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Department of the Interior and Environmental Justice: Overview and Current Policies

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SUMMARY

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Department of the Interior and Environmental Justice: Overview and Current Policies

The term *environmental justice* has different meanings in different contexts but generally refers to the notion of equitable or fair distribution of environmental benefits and burdens. Although there is no single statutory definition of the term, some individual federal departments have defined it for their purposes. For example, the Department of the Interior (DOI) has described environmental justice as "meeting the needs of underserved communities ... by reducing disparate environmental burdens, removing barriers to participation in decisionmaking, and increasing access to environmental benefits that help make all communities safe, vibrant, and healthy places to live and work."

DOI is the primary federal executive department responsible for the administration of U.S. lands, minerals, and other resources. Given DOI's role as the federal government's principal land management entity—as well as its responsibilities as trustee to tribal nations and communities—the department and its various bureaus can play a role in addressing environmental justice. Whether or to what degree DOI considers environmental justice in fulfilling its responsibilities is of interest to Congress.

Federal statute does not require the consideration of environmental justice across executive departments. However, various laws, executive orders, and other executive directives govern federal responsibilities in addressing issues related to environmental justice. In particular, Executive Order (E.O.) 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," signed on February 11, 1994, directs executive departments, including DOI, to integrate environmental justice into their respective missions to "the greatest extent practicable and permitted by law." In addition to E.O. 12898, DOI has responsibilities related to environmental justice pursuant to more recent executive orders. One such order is E.O. 14008, "Tackling the Climate Crisis at Home and Abroad," signed on January 27, 2021; this E.O. established broad environmental justice goals for the federal government, including a priority of "ensur[ing] that environmental and economic justice are key considerations in how we govern."

At the department level, DOI has issued various environmental justice policies for the department and for its bureaus and offices. These policies address issues related to DOI's obligations to identify and mitigate disproportionate adverse impacts on certain communities, ensure these communities' meaningful involvement in the decisionmaking process, and train DOI employees and staff regarding such obligations. In addition to these policies, DOI has published strategic plans for incorporating environmental justice into the department's mission, programs, and activities. DOI also has issued implementation reports outlining the progress made in meeting the benchmarks laid out in its environmental justice strategic plans and requirements under E.O. 12898.

Various offices and other entities within DOI oversee compliance with government-wide and departmental environmental justice policies. The Office of Environmental Policy and Compliance is the primary office responsible for overseeing the integration of environmental justice policies and plans across DOI's bureaus.

Congress has used different tools—including authorizing and appropriations legislation and oversight activities—to consider and provide guidance to DOI (and other executive agencies) on how to conduct programs or implement policies that address environmental justice. In addition, recent Congresses, including the 116th and 117th Congresses, held hearings on bills to statutorily mandate that DOI take certain actions regarding environmental justice.

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Introduction

The U.S. Department of the Interior (DOI) is the primary federal executive department responsible for the administration of U.S. lands, minerals, and other resources.[1] DOI and its various bureaus administer roughly 420 million acres of federal lands, approximately 55 million acres of tribal lands, more than 700 million acres of subsurface minerals, and about 2.5 billion acres of the outer continental shelf.[2] Given DOI's broad land and resource responsibilities—as well as its role as trustee to tribal nations and communities—the department may help shape how communities interact with and are impacted by the natural environment. In particular, DOI has a role in determining the degree to which environmental benefits or adverse impacts are distributed equitably across communities. This notion of equitable or fair distribution of environmental benefits and burdens is commonly referred to as *environmental justice*.

This report provides a general overview of DOI's policies and programs aimed at addressing and achieving environmental justice, with the goal of informing Congress's assessment of whether or to what extent such programs and policies are appropriate. It provides a broad overview with a focus on department-level authorities that shape the environmental justice strategies and plans implemented at the bureau or office level. The report starts with a brief introduction to the concept of environmental justice, followed by a discussion of how certain executive orders and statutes direct federal agencies to integrate environmental justice into their respective missions within existing law.[3] The report then traces the evolution of DOI-specific environmental justice policies, including a brief discussion of the offices and entities responsible for overseeing the implementation of these polices. It concludes with potential considerations for Congress, including an overview of recent congressional activities concerning DOI and its role in addressing environmental justice.

Background on Environmental Justice

To contextualize how DOI and other federal agencies address environmental justice, it may be helpful to first understand how the term has evolved over the years. This section provides a brief overview of both the concept and principles of environmental justice, how it has been defined over time, and the authorities that govern the federal government's responsibilities in addressing environmental justice.

Defining Environmental Justice

The term *environmental justice* has different meanings in different contexts. Among certain interest groups, it may refer to several broad principles.[4] Although no single statutory definition

[1] For an overview of the Department of Interior (DOI) and its various bureaus, see CRS Report R45480, *U.S. Department of the Interior: An Overview*, by Mark K. DeSantis.

[2] For data and other information on federal land management, see CRS Report R42346, *Federal Land Ownership: Overview and Data*, by Carol Hardy Vincent and Laura A. Hanson.

[3] Throughout this report, the terms *department* and *agency* are used interchangeably. The term *bureau* refers specifically to the 10 distinct bureaus within DOI. They are the Bureau of Indian Affairs, Bureau of Indian Education, Bureau of Land Management, Bureau of Ocean Energy Management, Bureau of Safety and Environmental Enforcement, Bureau of Reclamation, U.S. Fish and Wildlife Service, National Park Service, Office of Surface Mining Reclamation and Enforcement, and the U.S. Geological Survey.

[4] For example, in 1991, delegates to the First National People of Color Environmental Leadership Summit drafted and

of environmental justice applies across the federal government, regulations implementing specific federal programs have defined the term.[5] Some federal agencies also have defined the term within the context of implementing federal policies intended to ensure agency compliance with various federal statutes and executive orders.[6] DOI has described environmental justice as "meeting the needs of... underserved communities... by reducing disparate environmental burdens, removing barriers to participation in decision making, and increasing access to environmental benefits that help make all communities safe, vibrant, and healthy places to live, work, learn, and engage in recreation."[7] Further, DOI environmental justice considerations have involved assessments of the unequal distribution of adverse impacts (environmental, economic, health, etc.) related to pollution from activities authorized or undertaken by DOI bureaus, strategies to ensure meaningful stakeholder engagement, and access to natural resources and recreational opportunities.

Requirements That Shape Federal Environmental Justice Policy

Statute does not directly mandate the consideration of environmental justice across federal programs and activities. However, various laws, executive orders, and other executive issuances provide broad directives to federal agencies regarding their responsibilities in addressing issues related to environmental justice. In particular, federal environmental justice policy is most commonly affected by the following:

- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000d to 2000d-4), which prohibited discrimination based on race, color, or national origin in programs or activities receiving federal financial assistance.
- The **National Environmental Policy Act of 1969** (NEPA; 42 U.S.C. §§4321 et seq.), which directed federal agencies to integrate environmental considerations into agency planning and decisionmaking,[8] including accounting for any potentially significant adverse impacts to the "quality of the human environment."[9]

adopted 17 Principles of Environmental Justice. That document is available online at http://www.ejnet.org/ej/.

[5] In addition, some federal statutes reference existing regulatory definitions of *environmental justice*. For example, the Long Island Sound Stewardship Act of 2006 (P.L. 109-359) directed that environmental justice be one of the factors taken into consideration when selecting areas as "stewardship sites" for protection within the Long Island Sound ecosystem. That law cross-referenced the definition of environmental justice established by the U.S. Army Corps of Engineers at 33 C.F.R. §385.3: "Environmental justice means identifying and addressing, disproportionately high and adverse human health or environmental effects of a Federal agency's programs, policies, and activities on minority and low-income populations, in accordance with applicable laws, regulations, and Executive Orders."

[6] For example, the U.S. Environmental Protection Agency (EPA) defines the term as follows: "Environmental justice is the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." See EPA, "Learn About Environmental Justice," at https://www.epa.gov/environmentaljustice/learn-about-environmental-justice.

[7] DOI, "Environmental Justice Strategic Plan: 2016-2020," p. 6, Nov. 2016, at https://www.doi.gov/sites/doi.gov/files/uploads/doi_ej_strategic_plan_final_nov2016.pdf. (Hereinafter referred to as "DOI, 2016 EJ Plan"). DOI refers to "underserved communities" as "environmental justice communities throughout the remainder of the plan.

[8] Section 102 of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. §§4321 et seq.) established authorities and directives to all federal agencies to implement specific procedural mandates intended to ensure federal laws and programs are administered in accordance with NEPA's provisions (42 U.S.C. §4332). In particular, see provisions in Section 102(2) (§4332(2)).

[9] 42 U.S.C. §4332(2)(C).

- **Executive Order (E.O.) 12898**, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,"[10] discussed in detail in the following section.

A comprehensive discussion of the Civil Rights Act and NEPA is beyond the scope of this report. However, this report broadly discusses the connection between those laws and DOI's implementation of its environmental justice policies. Much of the discussion in this report focuses on DOI policies and plans implemented in response to directives in E.O. 12898.

Executive Order 12898

President Bill Clinton signed E.O. 12898 on February 11, 1994. The E.O. was intended to supplement—but not supersede—E.O. 12250, "Leadership and Coordination of Nondiscrimination Laws," which was issued in 1980 and pertained to the implementation of the Civil Rights Act of 1964 and other nondiscrimination laws applicable to federal agencies.[11] Among other directives, E.O. 12898 required certain federal agencies and offices—including DOI—to "make achieving environmental justice part of ... [their] mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of ... [their] programs, policies, and activities on minority populations and low-income populations."[12] Agencies and offices were to do so "to the greatest extent practicable and permitted by law."[13] E.O. 12898 is not judicially enforceable and explicitly precludes "any right to judicial review involving the compliance or noncompliance of the United States, its agencies, officers, or any other person with this order."[14]

E.O. 12898 also established the Federal Interagency Working Group on Environmental Justice (EJ) to facilitate collaboration among federal departments and offices to implement E.O. 12898.[15] The Environmental Protection Agency (EPA) Administrator chairs the EJ IWG, which includes representatives from 16 additional executive agencies and offices with responsibilities under E.O. 12898. The Secretary of the Interior is a member of the EJ IWG.

In 2011, federal departments and offices subject to E.O. 12898 entered into a memorandum of understanding (MOU) to renew and update their framework for collaboration under the executive order and to develop an accompanying Charter for Interagency Working Group on Environmental Justice.[16] The charter provides guidance to address the coordination of individual departments in implementing the requirements of E.O. 12898.

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[10] Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 *Federal Register* 7629, February 16, 1994. Hereinafter referred to as E.O. 12898.

[11] Executive Order (E.O.) 12250, "Leadership and Coordination of Nondiscrimination Laws," 45 *Federal Register* 72995, November 2, 1980. See reference to E.O. 12250 in E.O. 12898, General Provisions, Section 6-602. For context, when E.O. 12898 was issued, federal agencies responsible for actions with adverse environmental impacts already were required to integrate environmental considerations into agency decisionmaking. E.O. 12898 further required agencies subject to the executive order to explicitly determine whether any identified adverse impacts disproportionately affected minority and low-income populations.

[12] E.O. 12898, Section 1-101.

[13] Ibid.

[14] E.O. 12898, Section 6-609.

[15] E.O. 12898, Section 1-102.

[16] Federal Interagency Working Group on Environmental Justice (EJ IWG), "Memorandum of Understanding on Environmental Justice and Executive Order 12898," 2011 (hereinafter cited as EJ IWG, 2011 MOU).

Agency implementation of E.O. 12898 generally has involved articulating an agency's unique mission and clarifying how the agency will meet that mission in a way that does not result in discrimination. For example, DOI's role in environmental justice is tied to its mission to protect and manage "many of the Nation's natural resources and cultural heritage; [provide] scientific and other information about those resources; and [honor] the Nation's trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated island communities."[17] That mission is connected to DOI's "environmental justice vision statement" to "provide outstanding management of the natural and cultural resources entrusted to us in a manner that is sustainable, equitable, accessible, and inclusive of all populations."[18]

Recent Changes to Environmental Justice Federal Policy

On January 20, 2021, President Joe Biden signed E.O. 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." Among other provisions, E.O. 13990 directed federal agencies to review and take action, "as appropriate and consistent with applicable law," to prioritize environmental justice, among other issues.[19]

One week later, President Biden signed E.O. 14008, "Tackling the Climate Crisis at Home and Abroad," which set out broad environmental justice goals for the federal government, including a priority of "ensur[ing] that environmental and economic justice are key considerations in how we govern."[20] E.O. 14008 also directed that "agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts."[21] More specifically, E.O. 14008 amended E.O. 12898 by establishing two new groups within the White House responsible for addressing environmental justice: the White House Environmental Justice Interagency Council (Interagency Council) and the White House Environmental Justice Advisory Council (Advisory Council). E.O. 14008 directed the Interagency Council—of which the Secretary of Interior is a member—to develop a strategy to address environmental justice with performance metrics and to publish an annual scorecard to measure progress on the strategy's implementation, among other tasks.[22] The Advisory Council, which consists of nonfederal stakeholders from across the country who are appointed by the President and serve in a voluntary capacity, advises the Interagency Council on ways the federal government can increase efforts to address environmental justice.[23]

[17] DOI, 2016 EJ Plan, p. 1.

[18] Ibid.

[19] E.O. 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," 86 *Federal Register* 7037, January 25, 2021. Specifically, E.O. 13990 directed agencies to look at rulemaking and policies implemented from January 20, 2017, to January 20, 2021, to determine if they are inconsistent with or present obstacles to, the public health and environmental justice policies and goals outlined in the E.O.

[20] E.O. 14008, "Tackling the Climate Crisis at Home and Abroad," 86 *Federal Register* 7619, February 1, 2021. Hereinafter referred to as E.O. 14008.

[21] E.O. 14008.

[22] Many of the roles and responsibilities previously conducted by the EJ IWG pursuant to E.O. 12898 appear to have transferred to the White House Environmental Justice Interagency Council established under E.O. 14008.

[23] Pursuant to E.O. 14008, the EPA provides administrative and financial support to the White House Environmental Justice Advisory Council "to the extent permitted by law and within existing appropriations."

Justice40 Initiative

Among other provisions, Executive Order (E.O.) 14008, "Tackling the Climate Crisis at Home and Abroad," established a new government-wide goal, referred to as the *Justice40 Initiative*, of delivering 40% of the overall benefits of relevant federal investments—particularly investments in clean energy, climate, transportation, and other areas—to "disadvantaged communities." In July 2021, the Administration announced the launch of a pilot program of 21 priority projects and programs across the federal government to serve as a "blueprint for other agencies to help inform their work to implement the Justice40 Initiative." Included in this list of projects is the Abandoned Mine Land Economic Revitalization (AMLER) Program administered by the Office of Surface Mining Reclamation and Enforcement within the Department of the Interior. Congress has provided annual appropriations for the AMLER program since FY2016 (formerly known as the AML pilot program), and the administration's proposal would increase funding for this program from previously enacted amounts. In previous years, the AMLER program has provided grants to six Appalachian states with the greatest amount of unfunded abandoned mine land needs and three tribes to fund projects that leverage mine land reclamation with economic and community development. For FY2021, the grantees were Alabama, Kentucky, Ohio, Pennsylvania, Virginia, and West Virginia, as well as the Crow Tribe, the Hopi Tribe, and the Navajo Nation. To learn more about the AMLER program, see CRS Report R46266, *The Abandoned Mine Reclamation Fund: Reauthorization Issues in the 116th Congress*, by Lance N. Larson.

Sources: See Office of Management and Budget, "M-21-28, Interim Implementation Guidance for the Justice40 Initiative," July 20, 2021, at https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf; White House, "The Path to Achieving Justice40," July 20, 2021, at https://www.whitehouse.gov/omb/briefing-room/2021/07/20/the-path-to-achieving-justice40/; and Office of Surface Mining Reclamation and Enforcement, "Grants Resources," at https://www.osmre.gov/resources/grants.shtm.

Notes: Interim guidance issued by the Office of Management and Budget (provides agencies with indicators as to how best to define *disadvantaged communities*. Such indicators include measures of low income, high and/or persistent poverty, high unemployment and underemployment, racial and ethnic residential segregation, and other factors.

Other Authorities and Requirements

Federal agencies and offices also may rely on authorities provided in laws and executive actions other than those mentioned above to address issues related to environmental justice, though such authorities may not have been issued or enacted specifically for such purposes. For example, various laws and executive actions generally apply to the federal government-to-government relationship with Indian tribes. Such authorities include E.O. 13175, "Consultation and Coordination with Indian Tribal Governments," which charged all executive agencies with establishing procedures for engaging in consultation with tribal officials in the development of federal policies that have tribal implications.[24] In addition, statutes such as the National Historic Preservation Act (54 U.S.C. §§300101 et seq.) established requirements related to consultation with tribal communities on federal projects that may affect certain tribal historic properties.[25]

Although federal authorities related to government-to-government consultation and federal management of tribal historic properties are not specifically associated with environmental

[24] E.O. 13175, "Consultation and Coordination with Indian Tribal Governments," 65 *Federal Register* 67249, November 6, 2000. In addition to E.O. 13175, other executive actions guide federal policy regarding tribal consultation. For example, a presidential memorandum (P.M.) of November 5, 2009, required agencies to "prepare and periodically update" a "detailed plan of actions" to implement E.O. 13175. In January 2021, President Biden issued a P.M. on "Tribal Consultation and Strengthening Nation-to-Nation Relationships" that reaffirmed the policy outlined in the 2009 P.M. For more information on these executive actions, see CRS Insight IN11606, *Tribal Consultation: Administration Guidance and Policy Consideration*, by Tana Fitzpatrick.

[25] For example, Section 106 of the National Historic Preservation Act (54 U.S.C. §306108) required agencies to consult with tribal representatives when a federal undertaking may affect historic properties that (1) are located on tribal lands or (2) have been assigned religious or cultural significance by any Indian tribe or Native Hawaiian organization.

justice, some executive agencies nonetheless see compliance with such requirements as a key component of their respective environmental justice strategies. For example, DOI aims to ensure meaningful involvement and participation of certain groups, including tribes, in environmental decisionmaking. (For more information on DOI's environmental justice strategic goals, see "DOI Environmental Strategic Plans and Implementation Reports").[26] DOI has indicated that policies mandating the recognition of tribal self-governance and supporting government-to-government relationships have been crucial to meeting this goal.

DOI Policies and Plans

Over the years, many of the activities conducted by DOI to address environmental justice stemmed from government-wide executive orders (such as E.O. 12898) or presidential memoranda or proclamations. Other activities resulted from DOI-specific secretarial orders and other departmental or bureau-specific policies. This section provides an overview of DOI-wide policies, plans, and strategies that specifically address environmental justice. In general, policies issued or programs conducted by individual DOI bureaus are not discussed at length.[27]

DOI Environmental Justice Policy

In 1994, in response to directives in E.O. 12898, Secretary of the Interior Bruce Babbitt formally established an environmental justice policy for DOI. Specifically, the policy directed the department and its bureaus to consider the impacts of DOI's "actions and inactions on minority and low-income populations and communities, as well as the equity of the distribution of benefits and risks of those decisions."[28] In 2017, DOI issued an Environmental Justice Implementation Policy for the department, published as part of the DOI policy manual (*Departmental Manual*, or DM).[29] Among other components, the policy outlined DOI's responsibilities related to environmental justice activities across the department, established principles and guidance for how to integrate environmental justice into DOI's programs and activities, and mandated the publication of an annual progress report detailing how DOI has met strategic goals related to environmental justice.[30]

[26] DOI specifically mentions tribal consultation requirements under E.O. 13175 as part of its department-wide goal of ensuring minority, low-income, and tribal populations are provided with the opportunity to engage meaningfully in DOI's decisionmaking processes. See DOI, 2016 EJ Plan.

[27] The various DOI bureaus subject to both federal and DOI-specific environmental justice policy illustrate DOI's diverse array of responsibilities and potential environmental impacts associated with those responsibilities. See footnote 3 for an overview of these bureaus. Each bureau has a unique mission and set of responsibilities, as well as an organizational structure designed to meet its functional duties. For more information on DOI and the responsibilities and authorities of its various bureaus and offices, see CRS Report R45480, *U.S. Department of the Interior: An Overview*, by Mark K. DeSantis.

[28] Bruce Babbitt, Secretary, U.S. Department of the Interior, "Memorandum to All Assistant Secretaries, Inspector General, Heads of All Bureaus and Office," April 17, 1994, p. 1, at https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/ECM-95-3.pdf.

[29] DOI, 525 *Departmental Manual (DM)* 1, at https://www.doi.gov/sites/doi.gov/files/elips/documents/525-dm-1.pdf.

[30] 525 DM 1 serves as the primary environmental justice policy for DOI; however, the 1994 memorandum has not been rescinded and remains in place. Many of the directives outlined in 525 DM 1 reflect the similar requirements and standards required under the 1994 policy.

DOI Environmental Strategic Plans and Implementation Reports

Among other provisions, E.O. 12898 directed federal agencies to prepare a strategic plan that identifies and addresses issues related to environmental justice.[31] In response, DOI established a committee comprising representatives from each of the department's bureaus to develop the first DOI strategic plan on environmental justice, published in 1995 (hereinafter referred to as the *1995 EJ Plan*).[32] The 1995 EJ Plan outlined four specific goals for implementing E.O. 12898 and addressing environmental justice strategies across DOI:

1. Involve minority and low-income communities in environmental decisionmaking and ensure access to information
2. Provide environmental justice training and guidance to DOI employees
3. Use and expand research and data collection on new solutions to environmental justice concerns
4. Partner with grassroots, community, business, labor, trial, and governmental groups to advance environmental justice

Since 1995, DOI has updated this strategic plan, first in 2012 and again in 2016 (hereinafter referred to as the *2012 EJ Plan* and the *2016 EJ Plan*, respectively).[33] DOI conducted these updates after signing the 2011 MOU, which, among other provisions, called on each federal agency to review and update existing environmental justice strategic plans as applicable and as appropriate.[34]

The 2012 EJ Plan and the 2016 EJ Plan maintained or updated many of the goals outlined in the 1995 EJ Plan, while adding additional goals for the department and its bureaus. These additions included goals to use existing grant programs, training, and educational opportunities to "aid and empower minority, low-income, and tribal populations in their efforts to build and sustain environmentally and economically sound communities."[35] Pursuant to the 2011 MOU, the 2012 and 2016 EJ Plans also introduced performance metrics and, in the case of the 2016 plan, an action plan that outlined specific strategies and activities to meet the department's goals.

Starting in 2011, DOI also began to issue implementation reports outlining progress made in meeting benchmarks laid out in the environmental justice strategic plans and requirements under E.O. 12898. DOI issued these reports annually from 2011 to 2016.[36] The most recent implementation report issued by DOI was for FY2020 and was released in August 2021.[37]

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[31] E.O. 12898 uses the term *environmental justice strategies*. For the purposes of this report, CRS uses the term *environmental justice strategic plans* because DOI has used *environmental justice strategic plans* to document the department's environmental justice strategies.

[32] DOI, *1995 Strategic Plan – Environmental Justice*, 1995.

[33] See DOI, *Environmental Justice Strategic Plan: 2012-2017*, March 2012; and DOI, 2016 EJ Plan.

[34] EJ IWG, 2011 MOU.

[35] DOI, 2016 EJ Plan, p. 8.

[36] DOI's annual implementation reports can be found at DOI, Office of Environmental Policy & Compliance (OEPC), "Policy & Materials," at https://www.doi.gov/oepc/resources/environmental-justice/policy.

[37] DOI, *Environmental Justice Annual Implementation Report: Fiscal Year 2020*, August 2021, at https://www.doi.gov/sites/doi.gov/files/fy2020-ej-annual-report-aug-2021-508c_0.pdf. The report indicated that "reporting was re-started in the middle of the fiscal year, after a several year hiatus, and as a result activities may only reflect a portion of the reporting year" (p. 5).

Secretarial Order 3399

On April 16, 2021, Secretary of the Interior Deb Haaland issued Secretarial Order (S.O.) 3399, "Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process."[38] Among other provisions, S.O. 3399 established a Climate Task Force to advise the Secretary and to organize work across DOI on various climate-related issues. Included in the task force's mission is coordination with the Interagency Council to identify "policies and action to address current and historic environmental injustice to address the disproportionately high and adverse human health, environmental, and climate-related and other cumulative impacts on disadvantaged communities."[39] S.O. 3399 also provided additional guidance regarding the consideration of environmental justice in the NEPA process, including additional policy direction regarding consultation with tribes and "environmental justice communities."[40]

Integration of Environmental Justice with Agency NEPA Compliance

NEPA sets forth broad environmental policy supplementary to each agency's existing authorities.[41] To ensure agencies administer their respective programs in accordance with NEPA's policies, the act requires all federal agencies to integrate environmental considerations into agency planning and decisionmaking.[42] This includes taking into account any potentially significant adverse impacts to the "quality of the human environment."[43]

Agencies responsible for administering programs or making discrete decisions likely to have adverse environmental impact have established agency-specific procedures to implement NEPA's procedural mandates.[44] DOI set forth NEPA procedures applicable to departmental actions in 43 C.F.R. Part 46. Additionally, to reflect their unique statutory authorities, DOI bureaus responsible for actions subject to NEPA have their own guidance for implementing NEPA, as it applies to actions relevant to a specific bureau's authorities and responsibilities.[45]

One element of Secretary Babbitt's 1994 Environmental Justice Policy involved specifically directing DOI bureaus to integrate environmental justice considerations into their NEPA

[38] Deb Haaland, Secretary, U.S. Department of the Interior, Secretarial Order (S.O.) 3399, "Department-Wide Approach to the Climate Crisis and Restoring Transparency and Integrity to the Decision-Making Process," April 16, 2021, at https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3399-508_0.pdf (hereinafter cited as S.O. 3399).

[39] S.O. 3399, Section 4(a)(6).

[40] S.O. 3399, Section 5(c). Specifically, the S.O. mandated that DOI bureaus or offices "proactively" begin consultation with tribes and potentially impacted environmental justice communities "early in the project planning process." The S.O. further indicated that "early in the project planning process" includes when a bureau or office has "enough information on a proposed action to determine that an environmental assessment or an environmental impact statement will be prepared."

[41] Section 101 of NEPA set forth policies and goals for all federal agencies (42 U.S.C. §4331), and Section 105 specified that those policies and goals supplement existing agency authority (42 U.S.C. §4335).

[42] Section 102 of NEPA established authorities and directives to federal agencies to implement specific procedural mandates intended to ensure federal laws and programs are administered in accordance with NEPA (42 U.S.C. §4332). In particular, see provisions in Section 102(2) (§4332(2)).

[43] 42 U.S.C. §4332(2)(C).

[44] 42 U.S.C. §4332(2).

[45] Links to "Department of the Interior Requirements" for implementing NEPA are available at https://www.doi.gov/nepa/requirements-guidance/DOI-requirements.

analyses.[46] In 1995, to carry out that directive, the Director of DOI's Office of Environmental Policy and Compliance (OEPC) issued an environmental compliance memorandum (ECM) to the heads of all DOI bureaus and offices requiring that environmental justice consideration be included in NEPA documentation. In part, that ECM directed that "all environmental [NEPA] documents should specifically analyze and evaluate the impacts of any proposed projects, actions or decisions on minority and low-income populations and communities, as well as the equality of the distribution of the benefits and risks of those decisions."[47]

With the issuance of the 2017 Environmental Justice Implementation Policy (525 DM 1), the OEPC provided guidance similar to the 1995 ECM regarding environmental justice considerations in NEPA analysis. Specifically, the 2017 DM stated that, "in all appropriate NEPA evaluation processes," DOI evaluates "disproportionately high and adverse human health or environmental effects impacts [*sic*] to low-income, minority, and tribal populations."[48] OEPC also identified specific analysis and procedures relevant to environmental justice considerations that were required as part of the NEPA compliance process. For example, the 2017 DM required the NEPA evaluation to analyze proposed actions for disproportionate adverse impacts to low-income, minority, and tribal populations; identify potential mitigation measures to reduce those impacts when feasible; and provide opportunities for such communities to provide input early and throughout the NEPA process.[49]

DOI bureaus and offices may issue their own guidance for implementing departmental NEPA policies (often referred to as *NEPA handbooks*). These bureau-specific NEPA handbooks may be tailored to reflect the different authorities and types of actions for which a bureau is responsible or may provide additional guidance or detail regarding environmental justice considerations. For example, the Bureau of Reclamation's *NEPA Handbook* includes a separate section on integrating environmental justice considerations into the bureau's NEPA process. This section identifies specific factors that should be considered in conducting the necessary analysis, including assessing existing conditions in affected communities (e.g., multiple or cumulative exposure to human health or environmental hazards, historical exposure to hazards) and determining whether interrelated cultural, social, occupational, historical, or economic factors would amplify the physical environmental effects of a proposed action.[50] By contrast, the National Park Service (NPS's) *NEPA Handbook* largely reflects the directives included in 525 DM 1 and the 1995 ECM.[51]

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[46] Bruce Babbitt, Secretary, U.S. Department of the Interior, "Memorandum to All Assistant Secretaries, Inspector General, Heads of All Bureaus and Office," April 17, 1994, p. 1. ("This consideration should be specifically included in National Environmental Policy Act (NEPA) documentation on our decision-making.")

[47] See the environmental compliance memorandum (ECM) issued by Willie R. Taylor, Director, Office of Environmental Policy and Compliance, regarding "National Environmental Policy Act (NEPA) Responsibilities Under the Departmental Environmental Justice Policy," May 30, 1995. This memorandum is cited as ECM 95-3 in other DOI and DOI-bureau policies and guidance.

[48] 525 DM 1_1.6(L).

[49] Ibid.

[50] Bureau of Reclamation, *NEPA Handbook*, February 2012, p. 3-32, at https://www.usbr.gov/nepa/docs/NEPA_Handbook2012.pdf.

[51] See directives in NPS, *NEPA Handbook*, 2015, pp. 95-96, available at https://www.nps.gov/subjects/nepa/upload/NPS_NEPAHandbook_Final_508.pdf, which repeat directives in 525 DM 1 and ECM 95-3 on evaluating impacts of environmental decisionmaking on minority, low-income, and tribal populations and communities.

Selected DOI Environmental Justice Offices and Other Entities

Over the years, DOI has charged various offices and other entities with addressing or implementing environmental justice policies issued under government-wide or DOI-specific authorities. For some of these entities, their role in coordinating environmental justice initiatives and policies across DOI was added to other existing responsibilities. Other entities were created specifically to address environmental justice. This section provides a brief overview of three entities: OEPC, the DOI Environmental Justice Working Group, and the DOI Environmental Justice Steering Committee. This section is not intended to reflect all DOI-wide entities—current or historical—that have or have had responsibilities related to addressing environmental justice.

Office of Environmental Policy and Compliance

DOI's OEPC, located within the Office of the Assistant Secretary of Policy, Management, and Budget (AS-PMB), is responsible for overseeing the implementation of E.O. 12898 and the integration of environmental justice across DOI's bureaus and programs.[52] Each of DOI's bureaus has a primary environmental justice coordinator who works directly with OEPC in carrying out DOI's environmental justice activities. This coordinator helps to integrate environmental justice throughout the particular bureau or office.[53]

OEPC also is responsible for developing and publishing DOI's environmental justice strategic plans and the accompanying implementation reports. To do this, OEPC has issued guidance to bureaus and offices on when and how to submit information needed for reporting DOI's environmental justice-related activities.[54] The Director of OEPC also represents DOI on the EJ IWG and chairs the DOI Environmental Justice Working Group (see "DOI Environmental Justice Working Group, below").

DOI Environmental Justice Steering Committee

The DOI Environmental Justice Steering Committee (Steering Committee) serves in an advisory capacity to the AS-PMB and the Director of OEPC on DOI's compliance with E.O. 12898 and the department's effectiveness in addressing environmental justice issues. Among its responsibilities, the Steering Committee provides periodic reviews of the department's environmental justice strategic plans and policies, assists and supports DOI bureaus and offices in their implementation of such policies, and evaluates opportunities for collaboration among DOI bureaus and other federal agencies in evaluating impacts to minority, low-income, and tribal populations.[55] The Steering Committee consists of the heads (or senior leadership designees) of eight DOI bureaus, as well as the Office of Insular Affairs, Office of Civil Rights, and the OEPC.[56] Additional bureaus and offices also may participate, as appropriate. According to DOI, the Steering Committee meets at least once a year.

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[52] 525 DM 1_1.7(D).

[53] 525 DM 1_1.7(G).

[54] OEPC, "Reporting Environmental Justice Activities," Environmental Compliance Memorandum No. ECM 70-1, June 18, 2020.

[55] 525 DM 1_1.7(H)(4).

[56] 525 DM 1_1.7(H)(2). Two DOI bureaus do not have a designated representative on the DOI Environmental Justice Steering Committee. These are the Bureau of Indian Education and the Bureau of Safety and Environmental Enforcement.

DOI Environmental Justice Working Group

The DOI Environmental Justice Working Group (Working Group) serves in an advisory capacity to the Director of OEPC and the Steering Committee. Unlike the Steering Committee, which has a direct role in shaping DOI's environmental justice strategies and policies, the Working Group is primarily responsible for assisting DOI bureaus and offices in integrating these directives into their respective programs, policies, and activities. The Director of OEPC chairs the Working Group, which comprises the primary environmental justice coordinators for eight of DOI's bureaus: BIA, BLM, BOEM, BOR, NPS, OSMRE, FWS, and USGS.[57] According to DOI policy, the Working Group meets at least quarterly throughout the year.

Congressional Activities and Issues

Congress has used various tools—including authorizing legislation, appropriations legislation, and hearings—to provide guidance to DOI (among other departments) on whether or how to address environmental justice in conducting agency programs and developing DOI-wide policies.

Some congressional actions have specifically referenced the term *environmental justice*. For example, Congress has focused on the degree to which DOI and its bureaus have complied with E.O. 12898 and other government-wide environmental justice requirements. In 2019, for instance, the Government Accountability Office released a report pursuant to a request by Congress to examine the environmental justice strategies of federal agencies, including DOI.[58] In addition, Congress has conducted oversight hearings examining DOI's commitments to environmental justice. Hearing topics have included the disproportionate impacts faced by indigenous communities, OSMRE's responsibilities to address environmental justice in coal-producing communities, and the potential impacts of energy infrastructure projects across public lands on particular communities.[59]

Congress also has considered legislation related to whether, how, or under what circumstances DOI bureaus and offices might incorporate environmental justice activities into the fulfillment of their statutory responsibilities.[60] In particular, Congress has held hearings and forums to consider the Environmental Justice for All Act, versions of which were introduced in the 116th and 117th Congresses.[61] Among other provisions, versions of the bill would amend the Civil Rights Act of

[57] 525 DM 1_(I)(2). Pursuant to DOI Policy, the Office of Civil Rights and the Office of Insular Affairs also have a representative on the DOI Environmental Justice Working Group. Additional bureaus or offices also may participate in the DOI Environmental Justice Working Group.

[58] U.S. Government Accountability Office, *Environmental Justice: Federal Efforts Need Better Planning, Coordination, and Methods to Assess Progress*, GAO-19-543, September 16, 2019, at https://www.gao.gov/products/gao-19-543.

[59] See U.S. Congress, House Committee on Natural Resources, Subcommittee for Indigenous Peoples of the United States, *Environmental Justice in Indigenous Communities*, hearings, 117th Cong., May 13, 2021; U.S. Congress, House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, *Environmental Justice for Coal Country: Supporting Communities Through the Energy Transition*, hearings, 117th Cong., June 15, 2021; and U.S. Congress, House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, *Energy Infrastructure and Environmental Justice: Lessons for a Sustainable Future*, hearings, 116th Cong., 2nd sess., July 14, 2020, 116-37.

[60] For example, see U.S. Congress, House Committee on Natural Resources, *Legislative Hearing: Environmental Justice for All Act*, hearings, 116th Cong., October 1, 2020; and U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, *Legislative Hearing on H.R. 3687 Environmental Justice in Recreation Permitting Act*, hearings, 117th Cong., June 8, 2021.

[61] See H.R. 5986 and S. 4401 in the 116th Congress and H.R. 2021 and S. 872 in the 117th Congress.

1964 to include disparate environmental impacts on the basis of race, color, or national origin as a form of prohibited discrimination. Versions of the bill also would codify certain DOI grant programs that address issues related to environmental justice and would establish a new economic and environmental assistance program administered by DOI to help transition "fossil fuel-dependent communities."[62]

At other times, Congress has considered legislation and held hearings on issues that overlap with, or relate to, environmental justice concepts, but did not directly use the term. For example, Congress has authorized or appropriated funding for programs and initiatives aimed at increasing access to natural resources and recreational opportunities for urban or underrepresented communities. Although not explicitly considered environmental justice under federal policy, various stakeholders and interest groups have considered providing equitable access to nature a component of environmental justice.[63] In 1978, Congress authorized the NPS Urban Park and Recreation Recovery Program (UPARR), which provided grants to economically distressed urban communities to rehabilitate recreation facilities and to increase and enhance the provision of recreation programs and services.[64] Although Congress has not funded UPARR since 2005, NPS has used other appropriated funds for programs aimed at addressing outdoor recreation needs in urban communities across the country.[65] In addition, Congress has provided appropriations in recent years to FWS for its Urban Wildlife Conservation Program, a program established administratively in 2015 "to engage urban communities in fish and wildlife conservation and to encourage Service staff to help address urban wildlife and habitat restoration and conservation needs."[66] In FY2021, Congress provided $5.5 million for the program.[67]

Moving forward, Congress may expand, curtail, or otherwise alter the ways in which DOI policies and programs consider environmental justice. The definition of *environmental justice* has evolved, moving beyond traditional environmental conditions related to pollution and exposure concerns and into other policy and issue areas. Given this evolution, Congress may continue to consider ways in which DOI and its bureaus have a role in addressing environmental justice as currently defined or under any changed understanding of the concept.

[62] For example, see Sections 11 and 29 of H.R. 2021 and S. 872 in the 117th Congress.

[63] For example, see Jenny Rowland-Shea et al., "The Nature Gap: Confronting Racial and Economic Disparities in the Destruction and Protection of Nature in America," Center for American Progress, July 21, 2021, at https://www.americanprogress.org/issues/green/reports/2020/07/21/487787/the-nature-gap/.

[64] Congress initially authorized the Urban Park and Recreation Recovery Program in 1978 (P.L. 95-625, Title X, §1003). Congress amended the authorization in 1994 (P.L. 103-322, Title III, §31502) and recodified the program in 2014 (P.L. 113-287, §3).

[65] For example, since 2014, NPS has administered the Outdoor Recreation Legacy Partnership Program (ORLP). The ORLP is funded through the Land and Water Conservation Fund (LWCF). It is a nationally competitive grant program that delivers funding to urban areas (jurisdictions of at least 50,000 people) with priority given to projects located in economically disadvantaged areas and lacking in outdoor recreation opportunities. OLRP is not codified in statute, and there have been congressional proposals to authorize the program in law (e.g., H.R. 2021 in the 117th Congress). In addition, the FY2021 Interior appropriations law (Division G of P.L. 116-260) and the accompanying explanatory text set out an allocation of LWCF funding for the ORLP.

[66] FWS, 110 FW 1 – "Urban Wildlife Conservation Program Policy," at https://www.fws.gov/policy/110fw1.html.

[67] See Division G of P.L. 116-260 and the accompanying joint explanatory statement text.

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