effects of the proposed action, as it affects both the national and/or international environment. The attention given to different factors will vary according to the nature, scale, and location of proposed actions. Primary attention should be given in the statement to a discussion of those factors most evidently impacted by the proposed action.

(ii) Indirect Effects and Their Significance. Secondary or indirect consequences for the environment should be included in the analysis. Many major Federal actions, especially those that involve construction (for example, new installations, joint use of an installation, etc.), stimulate or induce secondary effects, in the form of associated investments and changed patterns of social and economic activities. Such secondary effects, by their impacts on existing community facilities and activities, by inducing new facilities and activities, or by changes in natural conditions, may often be even more substantial than the primary effects of the original action itself. For example, the effects of the proposed action on population and growth impacts should be estimated, if expected to be significant. An evaluation should be made of the effect of any possible change in population patterns or growth upon the resource base, including land use, water, and public services, of the area in question.

(iii) Possible Conflicts between the Proposed Action and the Objectives of Federal, Regional, State



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and Local (and in the case of a Reservation, Indian Tribe) Land Use Plans, Policies and Controls for the Area Concerned. This requires a discussion of how the proposed action may conform or conflict with the objectives and specific terms of approved or proposed Federal, state and local land use plans, policies and controls, if any, for the area affected, including those developed in response to environmental legislation. Where a conflict or inconsistency exists, the statement should describe the extent to which the Navy has reconciled its proposed action with the plan, policy or control. Full justification for the decision to proceed, notwithstanding the absence of full reconciliation should be stated.

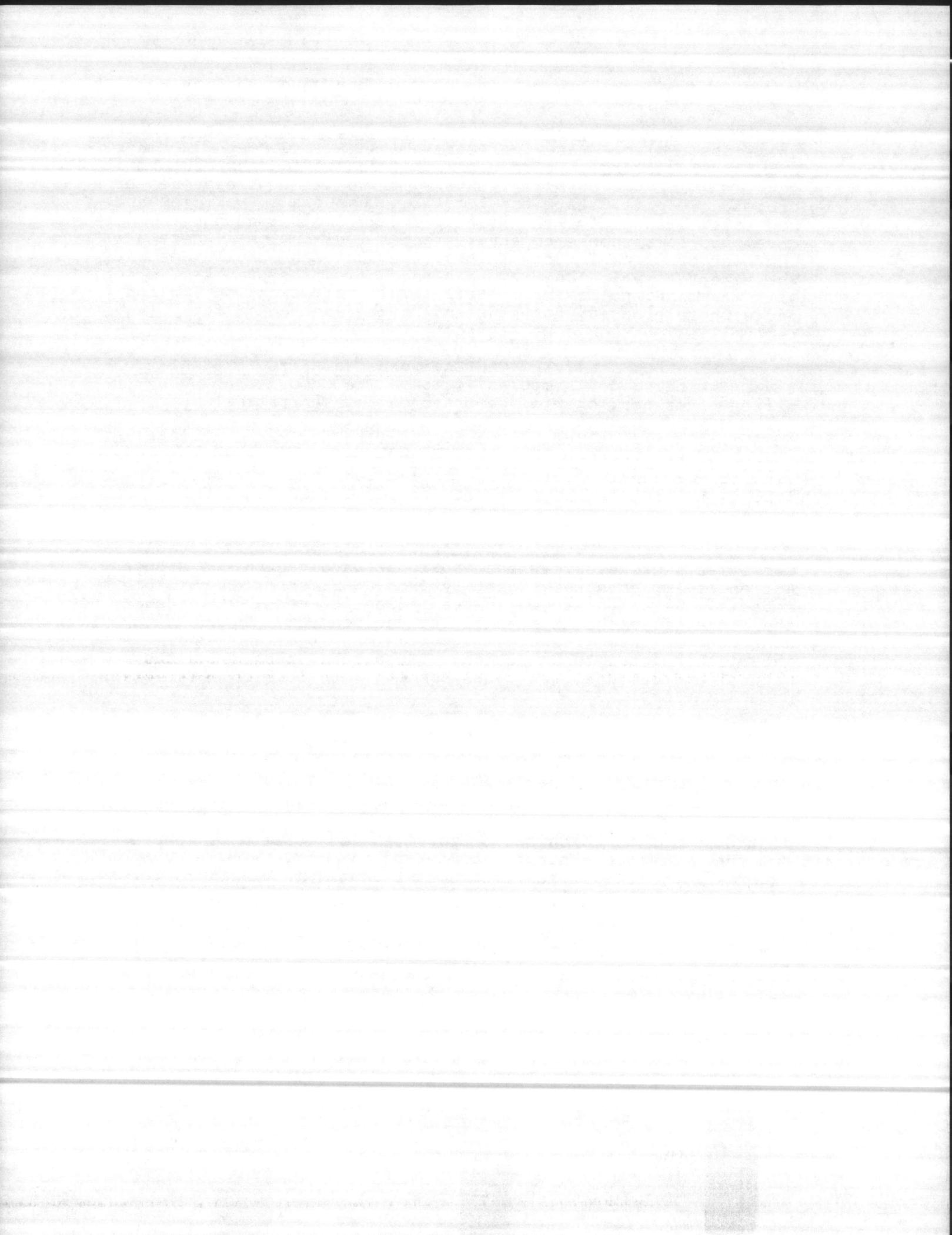
(iv) The Environmental Effects of Alternatives including the Proposed Action. The comparisons under the alternatives section will be based on this narrative.

(v) Energy Requirements and Conservation Potential of various alternatives and mitigation measures. In view of the energy situation, comment regarding the energy impact, to include the alternatives considered, should be addressed.

(vi) Any Irreversible and Irrecoverable Commitments of Resources that would be Involved in the Proposed Action if Implemented. Identify from a survey of unavoidable impacts, the extent to which the action irreversibly curtails the range of potential uses of the environment. Do not construe the term "resources" to mean only the labor and materials devoted to an action. "Resources" also means the natural and cultural resources committed to loss or destruction by the action.

(vii) Relationship Between Local Short-Term Use of Man's Environment and Maintenance and Enhancement of Long-term Productivity. A brief discussion of the extent to which the proposed action involves tradeoffs between short-term environmental gains and the expense of long-term losses or vice versa should be presented. It should also contain a discussion of the extent to which the proposed action forecloses future options. In this context, short-term and long-term do not refer to any fixed time periods, but should be viewed in terms of the environmentally significant consequences of the proposed action.

(viii) Urban Quality, Historic and Cultural Resources, and the Design of the Built Environment, including the Reuse and Conservation Potential of Various Alternatives and Mitigation Measures. (Self-explanatory).



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(ix) Means to Mitigate Adverse Environmental Impacts (if not previously) discussed. Indicate the extent to which countervailing benefits could be realized by following reasonable alternatives to the proposed action that would avoid some or all of the adverse environmental effects. In this connection, where appropriate and meaningful, and as dictated by the scope of the action addressed, cost benefit analyses of proposed actions may be attached, or summaries thereof, to the assessment or environmental statement. They should clearly indicate the extent to which environmental risk has been reflected in the analysis.

(x) Any Probable Adverse Environmental Effects which cannot be avoided should Proposal be Implemented. This should be a brief discussion summarizing in one place those effects previously discussed that are adverse, not amenable to mitigation, and unavoidable under the proposed action. (40 CFR 1502.16)

(g) List of Preparers. Environmental statements are to be prepared using an interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts. In order to ensure that this approach is undertaken, the statement shall list the names, together with their qualifications (expertise, experience, professional disciplines) of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement. Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages." (40 CFR 1502.17)

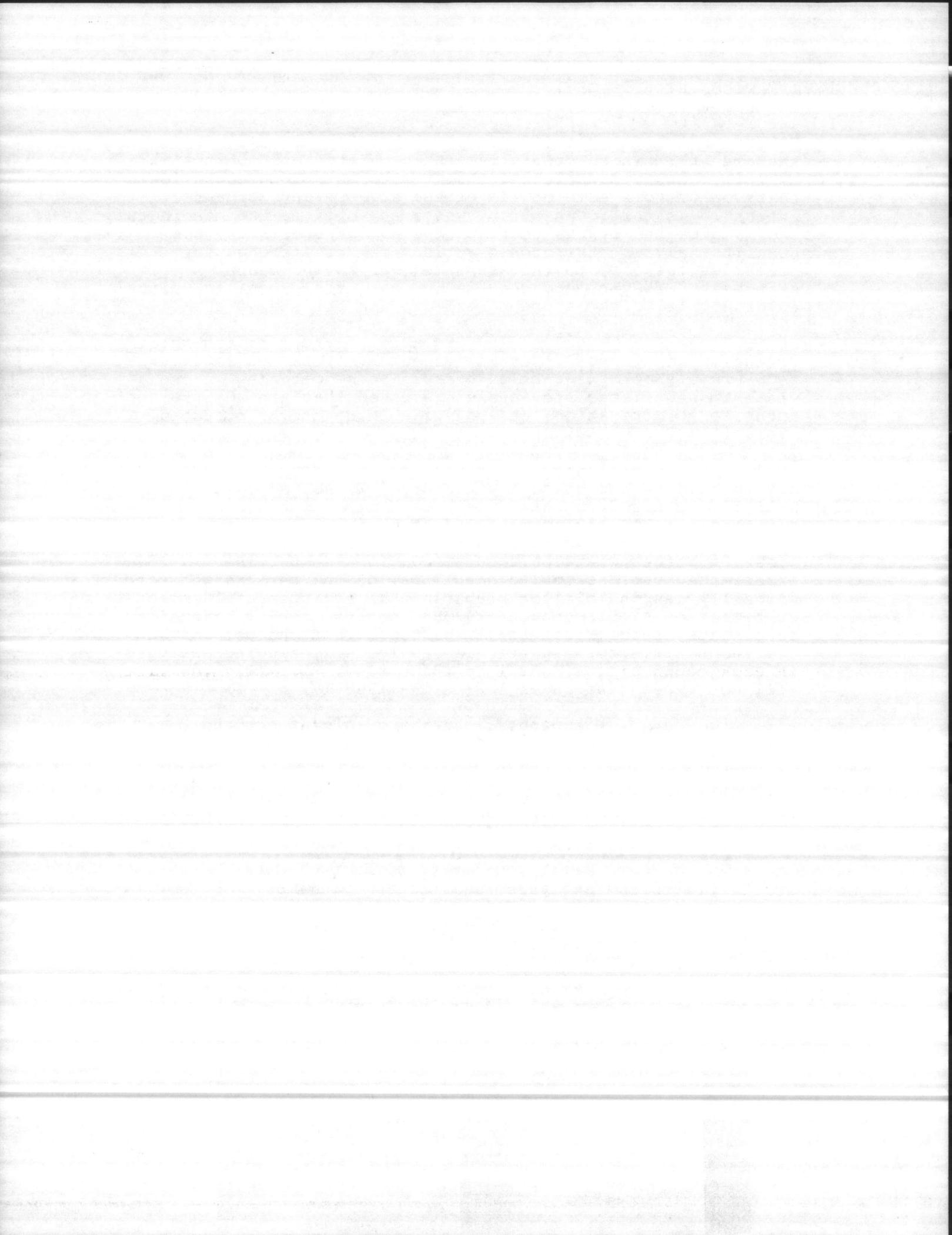
(g) Appendix. If the cognizant command "prepares an appendix to an ES, the appendix shall:

(i) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference).

(ii) Normally consist of material which substantiates any analysis fundamental to the ES.

(iii) Normally be analytic and relevant to the decision to be made.

(iv) Be circulated with the ES or readily available upon request." (40 CFR 1502.18)



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g. Incorporation by Reference. To the extent practicable, commands preparing Environmental statements "shall incorporate material into an ES by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference." (40 CFR 1502.21)

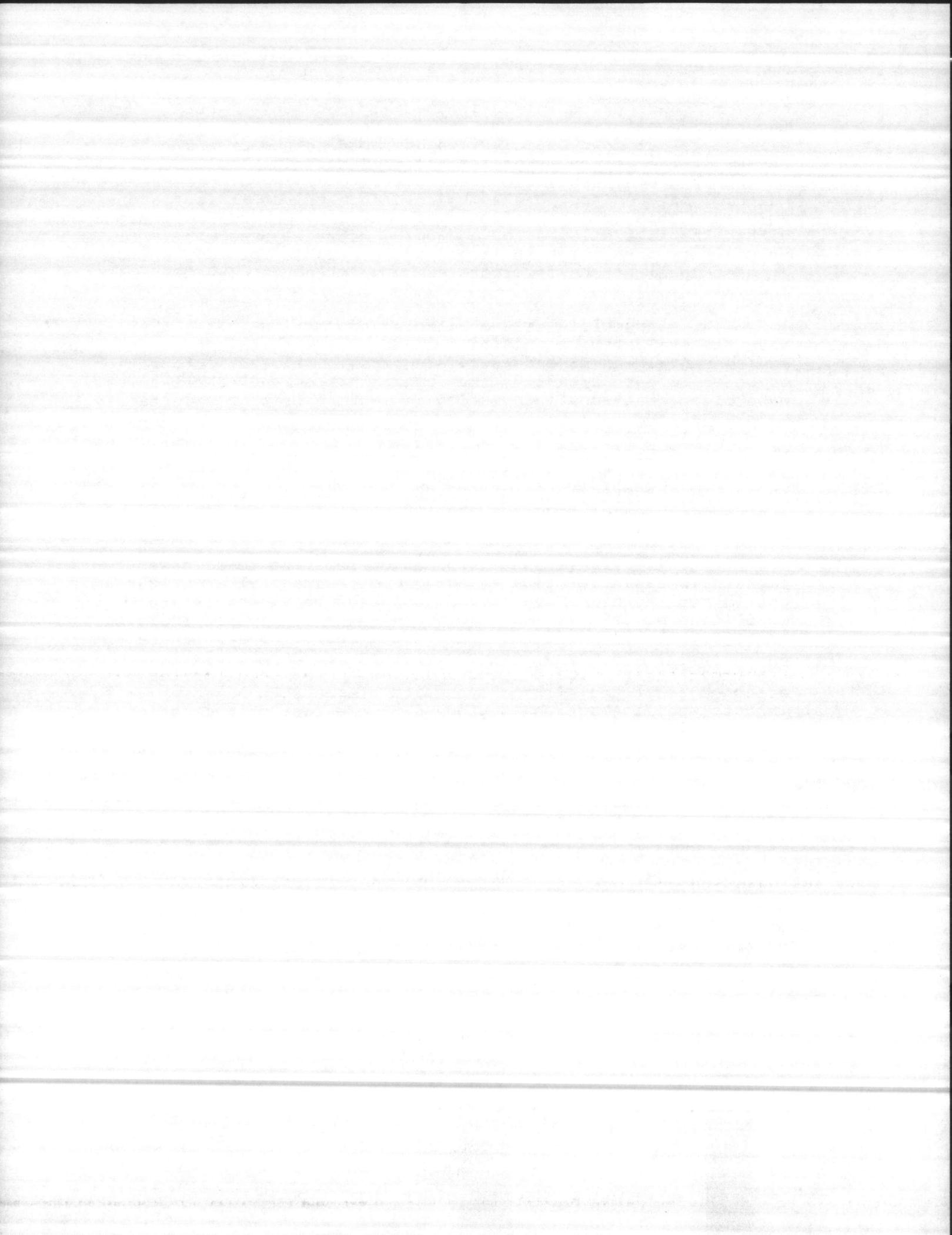
h. Incomplete or Unavailable Information. When the Navy "is evaluating significant adverse effects on the human environment in an ES and there are gaps in relevant information or scientific uncertainty, the "cognizant command" shall always make clear that such information is lacking or that uncertainty exists.

(1) If the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining are not exorbitant, the "command" shall include the information in the environmental impact statement.

(2) If, (a) the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are exorbitant or (b) the information relevant to adverse impacts is important to the decision and the means to obtain it are not known (e.g., the means for obtaining it are beyond the state-of-the-art) the command shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. In this event, the command shall include a worst case analysis and an indication of the probability or improbability of its occurrence." (40 CFR 1502.22)

i. Processing the Draft Environmental Statement within the Navy. The DES shall be processed as illustrated in Figure _____, and as follows:

(1) The cognizant major claimant, designated or subordinate command shall submit fifteen copies to CNO (Op-45) via the chain of command. If the proposed DES concerns matters which can be expected to generate considerable public interest or controversy, a copy of the statement and all subsequent



correspondence shall be furnished to the Chief of Information by CNO (Op-45).

(2) In his forwarding endorsement, the appropriate major claimant/command or his agent should provide recommendations relative to further disposition if applicable.

(3) After CNO (Op-45) receives the proposed DES, the statement shall be reviewed for an evaluation of the documented impact of the proposed action on the environment. If additional information is required, CNO (Op-45) will advise the major claimant.

(4) If the document is to be filed as a DES, CNO (Op-45) shall forward it to the Office of the Secretary of the Navy for filing with EPA.

(5) If the Office of the Secretary of the Navy does not concur that the document should be filed, the statement may be redesignated an environmental assessment and returned.

(6) Once the decision is made to file a statement, the originator may be required to coordinate with or provide CNO with additional copies of the draft statement for distribution. The number of copies is primarily dependent on the action contemplated.

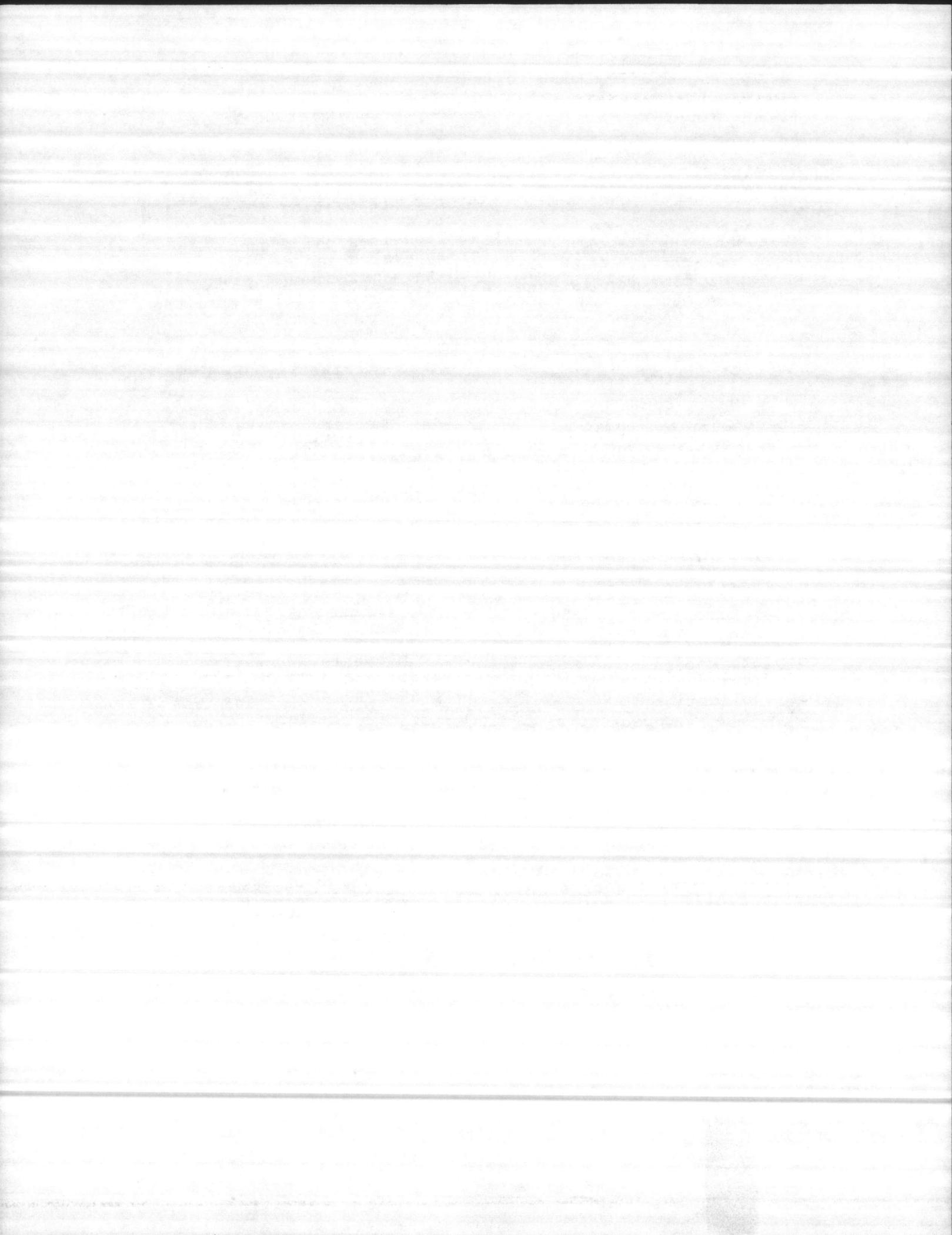
j. Circulating Navy approved Draft and Final Environmental Statements

(1) Draft environmental statements. Normally, complete copies of the DES shall be forwarded by CNO (Op-45) for distribution in accordance with 40 CFR 1502.19 and to EPA for publication in the Federal Register. However, if the statement is unusually long, summaries of the DES may be circulated where authorized, in accordance with CEQ regulations. CNO (Op-45) should be notified if it is anticipated to circulate summaries.

(a) In conjunction with the foregoing distribution, specific comments shall be requested from:

(i) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce standards applicable to the proposed action.

(ii) Appropriate state and local agencies



which are authorized to develop and enforce standards applicable to the proposed action.

(iii) Indian tribes, when the effects may be on a reservation.

(iv) Any agency which has requested it receive statements on actions of the kind proposed.

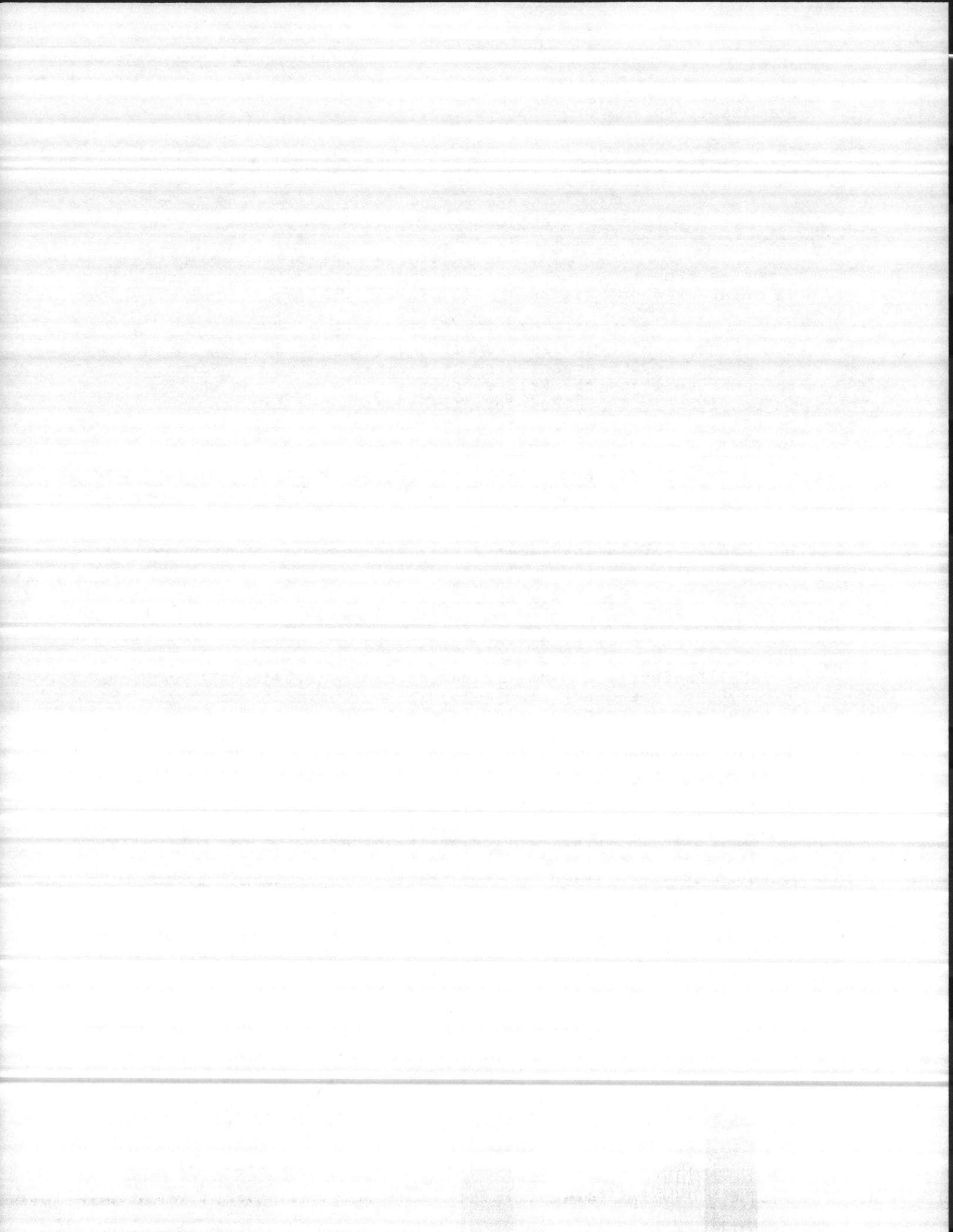
(v) The public, affirmatively soliciting comments from those persons or organizations who may reasonably be interested or affected. (40 CFR 1503.1A)

(b) A minimum of forty-five days is allocated for agency/public review, commencing with the date on which notice of the DES appears in the Federal Register. Normally this date will be the Friday following the week the statement is received by EPA. However, if, after summaries are circulated (paragraph (1)(a), above, the Navy thereafter received a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least fifteen days beyond the minimum period.

(c) As part of the review process, public hearings may be held. (See Part 5 for further information.)

(2) Final Environmental Statements.

(a) After the passage of a minimum sixty days from the date the announcement of the draft appears in the Federal Register, a final statement can be filed. All comments received of the draft statement will be forwarded to the originator for incorporation into the FES. After review of the comments and views received, the originator shall prepare a single document setting forth all changes made to the draft statement. Where comments reveal previously unrecognized impacts or changes to identified impacts, sufficient analysis thereof shall be included. Reproduction of individual comments received from agencies and the public where relevant shall be accomplished; however, inclusion of verbatim records of public hearings is discouraged. Consideration of the hearings can be ensured by summarizing those comments under relevant topic headings, followed by an appropriate response. A meaningful response to all responsible opposing views which have not been adequately addressed in the draft shall be included. "Possible responses in the final environmental statement include:



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- proposed action.
- (i) - modify alternatives including the
 - (ii) develop and evaluate alternatives not previously given serious consideration.
 - (iii) supplement, improve or modify the analyses.
 - (iv) make factual corrections
 - (v) explain why the comments do not warrant further response, citing the sources, authorities, or reasons which support such a position, and, if appropriate, indicate those circumstances which would trigger a reappraisal or further response." (40 CFR 1509.4A)

Where Navy response to comments can be accomplished by referencing sections contained in the DES, pertinent sections should be clearly identified in the response.

(b) After preparation of the final environmental statement, the originator will again forward a minimum fifteen copies of the statement to CNO (Op-45) for review and appropriate disposition. If the statement is to be distributed locally, phone coordination shall be completed with OP-45. Additionally, if the FES is unusually long, summaries of the FES may be circulated as with the DES.

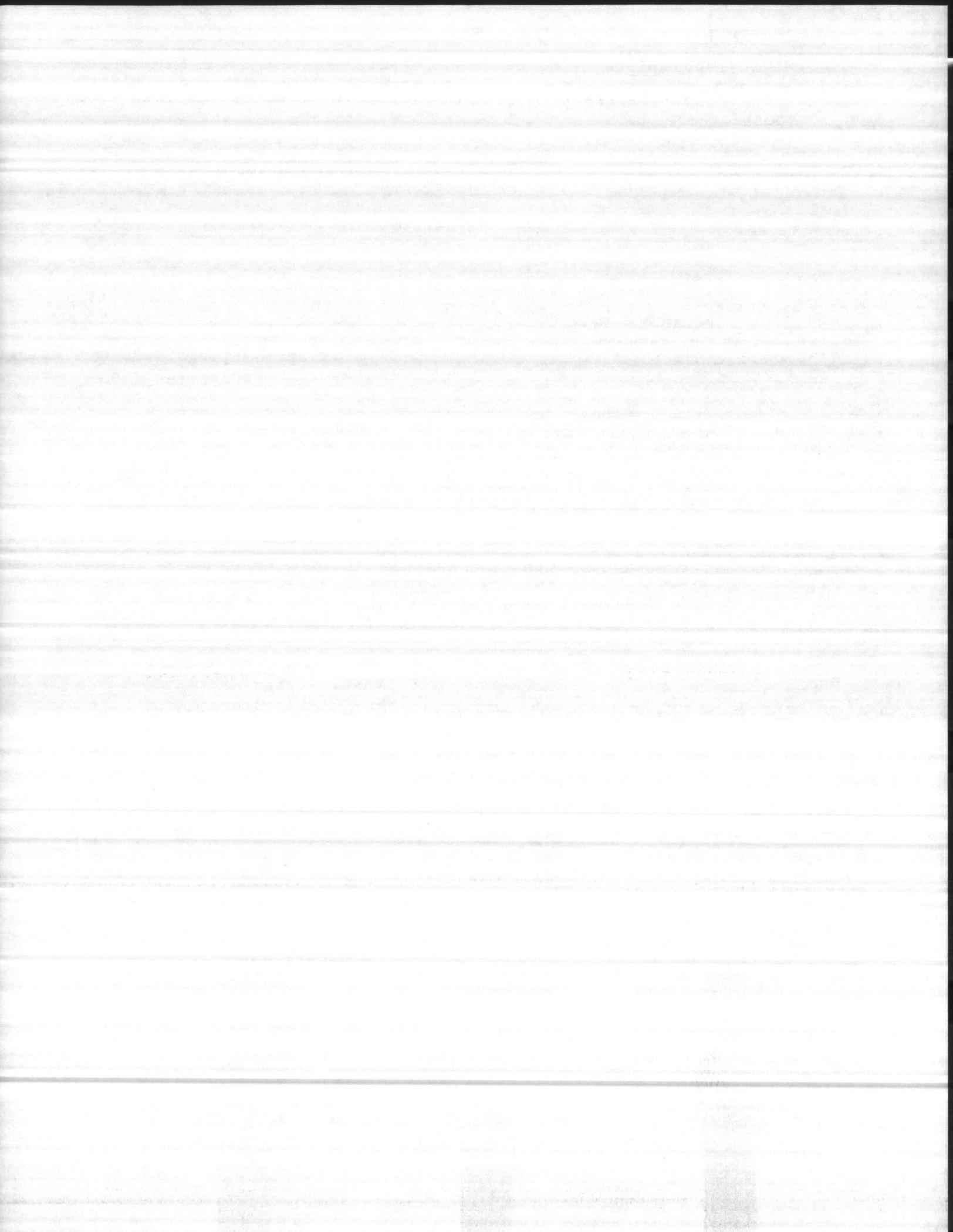
k. Document of Decision

(1) Preparation of an environmental statement is meaningless unless it is considered by the decision maker on the proposed action. To this end, CNO (Op-45) will ensure that a copy of the FES is provided to the appropriate command level for the consideration of the decision maker.

(2) "No decision which would result in the irretrievable commitment of natural resources or substantial amounts of money shall be made on a proposed action until the later of the following dates:

(a) Ninety (90) days after publication of the Federal Register notice announcing the filing of the DES with EPA, or

(b) Thirty (30) days after publication of the Federal Register notice of the filing of the FES with EPA."
(40 CFR 1506.106)



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(3) At the time of decision on the proposed action or recommendation to Congress, CNO (Op-45) shall prepare a concise public record of decision in accordance with CEQ regulations. After the record of decision has been prepared, CNO (OP-45) will arrange for its publication in the Federal Register.

l. Classified Environmental Assessments and Statements. The fact that a proposed action is of a classified nature does not relieve the proponent of the action from complying with the requirements of this directive. Environmental statements, both draft and final, as well as assessments, shall be prepared, safeguarded, and disseminated in accordance with the requirements applicable to classified information, DoD Regulations 5200.1-R and OPNAVINST 5510.1D. When feasible, these documents shall be organized in such a manner that classified portions can be included as annexes, so that the unclassified portions can be made available to the public.

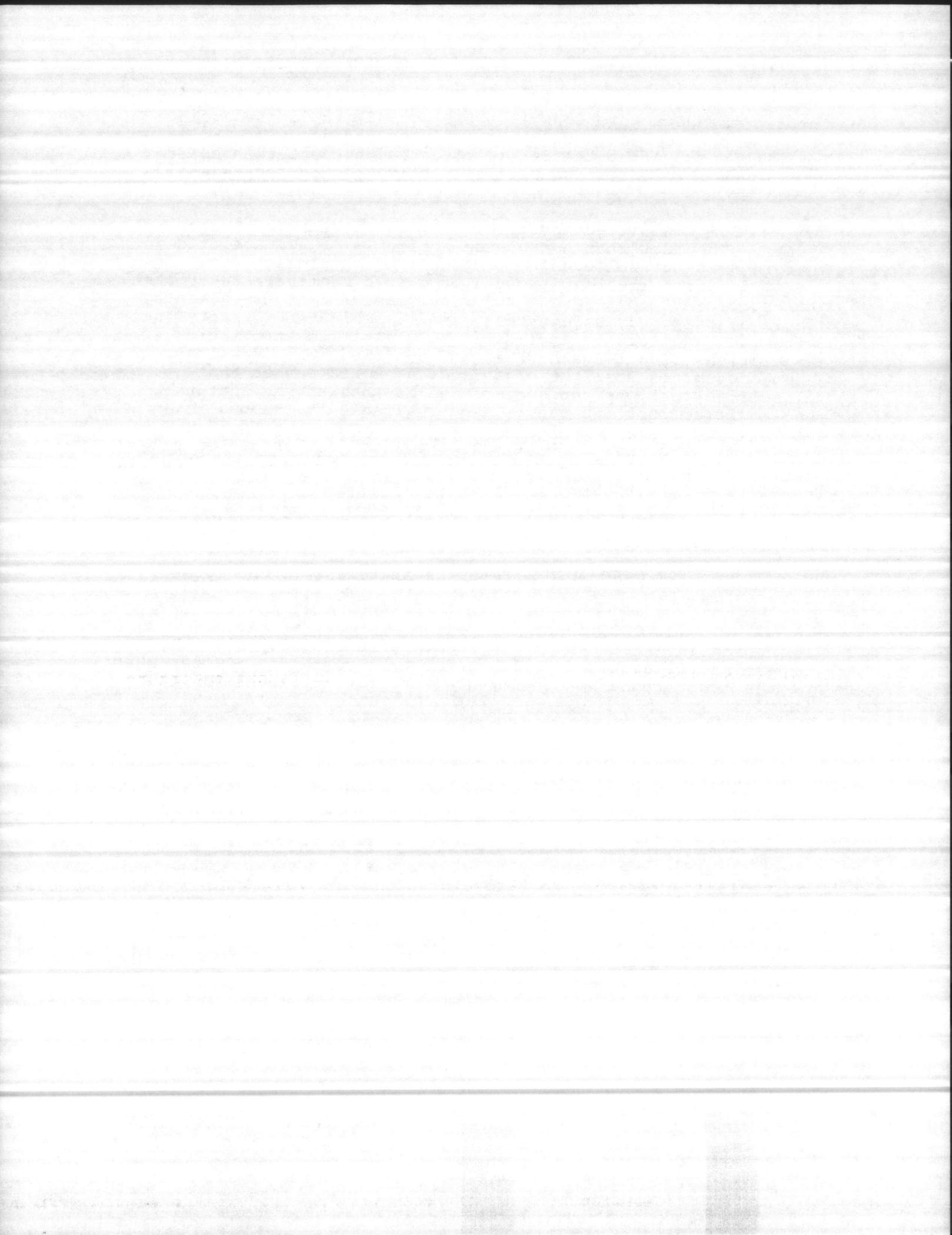
m. Processing Statements originated by other Federal Agencies. Environmental statements originated by other Federal agencies are to be processed as follows:

(1) The Federal agency originating the impact statement submits the statement to OASD(MRA&L) or DUSN.

(2) OASD/DUSN refers the statement to CNO (Op-45) for review.

(3) CNO, after independent review, and after referring the statement to the command or activity with the expertise for detailed review and return comments, advises DUSN of the concurrence/nonconcurrence with the statement for the Navy.

n. Processing Supplementary Statements. Supplements to either draft or final statements shall be prepared if there are substantial changes made in the proposed action which are relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Such supplements shall usually be prepared, circulated and filed in the same fashion as a draft or final statement. However, there is no necessity for scoping before drafting the document. Dependent upon the severity of the impacts forecast, the review time can be identical to that of the DES although such time should be determined on a case-by-case basis. The review time required shall be determined by Op-45 in consultation with the originator of the parent document.



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PART 5

RECOMMENDED PROCEDURES FOR CONDUCTING PUBLIC HEARINGS
UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT

4501. Discussion

a. In each case where a public hearing may be deemed appropriate, the CNO (Op-45) shall determine if a public hearing will be held. Hearings shall be conducted in accordance with guidelines and standards discussed herein.¹

b. Each public hearing must be tailored to meet the circumstances of the particular project under consideration.

4502. Guidelines and Standards. The following general guidelines are to serve as an aid in preparing for and conducting such hearings.

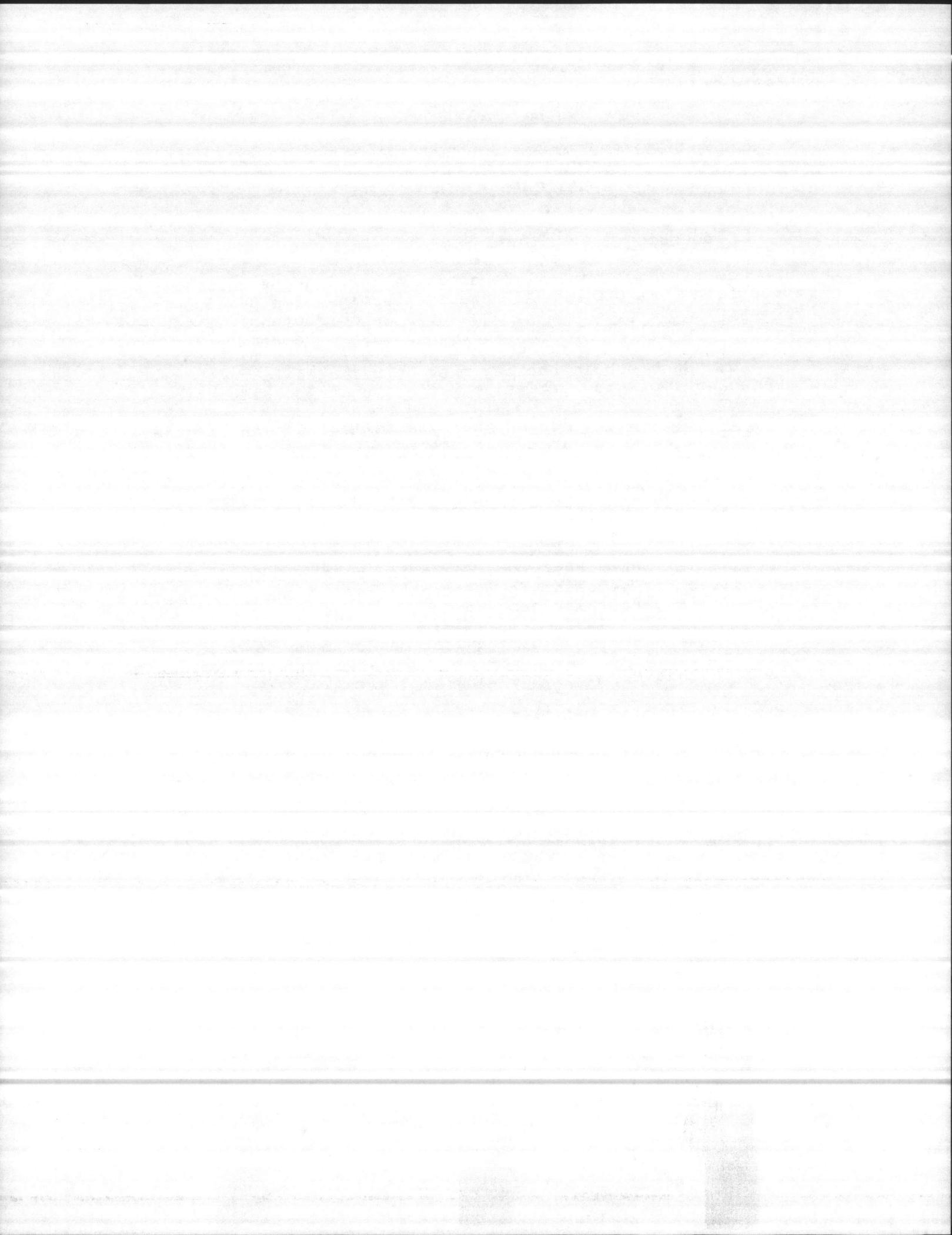
a. When a Hearing is Appropriate: When the DES is filed with EPA, CNO authorizes any public hearing to be held. Such hearings are appropriate in the following situations:

(1) Where the proposed action by the agency will have a direct or peculiar environmental impact on the people residing in a particular geographical area, or

(2) Where public organizations or members of the public possess expertise concerning the environmental impact of the action that may not otherwise be available.

(3) Where no overriding consideration of national security or time makes it illegal or impracticable to involve such organizations or members of the public in the consideration of a proposed action in which there is evidence of wide public interest.

¹The above is not intended to preclude local meetings with representatives of public or private agencies on such matters as schools, traffic, sanitation, utilities and city or area land use planning, as deemed appropriate.



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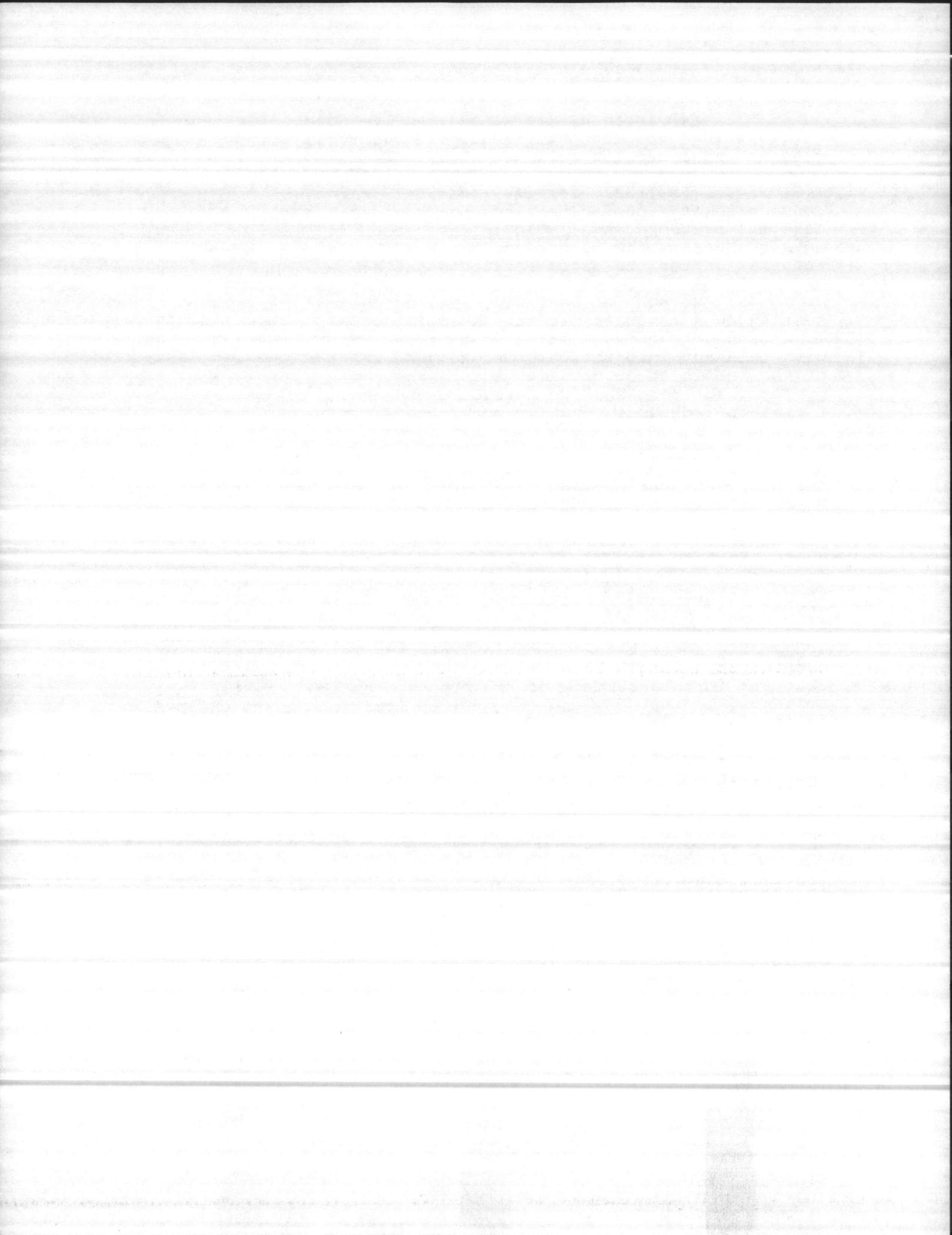
(4) A request for a hearing by another agency with jurisdiction over the action has been submitted supported by reasons why a hearing will be helpful.

(5) If a draft environmental statement is to be considered at a public hearing, the responsible command should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental statement).

b. Purpose of Hearings. The purpose of the public hearing on a proposed project is twofold. First, the hearing is intended to provide interested members of the general public with relevant information. Second, the hearing affords members of the public an opportunity to present their views of the proposed action. The two foregoing objectives dictate the format for conducting public hearings.

c. Notice of Hearing. If the proposed action does dictate that a hearing be held, the public must be advised of the proposed hearing via the Federal Register, at least fifteen days prior to the scheduled hearing. This notice is in addition to publication in local newspapers. Information to be published in the Federal Register should be forwarded to the Judge Advocate General of the Navy (Code 133) at least fifteen days prior to the scheduled publication date. Notification should include date, time, phone number of the hearing officer; the request that speakers submit in writing their intention to participate; any limitation on the length of oral statements; and should suggest that technical statements or statements of considerable length be submitted in writing. The notice should also set forth a summary of the proposed action, the findings contained in the DES, and the offices/locations where the DES is available for examination.

d. Availability of the Draft Environmental Statement to the Public. Copies of the DES should be available to the public at the appropriate regional offices of the Navy, if feasible. Copies of the DES should also be forwarded to the appropriate state, regional, and metropolitan clearinghouses (unless the governor of the state involved has designated some other point for receipt of this information), at the same time the statement is sent to (ASD(MRA&L), CEQ, EPA and other Federal agencies. The DES must be available to the public at least fifteen days prior to public hearings. Local outlets such as libraries, county commissioners' offices, etc., should be used whenever possible.

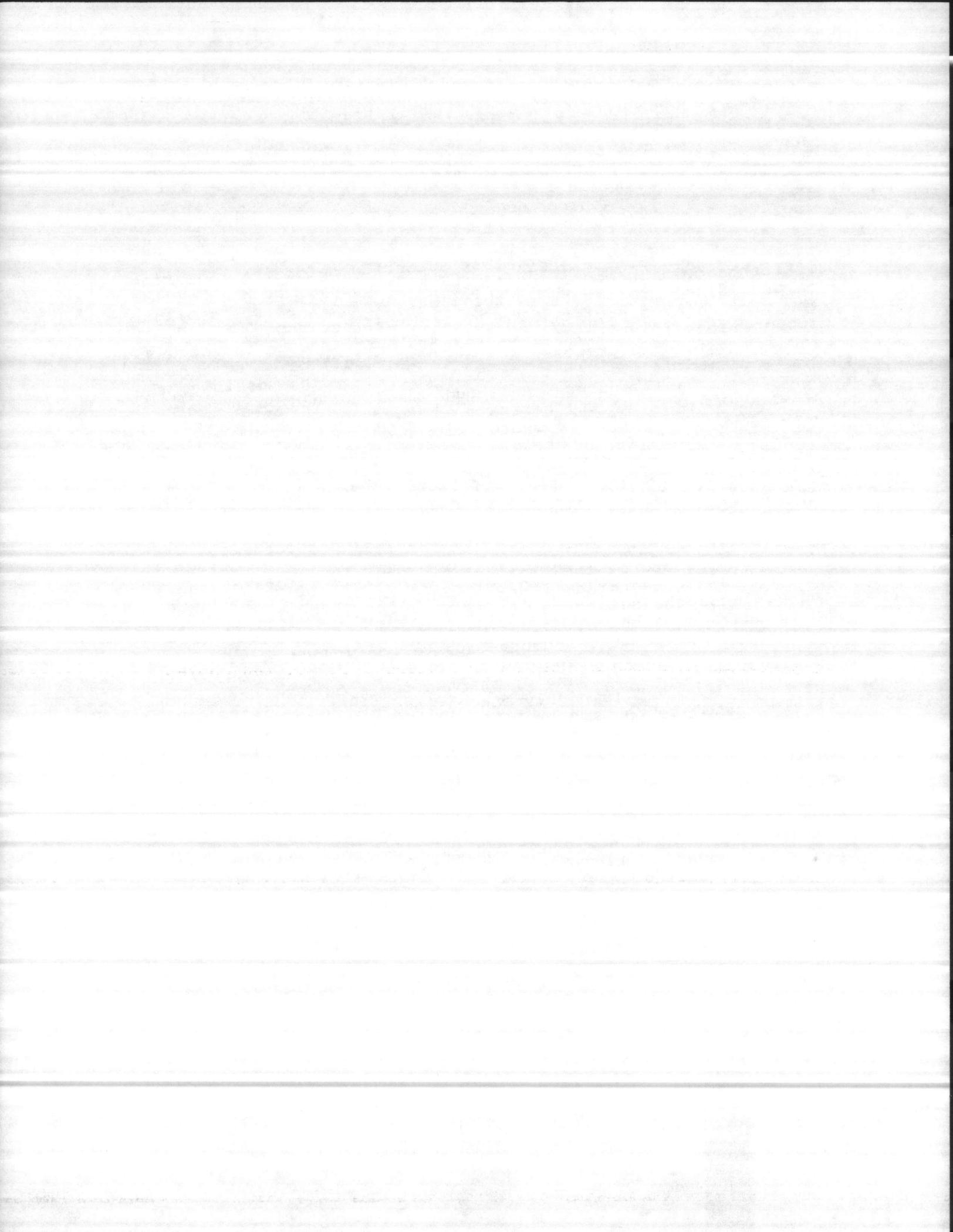


e. Location and Time of the Hearing. The hearing should be held at a time and place and in an area readily accessible to civilian organizations and individuals interested in the proposed action. It is generally preferable to hold the hearings in a civilian facility such as a high school auditorium or a weekday evening when these groups can reasonably be expected to attend.

f. Hearing Officer. The authority selecting a hearing officer should be cognizant of the dual purpose of the hearing in providing information to the public as well as soliciting the views of the public. The hearing officer should be of appropriate seniority, preferably military, and be thoroughly familiar with the proposed action. He should be of suitable temperament to preside at a public meeting with, possibly, the news media in attendance. Although there should be but one hearing officer, he may be assisted by other personnel who are also familiar with the proposed action or some phase of it. These personnel may be utilized in the presentation phase of the hearing to explain details or specialized portions of the proposed action, and later, to respond to specific questions raised at the meeting. If available, a Navy public affairs representative should monitor the hearing and assist Navy officials in dealing with news media covering the event.

g. Record of the Hearing. A verbatim record of the hearing is not required if the summarized record is accurate and reflects the substance of the hearing, including all positions set forth, all questions raised, and the responses thereto. An experienced court-reporter or stenographer may be used to advantage in preparing the record. In addition, a verbatim or tape recording of the hearing should be made when the issue involved is highly contentious or where litigation is likely. Statements made by U. S. Congressmen, their representatives, or other political figures attending the hearing should be set forth verbatim. All written exhibits submitted to the hearing officer during the hearing or prior to the record being completed should be appended to the record as exhibits. Also to be added is a list of persons attending the hearing, the organizations or interests they represent, and their addresses. Where practicable, a record of the hearing may be included as an annex to the final statement. Persons who have indicated that they desire a copy of the hearing may be mailed a copy when completed, subject to the user charges set forth in 37 Fed. Reg. 23719 (1972).

h. Hearing Format. The following format for the conduct of a NEPA hearing is provided as a general guideline.



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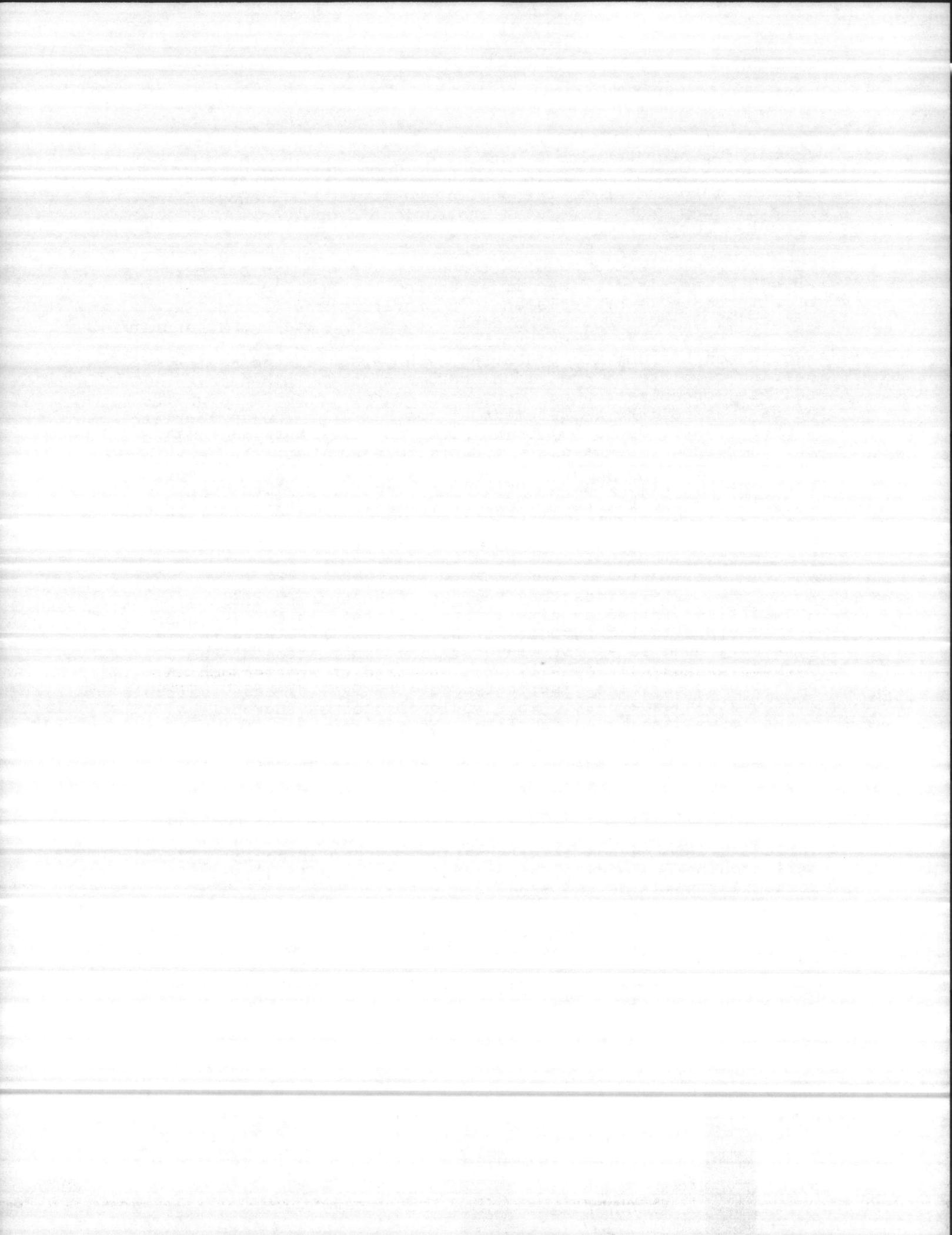
Hearing officers should feel free to improvise and tailor the format for each hearing as the circumstances dictate, to meet the objectives of the NEPA hearing. These objectives are to provide information to the public and to record the opinions of interested persons for later evaluation in conjunction with the proposed action.

(1) Recording of Attendees. The hearing officer should be apprised of who is attending the hearing. A record of attendance is of assistance in preparing the record, in recognizing individuals who desire to make a statement, and in mailing written answers to persons who desire them. This record can be compiled by having each person attending the hearing complete an individual card indicating his name, address, organization he is representing, if any, and whether he desires to make a statement at the hearing. An appropriate number of attendants may be utilized to distribute and collect the cards and to separate cards of those who desire to make a statement from those who do not. The cards may then be used by the hearing officer as an orderly system for calling upon individuals who desire to make statements. Additionally, those individuals responding to the announcement and requesting opportunity to speak should provide the text for the hearing proceedings.

(2) Introductory Remarks. The hearing officer should first introduce himself and any assistants, make a brief statement as to the purpose of the hearing, and state the general ground rules for conduct. The explanation of the purpose of the hearing will be simplified if written copies have previously been distributed to attendees or made available at the attendance desk. This would also be an appropriate point to welcome any dignitaries who are present. The hearing officer should ensure it is understood that he is not to make any decision as to whether the project is to proceed, be modified, or abandoned.

(3) Explanation of Proposed Action. The hearing officer should fully explain what the proposed action entails, including information on alternative courses of action. He may call upon one or more of his assistants to explain any particular phase of the program.

(4) Questions by Attendees. Following the explanation of the proposed action, the hearing officer should encourage questions to clarify points which may not have been understood. It may be necessary to reply to some of the questions at a later date in writing. In this case, the



hearing officer should assure that he has the name, address and question concerned, so an answer can be mailed to the person who posed it. The hearing officer should answer questions which seek information about the action, but should not attempt to respond to attacks on it. In brief, he is to answer "what" questions but not "why" questions. However, all questions asked should be included in the record of the hearing.

(5) Statement of Attendees. The persons attending the hearing must be afforded an opportunity to present oral and/or written statements. (The hearing officer should assure that he has the name and address of each person submitting an oral or written statement.) The attendees should be permitted to submit written statements during the hearing and within a reasonable time following the hearing. A reasonable length of time (5 minutes) should be allotted for oral statements, and if this action is contemplated, it should be publicized in the public notice of the hearing. Individuals who desire to make a written or oral statement, but did not indicate so on the card submitted when they entered the meeting, should be afforded an opportunity to do so after all other scheduled statements have been completed.

i. Adjournment. When it is time to adjourn the meeting, the hearing officer should thank the attendees and adjourn the meeting. It may be that attendance will warrant an additional day, perhaps at another time and location. If so, the hearing officer should announce the intent, but not normally agree to again repeat the entire procedure of publishing in the Federal Register, etc. At the conclusion of the meeting, the hearing officer should not express any opinion on the merits of the proposals or comments presented by anyone at the hearing.

PART 6

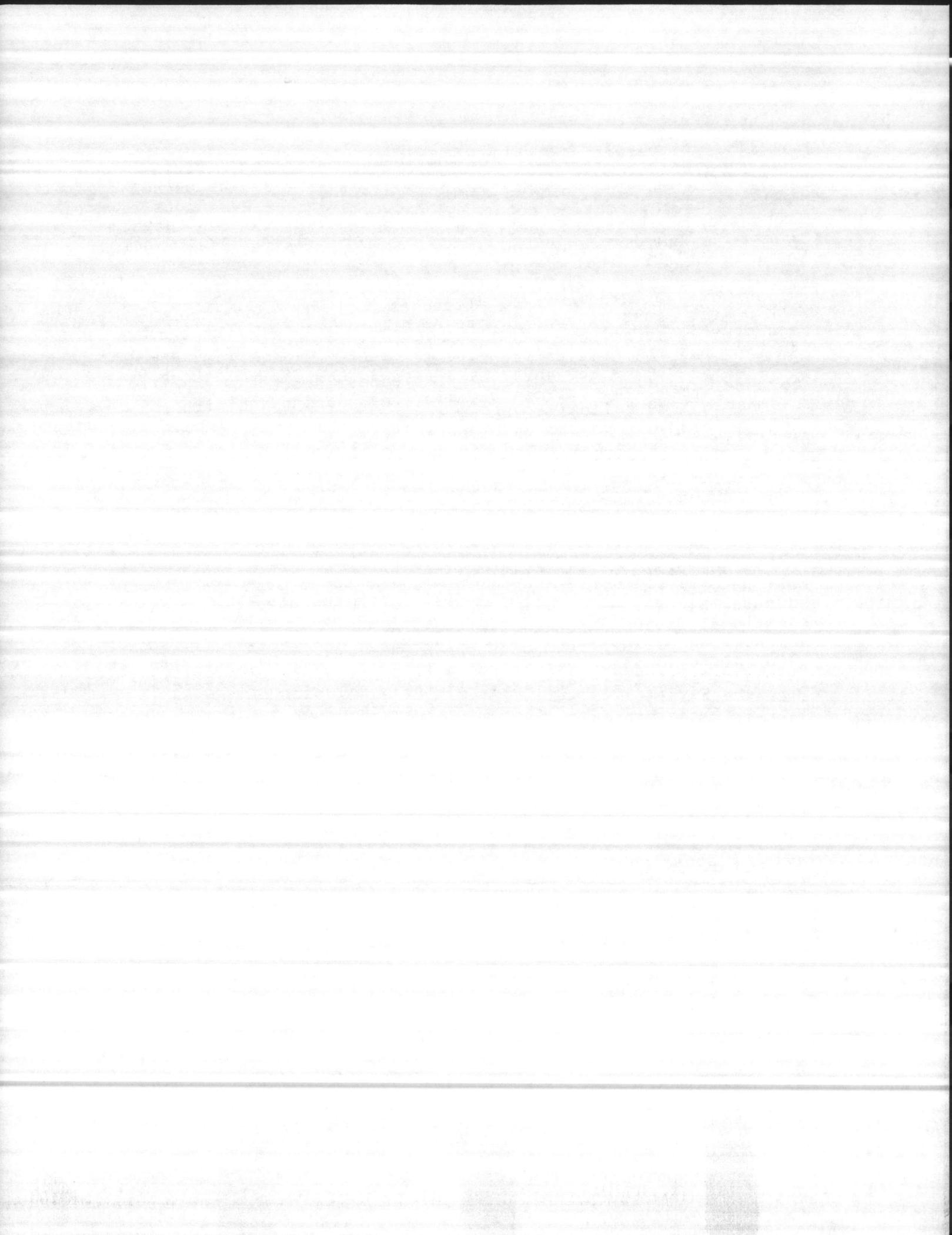
CNO REVIEW PANEL

4601. Discussion

Paragraph 4101d(4) indicates that a responsibility of the CNO (Op-45) is to coordinate review of assessments and statements through establishment of a "Review Panel".

4602. Guidelines and Standards

a. Charter for the Review Panel



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(1) Mission. Review assessments and statements submitted to the Chief of Naval Operations. Recommend to the Director, Environmental Protection, Occupational Safety and Health Division (Op-45), as the designated representative of the Deputy Chief of Naval Operations for Logistics (Op-04), when, in the panel's opinion, DES's should be submitted to the EPA, other Federal agencies, and to the public for appropriate comment. Draft statements so identified are in turn forwarded from CNO to the Office of the Secretary of the Navy for signature.

(2) Functions

(a) Keep abreast of applicable environmental laws and standards, including those likely to emerge in the future. Recommend to DCNO (Logistics) the impact of such laws, as applicable, necessitating the documentation of environmental impact associated with the conduct of naval operations.

(b) By review of assessments and statements submitted to the CNO, recommend to the DCNO, when applicable, such new, additional or alternative approaches or policy required to satisfy the intent of NEPA.

b. The Review Panel Membership. The panel membership may be composed of representatives from each of the following offices as applicable to the assessments/statements under consideration.

(1) Office of the Chief of Naval Operations

(a) Environmental Protection, Occupational Safety and Health Division (Op-453) Chairman. (Op-45 will provide panel secretariat.)

(b) Plans Division (Op-987)

(c) Shore Facilities Programming Division (Op-44)

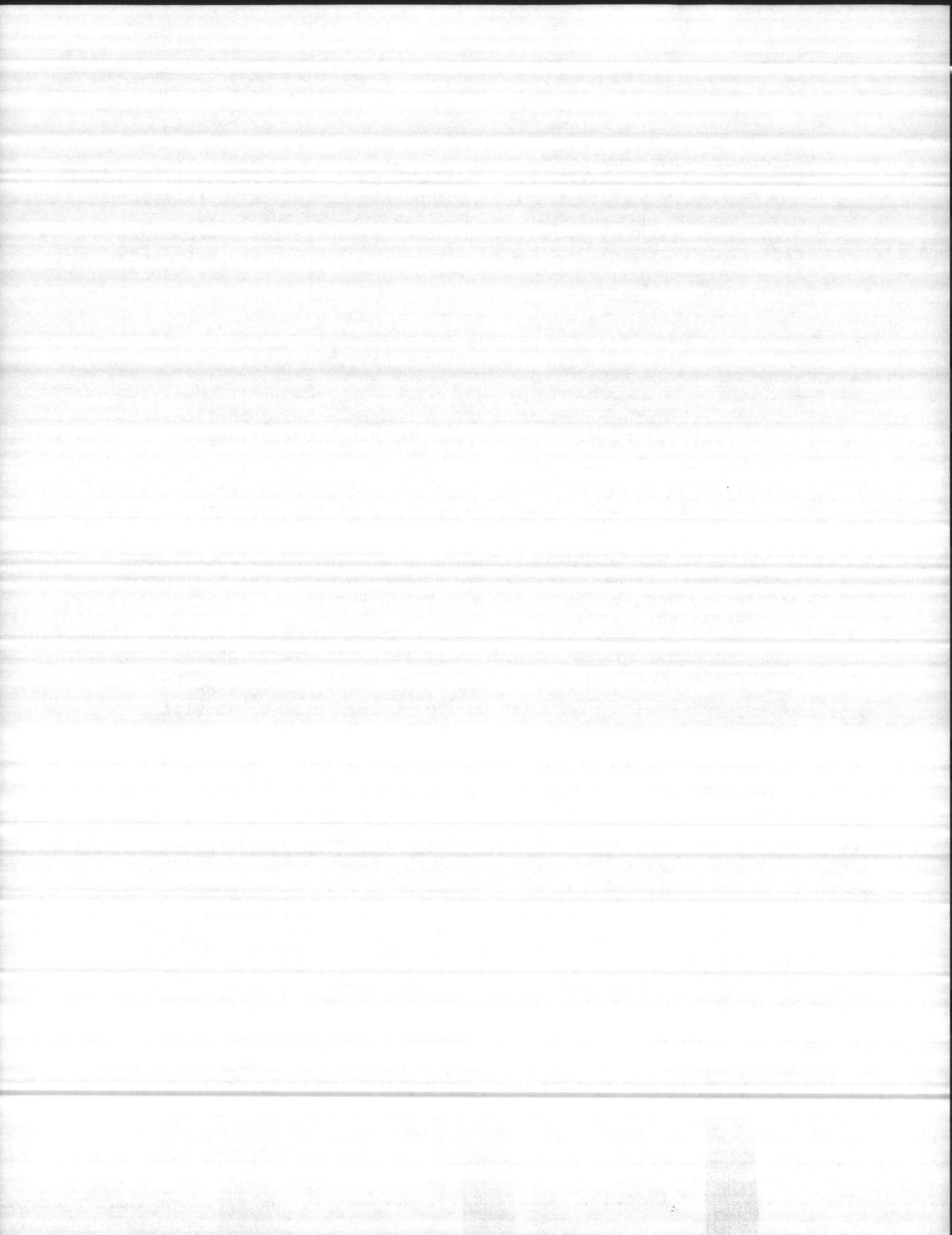
(d) Aviation Programs Division (Op-51)

(2) Naval Material Command

(a) Naval Material Command Headquarters

(b) Naval Facilities Engineering Command

(c) Naval Sea Systems Command



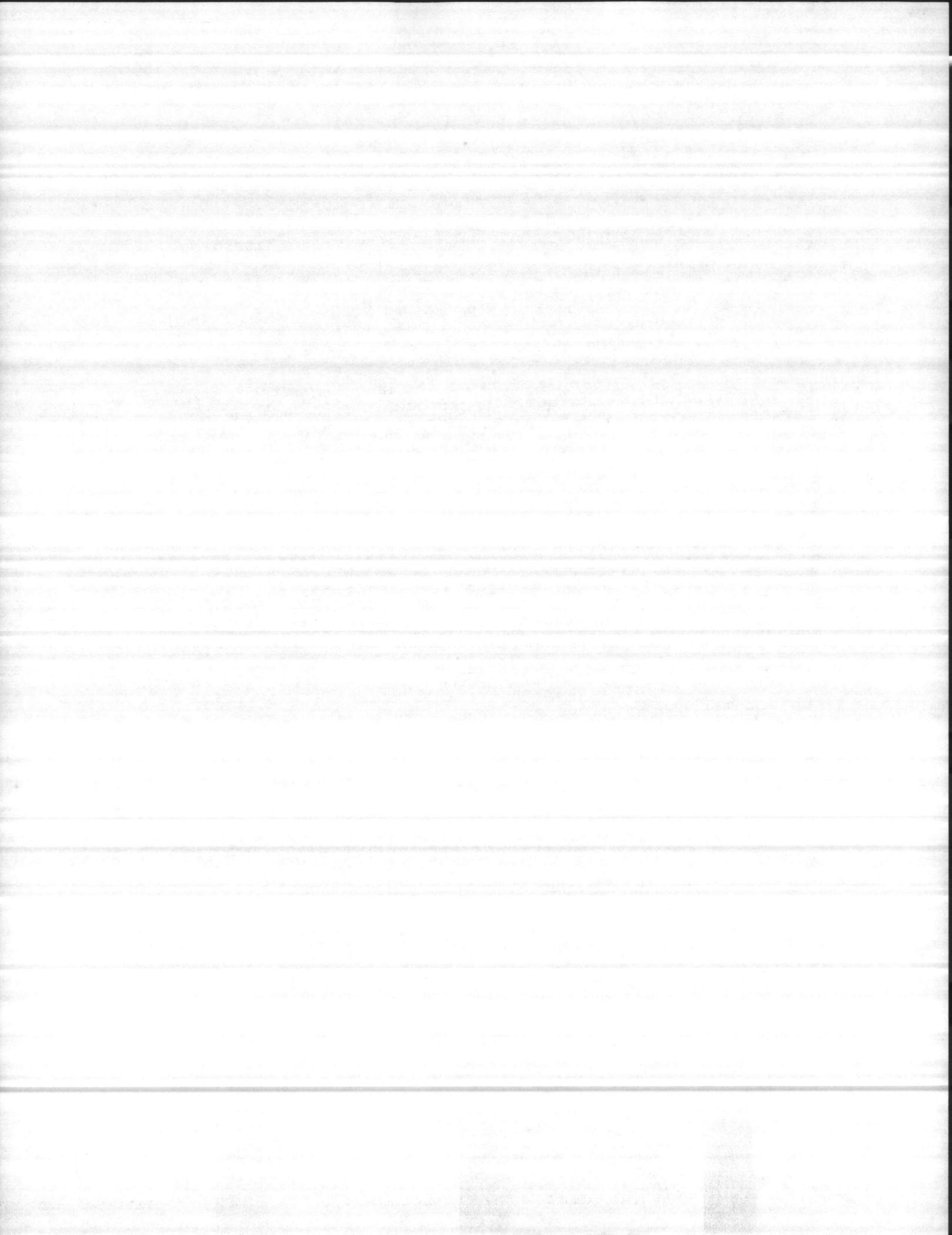
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- (d) Naval Air Systems Command
- (e) Naval Electronic Systems Command
- (f) Naval Supply Systems Command
- (3) Director, Naval Oceanography and Meteorology
- (4) Office of Naval Research
- (5) Chief of Naval Personnel
- (6) Chief, Bureau of Medicine and Surgery
- (7) Representatives of the Navy Department submitting environmental assessments and cognizant OPNAV sponsors invited to meet with the panel on specific matters which may concern them.
- (8) Representatives of JAG and CHINFO to serve as advisors.
- (9) Representative from the Army and Air Force are invited to meet with the panel when joint service matters are discussed, or matters are being addressed where they have special expertise, i.e., dredging, aircraft design, etc.
- (10) The chairman will request specific scientific and engineering disciplines for representation from the membership specified.
- (11) Participation by panel membership will depend on subject matter discussed and/or expertise required, as determined by the panel chairman.

4603. Responsibilities

a. The Review Panel:

- (1) The panel shall perform the mission and functions as described in paragraph 4602.
- (2) Advise and assist the Director, Environmental Protection, Occupational Safety and Health Division (Op-45), as the designated representative for the Deputy Chief of Naval Operations (Logistics) (Op-04) on environmental assessment matters, as required by this chapter.



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b. Offices and Commands. Offices and commands listed in paragraphs 4602b(1) through b(7). shall designate a principal and alternate member to the Review Panel and keep CNO (Op-45) advised of any change of their permanently designated representatives, along with titles and addresses. Offices and commands not presently holding membership will be specifically requested to designate representatives by the panel chairman.

c. Cognizant Office or Command. The cognizant office or command having responsibility for the proposed action or development of the statement or assessment, shall, if requested by the chairman of the panel, provide representation to the panel meeting to provide clarification or other information relative to the panel's deliberations.

d. CNO (Op-45) shall:

(1) Upon approval of each panel recommendation to file with EPA, inform the major claimant or principal command of the circumstances necessitating the development of a draft ES and coordinate the timely completion of the statement.

(2) Review the completed DES for compliance and submit the completed draft statement for signature.

(3) Maintain a record of panel and ad hoc panel meetings and accomplishments for future use by the panel and for review by higher authority, as appropriate.

e. The chairman shall:

(1) Establish the requirements for each meeting, announcing date, time, and place.

(2) Record proceedings of meetings, recommendations, and specific reports, submitting same to the Director, Environmental Protection, Occupational Safety and Health Division (Op-45), and to participating major commands, as appropriate.

