NEPA for BEAD

Programmatic Environmental Impact Statement (PEIS) Evaluation Sample Memo & Recommendations

December 2024

Resource Overview

In 2017, the First Responder Network Authority (FirstNet) prepared five regional Programmatic Environmental Impact Statements (PEISs) to support National Environmental Policy Act (NEPA) compliance for the National Public Safety Broadband Network. The PEISs evaluate the environmental impacts of broadband deployment in every U.S. state/territory. NTIA served as a cooperating agency for the FirstNet PEISs.

In July 2024, NTIA formally adopted the FirstNet PEISs to support tiered NEPA reviews for broadband deployments. Programmatic NEPA reviews can help to streamline environmental reviews and reduce redundancies. As a NEPA joint lead agency, Eligible Entities must evaluate the relevant state/territory chapter of the regional FirstNet PEIS for the Final Proposal. The evaluation must be completed by a qualified NEPA professional.

In August 2024, NTIA published **NEPA for BEAD: Evaluating FirstNet PEIS Statement Sections for States/Territories** to assist with this evaluation.

This resource provides two supplemental guidance components:

1) **PEIS Review Strategy and Recommendations:** Provides factors to consider in the evaluation of a relevant state/territory's chapter of the Regional PEIS and a recommended structure.

2) **Sample PEIS Validation Memo:** A sample of a completed PEIS memo that may serve as a template for documenting a PEIS chapter that a NEPA professional determines is adequate.

ADDITIONAL RESOURCES

- **Guidance on NTIA's National Environmental Policy Act Compliance**: See guidance on tiered NEPA reviews on page 9 *("Environmental Assessment Development Process," Section (f))* and page 12 *("Tiering")*

- **BEAD Program General Terms & Conditions**: See Section 13 "Environmental and Historic Preservation (EHP) Review" on page 7.

- **Final Proposal Guidance and Template**: See Requirement 14 (page 68-70) in the Guidance Document for additional information on Environmental and Historic Preservation Final Proposal submission requirements.

Review Strategy & Recommendations

PEIS Review Strategy

Eligible Entities should review the applicable regional [FirstNet Authority PEIS](#) to evaluate whether the analyses for its state or territory remains valid to support decision-making for BEAD-funded broadband infrastructure projects.

The following factors must be considered:

1 **Environmental Setting**: Consider the need for any changes to the environmental setting summarized in the chapter's 'Affected Environment' sub-section. Specifically, identify any changes since publication that affect (e.g., introduce, eliminate, or modify) the sensitivity of resources included in the 'Affected Environment' sub-section of the PEIS.

2 **Environmental Circumstances**: Identify any new or updated environmental laws or regulations enacted since the time of the publication of the PEIS. Examples may include updated air quality emission standards, updates to flood zones, and additions or removals from the Endangered Species Act protected species list or the National Register of Historic Places.

3 **Environmental Impacts**: Consider whether the potential environmental impacts summarized in the 'Environmental Consequences' section of the PEIS are sufficient for BEAD deployments. For example, have there been changes or advances in infrastructure or installation methods that were not covered in the PEIS and may have new or different environmental impacts? Identify any updates to equipment and construction activities and describe potential resource impacts and/or changes in the magnitude of impacts

4 **Best Management Practices (BMPs)**: Identify any significant changes to the most appropriate and applicable avoidance, minimization, and/or mitigation measures summarized the PEIS. Refer to [NTIA's Best Management Practices (BMP) and Mitigation Measures](#) resource for additional details on BMPs for broadband deployment projects.

> Reference the Sample PEIS Validation Memo *(pages 7-12)* for an example of how to document these four categories of review.

PEIS Review Recommendations

An effective and efficient evaluation should be concise and take a "hard look" at any new information or changed circumstances that are relevant to NEPA decision making.

REVIEW RECOMMENDATIONS

Hire, contract, or otherwise retain a qualified and experienced NEPA professional to review the PEIS: NEPA professionals will understand NEPA tiering and know how to approach updating the existing PEIS analyses to support and streamline later site specific NEPA reviews.

Evaluate the impact of legal revisions: While numerous changes to environmental laws and regulations have occurred since the publication date, it is only necessary to consider changes that may impact or invalidate the findings of the PEIS. For example, the Supreme Court amended the definition of "Waters of the United States" (WOTUS) in *Sackett v. EPA* in 2023. However, the PEIS's evaluation of impacts to regulated waters and the corresponding requirements set forth under the Clean Water Act remains applicable, despite the changed definition of the resource. As such, this Supreme Court ruling did not directly alter or invalidate the findings of the PEIS.

Consider using efficient cross-referencing techniques: Consider strategies to reduce the overall review time and quickly cross-reference identified resources with anticipated potential impacts and the corresponding Best Management Practices, such as opening the PEIS in multiple windows.

For example, consider opening the PEIS chapter in two separate windows, side-by-side, with one showing the 'Affected Environment' and the other showing the corresponding 'Environmental Consequences' section for each individual environmental resource. Additionally, consider opening a third separate window to view the NTIA's Best Management Practices document.

Investigate updates to listed/protected sensitive resources: In addition to the changes in environmental laws and regulations since PEIS publication, identify and consider the potential implications of changes to listed or protected environmental resources within your state.

These include but are not limited to the following:

- Resources listed in or eligible for the National Register of Historic Places
- Threatened and Endangered Species and Critical Habitat
- Federal Emergency Management Agency (FEMA) Flood Zone Designations and/or Boundaries
- Wild and Scenic River Designations

PEIS Review Recommendations

Use the PEIS Appendix: Appendix C of the PEIS contains a useful summary table of the applicable laws, regulations, and Executive Orders. While this table reflects the state of laws and regulations as of 2018 and does not include all current laws and regulations, it serves as a valuable reference to help users quickly assess the potential applicability of a law, regulation, or Executive Order on a project-specific basis.

Use a PEIS Section tracker to stay organized: Consider creating a spreadsheet (e.g., Microsoft Excel, Google Sheets) to track the findings of your PEIS review for the Final Proposal evaluation and for later reference on a project-specific level. Summarizing findings will allow for faster reference and consideration of the applicability of the PEIS to specific projects. For example, noting the addition of a newly designated 'Wild and Scenic River' in the state (since 2018), and its location within the state, will create a useful reference note for individuals using the PEIS in the preparation of an environmental analysis on a project-specific basis.

PEIS Section	Environmental Setting	Environmental Circumstances	Environmental Consequences	BMPs / Avoidance & Minimization
Infrastructure				
Soils				
Geology				
Water Resources				
Wetlands				
Biological Resources				
Land Use, Rec. & Airspace				
Visual Resources				
Socioeconomics				
Environmental Justice				
Cultural Resources				
Air Quality				
Noise & Vibration				
Climate Change				
Human Health & Safety				

Sample PEIS Validation Memo

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MEMORANDUM FOR THE RECORD

MEMORANDUM FOR:	Jill A. Springer Senior Policy Advisor for Permitting Chief Environmental Review and Permitting Officer Office of Internet Connectivity and Growth Amanda Pereira Environmental and Historic Preservation Team Lead Office of Internet Connectivity and Growth
FROM:	*[SBO Director's Name]* *[Title]* *[Organization]*
PREPARED BY:	*[NEPA Professional Name]* *[Title]* *[Organization]*
SUBJECT:	FirstNet Regional Programmatic Environmental Impact Statement Revalidation – *[State/Territory]*
DATE:	*[Date]*

On *[Date]*, the First Responder Network Authority published the Final Regional Programmatic Environmental Impact Statement (PEIS) and Record of Decision (ROD) for the *[FirstNet Region]* Region. The National Telecommunications and Information Administration was a Cooperating Agency on the analysis and is conducting this revalidation of the original analysis performed in accordance with requirements for reevaluation of programmatic documents older than 5 years in Section 108 of the National Environmental Policy Act, as amended by the Fiscal Responsibility Act of 2023. This revalidation will describe any changes to the proposed action, regulatory setting, or areas of concern or sensitivity identified in the original PEIS analysis and determine whether NTIA may still rely on it for purposes of subsequent environmental documents.

Changes in Environmental Setting:

8.1.12 Air Quality

8.1.12.2   National and State Ambient Air Quality Standards
The PEIS notes that the *[State/Territory]* Department of Environmental Protection has authorization to issue Clean Air Act Title V permits on behalf of the USEPA and tabulates the *[State/Territory]* Ambient Air Quality Standards in the environmental setting section. In 2019, these were updated and, at present, match current national standards (NAAQS) However, the PEIS based the impact significance rating criteria on the likelihood of the proposed action (at the programmatic level) exceeding the NAAQS.

Annotation callouts:

Add the specific chapter reference and introduce the Eligible Entity as **joint lead agency** for BEAD NEPA.

Provide details on updates to the **Environmental Factors** outlined in the PEIS chapter.

Changes in Environmental Circumstances:

8.1.4   Water Resources

8.1.4.2 Wetlands
The PEIS notes that discharges to "waters of the U.S." (WOTUS) are subject to the provisions of Section 401 of the Clean Water Act (CWA). This remains an accurate statement. The PEIS does not specifically define WOTUS. Therefore, the May 25, 2023 Supreme Court ruling in Sackett v. EPA – which resulted in a change to the definition of WOTUS - does not impact the environmental setting or circumstances as described in the PEIS.

8.1.4.4 Wild & Scenic Rivers
Portions of the ***[Named Rivers]*** (52.8 miles) were designated in 2019, and therefore not included in the PEIS.

8.1.4.6 Floodplains
While E.O. 14030 – signed in May 2021 – reinstated the implementing instructions set forth in E.O. 13690, the PEIS does not specifically refer to these Orders and so the Environmental Settings and Impacts sections of the PEIS remain valid. However, the associated best management practices and mitigation measures (Chapter 17) may warrant some revision, for example, by adding more specific flood mitigation requirements such as minimum elevation of broadband infrastructure that is placed within a 100-year flood zone.

8.1.6   Biological Resources

8.1.6.2 Wetlands
The PEIS notes that discharges to "waters of the U.S." (WOTUS) are subject to the provisions of Section 401 of the Clean Water Act (CWA) but does not specifically define WOTUS. As such, the May 25, 2023, Supreme Court ruling in Sackett v. EPA – which resulted in a change to the definition of WOTUS - does not impact the environmental setting or circumstances as described in the PEIS.

8.1.6.3 Nuisance and Invasive Plants
The PEIS identified 66 species of plants categorized as either "invasive," "likely invasive," or potentially invasive" in ***[State/Territory]***. The ***[State/Territory]*** Prohibited Plants[1] list was updated in November of 2022, to include the following:
- Japanese Black Pine (*Pinus thunbergii*)
- Scotch broom (*Cytisus scoparius*)
- Weeping Lovegrass (*Eragrostis curvula*)

Further, the following two plants species are currently under consideration for addition to the ***[State/Territory]*** Prohibited Plants list:
- Callery pear/Bradford pear (*Pyrus calleryana*)
- Wall-lettuce (*Mycelis muralis*)

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[1] Source

> Provide details on updates to the **Environmental Circumstances** from the PEIS chapter.

> List the common and scientific names of any identified **invasive species**.

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8.1.6.4 Threatened & Endangered Species

(i)   Since 2017, the following species – known to occur in the states covered by the ***[FirstNet Region]*** PEIS – have been granted protected status under the Endangered Species Act (ESA), and were not included in the PEIS:
- Rusty patched Bumble bee (*Bombus affinis*; Insect, added 2017; Endangered)
- Candy darter (*Etheostoma osburni*; Fish, added 2018; Endangered)
- Yellow lance (*Elliptio lanceolata*; Clam, added 2018); Threatened)
- Atlantic pigtoe (*Fusconaia masoni*; Clam, added 2021; Threatened)
- Sickle darter (*Percina williamsi*; Fish, added 2022; Threatened)
- Longsolid (*Fusconaia subrotunda*; Clam, added 2023; Threatened)
- Bog buck moth (*Hemileuca maia menyanthevora*; Insects; Endangered)

(ii)   Since 2017, the ESA status of the following species – known to occur in the states covered by the ***[FirstNet Region]*** PEIS – has changed:
- West Indian Manatee (*Trichechus manatus*): Endangered to Threatened in 2017
- American burying beetle (*Nicrophorus americanus*): Endangered to Threatened in 2020
- Northern long-eared bat (*Myotis septentrionalis*): Threatened to Endangered in 2023

> **List the common and scientific names of any threatened & endangered species.**

(iii)   The following species – known to occur in the states covered by the ***[FirstNet Region]*** PEIS –was proposed for listing by the USFWS as 'Endangered' under the ESA on September 13, 2022:
- Tricolored Bat (*Perimyotis subflavus*)

(iv)   The following species – known to occur in the states covered by the ***[FirstNet Region]*** PEIS – is currently listed as a Candidate species and is identified as "imminent" for protected status under the ESA:
- Monarch butterfly (*Danaus plexippus*)

8.2.10 Environmental Justice

In 2021, ***[State/Territory]*** Governor signed into law a new climate bill that codified Environmental Justice language into state law (previously EJ policy had been established through Executive Orders). Similar to federal EOs, ***[State/Territory]*** laws have expanded the definition of EJ populations to more broadly include geographic areas with high minority populations, low-income populations, and also considers English-language proficiency. It also established more robust public comment opportunities in the state. Consider updating PEIS language to refer to the latest EJ laws and policies of ***[State/Territory]*** and other states included in the ***[FirstNet Region]*** PEIS. While the findings of the PEIS with regard to EJ remain valid, the environmental review required to address EJ concerns moving forward may be more involved. Based on the nature of the NTIA broadband funding programs – intended to bring affordable high-speed internet to unserved and underserved areas – it is likely that many such areas will include areas of EJ populations. However, the benefits of such infrastructure deployment will likely be more positive than otherwise, which should not be discounted in the environmental review. At present, the impacts section of the PEIS does not appear to consider beneficial impacts.

> **Note any state changes and the rescission of EO 14154 and CEQ guidance on Environmental Justice.**

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8.2.14 Climate Change

The PEIS cites the *[State/Territory]* Climate Change Adaptation Report (September, 2011) as a relevant Climate Change law/regulation. In March 2021, *[State/Territory]* passed a significant new climate law aimed at cutting greenhouse gases, building a greener economy, and prioritizing equity and environmental justice (see discussion on EJ above). While the PEIS can be updated to cite this new climate law, the findings and assessment of impacts summarized in the PEIS remain valid.

Changes to Environmental Impacts of the Project:

8.2.6.4 Wildlife

The PEIS states (Pg. 8-312, Birds, 1st sentence) that "The direct removal of most bird nests is prohibited under the MBTA." Consider revising this to "The direction removal of most active bird nests is prohibited under the MBTA."

8.2.6.5 Fisheries and Aquatic Habitat

The PEIS describes "Activities with the Potential to Have Impacts at the Programmatic Level" as including "New Build – Submarine Fiber Optic Plant" installations. The PEIS specifically describes areas of impact from submarine cables as "limited nearshore and inland bodies of water". The National Oceanic and Atmospheric Administration defines the term 'nearshore' as being "*shorthand for tidal marshes, wetlands, and river estuaries where land and water combine to support life of all kinds…*"[2] While it remains accurate that nearshore and inland waters may be impacted, the statement could be revised to say "coastal marine waters, nearshore, and inland waters" to be more broadly inclusive in the event that submarine cables are placed further offshore. The remaining statement of potential impacts to these areas remains valid and does not require alteration.

Changes to Avoidance, Minimization, Mitigation Measures, or Best Management Practices:

Chapter 17   BMPS and Mitigation Measures
17.4   Water Resources
See 'Changes to Environmental Circumstances' (8.1.4.6 Floodplains) above.

17.6   Biological Resources
17.6.2 Wildlife
17.6.2.2   Project-Type Specific BMPS and Mitigation Measures: On March 1, 2021, the USFWS released an updated "*Recommended Best Practices for Communication Tower Design, Siting, Construction, Operation, Maintenance, and Decommissioning*".[3] The PEIS incorporates the recommended best practices from the 2013 version of this document.

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[2] https://www.fisheries.noaa.gov/feature-story/protecting-critical-value-nearshore-habitat
[3] https://www.fws.gov/media/recommended-best-practices-communication-tower-design-siting-construction-operation

> Provide details on updates to the **Environmental Impacts** outlined in the PEIS.

> Provide details on updates to the **BMPs** outlined in the PEIS.

17.6.3 Water Resources and 17.6.4 Threatened and Endangered Species
The PEIS does not specify new submarine cables under the "Project-Type Specific BMPs and Mitigation Measures". The general BMPs and mitigation measures in these sections remain valid and include many of the measures , but consider directly incorporating the Conservation Measures set forth in the applicable Fisheries Management Plan(s) for the Region.

Recommendation:
Based on a thorough review of the *[FirstNet Region]* Regional PEIS, *[Organization Name]* has determined that the analysis remains valid for use in subsequent environmental documents.

If the reviewer determines that the number or significance of **identified changes warrants the preparation of a supplemental EA or EIS** for the analyses to support BEAD Program implementation, the SBO should contact the relevant Federal Program Officer for guidance. A draft supplemental EA/EIS should be included with the Final Proposal.