

This is the third in a series of posts on the reasons we might have environmental review. The first post is [here](#). The second post is [here](#).

A frequent critique of NEPA is that it is paperwork without purpose, and thus a waste of resources. How can a statute that has no substantive requirements, and only requires analysis and public disclosure of the effects of a proposed agency action, have any impact on the environment? A partial answer is that the information that NEPA provides can be useful for implementation of other statutes - for instance, NEPA review can inform how public land management agencies can meet their legal obligations for resource protection.

The broader answer - at least the one given by supporters of NEPA - is that not all policy changes necessarily happen through the regulatory or legal process. To the extent that NEPA changes outcomes, it is not because it legally forces a government agency to adopt a particular substantive outcome. Instead, the public disclosure of the effects of a proposed action can have significant public and political implications. Projects that were touted as beneficial with few side effects can be revealed as having major tradeoffs, including to environmental resources that are valued by the public. The result can be that NEPA documentation can produce a public response to a project, a public response that in turn can produce a political response, as elected officials respond to that public pressure.

This theory of how NEPA makes change possible makes a number of assumptions. First, it requires a functioning press and civil society, so that negative criticisms of government projects can be circulated and used to mobilize opposition. Second, it requires the public to have strong feelings or perspectives about environmental effects - at least strong enough to prompt mobilization. And third, it requires elected officials to be responsive to those public demands. Finally, it assumes that NEPA is the catalyst of public opposition, but public opposition to a project might itself be a driver of efforts to use the NEPA process to stop a project (an approach I will tackle in a subsequent blog post).

How well does NEPA work this way? It's hard to assess, in part because the interaction of public opposition and NEPA reviews may not be a simple one-way process, as noted above. One can certainly point to examples of project opponents using the information in a NEPA documentation to buttress their case against a project. But there isn't much systematic evidence out there on this question one way or another.

And building on the assumptions above, there are a range of reasons why we might think NEPA as a political tool will be more effective in some contexts than others. Projects that are more high profile politically may ironically be less shaped by the political fights prompted by NEPA review, precisely because the agency and other project proponents have

more at stake, and therefore may resist public pressure more. In addition, if political polarization is high, then elected officials may be resistant to public pressure perceived to come from the “other side.” Indeed, in the context of higher political polarization, we may see support and opposition to a project aligning on partisan lines in ways that make responsiveness through NEPA processes less effective. On the other hand, if NEPA review produces information that produces broad mobilization in a community, that may well produce responsiveness by elected and unelected officials.