

THE WHITE HOUSE

WASHINGTON

April 8, 1993

PRESIDENTIAL REVIEW DIRECTIVE/NSC-23

MEMORANDUM FOR THE VICE PRESIDENT

THE SECRETARY OF STATE
THE SECRETARY OF THE TREASURY
THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF THE INTERIOR
THE SECRETARY OF AGRICULTURE
THE SECRETARY OF COMMERCE
THE SECRETARY OF TRANSPORTATION
THE SECRETARY OF ENERGY
DIRECTOR, OFFICE OF MANAGEMENT & BUDGET
UNITED STATES TRADE REPRESENTATIVE
CHIEF OF STAFF TO THE PRESIDENT
DIRECTOR OF CENTRAL INTELLIGENCE
CHAIR, COUNCIL OF ECONOMIC ADVISERS
DIRECTOR, OFFICE OF SCIENCE AND TECHNOLOGY POLICY
THE CHAIRMAN, JOINT CHIEFS OF STAFF
ADMINISTRATOR, AGENCY FOR INTERNATIONAL
DEVELOPMENT
ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY
DEPUTY ASSISTANT TO THE PRESIDENT FOR
ENVIRONMENTAL POLICY
ADMINISTRATOR, NATIONAL AERONAUTICS AND SPACE
ADMINISTRATION
DIRECTOR, NATIONAL SCIENCE FOUNDATION
DIRECTOR, UNITED STATES INFORMATION AGENCY
ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION

SUBJECT: U.S. Policy on Extraterritorial Application of the
National Environmental Policy Act (NEPA)

On March 15, 1993, the President decided not to petition for a rehearing in EDF v. Massey, a recent decision of the Court of Appeals for the District of Columbia Circuit. In declining to seek a rehearing in this case, the new administration indicated it would not challenge the Court's precise holding -- namely that NEPA applies to U.S. activities in Antarctica. The administration did not, however, reach a decision with respect to the application of NEPA either to the global commons (specifically the high seas and outer space), or to U.S. actions overseas, specifically in foreign territories and in the U.S. and foreign Exclusive Economic Zones (EEZ). This review will focus on these two issues.

The review should be completed by May 17, 1993 and shall include options related to NEPA applicability both to the global commons and to actions in a nation other than the United States. At a minimum, the review should include the following:

Part I: Background

- Analysis of the legislation and the legislative history with respect to these issues.
- Description of current Congressional interest in this issue, including an analysis of serious legislative proposals.
- Description of the history of applying NEPA in foreign territory, before and after Executive Order 12114, including a description of events leading to the issuance of the Executive Order.
- Description of history of applying NEPA to the global commons and the U.S. foreign EEZs, before and after Executive Order 12114 was issued.
- Description of environmental impact analysis obligations in existing treaties affecting the global commons or U.S. activities overseas.
- Analysis of the relationship between NEPA and the Freedom of Information Act, between NEPA and the subject of classified information, between NEPA and emergency actions, between NEPA and national security issues and between NEPA and foreign policy concerns, including negotiation and conclusion of international agreement.
- Comparative analysis of NEPA, EO 12114 and implementing agency regulations, including an analysis of the extent to which the environmental effects of Federal actions overseas and in the global commons are being addressed and implemented under Executive Order 12114.
- Analysis of pending and proposed litigation.
- Implications for other statutes, such as Section 7 of the Endangered Species Act.

Part II: Policy Options

- If NEPA were applied to either U.S. actions in the global commons, or in foreign territory, what impacts (environmental, commercial, budgetary, litigation, foreign policy and national security) would result? Potential application of NEPA to

the global commons or to foreign territory should be separately analyzed.

- To what extent can environmental concerns be addressed by actions short of extending NEPA such as a new Executive Order or improving the current Executive Order? What would the impact be of such an Executive Order?
- Pros and Cons shall be provided for each option.
- A recommended option should be provided.

Part III: Tasking

- The NSC shall chair an IWG meeting which will prepare a coordinated draft review paper.
- Because a number of matters to be addressed have implications for legal positions asserted by the United States on matters currently pending in litigation, the NSC shall consult particularly with agencies involved in the litigation.

The paper shall be presented to the Deputies Committee when complete, and a Deputies Committee meeting shall be called and chaired by the Deputy National Security Adviser.



Anthony Lake
Assistant to the President
for National Security Affairs