

The Democrats have adopted an ambitious [platform](#) for environmental protection, full of innovative legislative initiatives. Here's another idea Biden and Harris should consider, making use of the oldest of the modern environmental statutes.

The National Environmental Policy Act ([NEPA](#)) is best known for requiring environmental impact statements. While they have enforced that requirement, the courts have declined to enforce another of the statute's core requirements: that agencies actually take environmental issues into account when they make decisions. But there's a remedy. This mandate should be enforced as part of the White House review process.

Section 101(b) of NEPA sets forth a series of government policies. The most important ones are at the beginning. NEPA directs the government to "fulfill the responsibilities of each generation as trustee of the environment for succeeding generations." The government is also told to "assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings."

Congress intended agencies to take these policies seriously. Section 102(1) mandates that "to the fullest extent possible . . . the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act."

Overlooking this provision of law, the Supreme Court has [ruled](#) that NEPA only imposes a procedural requirement: agencies have to discuss environmental impacts, but they don't have to act on the information. That issue seems ripe for reconsideration by the courts, in light of the recent emphasis on obeying the texts of statutes. Realistically, that seems like a long shot, since it means overruling previous decisions.

Even if the courts won't act, that shouldn't stop the executive branch from enforcing the statutory mandate on itself. After all, since Reagan, it has enforced a cost-benefit mandate that has no basis in statute whatsoever.

I would propose an executive order restating NEPA's policies, perhaps in more modern language, and then assigning the White House Council on Environmental Quality the power to review agency decisions to determine whether agencies have met their responsibilities. This process would parallel the existing review process for regulations, which involves review of cost-benefit analyses by the Office of Information and Regulatory Affairs in the White House. Conceivably, the process

could be simplified by merging the two White House agencies into a new Office of Sustainable and Effective Regulation.

We're used to having the White House scrutinize whether agency actions pass cost-benefit analysis. This is a requirement that the executive branch simply invented. The mandate to protect the environment comes straight from Congress. It has a far better legal pedigree than the cost-benefit mandate. NEPA's mandate may have been slighted by the courts, but there's no reason for the executive branch to follow suit.