EPA AND NEPA'S INTERNATIONAL COOPERATION PROVISION

Terrence Neal*

ABSTRACT

The goal of this Article is to analyze and highlight EPA's authority to undertake international activities—a topic that has been more overlooked than EPA's foreign policy role itself. In accomplishing this goal, it places particular focus on the nature and scope of Section 102(2)(I) of the National Environmental Policy Act (NEPA). This Article asserts that Section 102(2)(I) is not merely a policy statement. It prescribes both an authorization and a discretionary duty to engage in international environmental cooperation. NEPA's text and legislative history, as well as persuasive judicial and administrative decisions, affirm this. After clarifying Section 102(2)(I)'s legal nature, this Article demonstrates how EPA may leverage this provision to bolster its legal justifications for undertaking international activities pursuant to statutes that neither preclude nor expressly authorize such activities.

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INTRODUCTION

Although the United States Environmental Protection Agency (EPA) has engaged in international activities since the 1970s,[1] its role in foreign

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* Terrence Neal is a Parenteau Climate Action Fellow at Vermont Law and Graduate School. I thank the staff members at the *Vermont Journal of Environmental Law* for their editorial assistance. I am grateful for advice and suggestions from Professor Pat Parenteau. I also am appreciative of my prior colleagues at

relations is often overlooked. EPA's Office of International Affairs coordinates the agency's international programs,[2] which provide scientific, policy, and legal expertise to international organizations, foreign governments, foreign research institutions, and other federal agencies to address bilateral, regional, and global human health and environmental issues.[3]

These programs were indispensable in advancing the Biden-Harris Administration's objective of restoring the United States' leadership and engagement internationally. Among other Biden-era engagements, EPA hosted the Global Methane Initiative secretariat;[4] participated in the United States' negotiation of international legal instruments, such as the Indo-Pacific Economic Framework for Prosperity and the United Nations plastic agreement;[5] and chaired the governing body of the Commission for Environmental Cooperation, an intergovernmental organization comprising the United States, Mexico, and Canada.[6] In addition, the agency entered into more than 20 arrangements with foreign governments and foreign research institutions to facilitate technical exchanges and scientific collaboration. For example, EPA signed memoranda of understanding (MOUs) with Australia's

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the United States Environmental Protection Agency (EPA) who I collaborated with on a range of international initiatives during my time as an EPA attorney-adviser.

1. *See generally* J. T. Dale, *The Global Interface: EPA's Office of International Activities*, 50 J. WATER POLLUTION CONTROL FED'N 600 (1978); *see also* Jamison Koehler & Scott A. Hajost, *1989: Advent of a New Era for EPA's International Activities*, 1 COLO. J. INT'L ENV'T. L. & POL'Y 181 (1990).

2. In coordination with this office, many EPA offices have engaged in international activities, including the Office of Chemical Safety and Pollution Prevention, Office of Air and Radiation, Office of Research and Development, Office of Land and Emergency Management, Office of Enforcement and Compliance Assurance, and Office of Policy and Regulatory Management. *See, e.g.*, *International Activities Related to Pesticides*, U.S. ENV'T PROT. AGENCY, https://www.epa.gov/pesticides/international-activities-related-pesticides (last updated Sept. 12. 2025) ("EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) will continue to work with Health Canada's Pest Management Regulatory Agency (PMRA) on a variety of projects."). EPA regional offices also conduct international activities. *See, e.g.*, JOINT STATEMENT OF COOPERATION ON THE GEORGIA BASIN AND PUGET SOUND ECOSYSTEM OF ENVIRONMENT CANADA AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ACTION PLAN AND REPORT ON PROGRESS 2 (2003), ("Regionally, Environment Canada - Pacific Yukon Region (EC-PYR) and the US Environmental Protection Agency (EPA)-Region 10 have a long standing and successful relationship."); *Interior and EPA Leverage Funding and Expertise in Support of Clean Water and Utility Efficiency in the Freely Associated States*, U.S. DEP'T OF THE INT. (Nov. 30, 2020), https://www.doi.gov/oia/press/interior-and-epa-leverage-funding-and-expertise-support-clean-water-and-utility-efficiency.

3. *See* 40 C.F.R. § 1.27(a) (2025); *see generally* Dale, *supra* note 1.

4. *See Secretariat*, GLOBAL METHANE INITIATIVE (GMI), https://www.globalmethane.org/secretariat/index.aspx (last visited Mar. 31, 2026).

5. *See U.S. Trade and Investment Agreements*, U.S. ENV'T PROT. AGENCY, https://www.epa.gov/international-cooperation/us-trade-and-investment-agreements (last updated Nov. 5, 2025).

6. *See CEC Council Sessions*, U.S. ENV'T PROT. AGENCY, https://www.epa.gov/international-cooperation/cec-council-sessions#2024 (last updated Sept. 12, 2025).

Department of Climate Change, Energy, the Environment and Water,[7] Israel's Ministry of Environmental Protection,[8] and Singapore's National Environment Agency.[9] These MOUs formalized the three foreign agencies' intent to cooperate with EPA on environmental justice and solid waste-management related matters.

Despite the breadth and importance of EPA's international activities,[10] the legal authorities permitting EPA to engage in such activities have been even more overlooked than EPA's foreign policy role itself. Thus, the goal of this Article is to highlight statutes that authorize EPA to engage in international activities. It places particular focus on Section 102(2)(I) of the National Environmental Policy Act (NEPA), clarifying its nature and scope.[11]

As amended by the Fiscal Responsibility Act (FRA) in 2023, Section 102(2)(I) states:

> The Congress authorizes and directs that, to the fullest extent possible . . . all agencies of the Federal Government shall . . . consistent with the provisions of this chapter, recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment[.][12]

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7. Memorandum of Understanding Between the Environmental Protection Agency of the United States of America and the Department of Climate Change, Energy, the Environment and Water of the Government of Australia on Environmental Cooperation (Oct. 20, 2023).

8. Memorandum of Understanding Between the Ministry of Environmental Protection of Israel and the United States Environmental Protection Agency (Sept. 18, 2023).

9. Memorandum of Understanding Between the Environmental Protection Agency of the United States of America and the National Environmental Agency of the Republic of Singapore on Environmental Cooperation (July 19, 2023).

10. For purposes of this Article, "international activities" is used broadly to, for example, include regulatory cooperation with foreign governments and international organizations, technical assistance and capacity building for foreign governments, international research collaboration, and other activities conducted between EPA and foreign governments and international organizations.

11. 42 U.S.C. § 4332(2)(I). At least two commentators have opined on Section 102(2)(I)'s pre-FRA amendment text, but their analyses are brief and not very detailed. *See* Dale, *supra* note 1, at 600; Joan R. Goldfarb, *Extraterritorial Compliance with NEPA Amid the Current Wave of Environmental Alarm*, 18 B.C. ENV'T AFFS. L. REV. 543, 572 (1991) ("NEPA currently requires agencies merely to 'lend appropriate support to initiatives[.]'"); *see also* DANIEL R. MANDELKER, NEPA LAW AND LITIGATION § 5.18 (2d ed. 2012) (noting NEPA's scope). For example, in 1978, J. T. Dale contemplated that Section 102(2)(F) of NEPA provided a mandate for such activities. *See* Dale, *supra* note 1, at 600.

12. 42 U.S.C. § 4332(2)(I).

I assert that this provision prescribes a discretionary or directory duty for EPA, as well as all other federal agencies with environmental protection-related competencies, to engage in international environmental cooperation. Additionally, I reason that EPA may cite Section 102(2)(I) to supplement its justifications for undertaking international activities pursuant to federal statutes that neither preclude nor expressly authorize such activities.[13]

This Article proceeds in five Parts. Part I explains the continued relevance of international environmental cooperation for fulfilling EPA's mission. Part II analyzes the extent to which the 2023 FRA amendments have altered NEPA's international cooperation provision. Part III describes the legal nature of Section 102(2)(I) of NEPA. Part IV examines the scope of Section 102(2)(I)'s authorization to agencies to support international environmental cooperation. Finally, Part V demonstrates how EPA can leverage NEPA to bolster the legal justifications for its international activities.

I. THE CONTINUED RELEVANCE OF NEPA'S INTERNATIONAL COOPERATION PROVISION

Senator Henry Jackson drafted Section 102(2)(I)'s pre-Fiscal Responsibility Act (FRA) amendment text.[14] When describing the need for the provision to his colleagues, he highlighted that:

> Cooperation in dealing with [the environmental problems all nations and all people share] is necessary, for the problems are urgent and serious . . . . We must seek solutions to environmental problems on an international level because they are international in origin and scope. The earth is a common resource, and cooperative effort will be necessary to protect it. Perhaps also, in the common cause of environmental management, the nations of the earth will find a little more sympathy and understanding for one another . . . .[15]

Today, Senator Jackson's sentiments are more relevant than ever. In our globalized world, most environmental challenges affecting the United States

13. This is particularly relevant to consider following the abrogation of the *Chevron* doctrine. *See generally* Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244 (2024).

14. 115 CONG. REC. 40416.

15. *Id*. at 40417.

have international dimensions. The best example of this is the climate crisis. The atmosphere is a global common into which every country emits greenhouse gases contributing to climate change.[16] The deterioration of this global common, in turn, poses risks to all people and ecosystems.

In the United States, climate change is linked to increased wildfire frequency and severity,[17] heavier rainfall and increased flooding, sea level rise and higher storm surges along coastlines,[18] and much more. These climate-intensified phenomena threaten the Environmental Protection Agency's (EPA) ability under existing environmental statutes and regulations to fulfill its mission to protect human health and the environment in the United States. For instance, wildfires worsened by climate change emit substantial amounts of particulate matter, and their emissions could offset air quality improvements that EPA particulate matter regulations have achieved.[19] Additionally, heavier precipitation events could undermine achievements made in improving water quality under the Clean Water Act. Such events often overwhelm stormwater and sewage systems and contribute to flooding that releases chemicals and debris into the environment.[20]

In conjunction with the climate crisis, humans and other living beings in the United States are also affected by the global issue of plastic pollution. Annually, approximately 11 million metric tons of plastics enter the ocean.[21] The Pew Charitable Trusts projects that this figure could nearly triple by 2040, to 29 million metric tons per year.[22] While this tragedy directly affects the United States' coastline and coastal waters, the United States is incapable of solving this transboundary pollution issue alone, for example, through EPA's regulation of solid waste. Many plastics in the ocean originate from plastic waste that is mismanaged in foreign countries, causing it to be

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16. *See generally* Robert Stavins et al., *International Cooperation: Agreements & Instruments*, *in* CLIMATE CHANGE 2014: MITIGATION OF CLIMATE CHANGE. CONTRIBUTION OF WORKING GROUP III TO THE FIFTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE 1001 (2014); ENV'T PROT. AGENCY, CLIMATE CHANGE INDICATORS IN THE UNITED STATES 6 (5th ed. 2024).

17. *See* Christopher J. Fettig et al., *Forests*, *in* FIFTH NATIONAL CLIMATE ASSESSMENT 7-1, 7-9 (Brooke Eastman et al., eds., 2023); Allison R. Crimmins et al., *Focus on Western Wildfires*, *in* FIFTH NATIONAL CLIMATE ASSESSMENT F2-1, F2-3 (Ellen M. Considine et al., eds., 2023).

18. *See* Ariane O. Pinson et al., *Water*, *in* FIFTH NATIONAL CLIMATE ASSESSMENT 4-1, 4-17 (Beth M. Haley et al., eds., 2023).

19. *See* Christopher G. Nolte et al., *Air Quality*, *in* FIFTH NATIONAL CLIMATE ASSESSMENT 14-1, 14-6 (Neal Fann et al., eds., 2023); Abageal Giles, *Is Vermont Seeing More Wildfire Smoke Because of Climate Change*, CAI (Aug. 21, 2025), https://www.capeandislands.org/text/2025-08-21/vermont-more-wildfire-smoke-climate-change.

20. *See* Pinson et al., *supra* note 18, at 4-17.

21. *See* THE PEW CHARITABLE TRUSTS, BREAKING THE PLASTIC WAVE 25 (2020); *Fighting for Trash Free Seas*, OCEAN CONSERVANCY, https://oceanconservancy.org/trash-free-seas/plastics-in-the-ocean (last visited Mar. 31, 2026).

22. THE PEW CHARITABLE TRUSTS, *supra* note 21, at 9.

released into waterways and the ocean from land-based sources.[23] As these plastics break down into micro- and nano-plastics from weathering and abrasion, they also find their way into the tissues of plants and animals that humans eat, as well as the air and precipitation.[24]

In short, without international cooperation, EPA cannot fulfill its mission or achieve the federal policy goals established under the National Environmental Policy Act (NEPA)—especially the goal of ensuring for all Americans, including future generations, a safe and healthy environment.[25] The pressing need for EPA's engagement in international environmental cooperation is bolstered by the International Court of Justice's unanimous advisory opinion on the obligations of states in respect of climate change.[26] This authoritative opinion affirms that countries have a duty to cooperate to address environmental degradation under customary international law. Specifically, it declares that all countries have a duty under customary international law to undertake sustained and continuous cooperation with other countries to protect the climate system from emissions of greenhouse gases.[27]

II. THE FRA'S MINOR CHANGES TO NEPA'S INTERNATIONAL COOPERATION PROVISION

Since President Richard Nixon signed the National Environmental Policy Act (NEPA) into law in 1970, NEPA has expressly recognized the global nature of environmental issues, as well as the importance of international cooperation to address them.[28] NEPA's original international cooperation provision was designated as Section 102(2)(E). It stated:

> The Congress authorizes and directs that, to the fullest extent possible . . . all agencies of the Federal Government shall . . . recognize the worldwide and long-range character of environmental problems and, where consistent with the

23. *Land-based Marine Debris*, NOAA, https://marinedebris.noaa.gov/where-does-marine-debris-come/land-based-marine-debris (last updated Mar. 28, 2025).

24. SECRETARIAT OF THE CONVENTION ON BIOLOGICAL DIVERSITY, CBD TECH. SERIES 83, MARINE DEBRIS: UNDERSTANDING, PREVENTING AND MITIGATING THE SIGNIFICANT ADVERSE IMPACTS ON MARINE AND COASTAL BIODIVERSITY 11 (2016); JULIANO CALIL ET AL., NEGLECTED: ENVIRONMENTAL JUSTICE IMPACTS OF MARINE LITTER AND PLASTIC POLLUTION 41–44 (2021).

25. *See* 42 U.S.C. § 4331(b)(1)–(2).

26. Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 I.C.J. ¶ 308 (2025) ("Climate change is a common concern. Co-operation is not a matter of choice for States but a pressing need and a legal obligation.").

27. *See generally id.*

28. *See* Pub. L. No. 97–190, § 102(2)(E) (1970) (codified at 42 U.S.C. § 4332(2)(I)).

> foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment . . . .[29]

In 1975, Congress redesignated this provision to Section 102(2)(F).[30] Later, in 2023, the Fiscal Responsibility Act (FRA) redesignated Section 102(2)(F) to Section 102(2)(I) and added "consistent with the provisions of this Act" before "recognize" in the provision's operative text.[31] These minor changes do not significantly alter the text's meaning. International environmental cooperation remains consistent with NEPA's broad purpose of "promot[ing] efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man,"[32] as well as with its policy goals of "creat[ing] and maintain[ing] conditions under which man and nature can exist in productive harmony."[33] In addition, such cooperation does not necessarily conflict with other NEPA provisions, such as those pertaining to environmental reviews of major federal actions (e.g., Section 102(2)(C) of NEPA). Therefore, authoritative analyses of Section 102(2)(I)'s pre-FRA amendment text, for example by federal courts, may be relied upon to interpret Section 102(2)(I).

This Part does not foreclose the possibility that the FRA's addition of "consistent with the provisions of this Act" may affect the interpretation of other NEPA provisions that are not the focus of this Article. Congress added this clause to Section 102(2)(I) as part of a permitting reform initiative.[34] Thus, it is more relevant for understanding the relationship between Section 102(2)(I) and Section 102(2)'s environmental review requirements. For instance, the clause could be construed to affect the extent to which agencies must "recognize the worldwide and long-range character of environmental problems" in preparing the environmental impact statements for major federal actions required under Section 102(2)(C) of NEPA.[35]

29. *See id.*

30. *See* Pub. L. No. 94–83 (1975).

31. *See* Fiscal Responsibility Act of 2023, Pub. L. No. 118–5, § 321(a)(7) (2023).

32. 42 U.S.C. § 4321.

33. 42 U.S.C. § 4331(a).

34. The FRA amendments to the international cooperation provision are located under Title III of the FRA, which is named "TITLE III–PERMITTING REFORM." Pub. L. No. 118–5, § 321(a)(7).

35. 42 U.S.C.§ 4332(2)(I); *cf.* Update to Regulations Implementing the Procedural Provisions of NEPA, 85 Fed. Reg. 43304, 43346 (finalized July 16, 2020) ("[Section 102(2)(F)] does not indicate in any way that the requirements of section 102(2)(C) to prepare detailed statements applies outside of U.S. territorial jurisdiction.").

III. SECTION 102(2)(I)'S LEGAL NATURE

Section 102(2)(I) prescribes both an authorization and a discretionary or directory duty to engage in international environmental cooperation. Its authorization is explicit.[36] Section 102(2)(I) plainly states that "Congress *authorizes* and directs that, to the fullest extent possible . . . [federal agencies] shall . . . where consistent with the foreign policy of the United States, lend appropriate support . . . ."[37] While the duty under Section 102(2)(I) arguably is less explicit, it is nonetheless evidenced by the National Environmental Policy Act's (NEPA) structure and legislative history,[38] a persuasive United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) opinion,[39] and Nuclear Regulatory Commission (NRC) orders.[40]

36. *See* King v. Burwell, 576 U.S. 473, 486 (2015) ("If the statutory language is plain, we must enforce it according to its terms.") (citing Hardt v. Reliance Std. Life Insurance Co., 560 U.S 242, 251 (2010)); Meyers v. Birdsong, 83 F.4th 1157, 1160 (9th Cir. 2023) ("In statutory interpretation, the plain meaning of a statute controls where that meaning is unambiguous.") (internal quotations marks omitted). NEPA's legislative history provides additional support. In 1969, Senator Henry Jackson explained that Section 102(2)(I)'s pre-amendment text provides "statutory authority to all Federal agencies to participate in the development of a positive, forward looking program of international cooperation in dealing with the environmental problems all nations and all people share." 115 CONG. REC. 40416–17. He also expressed:

> I am hopeful that the United Nations Conference in 1972 on "the Problems of the Human Environment" will unite leaders of nations throughout the world in the effort of achieving solutions to international environmental problems. I am, however, concerned that at the present time the Federal Government is not doing enough to plan and prepare for the 1972 U.N. Conference. [Section 102(2)(I)'s pre-amendment text] provides the Federal agencies and the administration with the authority to make a positive and a far-reaching contribution to this international effort to deal with this critical and growing international problem. I am hopeful that this authority will be utilized.

Id. at 40417.

37. 42 U.S.C. § 4332(2)(I) (emphasis added).

38. *See* Robinson v. Shell Oil Co., 519 U.S. 337, 341 (1997) ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole."); Loving v. I.R.S., 742 F.3d 1013, 1016 (D.C. Cir. 2014) ("In determining whether a statute is ambiguous and in ultimately determining whether the agency's interpretation is permissible or instead is foreclosed by the statute, we must employ all the tools of statutory interpretation, including text, structure, purpose, and legislative history.") (internal quotation marks omitted).

39. *See* Env't. Def. Fund, Inc. v. Massey, 986 F.2d 528, 536 (D.C. Cir. 1993); *see also* Nat. Res. Def. Council, Inc. v. Nuclear Regul. Comm'n, 647 F.2d 1345, 1387 (D.C. Cir. 1981) (Robinson III, J., concurring) (positing that NEPA's international cooperation provision is a directive that federal agencies must comply with).

40. *See* Babcock & Wilson, 5 N.R.C. 1332, 1338–39, 1346–48 (1977); Westinghouse Electric Corp., 11 N.R.C. 631, 649–50, 661–62 (1980); *but see* Update to Regulations Implementing the Procedural Provisions of NEPA, 85 Fed. Reg. 43304, 43346 (finalized July 16, 2020) ("International cooperation is inherently voluntary . . . .").

Regarding NEPA's structure, Section 101 of NEPA pronounces aspirational policies and goals.[41] Section 101's inclusion of language, such as "declares that it is the continuing policy of the Federal Government" and "should," make apparent it does not stipulate legal obligations.[42] In contrast, Section 102's provisions, including Section 102(2)(I), stipulate actions that agencies have a duty to implement.[43] Since these provisions are all subject to the operative terms "directs" and "shall," it is evident that Congress intended that they be given effect.[44]

NEPA's legislative history's description of the relationship between Section 101 and Section 102 supports this finding. When endorsing NEPA in 1969, the Senate Committee on Interior and Insular Affairs expressed that Section 102 was designed to effectuate NEPA's goals and policies.[45] Specifically, the Committee clarified that Section 102's international cooperation provision and its environmental review provisions were included in NEPA "to remedy . . . shortcomings in the legislative foundation of existing [federal] programs, and to establish action-forcing procedures which will help to insure that the policies enunciated in section 101 are implemented."[46] Thus, in accordance with their fundamental importance in NEPA's legislative scheme, Congress enacted Section 102's subparagraphs as "directives" requiring federal agency compliance.[47]

Consistent with Congress's intent, the D.C. Circuit recognized the legal character of Section 102(2)(I) in its dicta in *Environmental Defense Fund v. Massey*.[48] The central question in this case was whether Section 102(2)(C) of NEPA required the National Science Foundation (NSF) to undertake an environmental review of its proposed plan to incinerate waste in Antarctica.[49] NSF averred that Section 102(2)(I)'s pre-Fiscal Responsibility Act (FRA) amendment text prescribed NEPA's only requirement for agencies

41. *See* H.R. REP. No. 91-765, at 9 (1969) (Conf. Rep.); S. REP. No. 91-296, at 19–20 (1969).

42. 42 U.S.C. § 4331; *see* United States v. Santos-Portillo, 997 F.3d 159, 167 (4th Cir. 2021).

43. 42 U.S.C. § 4332(2)(I).

44. *See* Nat. Res. Def. Council, Inc. v. Tenn. Valley Auth., 367 F. Supp. 122, 125 (E.D. Tenn. 1973) ("The phrase in § 102 of the NEPA that 'Congress authorizes and directs that, to the fullest extent possible . . . ' has been consistently construed to require compliance with NEPA."); *cf.* National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 Fed. Reg. 35442, at 35508 ("[S]ection 102(2)(I) of NEPA . . . requires Federal agencies to 'recognize the worldwide and long-range character of environmental problems[.]'"). In comparison, "[t]he term 'authorize' is generally given a permissive connotation rather than a mandatory one, and has been held to denote ordinarily a power to act as opposed to an obligation to act." United States v. Maryland, 471 F. Supp. 1030, 1038 (D. Md. 1979).

45. *See* S. REP. NO. 91-296, at 17–20; *see also* H.R. REP. NO. 91-765, at 7–8.

46. S. REP. NO. 91-296, at 19.

47. H.R. REP. No. 91-765, at 9; *see also* Goldfarb, *supra* note 11, at 572.

48. *See* Env't. Def. Fund, Inc. v. Massey, 986 F.2d 528, 536 (D.C. Cir. 1993).

49. *See id.* at 529–30.

conducting activities internationally.[50] In ruling against NSF, the D.C. Circuit found that while Section 102(2)(I)'s pre-FRA amendment text stipulated an obligation, it did not negate the applicability of Section 102(2)(C).[51] The Court remarked:

> NSF has chosen to ignore the clear interrelationship between the Section 102 subsections and the Section 102 mandate as a whole. Section 102 lists several requirements under NEPA for "all Federal agencies." Compliance with one of the subsections can hardly be construed to relieve the agency from its duty to fulfill the obligations articulated in other subsections.[52]

In several nuclear reactor export licensing proceedings, the NRC similarly concluded that agencies have a duty to support international environmental cooperation under NEPA.[53] In *Babcock & Wilcox*, an environmental organization contended that the NRC was required under Section 102(2)(C) of NEPA to consider a nuclear reactor's potential environmental effects in the foreign country where it would be operated before deciding whether to license the reactor's export.[54] Although the NRC decided that NEPA did not require it to consider these effects, it noted international cooperation's importance under NEPA.[55] The NRC asserted that "NEPA requires the United States, where consistent with U.S. foreign policy, to lend appropriate support to efforts aimed at maximizing international cooperation on environmental matters"[56] and thus, "[a]gencies are to seek and encourage cooperation with other nations on environmental problems."[57] The NRC also expressed that its "cooperative ventures fully implement NEPA provisions *mandating* that the United States lend appropriate support to international cooperation in environmental matters."[58]

A few years after *Babcock & Wilcox*, the NRC was presented with similar questions regarding NEPA's extraterritorial application in

50. *Id.* at 530.

51. *See id.* at 536.

52. *Id.*; *see* Nat. Res. Def. Council, Inc. v. Nuclear Regul. Comm'n, 647 F.2d 1345, 1387 (D.C. Cir. 1981) (Robinson III, J., concurring) (citation omitted) (positing that NEPA's international cooperation provision is a directive that federal agencies must comply with).

53. *See* Babcock & Wilson, 5 N.R.C. 1332, 1338–39, 1346–48 (1977); Westinghouse Electric Corp., 11 N.R.C. 631, 649–50, 661–62 (1980).

54. *See* Babcock & Wilson, *supra* note 53, at 1334–37.

55. *See id.* at 1338–39, 1346–47.

56. *Id.* at 1346.

57. *Id.* at 1338–39.

58. *See id.* at 1347–48 (emphasis added).

Westinghouse Electric Corp.[59] This administrative proceeding concerned a license for exporting a nuclear reactor to the Philippines.[60] The NRC seized this opportunity to reaffirm that the pre-FRA amendment version of Section 102(2)(I) prescribed a legal requirement.[61] Furthermore, to demonstrate its compliance with this requirement, the NRC outlined that:

> The NRC pursuant to its NEPA obligations and existing bilateral and multilateral cooperation agreements, exchanges nuclear health, safety, and environmental information with other countries, and encourages adoption of health and safety standards and establishment and improvement of safety and regulatory practices by foreign governments. The NRC currently has agreements with eighteen countries including the Republic of the Philippines. As part of these exchanges the NRC provides notification of its decisions affecting design and operation of reactor types similar to those exported; analyses of problems similar to those encountered abroad, if requested; and copies of NRC standards, environmental impact statements and other health and safety documentation . . . . NRC also arranges for representatives of foreign regulatory organizations to be assigned to the NRC technical staff to work with NRC safety experts for periods of from four months to two years to gain experience in safety and regulatory matters. Representatives of foreign countries also attend 1–3 week NRC training courses on a range of regulatory topics.[62]

Nonetheless, even if Section 102(2)(I) stipulates a duty, its inclusion of the terms "appropriate support" and "where consistent with . . . foreign policy" reflects that Congress intended to grant agencies broad discretion regarding when and how to support international cooperation.[63] As the NRC has reasoned, these qualifiers further suggest that the discretionary duty that Section 102(2)(I) prescribes is not judicially enforceable.[64] Indeed, legal

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59. *See* Westinghouse Electric Corp., *supra* note 40, at 649–50, 661–62.
60. *See id.* at 632.
61. *See id.* at 661.
62. *Id.* at 649–50.
63. 42 U.S.C. §4332(2)(I).
64. *See* Babcock & Wilson, *supra* note 53, at 1339 ("Section 102(2)(F) does not appear to create enforceable obligations for agencies. To the contrary, the very conspicuousness of the foreign policy qualification indicates a concern for the practical problems of conducting foreign policy and responding to the vicissitudes of international relations.").

claims to force an agency to provide support to a particular international initiative would likely be non-justiciable. Judicial review of such claims would require a court to determine the content of United States foreign policy, as well as what constitutes appropriate forms of support to maximize international cooperation. In other words, these claims would invite a court to question the prudence of Congress or the Executive Branch in matters of foreign policy constitutionally committed to their discretion, which is impermissible under the political questions doctrine.[65]

However, the inability to seek judicial recourse does not mean that Section 102(2)(I) is merely a policy statement. NEPA explicitly directs agencies to comply with this provision "to the fullest extent possible."[66] In a concurring opinion in a NEPA environmental review case, Judge Spottswood William Robinson III highlights this.[67] He reasoned that "to the fullest extent possible" applies to the NEPA obligation to support international environmental cooperation and that agencies "should remain cognizant of this responsibility."[68]

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65. *See* Japan Whaling Ass'n v. Am. Cetacean Soc'y, 478 U.S. 221, 230 (1986) ("The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch."); *see also* People's Mojahedin Org. of Iran v. U.S. Dep't of State, 182 F.3d 17, 23 (D.C. Cir. 1999) (applying the political question doctrine and declining to review an agency's determination that the terrorist activity of an organization "threatens the security of United States nationals or the national security of the United States," which is one of the criteria for listing an organization as "foreign terrorist organization" under the Antiterrorism and Effective Death Penalty Act).

66. 42 U.S.C. § 4332(2)(I). As House managers emphasized in 1969 when deliberating NEPA's text, this clause's purpose is "to make it clear that each agency . . . shall comply with the directives set out in [Section 102(2)] unless the existing law applicable to such agency's operations expressly prohibits or makes full compliance with one of the directives impossible." H.R. REP. NO. 91-765, at 9. Federal appeals courts have echoed this. For example, in *Calvert Cliffs' Coordinating Comm., Inc. v. U.S. Atomic Energy Comm'n*, an environmental review case, the D.C. Circuit declared that NEPA's "Section 102 duties . . . must be complied with to the fullest extent, unless there is a clear conflict of statutory authority." 449 F.2d 1109, 1114–15 (D.C. Cir. 1971) (emphasis omitted) (deeming certain Atomic Energy Commission rules inconsistent with NEPA's environmental review provisions); *see also* Jamul Action Comm. v. Chaudhuri, 837 F.3d 958, 961 (9th Cir. 2016) (reasoning that "to the fullest extent possible" means that "NEPA applies unless the existing law applicable to such agency's operations expressly prohibits or makes full compliance with one of the directives impossible.") (internal quotation marks omitted).

67. *See* Nat. Res. Def. Council, Inc. v. Nuclear Regul. Comm'n, 647 F.2d 1345, 1387 (D.C. Cir. 1981) (Robinson III, J., concurring).

68. *Id.* Judge Robinson III further expressed that:

> NRC may [not] ignore its other NEPA obligations . . . . [A] determination that a formal EIS is unnecessary 'is not to say that environmental concerns are irrelevant.' For example, pursuant to NEPA's policy directives and its provision for multinational cooperation the Commission has inaugurated information interchange programs and other cooperative efforts, and certainly it should continue to pursue these diligently.

Id. (internal quotation marks omitted).

Considering the above, to implement Section 102(2)(I), agencies with environmental protection-related competencies, at a minimum, should have the capacity to lend support to international environmental cooperation activities that the President or the Department of State deems to be a United States foreign policy priority.[69] Additionally, in the absence of judicial enforcement of this provision, requests for relevant information under the Freedom of Information Act, congressional oversight (e.g., via committee hearings, oversight letters, and requests for information), Council on Environmental Quality NEPA guidance, and Presidential directives (e.g., via memoranda or executive orders) may serve as means of promoting Section 102(2)(I)'s implementation.

IV. THE SCOPE OF SECTION 102(2)(I)'S AUTHORIZATION

This Part seeks to clarify the scope of Section 102(2)(I)'s authorization because, in this regard, its plain text is unclear. Section 102(2)(I) uses broad language (i.e., "The Congress authorizes and directs that, to the fullest extent possible . . . all agencies of the Federal Government shall . . . lend appropriate support . . . "). Could, for example, an agency rely on this language as its sole authority for training foreign environmental regulators, or would another statute need to authorize the agency to perform trainings?

In addressing this scope question, federal court opinions are illuminating. As the Nuclear Regulatory Commission (NRC) has highlighted, "courts have made clear that NEPA does not expand a federal agency's substantive or jurisdictional powers."[70] For example, in *Natural Resource Defense Council, Inc. v. EPA*, the Environmental Protection Agency (EPA) averred before the D.C. Circuit that the National Environmental Policy Act (NEPA) expanded EPA's permitting authority under the Clean Water Act (CWA).[71] In particular, EPA asserted that it could impose any condition in a National Pollution Discharge Elimination System permit that it considered necessary to address a facility's environmental effects, including effects

69. *See* 40 C.F.R. § 1507.2 (2020) ("Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements of NEPA and the regulations [in this subchapter] . . . . Agencies shall . . . [f]ulfill the requirements of [Section 102(2)(I)'s pre-amendment text].").

70. Mountain Valley Pipeline, LLC, 171 F.E.R.C. 62632, 62682 (2020) (considering that NEPA did not "authorize the [Federal Energy Regulatory] Commission to deny a certificate application based on emissions from the upstream production or downstream use of transported natural gas."); *see also* Cape May Green, Inc. v. Warren, 698 F.2d 179, 188 (3d Cir. 1983) ("[T]he National Environmental Policy Act provides little, if any, support for an agency taking substantive action beyond that set forth in its enabling act."); Gage v. U.S. Atomic Energy Comm'n, 479 F.2d 1214, 1220 n.19 (D.C. Cir. 1973) (holding that NEPA does not "mandate action which goes beyond [an] agency's organic jurisdiction.").

71. *See* Nat. Res. Def. Council, Inc. v. EPA, 859 F.2d 156, 169–70 (D.C. Cir. 1988).

unrelated to the facility's effluent.[72] The D.C. Circuit rejected EPA's argument, reasoning that:

> Any action taken by a federal agency must fall within the agency's appropriate province under its organic statute(s) . . . . [Therefore,] EPA may not . . . under the guise of carrying out its [environmental review] responsibilities under NEPA transmogrify its obligation to regulate discharges [under the CWA] into a mandate to regulate the plants or facilities themselves. To do so would unjustifiably expand the agency's authority [under the CWA] beyond its proper perimeters.[73]

Since NEPA's environmental review provisions and Section 102(2)(I) are all subparagraphs of Section 102—and thus subject to the same chapeau and authorizing text—the D.C. Circuit's reasoning may be extended to Section 102(2)(I).[74] Indeed, NEPA's legislative history reflects that Congress intended for Section 102(2)(I) to be of the same legal nature as Section 102's other subparagraphs. The Report on the National Environmental Policy Act of 1969 of the Senate Committee on Interior and Insular Affairs collectively characterizes Section 102's subparagraphs as "action-forcing procedures" and "operating procedures."[75] In comparison, the 1969 Conference Report collectively characterizes them as a "congressional authorization and directive to all agencies."[76]

Therefore, Section 102(2)(I) does not endow agencies with any new substantive powers. Instead, this provision permits, as well as directs, agencies to use the respective substantive statutes they administer to support international environmental cooperation. This is limited only to the extent it would not be incompatible with those statutes or *ultra vires*.[77] Put differently, Section 102(2)(I) clarifies how agencies may use their powers, as well as instructs agencies on how to use them. For example, if a statute broadly authorizes an agency to train environmental officials, Section 102(2)(I) would remove any ambiguity as to whether the agency could use this authority to train foreign officials as part of an international initiative. As an

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72. *See id.*
73. *Id.* at 169–70.
74. *See* 42 U.S.C. § 4332(2).
75. S. REP. No. 91-296, at 19–20.
76. H.R. REP. No. 91-765, at 9–10.
77. *See id.* at 9 (expressing Congress's intent that NEPA was only to be complied with to the extent permissible under agencies' existing or other statutory authorizations); S. REP. No. 91-296, at 8 (stating that NEPA's purpose is "to guide Federal activities").

additional example, if a statute delegates an agency broad authority to promulgate environmental regulations and does not bar the consideration of international factors, Section 102(2)(1) would help justify the agency's consideration of international environmental cooperation objectives in its rulemakings.[78] For avoidance of doubt, Section 102(2)(I) also extends to agencies' exercise of power delegated to them from the President, including the President's independent foreign affairs powers under Article II of the Constitution.[79]

V. APPLYING SECTION 102(2)(I) AT EPA

Despite not providing the Environmental Protection Agency (EPA) with any additional substantive powers, Section 102(2)(I) of the National Environmental Policy Act (NEPA) is a useful tool for EPA's engagement in international environmental cooperation. This provision elevates such cooperation from merely a good policy idea to a statutorily stipulated objective of the federal government. It provides EPA's often resource-constrained programs with a clear basis for prioritizing such cooperation (e.g., in terms of budget and personnel allocation).

In making international cooperation a core part of their work in line with Section 102(2)(I), EPA programs can rely on a range of express statutory authorities.[80] For example, the Federal Insecticide, Fungicide, and Rodenticide Act authorizes EPA to "participate and cooperate in any international efforts to develop improved pesticide research and regulations."[81] The National Environmental Education Act permits EPA to fund "environmental education and training programs for . . . design and

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78. *Cf.* Elena Chachko, *International Factors in Domestic Regulation: What the District Court Got Wrong in Louisiana v. Biden,* YALE J. ON REG. (Mar. 3, 2022), https://www.yalejreg.com/nc/international-factors-in-domestic-regulation-what-the-district-court-got-wrong-in-louisiana-v-biden-by-elena-chachko/.

79. *See, e.g.*, U.S. Dep't of State, Case-Zablocki Act Memorandum on the Statement Regarding the Agreement between Saudi Arabia for Cooperation in the Global Program (Sept. 30, 2002) (citing Article II of the Constitution and the pre-FRA amendment version of Section 102(2)(I) as the authority for the United States to conclude the international agreement).

80. *See, e.g.*, 22 U.S.C. § 5452(b) (authorizing EPA "to undertake such educational, policy training, research, and technical and financial assistance, monitoring, coordinating, and other activities as the Administrator may deem appropriate, either alone or in cooperation with other United States or foreign agencies, governments, or public or private institutions, in protecting the environment in Poland and Hungary."); 42 U.S.C. § 7671p(b) ("The [EPA] Administrator, in consultation with the Secretary of State, shall support global participation in the Montreal Protocol by providing technical and financial assistance to developing countries that are Parties to the Montreal Protocol and operating under article 5 of the Protocol."); 42 U.S.C. § 7415 (authorizing EPA to address international air pollution where there is reciprocity in pollution prevention and control efforts.).

81. 7 U.S.C. § 136o(d)(1).

demonstration of projects to foster international cooperation in addressing environmental issues and problems involving the United States and Canada or Mexico."[82] Further, the Save Our Seas 2.0 Act empowers EPA to work with the Department of State and the U.S. Agency for International Development "to build partnerships, as appropriate, with the governments of foreign countries and to support international efforts to combat marine debris."[83] Finally, the North American Free Trade Agreement-related legislation,[84] in conjunction with Executive Order 12,915,[85] authorizes EPA to represent the United States in the Commission for Environmental Cooperation's governing body.

EPA may also engage in international cooperation pursuant to statutory provisions that neither preclude nor expressly authorize such activities. Section 102(2)(I) of NEPA can bolster EPA's legal justifications for claiming implied authority under these provisions.[86] This is because Section 102(2)(I)'s directive that agencies "shall . . . recognize the worldwide and long-range character of environmental problems" and support international environmental cooperation "to the fullest extent possible" may inform EPA's interpretation and application of its authorities. Indeed, Congress incorporated "to the fullest extent possible" into Section 102 partly to ensure that agencies would not adopt "excessively narrow" interpretations of their authorities in implementing NEPA.[87] Furthermore, Section 102(2)(I) can be coupled with Section 102(1) to help support claims of authority under ambiguous or non-explicit statutory provisions. Section 102(1) "authorizes

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82. Pub. L. No. 101-619, § 6(b)(5), 104 Stat. 3325 (1990); *see id.* §§ 5(b)(4), 10(a)(B)(2)(C).

83. Save Our Seas 2.0 Act, Pub. L. No. 116-224, § 204(b), 134 Stat. 1072 (2020).

84. *See* 19 U.S.C. § 3472. In January 2026, President Trump issued a memorandum expressing the intent of his administration to withdraw from the Commission for Environmental Cooperation. Withdrawing the United States from International Organizations, Conventions, and Treaties that Are Contrary to the Interests of the United States, 99 Fed. Reg. 2281 (Jan. 7, 2026). However, this memorandum cannot supersede applicable federal statutes. *Cf.* City of S.F. v. Trump, 897 F.3d 1225, 1235 (9th Cir. 2018) ("Because Congress did not authorize withholding of funds, the Executive Order violates the constitutional principle of the Separation of Powers.").

85. Exec. Order. No. 12,915, 59 Fed. Reg. 95 (May 18, 1994).

86. *See* 33 U.S.C. §§ 1254(b), (h); 42 U.S.C. § 7403(b); *cf.* 42 U.S.C. § 6981; 33 U.S.C. § 1443(a); 7 U.S.C. § 136r(a). Additionally, certain CAA provisions provide implied authority for EPA to engage in international regulatory cooperation. *See* Nat'l Ass'n of Clean Air Agencies v. EPA, 489 F.3d 1221, 1224 (D.C. Cir. 2007) (rejecting challenges to EPA's airplane emissions under Section 231 of the Clean Air Act that sought to align United States standards with International Civil Aviation Organization (ICAO) standards); Bluewater Network v. EPA, 372 F.3d 404, 412–13 (D.C. Cir. 2004) (rejecting a challenge to EPA's promulgation of a rule under Section 213 of the CAA that would align certain United States' emissions standards for nonroad engines with Annex VI to the International Convention on the Prevention of Pollution from Ships); *cf.* George E. Warren Corp. v. EPA, 159 F.3d 616, 623–24 (D.C. Cir. 1998) (reasoning that EPA could consider the United States' obligations under an international agreement in promulgating rules under 42 U.S.C. § 7545(k)(8)).

87. H.R. REP. No. 91-765, at 10.

and directs 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 [NEPA]."[88]

To demonstrate how Section 102(2)(I) can support EPA's use of implied authorities to engage in international environmental cooperation, the remainder of this Part examines several Clean Air Act (CAA) and Clean Water Act (CWA) provisions. For clarity, this Part's focus is on the interpretation of statutes from the perspective of an EPA attorney seeking to identify colorable readings of a statute to help EPA programs and policymakers achieve their objectives.[89] This focus is pertinent because EPA attorneys do not make policy and regulatory decisions—EPA programs and policymakers do. Additionally, in practice, these decisionmakers may desire to undertake a particular international activity regardless of whether it can be definitively based on either a clear or express delegation of authority from Congress. In this context, it is the attorney's role to advise the decisionmakers on how to minimize legal risks, including by identifying colorable legal justifications for undertaking the decisionmakers' planned activities.

Moreover, for international activities, EPA attorneys may often have to develop legal justifications in the absence of controlling case law. EPA's application and interpretation of many of its authorities related to international cooperation, such as those pertaining to training, scientific collaboration, and the making of cooperative agreements, are not commonly reviewed by courts.[90] Accordingly, the analysis in this Part pertains to how EPA attorneys can best guide, in every day internal decision-making and not necessarily in a litigation context, the interpretation and application of the statues that EPA administers.

A. Section 231 of the CAA

Section 231 of the CAA stipulates that the EPA Administrator: "shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare."[91] This provision further provides that after EPA proposes standards, EPA shall issue such standards "with such modifications as [it] deems appropriate."[92]

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88. 42 U.S.C. § 4332(2)(I).

89. *See* Thomas O. McGarity, *The Role of Government Attorneys in Regulatory Agency Rulemaking*, 61 L. & CONTEMPORARY PROBLEMS 19 (1998).

90. *See, e.g.*, 33 U.S.C. §§ 1254(b), (h); 42 U.S.C. §§ 7671e, 7403(b); 7 U.S.C. § 136r(a).

91. 42 U.S.C. § 7571(a)(2)(A).

92. *Id.* § 7571(a)(3).

Since 1982, invoking Section 231, EPA has consistently promulgated rules to align United States aircraft emission standards with international standards adopted by the International Civil Aviation Organization (ICAO),[93] to which the United States is a member.[94]

In its 1982 rule, EPA amended exhaust emissions from new and in-use commercial aircraft gas turbine engines. EPA explained that "one intent of this rulemaking . . . [was] to achieve as much commonality with international standards as is feasible without compromising with U.S. environmental goals."[95] Similarly, EPA's 2005 rule amending exhaust emissions from new commercial aircraft gas turbine engines describes that it "will help establish consistency between U.S. and international standards, requirements, and test procedures . . . and thus, the public can be assured they are receiving the air quality benefits of the international standards."[96] EPA's 2021 rule establishing aircraft engine carbon dioxide emissions standards continued the trend.[97] It states:

> In order to promote international cooperation on GHG emissions regulation and international harmonization of aviation standards and to avoid placing U.S. manufacturers at a competitive disadvantage that likely would result if the EPA were to adopt standards different from the standards adopted by ICAO, as discussed further above, the EPA is adopting standards for GHG emissions from certain classes of engines used on airplanes that match the stringency of the CO2 standards adopted by ICAO.[98]

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93. "One of the core functions of the International Civil Aviation Organization (ICAO) is to adopt Standards and Recommended Practices on a wide range of aviation-related matters, including aircraft emissions." Control of Air Pollution From Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures, 86 Fed. Reg. 2136, 2137 (Jan. 11, 2021); "EPA and the [Federal Aviation Administration (FAA)] work within the standard-setting process of ICAO[] . . . to help establish international emission standards and related requirements." *Id.* at 2140.

94. *See* California v. EPA, 72 F.4th 308, 312 (D.C. Cir. 2023); Control of Air Pollution From Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures, 86 Fed. Reg. 2136, 2140 (Jan. 11, 2021) ("Historically, . . . international emission standards have first been adopted by ICAO, and subsequently the EPA has initiated rulemakings under CAA section 231 to establish domestic standards that are harmonized with ICAO's standards . . . . This rule continues this historical rulemaking approach.").

95. Control of Air Pollution From Aircraft and Aircraft Engines; Emission Standards and Test Procedures, 47 Fed. Reg. 58462, 58469 (Dec. 30, 1982).

96. Control of Air Pollution From Aircraft and Aircraft Engines; Emission Standards and Test Procedures, 70 Fed. Reg. 69664, 69664 (Nov. 17, 2005).

97. Control of Air Pollution From Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures, 86 Fed. Reg. 2136, 2136 (Jan. 11, 2021).

98. *Id.* at 2157; *cf.* Control of Emissions From New Marine Compression-Ignition Engines at or Above 30 Liters Per Cylinder, 68 Fed. Reg. 9746, 9750 (Feb. 28, 2003) ("We have concluded that the

While Section 231 of the CAA does not expressly envision international regulatory cooperation or the consideration of international factors, this is exactly the type of activity that Congress sought to authorize and promote in enacting Section 102(2)(I) of NEPA. Thus, hypothetically, if there was no case law determining that aligning U.S. aircraft emissions standards with international standards is a reasonable exercise of the EPA's delegated authority under Section 231, an EPA attorney could advise that NEPA be cited for support in the administrative record when developing relevant rules. To be sure, I am not advocating that NEPA is a necessary authority for such agency rulemakings. Rather, Section 102(2)(I) of NEPA emphasizes the importance of federal agency engagement in international cooperation. This would provide additional legal support for EPA's international regulatory cooperation under CAA in the face of legal uncertainty.

Under this framing, the utility of Section 102(2)(I) may be accepted even if, in reality, the D.C. Circuit has affirmed EPA's authority under Section 231 to align federal standards with ICAO standards without reference to NEPA.[99] For example, in *California v. EPA*, the D.C. Circuit was not persuaded by 12 states' contentions that EPA "acted unlawfully as well as arbitrarily and capriciously by aligning domestic standards with ICAO's technology-following standards" in the 2021 Aircraft Rule.[100] The court concluded that Congress delegated "'explicit and extraordinarily broad'" authority to EPA in Section 231.[101] It considered that this was evidenced by the fact that "Section 231 does not specify the substantive content of [the aircraft emissions standards that EPA may promulgate], [or] specify any factors the agency must consider [in promulgating such standards]."[102] The D.C. Circuit then proceeded to hold that EPA reasonably harnessed its broad Section 231 authority in aligning federal standards with international standards in the 2021 Aircraft Rule. The Court's opinion states:

> EPA's decision to align domestic regulation with the ICAO standards rested on the reasonable judgment that the best

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standards in this final rule (which are equivalent to the internationally negotiated NO_X standards established under MARPOL Annex VI) are the appropriate controls for the near term."); Regulation of Fuels and Fuel Additives: Baseline Requirements for Gasoline Produced by Foreign Refiners, 62 Fed. Reg. 45533, 45533 (Aug. 28, 1997) (revising requirements for imported conventional gasoline to comply with the United States' international trade agreement obligations)

99. *See, e.g.*, California v. EPA, 72 F.4th 308, 314 (D.C. Cir. 2023); Nat'l Ass'n of Clean Air Agencies v. EPA, 489 F.3d 1221, 1224 (D.C. Cir. 2007)

100. *California*, 72 F.4th at 311.

101. *Id*. at 314 (quoting *Nat'l Ass'n of Clean Air Agencies*, 489 F.3d at 1229).

102. *Id*. at 314.

> way to reduce greenhouse gas emissions globally would be to align with international standards, rather than to exceed them . . . . The EPA determined that given the international nature of both aircraft emissions and climate change, it was critically important that domestic regulations not undermine the ICAO standards. Effective reduction of greenhouse gas emissions from aircraft engines requires international coordination because almost three-quarters of such emissions are generated by aircraft beyond the reach of American regulators. In order for the ICAO standards to compel adherence, "[r]eciprocity and consistency are essential, specifically the worldwide mutual recognition of the sufficiency of ICAO's standards and the avoidance of any unnecessary difference from those standards in each [ICAO] Member State's law."
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> The EPA also explained that a unified set of domestic and international standards would be beneficial for the aircraft industry by "decreas[ing] administrative complexity for airplane manufacturers and air carriers."[103]

There are, of course, statutory provisions that do not provide EPA with as broad authority as CAA Section 231. Invoking Section 102(2)(I) would be more meaningful in those contexts, particularly where the scope of the relevant authority has not been judicially settled and the agency is not entitled to deference.

B. Section 104(b)(2) of the CWA

Section 104(b)(2) empowers EPA to conduct research and a variety of other activities to further the CWA's objective of "restor[ing] and maintain[ing] the chemical, physical, and biological integrity of the [United States'] waters."[104] It stipulates that EPA:

> is authorized to . . . cooperate with other Federal departments and agencies, State water pollution control agencies, interstate agencies, other public and private agencies, institutions, organizations, industries involved, and individuals, in the preparation and conduct of such

103. *Id*. at 315–16 (internal citations omitted).
104. 33 U.S.C. § 1251(a).

> research and other activities referred to in [Section 104(a)(1) of the CWA].[105]

Section 104(a)(1) of the CWA adds that EPA:

> shall establish national programs for the prevention, reduction, and elimination of pollution and as part of such programs shall . . . in cooperation with other Federal, State, and local agencies, conduct and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of [water] pollution[.][106]

Hypothetically, the EPA Office of Water may wish to invoke Section 104(b)(2) to conduct water pollution-related research or other relevant activities with a public international organization (IO), such as the International Maritime Organization, the International Joint Commission, or the World Health Organization. However, neither the CWA nor case law has defined the term "organizations" for purposes of Section 104(b)(2), which plausibly could be interpreted to exclude IOs. IOs are distinguishable from the private (e.g., non-profits) and public (e.g., state entities and universities) organizations that EPA commonly collaborates with.

IOs are established under international law and generally are comprised of and beholden to foreign nations.[107] Thus, collaborating with IOs is more likely to raise foreign policy concerns or constraints than collaborating with organizations established under federal, state, or Tribal law. Furthermore, since IOs and their officers and employees are entitled to certain privileges and immunities under international and domestic law, EPA has less levers to ensure that these organizations comply with any standards or conditions EPA may wish to impose in terms of engagement.[108] For example, IOs are generally immune from suit and judicial processes in federal and state courts with respect to their non-commercial activities.[109]

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105. § 1254(b)(2).

106. § 1254(a)(1).

107. *See generally* Kirsten Schmalenbach, *International Organizations or Institutions, General Aspects*, *in* MAX PLANCK ENCYCLOPEDIAS OF INTERNATIONAL LAW (2020).

108. *See id.* §§ 33–37; 22 U.S.C. § 288a ("International organizations shall enjoy the status, immunities, exemptions, and privileges set forth in this section.").

109. *See* Jam v. Int'l Fin. Corp., 139 S. Ct. 759, 764 (2019) (interpreting the International Organizations Immunities Act of 1945).

In short, due to IOs' distinct features, the Office of Water's objective of collaborating with IOs pursuant to Section 104(b)(2) of the CWA would raise a degree of legal uncertainty. To strengthen the justification for such activities, EPA attorneys could invoke Section 102(2)(I) of NEPA, which suggests that agencies' substantive authorities should not be construed restrictively as to unnecessarily preclude international environmental cooperation.[110] In addition, the attorneys could advance that CWA's broader context supports construing Section 104(b)(2) of the CWA to encompass international organizations.[111]

In a distinct CWA section concerning penalties for CWA violations, the term "organization" is defined as "a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons."[112] Under the presumption of consistent usage, or "the normal rule of statutory interpretation that identical words used in different parts of the same statute are generally presumed to have the same meaning,"[113] this definition may be used for purposes of Section 104(b)(2). Accordingly, IOs, which have legal personality and are established for a wide range of purposes, including to establish international human health and environmental protection standards,[114] may be considered "organizations."

The specific context in which "organizations" is used in Section 104(b)(2) supports this interpretation.[115] This provision focuses on improving the understanding of water pollution so that its effects and threats to the waters of the United States can be effectively addressed. Additionally, other CWA provisions expressly recognize that ocean pollution and transboundary freshwater pollution affect the waters of the United States.[116] In other words, collaborating with IOs on research, training, and other activities is critical to Section 104(b)(2)'s objective. In sum, as indicated in

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110. *See* 42 U.S.C. § 4332(2)(I).

111. *Compare* Robinson v. Shell Oil Co., 519 U.S. 337, 341 (1997) ("The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole."), *with* United States v. Ng Lap Seng, 934 F.3d 110, 124 (2d Cir. 2019) ("[Public international organizations] easily fall within the broad definition of 'organization' established by 1 U.S.C. § 1 and 18 U.S.C. § 18. And there is no need to exclude such persons from the word 'organization' as used in [18 U.S.C. § 666].").

112. 33 U.S.C. § 1319(c)(3)(B)(iii).

113. IBP, Inc. v. Alvarez, 546 U.S. 21, 34 (2005).

114. *See, e.g.*, Erosion Victims of Lake Superior Regul. v. United States, 12 Cl. Ct. 68, 69 (1987) ("The [International Joint Commission] is an independent, public, legal personality regarding questions within its scope of duty."); *Ng Lap Seng*, 934 F.3d, at 124.

115. *See supra* note 110.

116. *See* 33 U.S.C. §§ 1251(c), 1268, 1276b, 1321c.

Part V.A. above, invoking Section 102(2)(I) of NEPA can be useful to an attorney counseling an EPA decisionmaker in the face of uncertainty.

CONCLUSION

Section 102(2)(I) of the National Environmental Policy Act stipulates a discretional duty and authorization to support international environmental cooperation. The Environmental Protection Agency's (EPA) implementation of this provision is more important than ever. EPA's ability to effectively protect human health and the environment in the United States is dependent on its cooperation with international partners to address environmental issues, which are increasingly global in nature. Accordingly, this Article has demonstrated some ways in which EPA could leverage Section 102(2)(I) to bolster its legal justifications for engaging in international activities and for maintaining its key role in United States foreign policy.

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