

Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities

Companion Manual for NOAA Administrative Order 216-6A



DRAFT: November 14, 2016



Acronyms and Abbreviations

CE	Categorical Exclusion
CEQ	Council on Environmental Quality
CEQ Regulations	CEQ's Regulations for Implementing NEPA (Parts 1500 - 1508 of Title 40 of the Code of Federal Regulations)
CFR	Code of Federal Regulations
DAO	Department Administrative Order
DEIS	Draft Environmental Impact Statement
EA	Environmental Assessment
EIS	Environmental Impact Statement
EO	Executive Order
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act of 1973
FEIS	Final Environmental Impact Statement
FONSI	Finding of No Significant Impact
FFRMS	Federal Flood Risk Management Standard
FR	Federal Register
FWS	U.S. Fish and Wildlife Service
MMPA	Marine Mammal Protection Act
MOU	Memorandum of Understanding
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NAO	NOAA Administrative Order
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service
NMSA	National Marine Sanctuaries Act
NOA	Notice of Availability
NOAA	National Oceanic and Atmospheric Administration
NOI	Notice of Intent
NOS	National Ocean Service
ONC	Line/Staff Office NEPA Coordinator
ROD	Record of Decision
SEIS	Supplemental Environmental Impact Statement
U.S.C.	United States Code

Table of Contents

<u>1. PURPOSE, SCOPE, AND POLICY</u>	<u>1</u>
<u>2. DETERMINING WHEN NEPA APPLIES.....</u>	<u>2</u>
A. COMPLYING WITH NEPA FOR ACTIONS DEVELOPED BY NON-FEDERAL ENTITIES	2
B. COMPLYING WITH NEPA FOR FISHERY MANAGEMENT ACTIONS	2
C. COMPLYING WITH NEPA WHEN ISSUING FINANCIAL ASSISTANCE AWARDS, GRANTS, AND CONTRACTS	3
<u>3. DETERMINING THE PROPER LEVEL OF NEPA ANALYSIS.....</u>	<u>3</u>
<u>4. CATEGORICAL EXCLUSIONS</u>	<u>4</u>
A. CONSIDERING EXTRAORDINARY CIRCUMSTANCES	4
B. DOCUMENTING THE USE OF A CE.....	6
C. REPORTING THE USE OF CEs TO THE NOAA NEPA COORDINATOR	6
D. MODIFYING, REMOVING, OR ADDING CEs.....	6
<u>5. USING EXISTING ENVIRONMENTAL ANALYSES</u>	<u>6</u>
A. ANALYZING ADEQUACY OF EXISTING NOAA DOCUMENTS FOR A NEW PROPOSED ACTION ...	7
B. INCORPORATION BY REFERENCE AND TIERING	7
C. SUPPLEMENTING AN EIS/EA.....	8
<u>6. PREPARING ENVIRONMENTAL ASSESSMENTS AND ENVIRONMENTAL IMPACT STATEMENTS</u>	<u>8</u>
A. IDENTIFYING THE PURPOSE AND NEED FOR THE PROPOSED ACTION	9
C. DESCRIBING THE AFFECTED ENVIRONMENT	10
D. ANALYZING THE ENVIRONMENTAL EFFECTS OF THE PROPOSED ACTION AND THE ALTERNATIVES	10
H. ADOPTING ANOTHER AGENCY’S NEPA ANALYSES	13
<u>7. PREPARING AN ENVIRONMENTAL ASSESSMENT</u>	<u>14</u>
A. CONTENTS OF AN EA	14
B. PUBLIC INVOLVEMENT FOR AN EA.....	14
C. DETERMINING IF THE EFFECTS OF AN ALTERNATIVE ARE SIGNIFICANT	15
D. DOCUMENTING THE FINDING OF NO SIGNIFICANT IMPACT	15
E. NOTIFYING THE PUBLIC OF A FONSI DETERMINATION	16
<u>8. PREPARING AN ENVIRONMENTAL IMPACT STATEMENT</u>	<u>16</u>

A. ISSUING A NOTICE OF INTENT TO PREPARE AN EIS	16
B. SCOPING REQUIREMENTS FOR AN EIS	16
C. DISTRIBUTION OF THE DEIS AND PUBLIC INPUT GATHERING	17
D. PREPARING THE FEIS.....	17
E. FILING THE NOTICE OF AVAILABILITY WITH THE EPA	18
F. PREPARING THE RECORD OF DECISION	18
G. SIGNING THE ROD	19

9. NEPA AND COLLABORATION..... 19

A. USING APPLICANT- AND CONTRACTOR-PREPARED NEPA DOCUMENTS.....	19
B. COOPERATING WITHIN NOAA	19
C. COOPERATING WITH OTHER AGENCIES	20
D. COMMENTING ON ANOTHER AGENCY’S EIS	21
E. REFERRING MATTERS TO CEQ FOR ENVIRONMENTALLY UNSATISFACTORY EFFECTS	22

10. INTEGRATING NEPA WITH OTHER ENVIRONMENTAL REQUIREMENTS..... 23

A. COMPLYING WITH EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS.....	24
B. COMPLYING WITH EXECUTIVE ORDER 13158, MARINE PROTECTED AREAS	25
C. COMPLYING WITH EXECUTIVE ORDERS 12114, ENVIRONMENTAL EFFECTS ABROAD OF MAJOR FEDERAL ACTIONS AND 13141, ENVIRONMENTAL REVIEW OF TRADE AGREEMENTS	25
D. COMPLYING WITH EXECUTIVE ORDERS 11988, FLOODPLAIN MANAGEMENT; 13690, FEDERAL FLOOD RISK MANAGEMENT STANDARD; AND 11990, PROTECTION OF WETLANDS.....	27

11. EMERGENCY SITUATIONS AND ALTERNATIVE ARRANGEMENTS..... 28

12. TERMINATING THE NEPA PROCESS 29

Appendices

Appendix A - Glossary

Appendix B - Authorities and References

Appendix C - Revised and Updated NEPA Procedures for Magnuson-Stevens Act Fishery Management Actions

Appendix D - NOAA and CEQ NEPA Resources

Appendix E - NOAA Categorical Exclusions

1. Purpose, Scope, and Policy

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, as implemented by the Council on Environmental Quality (CEQ) Regulations (40 CFR Parts 1500 through 1508), requires that Federal agencies include in their decision-making processes appropriate and careful consideration of all environmental effects of proposed actions, analyze potential environmental effects of proposed actions and their alternatives, avoid or minimize adverse effects of proposed actions, and restore and enhance environmental quality to the extent practicable. Additionally, the NEPA process is intended to encourage and facilitate public involvement in decisions which affect the quality of the human environment. 40 C.F.R. 1500.2(d).

In accordance with Department Organization Order (DOO) 10-15, section 3, the Under Secretary of Commerce for Oceans and Atmosphere (NOAA Administrator) has been delegated the responsibility to ensure NOAA's Compliance with NEPA. NOAA Administrative Order (NAO) 216-6A establishes NOAA's policy and procedures for compliance with NEPA; the CEQ regulations; Executive Order (EO) 12114, Environmental Effects Abroad of Major Federal Actions; EO 11988 and 13690, Floodplain Management; and EO 11990 Protection of Wetlands. Through the NAO, the NOAA Administrator has delegated responsibility to oversee the NOAA NEPA program to the NOAA General Counsel, who in turn may delegate these responsibilities to appropriate staff, including to a NOAA NEPA Coordinator. The NAO also authorizes the development of this Companion Manual to provide additional, specific policies pursuant to NEPA and related authorities. This Companion Manual is intended to make the NEPA process more useful to NOAA decision makers and the public, and will serve as a repository for guidance and resources to aid NOAA in implementation of NEPA. 40 C.F.R. 1500.2(b). Decision makers should also consult the guidance documents issued by CEQ that are available at nepa.gov.

As described in NAO 216-6A, the decision maker for the purpose of this Companion Manual is the individual who has the authority and responsibility to make the NOAA decision that is being informed by the NEPA process and the decision maker is responsible for ensuring that the NEPA process is fully and effectively conducted to support that decision making. The NOAA NEPA Coordinator is responsible for, among other things, assisting decision makers and their staff in a cooperative manner in applying NEPA; developing, maintaining, and revising agency-wide NEPA policy and procedures, including this Companion Manual; and coordinating NOAA-wide NEPA reporting and NOAA-wide comments on NEPA documents prepared by other agencies.

2. Determining When NEPA Applies

NEPA is triggered when a proposal for a major Federal action exists. CEQ regulations define major Federal actions to include adoption of official policy, such as rules and regulations; adoption of formal plans; adoption of programs; and approvals of specific projects. 40 C.F.R. 1508.18. The proposed action exists at a stage in the decision-making process when NOAA has a goal, and is preparing to make a decision on one or more alternative means of accomplishing that goal, the proposed action and effects are subject to NOAA control and responsibility, and the proposed action has effects that can be meaningfully evaluated.

NOAA must meet NEPA requirements whenever NOAA's decision on a proposal for action would result in a physical effect on the human environment, even when the effect would be beneficial and regardless of who proposes the action or where it would take place. 40 C.F.R. 1508.18. NOAA must evaluate every proposed action to determine the applicability of NEPA as early as possible in the planning process.

Some types of actions are or can be exempt from NEPA requirements—however, such exemptions are rare. The following are types of actions that may be exempt from NEPA:

- a) Actions that are statutorily exempt from NEPA compliance;
- b) Actions that are solely funding assistance in the form of general revenue sharing funds when NOAA has no control over the subsequent use of such funds (40 C.F.R. 1508.18); and
- c) Certain actions implementing the Endangered Species Act that have been found by courts not to require NEPA compliance including: determinations whether a species should be listed as threatened or endangered, determinations that a species should be delisted, and determinations that a species should be reclassified as threatened or endangered.

A. Complying with NEPA for Actions Developed by Non-Federal Entities

Some NOAA proposed actions are initially developed by applicants (*e.g.*, permits, grants) or other non-Federal entities. In these cases, the decision maker must begin coordination with the non-Federal entity early in the planning process and inform the entity of what information NOAA might need to ensure NEPA compliance. As soon as is practicable, the decision maker should establish and communicate to the non-Federal entity a schedule for completing steps in the NEPA review process.

B. Complying with NEPA for Fishery Management Actions

Section 304(i) of the Magnuson-Stevens Fishery Conservation and Management Act required the Secretary of Commerce to revise and update agency procedures for compliance with NEPA in the context of fishery management actions developed pursuant to the Magnuson-Stevens Act. 16 U.S.C. § 1854(i). In compliance with that statutory provision, NOAA and the National Marine Fisheries Service (NMFS) established a line-office supplement to NAO 216-6, entitled, "Revised

and Updated NEPA Procedures for Magnuson-Stevens Fishery Management Actions.” (See 79 FR 36726, Jun. 30, 2014, and 81 FR 8920, Feb. 23, 2016). As stated in NAO 216-6A, section 6, this supplement remains in effect. The supplement sets forth the policies and procedures for NEPA compliance for such actions. For convenience, the supplement is reproduced as Appendix C to this Companion Manual. Decision makers for such actions may also consider and apply the guidance in this Companion Manual to the extent it is consistent with the policies and procedures in the supplement. To the extent they are relevant, current and future CEQ guidance on the implementation of NEPA applies to such actions and should also be considered by decision makers.

C. Complying with NEPA when Issuing Financial Assistance Awards, Grants, and Contracts

If NOAA has sufficient decision-making authority to approve or deny financial assistance awards, impose conditions on the award (other than standard administrative conditions), or ongoing authority to substantially control or otherwise direct the non-Federal action after the financial assistance award is made, then NEPA compliance is necessary prior to the issuance of the financial assistance award. When considering the proposed action of issuing a financial assistance award under NEPA, the decision maker must consider the impacts of the activities to be funded by the award.

3. Determining the Proper Level of NEPA Analysis

If NEPA applies to the proposed action, the decision maker must determine whether to apply a Categorical Exclusion (CE), or prepare either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). A categorical exclusion is appropriately applied for categories of actions that NOAA has determined via these NEPA procedures do not have significant effects on the quality of the human environment, so long as there are no extraordinary circumstances present that would indicate that the effects of the action may be significant (see Section 4). Many of NOAA’s routine functions and activities (e.g., administrative actions, data collection, and minor facility upgrades) are covered by CEs. If a CE is applicable, decision makers may need to prepare a document evaluating the applicability of the CE (see Section 4(B)).

If a CE is not applicable, the decision maker must prepare either an EA or an EIS for the proposed action. An EA is appropriate to analyze actions that are not subject to CEs, not covered in an existing environmental document, and are not normally subject to an EIS. An EA is used to determine if the action would have significant effects; if so an EIS must be prepared. If the EA demonstrates that the action would not have significant effects, the decision maker must prepare a Finding of No Significant Impacts (FONSI) (see Section 7 part D).

An EIS is required to analyze actions whose effects are expected to be significant and are not fully covered in an existing EIS (see Section 5). An EIS must also be prepared if, after preparation and analysis of an EA, the decision maker determines that the effects of the proposed action would be significant and cannot be mitigated to a not significant level. Additionally, Congress has mandated that certain actions be evaluated in an EIS: National Marine Sanctuary Designations and initial National Marine Sanctuary management plans require preparation of an EIS, regardless of the level of anticipated impacts, pursuant to the National Marine Sanctuary Act (§ 304(a)(2)). In addition, issuance of any license for ownership, construction, and operation of an Ocean Thermal Energy Conversion facility; issuance of a Deep Seabed Mining license or permit; and new fishery management plans typically require preparation of an EIS.

4. Categorical Exclusions

A CE is a category of actions that an agency has determined does not individually or cumulatively have a significant effect on the quality of the human environment. A CE is a form of NEPA compliance, without the detailed analysis that occurs in an EA or EIS. A CE may only be applied to a proposed action when:

- a) the proposed action falls within one of the CE categories listed in Appendix F of this Manual;
- b) the proposed action is not part of a larger action, and can therefore be reviewed independently from other actions under NEPA; and
- c) there are no extraordinary circumstances that may require further analysis in an EA or EIS.

Some proposed actions may fit within more than one CE. In determining the appropriate CE to use, select the CE that most closely matches the objectives of the proposed action and is the most specific. When considering whether a proposed action to provide a financial assistance award could be categorically excluded, the decision maker should look at whether the activity to be funded falls within one of the established CEs. If applicable, individual CEs may be applied to individual tasks within a single financial assistance award. The CEs may be documented in a single evaluation document prepared for the entire financial assistance award, as long as individual tasks are similar, but not connected, actions as defined by 40 C.F.R. § 1508.25, and the tasks within the award do not have cumulatively significant impacts.

Many of NOAA's CEs include representative examples of the types of activities covered in the text of the CEs; these examples are not inclusive of the full set of activities that may qualify for inclusion within the CEs.

A. Considering Extraordinary Circumstances

Extraordinary circumstances are situations for which NOAA has determined further NEPA analysis may be required because they are circumstances in which a normally excluded action

may have significant effects. The mere presence of one or more extraordinary circumstances does not preclude the use of a CE. A determination of whether an action that is normally excluded requires additional evaluation because of extraordinary circumstances focuses on the action's potential effects and considers the significance of those effects in terms of both context (consideration of the affected region, interests, and resources) and intensity (severity of impacts). Before applying a CE, the decision maker must consider whether the proposed action involves one or more of the following extraordinary circumstances:

- a) adverse effects on human health or safety that are not negligible or discountable;
- b) adverse effects on an area with unique environmental characteristics (e.g., wetlands and floodplains, national marine sanctuaries, or marine national monuments) that are not negligible or discountable;
- c) adverse effects on species or habitats protected by the ESA, the MMPA, the MSA, NMSA, or the Migratory Bird Treaty Act that are not negligible or discountable;
- d) the potential to generate, use, store, transport, or dispose of hazardous or toxic substances, in a manner that may have a significant effect on the environment;
- e) adverse effects on properties listed or eligible for listing on the National Register of Historic Places authorized by the National Historic Preservation Act of 1966, National Historic Landmarks designated by the Secretary of the Interior, or National Monuments designated through the Antiquities Act of 1906; Federally recognized Tribal and Native Alaskan lands, cultural or natural resources, or religious or cultural sites that cannot be resolved through applicable regulatory processes;
- f) a disproportionately high and adverse effect on the health or the environment of minority or low-income communities, compared to the impacts on other communities (EO 12898);
- g) contribution to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species;
- h) a potential violation of Federal, State, or local law or requirements imposed for protection of the environment;
- i) highly controversial environmental effects
- j) the potential to establish a precedent for future action or an action that represents a decision in principle about future actions with potentially significant environmental effects
- k) environmental effects that are uncertain, unique, or unknown; or
- l) the potential for significant cumulative impacts when the proposed action is combined with other past, present and reasonably foreseeable future actions, even though the impacts of the proposed action may not be significant by themselves.

B. Documenting the Use of a CE

Some activities, such as routine personnel actions or purchases of small amounts of supplies, may carry no risk of significant environmental effects, such that there is no benefit from preparing additional documentation when applying a CE to those activities. In these cases, the decision maker need not prepare CE documentation. Otherwise, the decision maker must prepare a document to evaluate the applicability of a CE, which includes the following:

- a) a description of the proposed action;
- b) the CE category number, title, and CE text that applies to the action (Appendix F); and
- c) a brief summary of the review conducted to determine whether extraordinary circumstances exist.

A CE evaluation document can take the form of a memorandum to record, a checklist, or other similar document, so long as the above components are included. Before the action is implemented, the decision maker must sign the CE evaluation document to indicate that use of the CE is appropriate. The decision maker must keep the original, signed document as part of the record for the action. Templates for CE evaluation documents are available on the NOAA NEPA intranet site at <https://sites.google.com/a/noaa.gov/nepanews/noaa-nepa-website/noaa-nepa-intranet/templates>.

C. Reporting the Use of CEs to the NOAA NEPA Coordinator

On a quarterly basis, Line Office NEPA Coordinators must report which CEs were used by their Line Office during the previous quarter and submit the report electronically to the NOAA NEPA Coordinator. The report must include:

- a) name of the Line Office for which the report is prepared;
- b) fiscal year and quarter number (e.g., FY16, Quarter 1) of the report;
- c) number of times each category of CE was used; and
- d) total number of CEs used by the Line Office for the reported quarter.

D. Modifying, Removing, or Adding CEs

The NOAA NEPA Coordinator, in consultation with the Line and Staff Offices, will periodically review the list of CEs (Appendix F). Any Line or Staff Office may, at any time, recommend changes to the list of CEs to the NOAA NEPA Coordinator. The NOAA NEPA Coordinator must promptly evaluate these recommendations for consultation with CEQ and publication in the *Federal Register*.

5. Using Existing Environmental Analyses

In some cases, decision makers may use existing NOAA environmental analyses (EAs and EISs) to analyze effects associated with a proposed action, when doing so would build on work that has

already been done, avoid redundancy, and provide a coherent and logical record of the analytical and decision-making process. There are several ways to use existing environmental analyses including tiering, incorporation by reference, and supplementation.

A. Analyzing Adequacy of Existing NOAA documents for a New Proposed Action

When reviewing existing NEPA analyses, the decision maker must consider the following to determine whether those analyses adequately cover a new proposed action under consideration:

- a) Is the new proposed action a feature of, or essentially similar to, the prior proposed action or an alternative analyzed in the existing NEPA document? Is the project within the same analysis area, or if the project location is different, are the geographic and resource conditions sufficiently similar to those analyzed in the existing NEPA document? If there are differences, can the decision maker explain why those differences are not substantial?
- b) Is the range of alternatives analyzed in the existing NEPA document appropriate with respect to the new proposed action, given the environmental concerns, interests, and resource values relevant to the proposed action?
- c) Is the existing analysis valid in light of any new information or circumstances (see Section 5 part C)?
- d) Are the direct, indirect, and cumulative effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document?

In reviewing these questions, decision makers should provide thorough answers and contain specific citations to the existing EA or EIS. If the answers to all of these questions are yes, additional NEPA analyses may not be necessary. However, the decision maker should document their consideration of these questions in a memo to the record to demonstrate that the existing NEPA documents sufficiently cover the proposed action.

In addition to reviewing these questions, decision makers must evaluate whether the public involvement and interagency review associated with the existing EA or EIS is adequate for the new proposed action. The decision maker must evaluate whether the new proposed action has already been discussed during the public engagement process for the previous EA or EIS, and thus whether the public has received sufficient notice and opportunity to comment regarding the new proposed action. Furthermore, a new FONSI or ROD would need to be prepared and signed if the new proposed action is an alternative analyzed, but not selected, pursuant to the existing NOAA NEPA document.

B. Incorporation by Reference and Tiering

The decision maker may incorporate material into a NEPA document by reference to reduce the length of the document, so long as doing so does not impede agency and public review of the proposed action. The incorporated material must be cited and its content must be briefly

described. The material incorporated by reference must be reasonably available for inspection by potentially interested parties. 40 C.F.R. 1502.21.

Tiering is a form of incorporation by reference that uses existing analysis of general matters from broader or programmatic NEPA documents in subsequent narrower NEPA documents. 40 CFR 1508.28, 40 CFR 1502.20. Tiering allows the decision maker to narrow the scope of the subsequent analysis and focus on issues that are ripe for decision-making. Tiering is appropriate when the analysis for the proposed action will be a more site-specific or project-specific refinement or extension of the existing, broader NEPA document, so long as the existing NEPA document remains timely. [see Section 6 part D]

C. Supplementing an EIS/EA

The decision maker must prepare a supplement to an EIS or EA if, after preparation of the document but prior to completion of the action analyzed in the EIS or EA:

- a) there are substantial changes in the proposed action that are relevant to environmental concerns; or
- b) there are significant new circumstances or there is new information relevant to environmental issues bearing on the proposed action or its impacts.

Supplemental EISs and EAs must reference the original analyses. The decision maker must complete the supplemental analysis with a new Record of Decision (ROD) or FONSI, as applicable.

In determining whether supplementation is necessary, decision makers may prepare a Supplemental Information Report (SIR). A SIR is a concise document that describes the decision maker's evaluation of new information, changed circumstances, or proposed changes to an action and assists the decision maker in determining and documenting whether a supplemental NEPA document is necessary. A SIR is a decision tool rather than a final NEPA document, and thus standing alone, a SIR cannot repair deficiencies in the original environmental analysis or documentation, nor can it change a decision to implement an action made pursuant to appropriate NEPA procedures.

6. Preparing Environmental Assessments and Environmental Impact Statements

Although the CEQ regulations prescribe specific steps for the preparation of an EIS, there are some typical steps in developing a NEPA analysis that are applicable to preparation of both EAs and EISs. This section describes the general approach to preparing a NEPA analysis. Section 7 provides further instructions on the development of EAs and Section 8 addresses EISs.

A. Identifying the Purpose and Need for the Proposed Action

A proposed action is defined by anything the federal agency does directly (*e.g.*, construction, research, management actions, etc.), funds, or authorizes (*e.g.*, issues permits, regulations, etc.). The use of the term “proposed” indicates that the lead federal agency has yet to make a decision, which allows the analysis – along with public participation—to inform the decision when it is made.

When preparing either an EA or an EIS to evaluate the impacts of a proposed action, the decision maker must clearly identify the purpose and need for the action. The decision maker is encouraged to specifically identify the “purpose” as the objective(s) of the proposed action, while the “need” is the underlying problem that the proposed action addresses. It is recommended that the decision maker draft the purpose and need statement early in the NEPA process; a carefully crafted purpose and need statement can be an effective tool in managing the scope of the NEPA analysis. The purpose and need statement, however, cannot be so arbitrarily narrow that it preordains the outcome of the NEPA analysis.

B. Defining Reasonable Alternatives

When preparing either an EA or EIS, decision makers must consider and analyze the impacts of a reasonable range of alternatives to the proposed action. The alternatives considered are alternative means of meeting the purpose and need for the action, including a “no action” alternative. The broader the purpose and need statement, the broader the range of alternatives that must be analyzed. The range of alternatives that the decision maker should consider is also connected to the potential for impacts: an EIS will likely involve a greater range of alternatives than an EA, which may in some instances include only the preferred and “no action” alternatives. If potential alternatives are raised by outside parties during the course of the decision making process, decision makers are encouraged to closely evaluate whether those alternatives are reasonable and warrant further consideration in the EA or EIS.

i. Defining the No-Action Alternative

The CEQ regulations require that agencies consider a “no action” alternative as part of the alternatives analysis for EISs. 40 C.F.R. 1502.14(d). The “no action” alternative can assist decision makers by providing a baseline for comparison of environmental effects. Although only explicitly required for EISs, CEQ has also suggested in guidance that agency EAs “may contrast the impacts of the proposed action and alternatives with the current condition and expected future condition in the absence of the project. This constitutes consideration of a no-action alternative as well as demonstrating the need for the project.” (CEQ Memorandum to Federal NEPA Contacts: Emergency Actions and NEPA (September 8, 2005)). Decision makers should include a no action alternative for consideration even if such an alternative would not meet the purpose and need for the action.

In many cases “no action” means that the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity or an alternative activity to go forward. For example, if the proposed action is to construct and operate a facility, the no-action alternative would be a scenario in which the facility is not constructed. However, when updating an ongoing Federal action, if the regime continues in absence of taking action, “no action” may be a scenario in which there will be no change from current, ongoing management. Decision makers can consider both types of “no action” alternatives in the same analysis if appropriate.

C. Describing the Affected Environment

The decision maker must describe the environment of the area to be affected by the alternative(s) under consideration. The affected environment of the area encompasses all physical environmental conditions, including all natural resources, and cultural heritage or built resources and the relationship of people with that environment. The description of the affected environment should facilitate an analysis of the effects of the alternatives under consideration and shall be no longer than is necessary to understand the effects of the alternatives. 40 CFR 1502.15.

D. Analyzing the Environmental Effects of the Proposed Action and the Alternatives

The environmental effects analysis must analyze the direct, indirect, and cumulative environmental impacts of the proposed action and the alternatives in clear terms and with sufficient information to ensure the professional and scientific integrity of the discussion and analysis. Both adverse and beneficial effects must be analyzed. The amount of data and analyses included must be commensurate with the context and intensity of the impact and to provide support for any conclusions drawn.

The decision maker must use the best available scientific information and analysis to present the environmental effects of the proposed action and alternative(s) in comparative form, providing a clear basis for choice among the options.

In considering impacts, decision makers must evaluate direct and indirect impacts, as well as the cumulative impact of the proposed action and alternatives. Cumulative impacts are the impacts on the environment which result from the incremental impact of the action when added to other past, present, and *reasonably foreseeable* future actions regardless of what agency or person undertakes those actions. Reasonably foreseeable future actions cannot be limited only to those that have been approved or funded, but decision makers need not speculate about future actions that are not likely.

E. Programmatic NEPA Reviews

“Programmatic” reviews are broad or high-level NEPA reviews that assess the environmental impacts of proposed policies, plans, programs, or projects for which subsequent actions will be implemented either based on the programmatic EA (PEA) or programmatic EIS (PEIS), or based on subsequent NEPA reviews tiered to the programmatic review (e.g., a site- or project-specific document). Programmatic NEPA reviews can provide the basis to approve broad or high-level decisions such as identifying geographically bounded areas within which future proposed activities may be taken or identifying broad mitigation and conservation measures that may be applied in subsequent tiered reviews. Effective programmatic NEPA analyses should present document reviewers with NOAA’s anticipated timing and sequence of decisions, which decisions are supported by the programmatic NEPA document and which decisions are deferred for some later time, and the time-frame or triggers for a tiered NEPA review.

Programmatic reviews should be considered, in particular when a decision maker is (1) initiating or revising a national or regional rulemaking, policy, plan, or program; (2) adopting a plan for managing a range of resources; or (3) making decisions on common elements or aspects of a series or suite of closely related projects. The decision maker should consider including other NOAA programs or Line or Staff Offices that may benefit from a cooperative approach to the broader or programmatic EIS or EA.

After completing a PEA or PEIS, decision makers may rely on those documents to prepare subsequent tiered EAs or EISs that address more specific considerations, while benefiting from the programmatic review by summarizing and incorporating by reference parts of those broader reviews. When tiering from a programmatic review, the decision maker must consider whether the depth of analysis needed for a tiered decision requires adding to, or building on, the analysis provided in the programmatic NEPA review. See Section 5, part B on tiering.

F. Consideration of Greenhouse Gas Emissions and the Effects of Climate Change

When performing NEPA analyses, NOAA decision makers should consider (1) the potential effects of proposed actions on climate change as indicated by assessing the estimated greenhouse gas (GHG) emissions of the proposed action, and (2) the effects of climate change on proposed actions and their environmental impacts. To assist in these considerations, decision makers should refer to CEQ’s Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews (August 1, 2016), and where relevant, NMFS’s Revised Guidance for Treatment of Climate Change in NMFS Endangered Species Act Decisions (June 17, 2016).

i. Considering a Proposed Action’s Contribution to Climate Change

As long as tools, methodologies, or data inputs are reasonably available, decision makers should quantify a proposed action’s projected direct and indirect GHG emissions. CEQ has compiled a repository of available GHG accounting tools, which is available at

https://ceq.doe.gov/current_developments/ghg-accounting-tools.html. Decision makers can then use projected GHG emissions as a proxy for assessing potential climate change effects when preparing a NEPA analysis.

When the decision maker does not quantify the action's projected GHG emissions because tools, methodologies, or data inputs are not reasonably available to support calculations for a quantitative analysis, the decision maker should include a qualitative analysis in the NEPA document and explain the basis for determining that quantification is not reasonably available.

ii. Considering the Impact of Climate Change on a Proposed Action

Because NEPA reviews require decision makers to consider the impacts of proposed actions and alternatives into the future, these analyses must consider these actions in the context of the future state of the environment, which includes consideration of the impacts of climate change on the environment. Decision makers need not undertake new research or analysis of potential climate change impacts in the proposed action area, but may instead summarize and incorporate by reference the existing relevant scientific literature. In particular, decision makers should consider summarizing and incorporating by reference the relevant chapters of the most recent national climate assessments or reports from the United States Global Change Research Program, available at <http://www.globalchange.gov/browse/reports>. NOAA has significant climate expertise and resources that are available for decision makers. See cpo.noaa.gov and climate.gov.

G. Coordination with NOAA NEPA Coordinator

To facilitate cross line office coordination and the tracking of NEPA implementation, as well as to assist the NOAA NEPA coordinator in fulfilling reporting obligations to CEQ, once the purpose and need for the proposed action has been identified and project scoping has begun, the decision maker, or NEPA project leader, must submit an electronic summary notice to the NOAA NEPA Coordinator via the "Report a Federal Action" form on the NOAA NEPA intranet. The summary notice should include:

- a) the name, line office, email address, and phone number of the decision maker or NEPA project leader;
- b) the name and email address of the relevant line office NEPA Coordinator;
- c) the type of action and its title;
- d) a brief summary of the proposed action, such as the text of the purpose and need;
- e) any known or estimated deadlines or timelines associated with the project. If a Notice of Intent (NOI) has been published, that should be noted;
- f) any known or potential issues or problems with the project;
- g) the names of cooperating agencies when NOAA is the lead agency; and
- h) if NOAA is adopting a NEPA document, the lead agency, title and date of the document, and whether NOAA is a cooperating agency, should be included as well.

If there are any major changes or updates to the project, the decision maker or NEPA project leader, should notify the NEPA Coordinator of the changes as soon as possible. Examples of a major change include changes in: the decision maker, type of action, major deadlines, controversiality of the action, cooperating agencies, or NOAA's status as a cooperating agency if adopting another agency's document.

The decision maker must submit an electronic copy of the FEIS and signed ROD, or the Final EA and the signed FONSI, to the NOAA NEPA Coordinator within five business days of signing. The decision maker must keep the FEIS and ROD or Final EA and FONSI in the agency's records for the action. The NOAA NEPA Coordinator must also maintain an electronic copy of the FEIS and ROD or Final EA and FONSI.

If NOAA is adopting another agency's document, then an electronic copy of the other agency's FEIS and signed ROD, or the Final EA and the signed FONSI, should be submitted to the NOAA NEPA Coordinator within five business days of the adoption.

H. Adopting Another Agency's NEPA Analyses

NOAA may adopt all or portions (e.g., specific analyses, appendices, or specific sections) of an EA or EIS prepared by another federal agency, regardless of cooperating agency status, if the action addressed in the adopted document (or portion) is substantially the same as that being considered or proposed by NOAA and NOAA determines that the document (or portion) meets all NEPA requirements. 40 CFR 1506.3 (adopting an EIS); and 48 Fed. Reg. 34263 (July 28, 1983) (further guidance on adopting an EA). In order to adopt another agency's document, the decision maker must determine that the other agency's EA or EIS (or portion thereof) fully covers the scope of NOAA's proposed action and alternatives and environmental impacts.

When participating as a cooperating agency, NOAA decision makers may adopt an EA or EIS of the lead agency when, after an independent review of the document, the decision maker concludes that NOAA's comments and suggestions have been satisfied and that the analysis includes the appropriate scope and level of environmental impact evaluation for NOAA's proposed action and alternatives.

Once NOAA has decided to adopt an EA or an EIS, the decision maker must notify the NOAA NEPA Coordinator electronically in the same manner as for an EIS or an EA as appropriate. If NOAA elects to adopt another agency's EA or EIS, it must prepare and sign its own FONSI or ROD.

7. Preparing an Environmental Assessment

A. Contents of an EA

The CEQ regulations provide that an EA must contain a brief discussion of the purpose and need for the proposed action, the alternatives considered, an analysis of the environmental effects of the proposed action and alternatives, and a listing of agencies and persons consulted. 40 C.F.R. § 1508.9(b). EAs should be concise documents; to avoid undue length the EA may incorporate by reference background data to support its succinct discussion of the proposal and relevant issues.

B. Public Involvement for an EA

Decision makers must provide the public with as much environmental information as is practicable under the circumstances and allow an opportunity for the public to offer their views and inform the agency's decision-making process. While not required, decision makers are encouraged to release the Draft EA to the public through the Federal Register or other means for a public comment period of at least 30 calendar days.

If the decision maker does not release the Draft EA for public review and comment, the decision maker may use one or more alternative public involvement methods, unless an emergency situation exists (see Section 11). Alternative methods for public involvement include:

- a) publishing a notice of availability (NOA) of an EA once it is available in the Federal Register, on a NOAA website, or in the local or national media;
- b) soliciting public input through a scoping process (see Section 8(B)) and an NOI briefly describing, among other things, the proposed action, its location, alternatives, anticipated environmental impacts, and potential measures for mitigation and monitoring;
- c) making documents such as permit applications, requests for authorizations, scientific reports, or other relevant environmental information available for public review through any mechanism listed in 40 CFR 1506.6;
- d) holding public meetings or hearings to address the proposed action and solicit public input; or
- e) soliciting the views of Federal, State, and local agencies and Tribal governments with a potential interest in the proposed action or its environmental impacts.

To determine the appropriate type and level of public involvement, the decision maker should consider all relevant circumstances, including:

- a) the nature of the proposed action, including the magnitude of the proposed action, the potential for controversy, and the anticipated impacts;
- b) statutory and regulatory requirements, such as the need for environmental permits or authorizations that have public involvement requirements;
- c) significant policy considerations;
- d) the needs of the relevant program; and

- e) the existence of an emergency situation or compelling need to act quickly.

If NOAA receives public input prior to finalizing the EA, the decision maker must consider whether the EA should be modified to reflect any issues raised by that input. If changes are warranted, adjustments should be made to the EA and the decision maker must reconsider whether the effects of the action are significant. The resulting document is the Final EA. The Final EA must indicate how public input was solicited and include any comments received, or summaries thereof.

C. Determining if the Effects of an Alternative are Significant

Determining if an effect is significant requires consideration of the effect's context and intensity. The decision maker must refer to 40 CFR 1508.27(a) to evaluate the context and 40 CFR 1508.27(b) to evaluate the intensity of the proposed action's likely effects, in addition to considering the following factors:

- a) the degree to which the action may adversely affect:
 - i) stocks of marine mammals as defined in the MMPA;
 - ii) managed fish species;
 - iii) essential fish habitat as defined under the MSA;
 - iv) vulnerable marine or coastal ecosystems, including, but not limited to, deep coral ecosystems; or
 - v) biodiversity or ecosystem functioning (e.g., benthic productivity, predator-prey relationships, etc.); and
- b) whether the action may result in the introduction or spread of an invasive species.

If the selected alternative would have a significant effect on the human environment, the decision maker must prepare an EIS. If the selected alternative would not have a significant effect on the environment, the decision maker may finalize the EA and prepare a FONSI.

D. Documenting the Finding of No Significant Impact

If the EA indicates that the selected alternative will not have a significant effect on the human environment, the decision maker may prepare a FONSI. The FONSI documents the reasons why the decision maker has determined that the selected alternative will not have a significant effect on the quality of the human environment, indicates that an EIS will not be prepared, and concludes the NEPA process for that action. A FONSI may be either a stand-alone document that incorporates the EA by reference or be an attachment to the EA. Templates and examples of FONSI are available at the NOAA NEPA intranet site.

An EA may demonstrate that a proposed action would have effects that are significant but could be reduced or avoided through mitigation. This is known as a mitigated FONSI—a FONSI must identify any mitigation measures cited in the EA when their implementation is necessary to reduce potentially significant impacts to support a FONSI (known as a “mitigated FONSI”). The decision maker must ensure that NOAA has the legal authority and resources to ensure the

performance of these mitigation measures, or in the case where the decision maker has considered and decided on an alternative outside NOAA's jurisdiction (as provided in 40 CFR 1502.14(c)), the decision maker should identify the authority for the mitigation and consider the consequences of it not being implemented.

E. Notifying the Public of a FONSI Determination

Final EAs and signed FONSI's must be made available to the public. The public may be notified in the Federal Register or other methods, such as posting on a publically available website or other methods detailed at 40 CFR 1506.6. If the EA is associated with a rulemaking, this notification may be combined with the Federal Register publication of the final rule.

8. Preparing an Environmental Impact Statement

The contents of the EIS must be in accordance with 40 CFR 1502.10, unless the decision maker has identified a compelling reason to use a different format. NOAA must prepare EISs in plain language to the extent possible.

A. Issuing a Notice of Intent to Prepare an EIS

The decision maker must publish a NOI to prepare an EIS in the Federal Register as soon as practicable after making the decision to prepare an EIS and after identifying the proposed action and possible alternatives. 15 CFR 1508.22. The decision maker may combine the NOI with similar notices required for preparation of other documents to reduce duplication and avoid delays. Decision makers are encouraged to consider additional methods to notify interested parties of the intent to prepare an EIS.

B. Scoping Requirements for an EIS

Scoping for an EIS must be performed in accordance with 40 CFR 1501.7. A scoping period of at least 30 days is recommended to provide an adequate opportunity for interested parties to comment.

Scoping is an early and open process designed to determine the scope of issues to be addressed in depth in the analyses that will be included in the EIS.

The purpose of scoping is to:

- a) define the alternatives that will be analyzed;
- b) identify the concerns of the other entities, including other Line or Staff Offices, Federal, State, and local agencies; Tribal governments; nongovernmental organizations; and individuals; and invite participation from affected entities;
- c) identify the likely geographic area of potential environmental effects;
- d) identify the environmental issues that are pertinent to the proposed action;

- e) identify and eliminate those environmental issues that are irrelevant to the proposed action; and
- f) determine if the proposed action will trigger the compliance requirements of other environmental statutes, regulations, or Executive Orders.

C. Distribution of the DEIS and Public Input Gathering

The decision maker must file the completed DEIS with the EPA.¹ The procedures for filing the DEIS with the EPA are available on the EPA website (see Appendix D). The EPA will then publish a Notice of Availability (NOA) for the DEIS in the Federal Register.

NOA publication begins a required minimum of a 45-calendar day public comment period. The decision maker may use other public notification methods in addition to the EPA NOA. If public meetings or hearings are planned, additional notifications should be published to provide more detailed information to parties who may be interested or affected. These other notification methods should also describe how NOAA will accept public comments.

Before the DEIS is filed with the EPA, the decision maker must send copies of the DEIS to all interested or affected Federal, State, and local agencies; Tribal governments; nongovernmental organizations; and individuals, including applicants (if applicable) or any party who requests the EIS.

When preparing an EIS, the decision maker must, to the extent practicable, provide the public with relevant environmental information and a meaningful opportunity to provide its views for consideration by the agency. For example, the decision maker may hold public meetings and/or prepare informational documents in addition to inviting comments on the DEIS.

D. Preparing the FEIS

Once the comment period on the DEIS closes, the decision maker must assess and consider the comments received. The FEIS must include all individual substantive comments or summaries of substantive comments received during the comment period as well as agency responses to comments.

The decision maker must assess and consider comments both individually and collectively and respond by one or more of the following means:

- a) modify the alternatives, including the proposed action;
- b) develop and evaluate alternatives not previously given serious consideration by the agency;

¹ EPA is required by Section 309 of the Clean Air Act (42 U.S.C. § 7609) to review agency EISs to evaluate the adequacy of the analysis and the impact to the environment. EPA uses a rating system that summarizes its recommendations to the lead agency. If EPA determines that the action is environmentally unsatisfactory, it is required by law to refer the matter to CEQ.

November 14, 2016

- c) supplement, improve, or modify its analyses;
- d) make factual corrections; or
- e) explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons that support the agency's position and, if appropriate, indicate those circumstances that would trigger agency reappraisal or further response.

If, following public review of the DEIS, the decision maker makes substantial changes to the proposed action, and these changes result in effects that have not been considered in the DEIS, the decision maker should prepare a supplement to the DEIS. 40 C.F.R. 1502.9(c); see also Section 5.C, *supra*.

E. Filing the Notice of Availability with the EPA

After comments are considered and addressed, the decision maker must file the FEIS with the EPA. The procedures for filing the FEIS with the EPA are available on the EPA website (Appendix D). The EPA will then publish a NOA for the FEIS. The decision maker may use other notification methods in addition to the EPA NOA.

F. Preparing the Record of Decision

After filing the NOA for the FEIS, the decision maker may prepare the ROD. The ROD concludes the NEPA process for an EIS. The ROD must be a separate document from the FEIS, but may be integrated into other agency decision documents, such as a notice of final rulemaking or a final management plan.

The ROD must:

- a) state what the decision was;
- b) identify all alternatives considered by the agency in reaching its decision;
- c) identify the environmentally preferable alternative(s), defined as the alternative that causes the least damage (or provides the greatest benefit) to the human environment;
- d) identify and discuss all factors that were balanced by the agency in making its decision, including any essential considerations of national policy, and state how those considerations entered into its decision if they existed; and
- e) state whether all practicable means to avoid or minimize environmental harm from the selected alternative have been adopted and, if not, why not. A monitoring and enforcement program must be adopted and summarized where applicable for any mitigation. 40 C.F.R. 1505.3.

The decision maker must make a notice of the ROD available to the public. Although not required, publication of the notice in the Federal Register is encouraged.

G. Signing the ROD

The final decision on the action is made when the decision maker signs the ROD. Unless an emergency situation exists (see Section 11), the decision maker must wait until the later of the following dates before signing the ROD:

- a) 90 days after publication of the NOA for the DEIS; or
- b) 30 days after publication of the NOA for the FEIS.

The EPA may, upon a showing by NOAA of compelling reasons of national policy, reduce the prescribed time periods. 40 C.F.R. 1506.10.

9. NEPA and Collaboration

A. Using Applicant- and Contractor-Prepared NEPA Documents

Applicants or contractors hired by the applicant or NOAA may prepare EAs. However, in such cases the decision maker must independently evaluate all pertinent environmental issues through an internal review. The FONSI for an applicant-prepared EA must be prepared by NOAA and state that this internal review was performed.

EISs must be prepared by the lead agency, or by a contractor selected by the lead agency (or by the lead agency in cooperation with cooperating agencies). The decision maker must independently evaluate an EIS prepared by a contractor prior to its approval and take responsibility for its scope and contents. A contractor who prepares an EA or EIS must have no financial or other interest in the outcome of the analysis and must sign a disclosure form. The disclosure form must become part of the agency's records.

B. Cooperating within NOAA

Decision makers are encouraged to solicit other NOAA Offices for input and guidance on NEPA documents whenever possible. When multiple NOAA Offices are involved, the decision maker(s) may choose to:

- a) prepare a single FONSI or ROD for signature by a NOAA official with the authority to speak for all NOAA Offices involved;
- b) prepare a single FONSI or ROD to be signed by multiple individuals, who collectively have the authority to speak for all NOAA Offices involved; or
- c) prepare multiple FONSIs or RODs, which collectively represent the decisions of all NOAA Offices involved, each signed by the appropriate authority for each decision.

The lead NOAA Line or Staff Office is the Office responsible for completing the NEPA process. Two or more Offices may agree to share the lead role. Factors that determine which Office should be the lead include:

- a) magnitude of involvement with the proposed action;
- b) level of expertise concerning the action's environmental effects proposed action; and
- c) history of involvement with similar actions.

C. Cooperating with Other Agencies

The CEQ regulations support agency cooperation in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law must be a cooperating agency. 40 C.F.R. 1501.6. An agency has jurisdiction by law when it “has authority to approve, veto, or finance all or part of the proposal.” 40 C.F.R. 1508.15. In addition, any other Federal agency which has special expertise with respect to any environmental issue, may be a cooperating agency upon request of the lead agency. 40 C.F.R. 1501.6. “Special expertise” means statutory responsibility, agency mission, or related program experience. 40 C.F.R. 1508.26. Appendix II to the CEQ regulations provides a list of Federal and Federal-State agencies with jurisdiction by law or special expertise on environmental quality issues. 49 Fed. Reg. 49754 (Dec. 21, 1984). An agency may also request the lead agency to designate it a cooperating agency. In establishing cooperating agency status, it is recommended that the cooperating agency's roles and responsibilities be documented through a Memorandum of Understanding or similar document. In particular it may be useful to document any agreed upon timeframes for completion of tasks.

Cooperating agency templates are available at:

<https://sites.google.com/a/noaa.gov/nepanews/noaa-nepa-website/noaa-nepa-intranet/templates>.

i. Determining When NOAA will be the Lead Agency

NOAA may elect to be the lead (or the joint lead) agency when the proposed action is within NOAA's control and responsibility. The lead agency is ultimately responsible for completing the NEPA process. When a joint lead relationship is established, NOAA and the other joint lead agency or agencies are collectively responsible for completing the NEPA process. NOAA may only establish a joint lead relationship with a non-Federal agency when that agency has a duty to comply with a similar environmental planning requirement for the same action.

If a lead agency cannot be determined by considering the factors listed in 40 CFR 1501.5(c), the decision maker must immediately request that the NOAA NEPA Coordinator file a request with CEQ to determine which agency will be the lead agency.

ii. Inviting Other Agencies to Cooperate When NOAA is the Lead Agency

When NOAA is a lead agency, the decision maker should consider inviting eligible governmental entities (Federal, State, local, and tribal) to participate as cooperating agencies when preparing an EIS. In determining whether an agency is eligible, the decision maker should consider the following factors:

- a) whether the potential cooperating agency has jurisdiction by law, including, but not limited to, the authority to approve, finance, or issue permits for the proposed action;

November 14, 2016

- b) whether the potential cooperating agency has special expertise related to the proposed action; and
- c) whether the potential cooperating agency can provide personnel, expertise, funding, data, facilities, equipment, or other resources to support the NEPA process to proceed in a timely manner.

The decision maker must also consider any requests by such entities to participate as a cooperating agency with respect to a particular EIS, and either accept or deny such requests. If such a request is denied, the decision maker will inform the entity, in writing, the reasons for such denial. Throughout the preparation of an EIS, the decision maker must collaborate, to the fullest extent practicable with all cooperating agencies concerning those issues relating to their jurisdiction or special expertise.

iii. Deciding if NOAA will be a Cooperating Agency

The decision maker should consider requesting cooperating agency status from the lead agency if NOAA has jurisdiction by law or has special expertise, or if cooperation would otherwise further the NOAA mission. When invited by the lead agency, NOAA must agree to serve as a cooperating agency when NOAA has jurisdiction by law over any environmental impact involved. 40 C.F.R. 1501.6. If NOAA is requested to be the cooperating agency in preparation of a NEPA document in which NOAA has special expertise, NOAA may elect to be a cooperating agency, but may decline if program commitments preclude NOAA from any involvement or the degree of involvement requested by the lead agency. In these cases, NOAA may decline the request from the lead agency in writing. If NOAA declines to cooperate on an EIS, the NOAA NEPA Coordinator must send copy of the letter declining cooperating status to the CEQ.

D. Commenting on Another Agency's EIS

NOAA must consider commenting on an EIS when NOAA has jurisdiction by law or special expertise with respect to any environmental impact involved. 40 C.F.R. 1503.2. In order to coordinate NOAA-wide comments, the NOAA NEPA Coordinator will review the EPA's publication of EIS NOAs and forward notification of the availability of any potentially pertinent EISs to each NOAA office as applicable. Any office intending to comment must inform the NOAA NEPA Coordinator of its intent to comment within ten business days of receipt of the notice. Offices must provide the NOAA NEPA Coordinator with the name, title, and contact information of any staff that plans to provide comments.

If a NOAA Line or Staff Office becomes aware of another agency's Notice of Availability of the Draft EIS and desires to comment on the other agency's NEPA document, the Line or Staff Office must notify the NOAA NEPA Coordinator of its intent to comment within five business days of receipt of the notice and must provide the NOAA NEPA Coordinator with contact information for the commenting office.

In either case, the NOAA NEPA Coordinator must:

- a) identify any other Line and Staff Offices that wish to participate;
- b) supply the other interested offices with the points of contact; and
- c) coordinate comments on documents if more than one office is commenting.

If only one office is providing comments, the NOAA NEPA Coordinator may recommend that the Office participate and/or provide comments directly with the action agency on a case-by-case basis. The Line or Staff Office that comments must submit an electronic copy of the comments to the NOAA NEPA Coordinator.

In addition to commenting on other agency NEPA documents, NOAA should also serve as a resource for agencies when NOAA's scientific expertise and available resources and information may be of assistance.

i. Commenting Under Laws with Accelerated Project Delivery Requirements

The Fixing America's Surface Transportation Act ("FAST Act," 23 U.S.C. 139 and 42 U.S.C. 4370m) and the Water Resources Reform and Development Act ("WRRDA," 33 U.S.C. 2045), require "accelerated project delivery" of surface transportation (Title 1 of FAST Act), large-scale infrastructure (Title 41 of FAST Act), and Army Corps of Engineers water resource development (WRRDA) projects. For actions subject to these statutes, NOAA may be deemed a "participating" or "cooperating" agency and as such may be subject to specific procedural requirements in addition to those required under NEPA. For example, NOAA offices may be asked to concur on project-specific schedules, may be subject to shorter than typical comment deadlines, and may be obligated to participate in specified dispute resolution procedures. Whenever NOAA has an interest in a qualifying surface transportation, infrastructure, or water resources development project, decision makers should consult the lead agency to ensure that it is aware of its obligations with respect to the project.

E. Referring Matters to CEQ for Environmentally Unsatisfactory Effects

The CEQ referral process is a formal, third-party arbitration that permits Federal agencies to bring to CEQ interagency disagreements concerning proposed actions that might cause unsatisfactory environmental effects. CEQ referrals are made only after all other efforts to resolve the dispute have been exhausted.

NOAA staff must notify the NOAA NEPA Coordinator and Line/Staff Office NEPA Coordinator, when efforts to resolve disputes have been exhausted. The NOAA NEPA Coordinator must evaluate the action using criteria outlined in 40 CFR 1504.2 and, if appropriate, recommend referral to the NOAA Administrator. Upon approval from the NOAA Administrator, the NOAA NEPA Coordinator will sign and transmit necessary referral correspondences to the CEQ within 25 days of the FINAL EIS NOA, following procedures identified in 40 CFR 1504.3. EPA may also refer final EISs to CEQ if decision makers do not

make improvements recommended by EPA for documents rated as inadequate following their review of a final EIS.

10. Integrating NEPA with Other Environmental Requirements

The CEQ regulations require that, to the fullest extent possible, draft NEPA documents should be prepared concurrently with and integrated with environmental impact analyses and related surveys and studies required by other federal statutes. Additionally, the CEQ regulations allow agencies to combine an environmental document prepared in compliance with NEPA with any other agency document to reduce duplication and paperwork. 40 C.F.R. 1506.4. Thus, the decision maker may combine a NEPA document with related plans, rules, or amendments as a single consolidated document. This may be reasonable where the EIS/EA format and regulations also satisfy the requirements of a trust resource management plan or amendment. The consolidated document must contain and clearly identify the required sections of the NEPA document and must stand on its own as an analytical document which fully informs decision makers and the public of the environmental effects of the proposal and those of the reasonable alternatives.

When scoping identifies consultations, permits, or licenses necessary under other environmental laws, the EA/EIS should contain a section briefly listing the applicable requirements and how they have been or will be met (*e.g.*, permits applied for or received, consultations initiated or concluded). The EA/EIS should also contain a section listing the agencies or persons consulted regarding these requirements. In the case of financial assistance awards, the EA/EIS should note which requirements are the responsibility of the action agency and which are the responsibility of the awardee/applicant. The FONSI/ROD should also note whether other environmental documents are related to the scope of the action, such as the results of these consultations.

Examples of consultation and permitting requirements that are commonly applicable to NOAA actions include, but are not limited to the following:

- Consultation with the U.S. Fish and Wildlife Service's Division of Habitat and Resource Conservation and then the appropriate State fish and wildlife agencies under the Fish and Wildlife Coordination Act when a proposed action is anticipated to result in the control or modification of a natural stream or body of water;
- Consultation with the relevant State Historic Preservation Office or Tribal Historic Preservation Officer under the National Historic Preservation Act when a proposed action has the potential to affect a historic property;
- Consultation with the relevant office of NMFS's Office of Protected Resources and/or the U.S. Fish and Wildlife Service under the Endangered Species Act when a proposed action may affect species listed as threatened or endangered, or any designated critical habitat;

- Consultation under the Essential Fish Habitat (EFH) Provisions of the MSA with NMFS's Director of Habitat Conservation or the NMFS Regional Administrator as appropriate when proposed actions may adversely affect EFH identified in a fishery management plan pursuant to section 305(b) of the MSA;
- Consultation under the National Marine Sanctuaries Act with NOAA's Office of National Marine Sanctuaries when proposed actions are likely to destroy, cause the loss of, or injure any sanctuary resource. In the case of Stellwagen Bank National Marine Sanctuary, the decision maker must consult on proposed actions that may affect any resource of the sanctuary;
- Consultation with the Regional Administrator of NMFS Pacific Islands Region when proposed actions may impact the resources of a Marine National Monument. For actions that may impact the Papahānaumokuākea Marine National Monument, the decision maker must coordinate with NOAA's Office of National Marine Sanctuaries and NMFS Pacific Islands Regional Office;
- Consultation with the lead State agency as identified in a coastal State's Federally approved coastal management program under the Coastal Zone Management Act when a proposed action has reasonably foreseeable effects on any land, water use, or natural resource of the coastal zone;
- Consultation with federally-recognized tribes when a proposed action may have tribal implications as defined by E.O. 13175. If a proposed action may have tribal implications, the decision maker should consult the NOAA Tribal Consultation Handbook and contact their Tribal Liaison to determine what Tribal consultation obligations may be triggered by the proposed action.
- Permits or authorizations obtained from the NMFS Office of Protected Resources or his/her designee under the Marine Mammal Protection Act when a proposed action may involve take of any marine mammal.

Additionally, the following sections provide further guidance on implementing Executive Orders that may be relevant to proposed actions that are analyzed under NEPA.

A. Complying with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

The decision maker must determine whether the proposed action has a disproportionately high and adverse human health or environmental impact on minority or low-income populations and on subsistence use in affected areas. As appropriate to a project, the decision maker must analyze the interrelated cultural, social, occupational, historical, and economic factors that may amplify the natural and physical environmental effects of the proposed action on low-income or minority populations. If the analysis of these effects is applicable to the proposed action then it must be

documented in the EIS or EA. Whenever feasible, decision makers should identify mitigation measures to address any significant or adverse human health or environmental effects on minority and low-income populations.

For those actions that have the potential to have a disproportionately high and adverse human health or environmental impact on minority or low-income populations, NOAA must ensure that public involvement is conducted in a manner that reaches the affected communities. Such efforts could include language translation and coordination with community networks.

B. Complying with Executive Order 13158, Marine Protected Areas

The decision maker must coordinate as necessary with the Director of NOAA’s Office of National Marine Sanctuaries for proposed actions that affect natural or cultural resources protected by a marine protected area under EO 13158. If avoidance measures are to be implemented pursuant to this EO, the decision maker must document the measures in the CE evaluation documentation, FONSI or ROD.

C. Complying with Executive Orders 12114, Environmental Effects Abroad of Major Federal Actions and 13141, Environmental Review of Trade Agreements

EO 13141 applies to certain trade agreements. EO 12114 applies to proposed actions, or impacts thereof, that occur outside the United States, its territories and possessions, U.S. Territorial Seas, or which may affect resources not subject to the management authority of the United States.

In an action subject to EO 12114, the decision maker, in consultation with the NOAA NEPA Coordinator and Line/Staff Office NEPA Coordinator, must determine the appropriate level of environmental review, as specified in Table 1 below.

Table 1: NOAA Environmental Review Options under Executive Order 12114

Type of Federal Action	Appropriate Environmental Review
Major Federal actions significantly affecting the global commons outside the jurisdiction of any nation	An EIS prepared in accordance with Section 4.5 of this Manual
Major Federal actions significantly affecting a foreign nation that is not participating with the United States and is not otherwise involved in the action	A bilateral or multilateral study prepared in accordance with section 2-4(ii) of EO 12114, or a concise review prepared in accordance with section 2-4(iii) of EO 12114
Major Federal actions significantly affecting the environment of a foreign nation which provide to that nation a product or physical project producing a principal product, emission, or effluent which is	

prohibited or strictly regulated by US Federal law because its toxic effects pose a serious health risk	
Major Federal actions significantly affecting the environment of a foreign nation which provide to that nation a physical project which in the United States is prohibited or strictly regulated to protect the environment against radioactive substances	
Major Federal actions located outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection by the President or by the Secretary of State	An EIS prepared in accordance with Section 4.5 of this Manual, a bilateral or multilateral study prepared in accordance with section 2-4(ii) of EO 12114, or a concise review prepared in accordance with section 2-4(iii) of EO 12114

If an EIS is not required for the proposed action, at a minimum, the environmental review document must describe:

- a) the proposed action and its alternatives;
- b) the affected environment; and
- c) the potential direct, indirect, and cumulative environmental impacts.

Decision makers can always opt to undertake an EIS if more appropriate in particular circumstances. Decision makers may also use the list of CEs in Appendix E of this manual in reviewing potential environmental impacts of major actions abroad and in the global commons, in accordance with EO 12114, section 2-5(c). If the decision maker is undertaking an action and determines that such action will not have a significant effect on the environment outside the United States, the decision maker should prepare a brief record which describes the basis for its determination.

Public involvement efforts should be made to the extent practicable and may include consulting with foreign officials, holding meetings, or circulating an environmental review document for public review and comment. Steps should be taken to translate environmental review documents as necessary. Occasionally, it may be necessary to limit public involvement for one or more of the following reasons:

- a) diplomatic considerations;
- b) national security considerations;
- c) relative unavailability of information;
- d) commercial confidentiality; or
- e) extent of NOAA's role in the proposed activity.

The NOAA NEPA Coordinator must coordinate with other offices in NOAA, DOC, CEQ, and the Department of State when the proposed action or its environmental impacts are likely to involve substantial policy considerations.

D. Complying with Executive Orders 11988, Floodplain Management; 13690, Federal Flood Risk Management Standard; and 11990, Protection of Wetlands

The Floodplain Management, Federal Flood Risk Management Standard (FFRMS), and Wetland Protection EOs direct federal agencies to avoid, to the extent possible, adverse impacts associated with occupying or modifying floodplains and wetlands. They also require federal agencies to avoid floodplain or wetland development whenever there is a practical alternative. The FFRMS further requires that Federally funded projects—those Federal actions that involve construction, substantial improvement, or repair of substantial damage of structures and facilities—to be resilient to both current and future flood risk. These EOs apply to any proposed actions in or affecting floodplains and wetlands that involve acquiring, managing, and disposing of Federal lands and facilities; providing Federally undertaken, financed or assisted construction and improvements; and conducting Federal activities and programs affecting land use such as water and related land use resource planning, regulating, and licensing activities.

If these EOs apply to the proposed action, the decision maker must, via the NEPA analysis for that proposed action:

- a) determine if the proposed action would occur within the resource of concern (defined here as either:
 - i) a wetland;
 - ii) for Federally funded projects, a floodplain determined through application of the FFRMS; or
 - iii) for actions that are not Federally funded projects, a 500-year floodplain for “critical actions” (as defined in Appendix A) or a 100-year floodplain for non-critical actions;
- b) if the proposed action will occur in the resource of concern, notify the public at the earliest possible time and involve the affected and interested members of the public in the decision-making process;
- c) identify and evaluate practicable alternatives to locating the proposed action in the resource of concern, using natural systems, ecosystem processes, and nature-based approaches where possible;
- d) identify the impacts of the proposed action, if a practicable alternative located outside of the resource of concern cannot be identified;
- e) evaluate measures to reduce the proposed action’s adverse impacts on the resource of concern;
- f) re-evaluate alternatives to the proposed action to account for information gained in this process;
- g) make the final decision and explain the findings to the public; and then

- h) implement the decision.

The decision maker should also consult NOAA's floodplain guidance document, ("Executive Order 11988-Floodplain Management, Executive Order 11990-Protection of Wetlands Guidance, December 2012") for detailed information on how to comply with EOs 11988, 13690, and 11990.

11. Emergency Situations and Alternative Arrangements

CEQ has recognized the possibility that circumstances could arise that would make it impossible to comply with the rigorous obligations of NEPA. Actions in response to emergency situations are not exempt from NEPA review. However, when the need to respond to an emergency situation makes compliance with NEPA and the CEQ regulations impracticable, "alternative arrangements" may be established for EISs. 40 C.F.R. 1506.11. For the purposes of this Manual, the term "emergency situation" refers to a scenario with an immediate threat to human health or safety, or immediate threats to valuable natural resources. Examples of emergency actions include actions responding to threats to life or property, actions taken in response to oil or other chemical spills, or regulatory actions taken to protect the following resources from immediate threats: 1) threatened or endangered species, marine mammals, or their habitat; 2) cultural or historic resources located within marine national monuments, marine sanctuaries, or marine protected areas; and 3) fish stocks or fisheries; and 4) national marine sanctuary resources.

If a proposed action to respond to an emergency situation is expected to have a significant effect on the human environment, the decision maker must immediately notify the NOAA NEPA Coordinator. The NOAA NEPA Coordinator must contact CEQ to establish alternative arrangements for compliance with NEPA. If the NOAA NEPA Coordinator cannot be reached, the decision maker may contact CEQ directly. Alternative arrangements do not waive the requirement to comply with NEPA, but establish an alternative means for compliance for responsive action with significant environmental impacts.

Alternative arrangements for compliance with NEPA are limited to the actions necessary to control the immediate impacts of the emergency. The arrangements will be developed, based upon the specific facts and circumstances, during the consultation with CEQ. Once the alternative arrangements are established, CEQ will provide documentation outlining the alternative arrangements and the considerations on which they are based. Factors to be addressed when developing alternative arrangements are:

- a) nature and scope of the emergency;
- b) actions necessary to control the immediate impacts of the emergency;
- c) potential adverse effects of the proposed action;
- d) components of the NEPA process that can be followed and provide value to decision-making;

- e) duration of the emergency; and
- f) potential mitigation measures.

Alternative arrangements are only available for those actions that are likely to result in significant environmental effects and would therefore require consideration in an EIS. If the emergency action is not likely to result in significant environmental effects, and is not an action that would be covered by one of NOAA's CEs, the decision maker should prepare a concise and focused EA. Decision makers are advised to consider CEQ guidance on Preparing Focused, Concise and Timely Environmental Assessments.

12. Terminating the NEPA Process

NOAA may terminate the NEPA process at any stage if the proposed action or program goals change, support for a proposed action or program diminishes, original analyses become outdated (e.g., the environmental effects analysis is no longer relevant), or other special circumstances occur.

If the NEPA process is terminated after the publication of an NOI or a DEIS, the decision maker must notify the NOAA NEPA Coordinator, who in turn must notify the EPA or CEQ, as appropriate. The decision maker must publish an updated notice in the Federal Register, and may notify interested parties of the termination of the NEPA process through additional methods if necessary.

Appendix A:

Glossary

Glossary

The definitions in 40 CFR 1508, EO 11988, EO 11990, EO 12114, and official CEQ interpretations are applicable to this Manual. The definitions below do not supersede 40 CFR 1508.

Agency's Records – all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by NOAA under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of the data in them (44 U.S.C. 3301).

Amendment – a change to a permit or management plan prepared to carry out management objectives.

Applicant-- any party who may apply to NOAA for a Federal permit, funding, or other approval of a proposal or action and whose application should be accompanied by an environmental analysis. Depending on the program, the applicant could be an individual, a private organization, or a Federal, state, tribal, territorial, or foreign governmental body. Fishery Management Councils are not considered applicants because of their unique status under Federal law.

Cooperative Agreement – a legal instrument reflecting a relationship between the U.S. Government and a State, a local government, or other recipient when 1) the principal purpose of the relationship is to transfer a thing of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the U.S. Government; and 2) substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.

Critical Action – any activity located in or adversely affecting a floodplain and/or a wetland where even a slight chance of flooding is deemed to be too great a risk.

Decision Maker – the individual who has the authority to make the NOAA decision that is being informed by the NEPA process. While the decision maker is not normally expected to personally execute the NEPA process, the decision maker is responsible for initiating the environmental planning effort and is responsible for its content and quality.

Financial Assistance Award – funding provided to a non-Federal entity by either a grant or cooperative agreement.

Financial Assistance Program – a plan or system under which action may be taken to support the transfer of funds either by grant or cooperative agreement.

Floodplain – the areas adjoining inland and coastal waters including that area subject to a 1 percent or greater chance of flooding annually (often referred to as the “100-year floodplain”). For a critical action, the floodplain is the area with a 0.2 percent chance of flooding annually (the “500-year floodplain”).

Grant – a legal instrument reflecting a relationship between the U.S. Government and a State, a local government, or other recipient when 1) the principal purpose is to transfer a thing of value to a State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the U.S. Government; and 2) substantial involvement is not expected between the Federal agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.

Line Office – one of six organizational units within NOAA, identified as:

National Environmental Satellite, Data, and Information Service;

National Marine Fisheries Service;

National Ocean Service;

National Weather Service;

Office of Marine and Aviation Operations; and

Oceanic and Atmospheric Research.

Major Projects – as defined by the NAO 217-104, Facility Capital Planning and Project Management Policy, major projects are investments subject to DOC approval thresholds for estimated total project cost.

Minor Projects – as defined by the NAO 217-104, Facility Capital Planning and Project Management Policy, minor projects are investments involving new facilities or enhancements/additions/expansions to existing facilities below the DOC approval thresholds, but with a total project cost greater than \$300,000.

Species – A fundamental group of related organisms similar in certain morphologic and physiologic characteristics and capable of interbreeding; a genetically distinct population of organisms with very similar physical characteristics, which interbreed and occupy a limited geographic region, share a common gene pool, and are reproductively isolated from all other such groups. The term includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species or vertebrate fish or wildlife which interbreeds when mature.

Staff Office – an organizational unit within NOAA that fulfills specific support mandates in furtherance of NOAA’s mission, such as fleet allocation, infrastructure, and workforce management. NOAA Staff Offices are:

Office of Communications;

DRAFT For Public Review

November 14, 2016

Office of Education;

Office of the Federal Coordinator for Meteorology;

Office of General Counsel;

Office of International Affairs; and

Office of Legislative and Intergovernmental Affairs

Supplemental Information Report – an analysis prepared in order to document a review of new information or changed condition/circumstances from that described in an existing NEPA document to determine the sufficiency of the existing analysis and subsequent decision.

Trust Resources – biological, physical, or ecosystem attributes for which NOAA is entrusted to manage, protect, conserve, recover, or restore on behalf of the public. Resources may include, but are not limited to, delineated geographic areas, individual species, species complexes, and coastal ecosystems.

Wetlands – those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions.

Appendix B:

Authorities and References

Authorities and References

The following authorities and references apply to this Manual. The authorities listed below are the regulatory drivers for the policies established in this Manual. The relevant statutory requirements and policies are references related to the implementation of related environmental requirements. The CEQ reports and guidance documents and other references are listed below to provide references that assist users to implement the policy requirements. If there are additional authorities or removal of authorities, these documents are considered to be incorporated by reference into this order. The reference list below is subject to change; therefore, a minor addition or deletion to or from the list of references would not constitute a revision to this Manual.

Authorities

- a) 42 U.S.C. §§ 4321-4361; National Environmental Policy Act
- b) 40 CFR 1500-1508; Regulations for Implementing the National Environmental Policy Act
- c) DAO 216-6; Implementing the National Environmental Policy Act
- d) EO 12114; Environmental Effects Abroad of Major Federal Actions
- e) DAO 216-12; Environmental Effects Abroad of Major Federal Actions
- f) EO 11988; Floodplain Management
- g) EO 11990; Protection of Wetlands
- h) EO 13141; Environmental Review of Trade Agreements

Relevant Statutory Requirements and Policies

- a) 16 U.S.C. §§ 1531–1544; Endangered Species Act
- b) 50 CFR 402.06 §§ 222-226; Endangered Species Act Implementing Regulation – Coordination with other environmental reviews
- c) 50 CFR 216, 16 U.S.C. §§ 1361 et seq.; Marine Mammal Protection Act Implementing Regulation
- d) 16 U.S.C. §§ 1801 et seq.; Magnuson-Stevens Fishery Conservation and Management Act
- e) 16 U.S.C. §§ 1451-1456; Coastal Zone Management Act
- f) 33 U.S.C. §§ 1401-1445 and 16 U.S.C. §§ 1431-1445; Marine Protection, Research, and Sanctuaries Act
- g) 15 U.S.C. §§ 3501 et seq.; Coastal Barrier Resources Act
- h) 16 U.S.C. §§ 6401 et seq.; Coral Reef Conservation Act
- i) 16 U.S.C. §§ 470 et seq.; National Historic Preservation Act
- j) 36 CFR 800.8; National Historic Preservation Act - Implementing Regulation
- k) 16 U.S.C. §§ 661 et seq.; Fish and Wildlife Coordination Act
- l) 16 U.S.C. §§ 703-712; Migratory Bird Treaty Act

November 14, 2016

- m) 16 U.S.C. §§ 1271-1287; Wild and Scenic Rivers Act
- n) 33 U.S.C. § 1344; Clean Water Act
- o) 42 U.S.C. §§ 7401–7626; Clean Air Act
- p) P.L. 106-554 § 515; H.R. 5658; Data Quality Act
- q) 5 U.S.C. Subchapter II §§ 551-559; Administrative Procedure Act
- r) EO 13158; Marine Protected Areas
- s) EO 13089; Coral Reef Protection
- t) EO 13112; Invasive Species
- u) EO 13186; Responsibilities of Federal Agencies to Protect Migratory Birds
- v) EO 13175; Consultation and Coordination with Indian Tribal Governments
- w) EO 12898; Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

CEQ Guidance and Reports

- a) Memorandum for Heads of Federal Departments and Agencies: Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews (CEQ, August 1, 2016)
- b) Memorandum for Heads of Departments and Agencies: Guidance on Effective Use of Programmatic NEPA Reviews (CEQ, December 18, 2014)
- c) Memorandum on Environmental Collaboration and Conflict Resolution (OMB & CEQ, September 7, 2012)
- d) Memorandum for Heads of Federal Departments and Agencies: Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act (March 6, 2012)
- e) Memorandum for Heads of Federal Departments and Agencies: Appropriate Use of Mitigation and Monitoring and Appropriate Use of Mitigated Findings of No Significant Impact (CEQ, January 14, 2011)
- f) Memorandum for Heads of Federal Departments and Agencies: Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act (CEQ, November 23, 2010)
- g) Aligning National Environmental Policy Act Processes with Environmental Management Systems: A Guide for NEPA and EMS Practitioners (CEQ, 2007)
- h) Collaboration in NEPA: A Handbook for NEPA Practitioners (CEQ, 2007)
- i) A Citizen's Guide to the NEPA: Having Your Voice Heard (CEQ/NEPA Task Force, 2007)
- j) Emergency Actions and NEPA (CEQ memorandum, May 12, 2010)
- k) Guidance on the Consideration of Past Actions in Cumulative Effects Analysis (CEQ memorandum, June 24, 2005)
- l) Modernizing NEPA Implementation (CEQ/NEPA Task Force, 2003)

November 14, 2016

- m) Identifying Non-Federal Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act (CEQ memorandum, September 25, 2000)
- n) Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of NEPA (CEQ memorandum, July 28, 1999)
- o) Considering Cumulative Effects under the National Environmental Policy Act (CEQ, 1997)
- p) Environmental Justice: Guidance under the National Environmental Policy Act (CEQ, 1997)
- q) Council on Environmental Quality Guidance on NEPA Analyses for Transboundary Impacts (CEQ memorandum, July 1, 1997)
- r) Pollution Prevention and the National Environmental Policy Act (CEQ memorandum, January 12, 1993)
- s) Incorporating Biodiversity Considerations into Environmental Impact Analysis under the National Environmental Policy Act (CEQ, 1993)
- t) Guidance Regarding NEPA Regulations (CEQ memorandum, July 28, 1983)
- u) Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (CEQ memorandum, March 16, 1981)
- v) Guidance on Applying Section 404(r) of the Clean Water Act to Federal Projects which Involve the Discharge of Dredged or Fill Materials into Waters of the U.S., including Wetlands (CEQ memorandum, November 17, 1980)
- w) Environmental Effects Abroad of Major Federal Actions, Executive Order 12114; Implementing and Explanatory Documents (CEQ memorandum, March 21, 1979)
- x) Implementation of Executive Order 11988 on Floodplain Management and Executive Order 11990 on Protection of Wetlands (CEQ memorandum, March 21, 1978)
- y) Environmental Review Pursuant to Section 1424(e) of the Safe Drinking Water Act of 1974 and its Relationship to NEPA of 1969 (CEQ memorandum, November 19, 1976)
- z) NEPA and NHPA: A Handbook for Integrating NEPA and Section 106 (CEQ and ACHP, 2013)
- aa) CEQ guidance, directives, and interpretations at <http://www.nepa.gov>.

Other References

- a) Global Climate Change Impacts in the United States (U.S. Global Change Research Program, 2009)
- b) Environmental Management Systems Implementers Guide (U.S. Department of the Army, 2005)
- c) National Flood Insurance Program (Federal Emergency Management Agency)
- d) National Wetlands Inventory (U.S. Fish and Wildlife Service)
- e) Status Report for the National Wetlands Inventory Program (U.S. Fish and Wildlife Service, 2009)

- f) Addressing your Community's Flood Problems: A Guide for Elected Officials.
(Association of State Floodplain Managers and the Federal Interagency Floodplain Management Task Force, 1996)

Appendix C:

**Revised and Updated NEPA Procedures for Magnuson-Stevens Act Fishery Management
Actions**

Revised and Updated NEPA Procedures for
Magnuson-Stevens Act Fishery Management Actions

I. Overview

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) establishes the basis for Federal management of United States fisheries and vests primary management responsibility with the Secretary of Commerce. The Secretary has delegated this responsibility to the National Marine Fisheries Service (NMFS) within the National Oceanic and Atmospheric Administration (NOAA). The MSA establishes eight regional fishery management councils (FMCs) and gives them special responsibilities for recommending management plans and regulations. Management plans and regulations must comply with all applicable law including the National Environmental Policy Act (NEPA). NOAA provides general guidance on agency compliance with NEPA in the NOAA Administrative Order (NAO) 216 – 6. (http://www.nepa.noaa.gov/NAO216_6.pdf)

In addition, NMFS provides detailed guidance on compliance with all applicable laws, including NEPA, in the context of MSA fishery management actions in Policy Directive 01-101-03, “Revised Operational Guidelines,” May 1997. (<http://www.nmfs.noaa.gov/op/pds/documents/01/101/01-101-03.pdf>)

Section 304(i) of the Magnuson-Stevens Fishery Conservation and Management Act called on the Secretary to revise and update agency procedures for compliance with NEPA in context of fishery management actions developed pursuant to the MSA. On behalf of the Secretary, NMFS engaged in a lengthy and transparent public process including coordination with the Council on Environmental Quality (CEQ) and the Regional FMCs to develop the scope of issues and concerns to be addressed by the procedures. During NMFS’s work on this issue, the NOAA Office of Program Planning and Integration (PPI) began a process of revising and updating NAO 216-6. NMFS believes it is appropriate to incorporate the MSA-specific NEPA procedures into the revised NAO and is working to ensure this happens. However, there is also a need to provide for national consistency on certain key issues during the interim.

Currently, NAO 216-6 provides agency-wide guidance on complying with NEPA and CEQ requirements pertaining to documentation; and the Policy Directive 01-101-03, “Revised Operational Guidelines,” May 1997, provides guidance on timing and procedures for the FMC process. (<http://www.nmfs.noaa.gov/op/pds/documents/01/101/01-101-03.pdf>)

These revised and updated NEPA procedures supplement the NAO and Operational Guidelines by providing additional guidance on certain issues not addressed elsewhere. NMFS anticipates further improvements to the NEPA process at NOAA in the form of revised and updated language in NAO 216-6, the document that provides NOAA-level policy and procedures for NEPA compliance, the NEPA manual, or otherwise. NMFS will work to ensure consistency between any NMFS-level and any future NOAA-level NEPA policy and procedures. In addition, NMFS may further modify these revised and updated NEPA procedures to reflect future improvements and needs.

With respect to compliance with NEPA during the development of fishery management actions pursuant to the MSA, these revised and updated NEPA procedures:

- Clarify Roles and Responsibilities;
- Provide Guidance on timing of NEPA compliance, and establish a procedural nexus to the MSA fishery management process;
- Provide Guidance on certain issues pertaining to NEPA documentation, including the statement of purpose and need, identifying alternatives, and content of the Record of Decision (ROD); and
- Provide guidance on techniques for improving partnerships and efficiencies

II. Applicability

These revised and updated NEPA procedures have been developed specifically to address the unique timing and procedural requirements of the MSA. However, we recognize that NMFS and the FMCs may utilize FMC processes to develop and/or implement other fishery management measures, such as regulations promulgated pursuant to the Pacific Halibut Act, the Western and Central Pacific Fisheries Convention Implementation Act, or other such laws. To the extent that NEPA applies to these activities, the roles of NMFS and the FMCs with respect to NEPA are the same as described in this document, and early coordination and cooperation are likewise encouraged.

III. Roles and Responsibilities (fostering partnerships/retaining responsibility)

NMFS and the FMCs have different and important roles with respect to National Environmental Policy Act (NEPA) and MSA implementation. While the MSA and NEPA requirements for schedule, format, and public participation may be compatible and may be conducted jointly as long as all responsibilities are fulfilled, in some cases it may be necessary to separate the two statutes' procedures and documentation in order to ensure compliance with all requirements.

The chief purpose of NEPA is to declare a national environmental policy, which directs Federal agencies to use all practicable means to maintain conditions in which man and nature can live in productive

harmony (i.e., fulfilling the social, economic, and other requirements of present and future generations of Americans). NEPA provides policy goals and creates a mandate for the Federal government to use all practicable means to improve and coordinate Federal plans, functions, programs, and resources in order to:

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
- Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

In addition to these environmental policy goals, NEPA includes specific analytical and procedural requirements that interact with NMFS's decision-making process under the MSA. NEPA includes basic requirements for federal agencies to consider the effects of their actions on the environment, to consider alternatives during the decision-making process, and to provide opportunities for public involvement. It also requires Federal agencies to initiate and utilize ecological information in planning and developing resource-oriented projects. These revised and updated NEPA procedures link NEPA's mandates on NMFS, as the Federal action agency, to the activities of the FMCs, in their role as advisory bodies. The revised and updated NEPA procedures do not preclude an FMC's development of NEPA documents as is the practice in some regions. However, they clarify where ultimate legal responsibility for NEPA lies – and that is with NMFS. While NEPA does not specify at what point in the FMC process a NEPA document must be available, it is good practice to have as complete a NEPA document as practicable available during FMC deliberations.

A. Special Issues Relevant to FMC-initiated Fishery Management Actions

For MSA fishery management actions, NMFS's authority to modify FMC-recommended fishery management plans and plan amendments is restricted: NMFS may approve, disapprove, or partially approve a proposed FMP or FMP amendment recommended by the FMC, and the sole basis for disapproval of any such recommendation is that it is not consistent with applicable law, including NEPA, and the MSA and its national standards.

Because policy recommendations are developed and alternatives may be created and narrowed through the public forum of FMC meetings, the purposes of NEPA are best served by integrating the NEPA analysis of alternatives and impacts with the FMCs' development of recommended management measures and actions when possible. Completing as much of the NEPA process as practicable while at the Council level enhances good decisionmaking. It is also important to bear in mind the ongoing and iterative nature of fishery management under the MSA. While NMFS reviews each FMC recommendation on an

November 14, 2016

individual basis, these recommendations are typically pieces of a more complex management regime taking place in an ongoing management continuum that must address continually evolving information and needs. Consistent with NEPA's declaration that it is the continuing policy of the Federal government to use all practicable means to maintain conditions in which man and nature can live in productive harmony and utilize ecological information in planning and developing resource-oriented projects, the information presented in any particular NEPA analysis may also inform NMFS in its ongoing stewardship responsibilities under the MSA and other resource management authorities.

B. Roles and Responsibilities

1. NMFS-initiated Actions

For MSA actions prepared by NMFS, such as management of highly migratory species and Secretarial actions pursuant to MSA section 304(c) or 305(c), NMFS is responsible for compliance with both NEPA and the MSA. NMFS will, to the extent practicable, conduct NEPA concurrently with the development of fishery management actions.

2. FMC-initiated actions

For FMC-initiated fishery management actions developed pursuant to the MSA, NMFS and the FMCs have different and important roles with respect to NEPA and the MSA as described below.

a. MSA Role of the FMCs

As set forth in sections 302(h), 303, and 304 of the MSA (see also the policy directives entitled "Procedures for Initiating Secretarial Review of FMPs and Amendments (3/01/91) (<http://www.nmfs.noaa.gov/op/pds/documents/01/101/01-101-01.pdf>) and "Revised Operational Guidelines," May 1997, (<http://www.nmfs.noaa.gov/op/pds/documents/01/101/01-101-03.pdf>)), FMCs are responsible for:

- Conducting public hearings to allow for public input into the development of FMPs and amendments;
- Reviewing pertinent information;
- Preparing fishery management plans and amendments for fisheries requiring conservation and management;
- Drafting or deeming regulations to implement the plans or amendments
- Developing Annual Catch Limits;
- Identifying research priorities; and
- Transmitting complete packages containing documentation necessary for NMFS to initiate a review of compliance with all applicable laws including NEPA.

b. MSA Role of NMFS

As set forth in section 304(a) of the MSA, the role of NMFS with respect to fishery management plans and plan amendments developed by the FMCs is to review – and approve, disapprove, or partially approve – those plans and amendments in accordance with specified procedures, including:

- Immediately upon transmittal of the FMP or FMP amendment publish the proposed plan or amendment in the Federal Register for a 60-day comment period; and
- Approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period on the plan or amendment. Disapproval must be based on inconsistency with the MSA or other applicable law. In addition, disapprovals must provide guidance on what was inconsistent and how to remedy the situation, if possible (see MSA section 304(a)(3)(A)-(C)).

In addition, as set forth in section 304(b) the role of NMFS with respect to FMC-recommended draft regulations is to:

- Immediately upon transmittal of the proposed regulations initiate an evaluation to determine whether they are consistent with the fishery management plan, plan amendment, the MSA, and other applicable law;
- Within 15 days make a determination of consistency, and—
 - if that determination is affirmative, publish the proposed regulations for a public comment period of 15 to 60 days; or
 - if that determination is negative, notify the FMC in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent.
- Consult with the FMC before making any revisions to the proposed regulations; and
- Promulgate final regulations within 30 days after the end of the comment period and publish in the *Federal Register* an explanation of any differences between the proposed and final regulations.

The MSA, at section 304(c), also authorizes NMFS to prepare a fishery management plan or amendment if:

- (a) the appropriate FMC fails to develop and submit to NMFS, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management;
- (b) NMFS disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the FMC involved fails to submit a revised or further revised plan or amendment; or
- (c) NMFS is given authority to prepare such plan or amendment under the MSA.

NMFS may also develop regulations to implement Secretarial plans and amendments. (MSA section 304(c)(6), (7)).

c. NEPA Roles for NMFS and FMCs

NEPA requires Federal agencies to create an environmental impact statement (EIS) when proposing major federal actions significantly affecting the quality of the human environment. An EIS must comply with section 102(2)(c) of NEPA (P.L. 91-190, 42 U.S.C. 4321-4347) and CEQ's regulations (40 CFR Parts 1500 – 1508) for implementing the procedural provisions of NEPA.² Fishery management actions, such as NMFS's approval of fishery management plans and amendments, are typically considered "major Federal actions" requiring some level of NEPA review. NMFS is the Federal action agency for fishery management actions. Because of the close relationship between NMFS's actions and the FMC's recommendations, compliance with NEPA will be most effective if NMFS and the FMCs coordinate their NEPA and MSA activities closely.

These revised and updated NEPA procedures recognize that FMC staff are often responsible for drafting NEPA documents; however, it is NMFS's responsibility to ensure the resulting documents are adequate for purposes of initiating Secretarial review and are fully compliant with NEPA prior to approval or partial approval. NMFS is not required to make determinations about adequacy of draft Environmental Assessments (EAs) and Categorical Exclusions (CEs) during FMC deliberations or about the adequacy of early drafts of EISs used to inform the FMC process. However, NMFS is required to ensure the adequacy of a draft EIS (DEIS) that will be filed with EPA and published for the formal comment period required by 40 CFR 1503.1 and 1506.10. In addition, NMFS must ensure the adequacy of EA/FONSI's and CE's used to support NMFS's decisionmaking. If NMFS, through early coordination with an FMC, identifies concerns with early versions of draft NEPA documents, NMFS should discuss these with the appropriate FMC as early as possible. In this context the NEPA analyses inform two aspects of NMFS's fishery management decision making activities: they inform NMFS's review of fishery management actions developed through the FMC process and NMFS's decision as to whether to approve, partially approve, or disapprove a fishery management recommendation; and they inform NMFS's ongoing oversight responsibilities with respect to whether a Secretarial action is necessary pursuant to section 304(c) of the MSA.

NMFS's duties with respect to NEPA compliance include:

- Determining whether NEPA applies;
- Determining which level of NEPA analysis is necessary for initiation of Secretarial review and for final Secretarial action,³ i.e., an Environmental Impact Statement (EIS), Environmental Assessment (EA), a Categorical Exclusion (CE), and/or determining whether an existing NEPA analysis adequately supports the action for initiation of Secretarial review and for final Secretarial action;⁴

² Additional information about NEPA may be found at CEQ's website: <http://ceq.doe.gov>.

³ Information in the NEPA document contributes to the factual basis on which NMFS relies when determining whether a Council-recommended action complies with applicable laws. Thus, in some cases an EA or EIS may provide the factual basis for a disapproval. This situation is discussed further in section V.C. below.

⁴ NMFS should advise the Councils regarding these determinations as early as possible during their deliberations for greatest effectiveness.

November 14, 2016

- If an EIS will be prepared, NMFS is responsible for ensuring that the following tasks are completed, bearing in mind that cooperation and utilization of existing MSA processes and venues is encouraged:
 - Ensuring that NEPA scoping is conducted (including publication of the Notice of Intent and solicitation and consideration of scoping comments);
 - Ensuring that a draft EIS (DEIS) adequate for filing with EPA is prepared;
 - Ensuring that opportunity for public comment on the DEIS is provided;
 - Ensuring that a final EIS (FEIS) adequate for filing with EPA is prepared;
 - Providing for a 30 day cooling off period prior to making or recording a decision to approve, disapprove, or partially approve a fishery management action (and/or whether to initiate Secretarial action under MSA section 304(c)); and
 - Preparing a Record of Decision (ROD).
- If an Environmental Assessment (EA) will be prepared, ensuring the EA is sufficient, determining whether to issue a Finding of No Significant Impact (FONSI), and ensuring that the EA and FONSI are made available to the public;⁵ and
- If a Categorical Exclusion (CE) applies, documenting the applicability of the CE.⁶

C. Fostering Partnership and Cooperation while Retaining Oversight and Legal Responsibility

The MSA and NEPA requirements for schedule, format, and public participation are compatible and may be conducted jointly as long as all responsibilities are fulfilled. For example, if an FMC meeting will be used to satisfy any requirement of NEPA for a public meeting, then NMFS must ensure that the procedures required by NEPA are satisfied (such as public notice requirements in 40 CFR 1506.6). In some cases, it may be necessary to separate MSA and NEPA procedures and documentation in order to ensure compliance with all requirements.

Recognizing that each Region/FMC pair frequently works as a team to achieve the fishery management mission with available resources, these revised and updated NEPA procedures are designed to foster continued cooperation and joint prioritization between NMFS and the FMCs. The revised and updated NEPA procedures emphasize the development of timely, useful analyses, building on the approaches set forth in 42 USC 4332(2)(d) (pertaining to documents prepared by States), 40 CFR 1501.2 (directing agencies to integrate the NEPA process with other planning at the earliest possible time and coordinate early with private or non-Federal entities) and 40 CFR 1506.5 (pertaining to preparation of documents by applicants and contractors). While recognizing that FMCs are not Federal action agencies for the purposes of NEPA, the revised and updated NEPA procedures also acknowledge that the FMCs are indispensable elements in the MSA statutory scheme and as such, are an integral part of the Department of Commerce team. Given the unique relationship between NMFS and the FMCs, either NMFS or FMC

⁵ NOAA provides guidance on the preparation of EAs in NAO 216-6, section 5.03. That guidance is attached in Appendix B of this Policy Directive.

⁶ NOAA provides guidance on the use of CE's in NAO 216-6, section 6.03.d.4. That guidance is attached in Appendix C of this Policy Directive.

November 14, 2016

staff may draft the NEPA document as long as NMFS participates early, provides information or advice as needed, conducts appropriate outreach with other agencies and constituents, and independently evaluates each NEPA document's adequacy prior to using it in some fashion to satisfy its NEPA responsibilities.

The revised and updated NEPA procedures encourage NMFS and the FMCs to prepare and make available as much NEPA documentation as practicable (given timelines and resource needs) during the FMC's development of its management recommendation, recognizing that the FMC-proposed alternative and thus final development of the NEPA analysis may not occur until after an FMC takes final action on its management recommendation. The specific FMC proposed alternative is often identified only at final action. This includes providing opportunities for public participation as early in the process as possible while accommodating fishery resource management needs.

Thus, the FMCs serve an important role in the development of NEPA documentation through partnership and cooperation with NMFS. However, NMFS remains responsible for the scope, objectivity, and content of the NEPA documents when determining adequacy for transmittal, and NEPA compliance for purposes of final Secretarial action.

IV. Timing

The revised and updated NEPA procedures encourage conducting as much of the NEPA process as practicable at the FMC level so that the FMCs and the public are informed during the development of a management recommendation of potential environmental impacts and alternatives. This means that NMFS and the FMCs should engage the public as early as practicable in the development of EAs and EISs and, when practicable, actively involve the public in scoping and identifying alternatives for both EAs and EISs. However, the revised and updated NEPA procedures also recognize that there will be variations regarding the extent to which this can happen, and establish minimum requirements and a procedural nexus to the MSA process.

A. Factors to Consider

In light of the minimum timelines set forth in the CEQ regulations, the statutory timelines of the MSA, the practical issues surrounding scheduling of FMC meetings, and the logistics of completing the necessary steps to develop a fishery management recommendation, NMFS recognizes that there will be variations in the extent to which NEPA procedures can be completed in advance of an FMC's vote on a management recommendation. These revised and updated NEPA procedures promote completing as much of the NEPA process as practicable in advance of the FMC's vote so that the FMC can benefit from that process in consideration of the following factors:

- the urgency of the management need;

November 14, 2016

- the need for the FMC recommendation to move forward through Secretarial review to an ultimate decision in order to respond to real-time fishery management needs;
- the timing of the availability of fishery statistics;
- the timing of the opening of the fishing season;
- judicially-imposed deadlines; and
- the schedule of FMC meetings.

The typical FMC process for development of a management recommendation usually involves an iterative process with the public in which one or more early versions of a draft fishery management measure and environmental analysis (i.e., draft EIS or draft EA) are shared, commented on, and modified over the course of several FMC meetings prior to a final FMC vote. However, for a small subset of fishery management recommendations, various factors (such as the timing of the availability of fishery statistics, the timing of the opening of the fishing season, judicially-imposed deadlines, and the schedule of FMC meetings) can interact to constrain the available time between identification of a management need and the date when a management measure needs to be effective. In some circumstances, an FMC may need to complete development and selection of a recommendation in as few as two FMC-meetings, and sometimes in a single meeting. The intent of these revised and updated NEPA procedures is to infuse NEPA into the iterative and deliberative processes of the FMCs as much as possible while allowing enough flexibility so that the fishery management system can respond effectively in time-constrained situations and still comply with NEPA.

B. Procedural Nexus

In order to initiate Secretarial Review of an FMC-recommended fishery management measure, an FMC must provide complete documentation of compliance with the MSA and other applicable law. In terms of NEPA, this means that, for actions requiring an EIS, at a minimum a notice of availability of the Final EIS must be published 30 days before NMFS's decision on the fishery management action. These revised and updated NEPA procedures promote completing as much of the NEPA process as possible during the FMC's development of a fishery management action. To the extent that the NEPA process and documents can be completed early in the FMC process, FMC-recommended fishery management actions will benefit from better information, more robust consideration of alternatives, improved decision making, more timely implementation and review, a higher likelihood of approval, and decreased risk of litigation.

To the extent that the NEPA process and documents are completed later, likelihood of logistical challenges increase and with them the potential for disapproval. For example, while it is technically possible to allow FMC transmittal to occur at the point at which a complete DEIS adequate for filing with the EPA is submitted, this scenario would place serious burdens on staff to complete all requisite steps in time for an approval decision, bearing in mind the statutory and regulatory time requirements of NEPA and the MSA. The MSA requires NMFS to make a decision on FMC-recommended fishery management plans and amendments within 95 days of transmittal of that plan or amendment.⁷ NEPA requires a 45 day

⁷ NMFS's guidance on determining the date of transmittal is posted at <http://www.nmfs.noaa.gov/op/pds/documents/01/101/01-101-01.pdf>

comment period on a DEIS, followed by preparation of an FEIS that responds to comments received on the DEIS, followed by a 30 day cooling off period, which in limited circumstances may be reduced or waived by EPA, prior to making a final decision. These minimum times begin on the dates on which EPA publishes notices of availability of the NEPA documents in the Federal Register. EPA publishes these notices on the Fridays of the week following receipt of the documents. Thus, it would be challenging to produce a well-written FEIS within the necessary time period to allow NMFS to determine the recommendation complies with NEPA by day 95 (i.e., MSA “decision day”).

In determining what amount of NEPA process must be completed prior to transmission, NMFS and the relevant FMC will consider these factors and strive to complete as much of the NEPA process as practicable during the FMC’s development stage.

V. Guidance on Documentation

A. Identification of the Purpose and Need

The identification of purpose and need for the NEPA analysis should conform to the fishery management need an FMC is addressing. Pursuant to the MSA, NMFS and the FMCs continually review incoming information and monitor the status of the fisheries to identify the need for conservation and management.

For NEPA compliance, each FMC, in coordination with NMFS, will clearly identify the purpose and need for the MSA fishery management action. For FMC-initiated actions as well as for NMFS-initiated actions, the purpose and need articulated for the NEPA process should be the same as the need for conservation and management identified pursuant to the MSA. If the FMC identifies its conservation and management needs in broad terms, NMFS should work with the FMC to refine a problem statement for the MSA activities sufficiently to ensure a conforming NEPA statement of purpose and need consistent with achieving NMFS’s statutory, regulatory, and policy requirements.

The description of the purpose and need should be comprehensive enough to inform the development of the proposed action and the alternatives that will be analyzed during the NEPA process and include information and specifics for meeting other environmental requirements as applicable. With the exception of the no action alternative, an alternative will be considered reasonable, and thus suitable for full consideration, only if it meets the purpose and need for action.

B. Alternatives

November 14, 2016

NEPA requires the consideration of alternatives to a proposed action. CEQ's regulations specify that for an EIS, all of the reasonable alternatives that meet the purpose and need must be identified, as well as the no-action alternative (40 CFR 1502.14). NMFS will apply this standard consistent with relevant case law which provides for a rule of reason.

1. "Reasonable"

For fishery management actions, "reasonable alternatives" are those derived from the statement of purpose and need of the action, in context of the MSA's National Standards and requirements of other applicable laws, and which satisfy, in whole or substantial part, the objectives of the proposed federal action. Alternatives that are impractical, or would not achieve stated purposes and needs, as identified by the FMC, or not meet NMFS's statutory, regulatory and policy requirements, are not "reasonable alternatives."

There is no set number of alternatives that is considered reasonable. This is a determination based on the facts of each scenario, and the statement of purpose and need. However, in cases where there would be only two alternatives, the proposed action and the "no action" alternative, if the "no action" alternative would be inconsistent with applicable requirements, it is recommended that an additional alternative or alternatives be considered.

2. "No Action"

Every EIS and EA must include an analysis of the "no action" alternative. Consistent with CEQ's discussion of the "no action" alternative in the 40 Most-Asked Questions,⁸ there are two distinct interpretations of "no action" that may be utilized, depending on the nature of the proposal being evaluated. If the "no action" alternative will literally result in the sun-setting of a management measure, it may be reasonable to consider the "no action" alternative to be the fishery absent the management measure that would sunset. If, on the other hand, the underlying management will not sunset, and "no action" means that current management measures will remain in place, it is reasonable to use a continuation of the status quo, or baseline, as the "no action" rather than the hypothetical scenario of no federal management. This determination depends on the circumstances. The key is to provide a meaningful analysis of anticipated results of the proposed action relative to the status-quo fishery management regime.

Finally, in circumstances where there is significant uncertainty or controversy as to what the appropriate "no action" alternative is, the NEPA document should explain why the agency chose the "no action" alternative it did, state that it had considered a different "no action" alternative, and ask the public to comment on the issue of the appropriate "no action" alternative. It might also be prudent to analyze the other approach (i.e., absence of management) as an additional alternative in the NEPA document.

⁸ 46 Fed. Reg. 18026 (Mar. 23, 1981), as amended.

C. “Consolidated” or “Integrated” Analyses

FMPs and FMP Amendments may be combined with the EIS or EA into one document called a “consolidated” or “integrated” document. This may be a reasonable approach to promote short, clear, analytical EISs that also satisfy the requirements of our other multiple legal mandates. While it is important to reduce duplication and paperwork, it is equally important for consolidated documents to meet the objectives of being concise, clear, and to the point. If the resulting “consolidated” or “integrated” document does not meet these objectives, then it could be counterproductive to fostering informed action.

NMFS has the responsibility to ensure the NEPA analysis is adequate at the points where the documentation is being used to comply with the CEQ regulations pertaining to when the DEIS/FEIS is filed with EPA, circulated and released for the comment and cooling off periods required by 40 CFR 1503.1; and 1506.10, as well as any additional requirements of NEPA and agency implementing guidance. NMFS will also ensure the NEPA analysis is sufficient when evaluating whether the action is adequate for initiation of Secretarial review, and whether it is adequate to support Secretarial decision-making. Thus, NMFS has the responsibility to ensure the NEPA analysis is reasonable and adequate, and that the proposed action and alternatives are clearly identified. NMFS will also advise the FMCs as to sufficiency at earlier stages in the (FMC) process as appropriate. In situations where “consolidated” or “integrated” documents are developed, it is important that the FMCs and NMFS work in close cooperation to ensure the NEPA component is adequate before the FMC transmits the document for Secretarial review bearing in mind the dual purposes of informing approval of the FMC recommendation and informing future actions in the management continuum.

D. Contents of the ROD

For FMC-initiated fishery management actions, NMFS’s decision is whether to approve, partially approve, or disapprove an FMC-recommended measure. Information in the NEPA document contributes to the factual basis on which NMFS relies when determining whether a Council-recommended action complies with applicable laws. Thus, in some cases an EA or EIS may provide the factual basis for a disapproval. In these cases, NMFS may provide recommendations concerning the actions that could be taken by the FMC to conform its actions to the requirements of applicable law. Consistent with NEPA’s declaration that it is the continuing policy of the Federal government to use all practicable means to maintain conditions in which man and nature can live in productive harmony and utilize ecological information in planning and developing resource-oriented projects, the information presented in any particular NEPA analysis may also inform NMFS in its ongoing stewardship responsibilities under the MSA and other resource management authorities.

Thus a ROD may serve the dual purposes of documenting a decision on a specific FMC recommendation as well as providing useful information to assist NMFS in its management and oversight roles consistent

with the MSA and other applicable laws. CEQ's requirements for contents of the ROD are set forth at 40 CFR 1505.2.

VI. Improvements and Efficiencies

This section describes a non-exclusive, non-mandatory set of approaches that may be used to increase efficiency and utility of the NEPA process.

A. NEPA Advanced Planning Procedure (NAPP)

CEQ's guidance on NEPA promotes the use of tiering as described in 40 CFR 1502.20. This section describes a model process for utilizing tiering in a fishery management context. The model is based on the concept of tiering and using advanced planning to promote greater efficiencies in conducting NEPA analyses. Its use is optional, and it does not represent the only approach to tiering or NEPA efficiencies.

NEPA Advanced Planning Procedure. Under this approach, an FMP or an EIS could establish a NEPA Advanced Planning Procedure (NAPP), which would be a mechanism for allowing actions to be undertaken pursuant to a previously planned and constructed management regime without requiring additional environmental analysis. Such a procedure would:

- allow for an evaluation of whether a fishery management action taken pursuant to a NAPP falls within the scope of a prior environmental document; and
- specify criteria that would trigger a requirement to supplement the prior analysis or would require development of a new EIS or EA for the fishery management action taken pursuant to a NAPP.

The NAPP could also specify criteria that would permit certain management actions under revision or review to continue during supplementation or revision of the prior NEPA document, and, if so, establish criteria for determining when this is appropriate.

A fishery management action taken pursuant to a NAPP would not require additional action-specific analysis if NMFS determines that the management measures in the action and their environmental effects fall within the scope of a prior analysis. This determination would be documented in a "NEPA Compliance Evaluation" document.

NEPA Compliance Evaluation (NCE). An NCE is documentation to determine whether an existing NEPA document remains adequate to support a fishery management action undertaken pursuant to a NAPP. The NCE would culminate in either a determination that the existing NEPA analysis must be supplemented or preparation of a Memorandum of NEPA Compliance for the file.

A NEPA Compliance Evaluation (NCE) must:

- Identify the prior EIS or EA that analyzed the impacts of the fishery management action proposed to be taken pursuant to the NAPP;
- Identify new information, if any, relevant to the impacts of the fishery management action proposed to be taken pursuant to a NAPP; and
- Evaluate whether the fishery management action proposed to be taken pursuant to a NAPP falls within the scope of the prior NEPA analyses and whether new information, if any, requires supplementation.

If the NCE results in a determination that supplementation is not required, a Memorandum of NEPA Compliance (MNC) must be prepared for the file and both documents should be made a part of the administrative record. If the NCE results in a determination that NEPA supplementation is required, appropriate supplemental analyses must be conducted and both documents should be made a part of the administrative record.

Memorandum of NEPA Compliance (MNC). A Memorandum of NEPA Compliance is a concise (ordinarily 2 page) document that briefly summarizes the fishery management action taken pursuant to a NAPP, identifies the prior analyses that addressed the impacts of the action, and incorporates any other relevant discussion or analysis for the record.

B. Supplemental Information Report (SIR).

In the event that an NAPP is not in use, on a case-by-case basis, an SIR may be used to document why further NEPA analysis is not necessary. The SIR is a concise document that contains the rationale for determining if new information, changed circumstances, or changes to the action are not significant and thus why an SEIS is not required. There is no standard format for the SIR, but generally the SIR will have the following parts, or their equivalent:

- Title page with date;
- Introduction;
- Purpose and need;
- Background;
- Scope of SIR;
- Evaluation of new information;
- Conclusions/Decision; and
- Approval authority signature block and date.

C. Incorporation by Reference.

NMFS and the FMCs should incorporate material into an EIS or EA by reference when the effect will be to reduce the length or complexity of the EIS or EA without impeding agency and public review of the action. The incorporated material must be cited in the EIS or EA, its content briefly described, and instructions on how the public can access the incorporated material must be provided in the EIS or EA (e.g., via a website link). Material that is incorporated by reference must be maintained in locations and in a format that is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data that is itself not available for review and comment may not be incorporated by reference.

D. Improving Partnerships with FMCs

NMFS Regions are encouraged to work cooperatively with their FMC partners to identify additional opportunities for coordination and cooperation. Strategies that may be beneficial include: using new technologies; real-time sharing of documents; and “frontloading.”

1. Using Technology and Document Sharing

Sharing documents throughout the fishery management process facilitates frontloading. These revised and updated NEPA procedures encourage the sharing of documents between relevant NMFS and FMC staff, with time for review and comment, before circulating for public review and again before FMC final action. Documents should be shared using the best available technology to facilitate real-time review and maintain version control.

Wiki tools and software can be used to enable multiple authors to simultaneously work on documents and have shared file space.

2. Frontloading

Frontloading means working together early in the process to identify alternatives and issues, and conduct analyses, so that that information is available at each stage of decision-making. Frontloading helps prevent important information from only coming to light during Secretarial review.

Effective frontloading involves coordination and communication between NMFS and the FMC early in the process to ensure that all relevant issues are addressed in the document. Key tools for frontloading include:

- Strategic planning early in the development of documents to identify the purpose and need, the scope of the analysis, the range of alternatives, the information needed, and the plan to accomplish the analysis;
- Whenever possible, identifying an FMC’s Preliminary Preferred Alternative for its MSA recommendation prior to its final vote, particularly on larger actions, to facilitate focused review of potential impacts;
- Providing adequate time for internal review of the document before it is released to the public, and effectively responding to relevant internal comments in the document; and

- Convening an interdisciplinary team early in the process.

NMFS Regional Offices and each FMC should consider developing processes to achieve frontloading and clarify overall roles and responsibilities in general and on a project-specific basis.

VII. Relationship to Other Guidance Materials

A. 1997 Operational Guidelines

Efforts are underway to prepare new Operational Guidelines consistent with this directive. To the extent that these revised and updated NEPA procedures are consistent with the Operational Guidelines of 1997, those guidelines remain in effect. However, where inconsistencies exist, the revised and updated NEPA procedures control.

B. Council on Environmental Quality (CEQ) Regulations and Department and NOAA Administrative Orders

These revised and updated NEPA procedures do not affect the applicability of the CEQ regulations, 40 CFR Parts 1500-1508, DAO 216-6, or of any pertinent Departmental or agency-level guidance.

Appendix D:

NOAA and CEQ NEPA Resources

DRAFT For Public Review

November 14, 2016

NOAA and CEQ NEPA Resources

NOAA Line Office NEPA Contacts

<https://sites.google.com/a/noaa.gov/nepanews/noaa-nepa-website/contact-us/noaa-line-office-nepa-contacts>

The EIS and EA notice submission form (from Section 6(I))

<https://sites.google.com/a/noaa.gov/nepanews/noaa-nepa-website/noaa-nepa-intranet/report-major-federal-action>

The NOAA NEPA News Blog:

<https://sites.google.com/a/noaa.gov/nepanews/>

NOAA's National Environmental Policy Act (NEPA) Website and Intranet:

<http://www.nepa.noaa.gov>

CEQ guidance, directives, and interpretations:

<http://www.nepa.gov>

Instructions on submitting an EIS to the EPA:

<http://www.epa.gov/compliance/nepa/submiteis/index.html>

Additional Guidance on submitting an EIS:

http://www.wsdot.wa.gov/NR/rdonlyres/FBE6F11F-4A8F-4F82-ADF6-FC31B8DD108B/0/EIS_GuideElectronicFiling.pdf

NOAA's Library and Information Network Catalog:

Enter "NEPA Document" into Word or Phrase search link (below) to find NOAA NEPA EA and EIS documents in adobe portfolio digital format.

<http://www.lib.noaa.gov/uhtbin/cgiirsi/?ps=A8N1WwC2tc/SILVERSPRG/49780134/60/495/X>

(Note: all links current as of November 14, 2016)

Appendix E:
List of NOAA's Categorical Exclusions

NOAA’s Categorical Exclusions

The following series of CEs includes actions that may be implemented either directly by NOAA or by the recipient of a financial assistance award. The activities contemplated in the series of CEs have been evaluated and found not to have individual or cumulative significant impacts on the human environment, whether implemented by a grantee through a financial assistance award or directly implemented by NOAA.

For many of the categories, representative examples of the type of activities covered in the text of the categorical exclusion are provided in order to provide further clarity and transparency regarding the types of actions covered by the categorical exclusion. These examples are intended to be illustrative, but not exhaustive.

Trust Resource Management Actions		
Reference Number	Categorical Exclusion	Examples
A1	An action that is a technical correction or a change to a fishery management action or regulation, which does not result in a substantial change in any of the following: fishing location, timing, effort, authorized gear types, access to fishery resources or harvest levels.	Changes to reporting requirements. Changes to vessel hailing requirements. Removal, addition, or changes to provisions for allowable gear when transiting through closed areas. Extension or change of the period of effectiveness of an FMP or regulation. Changes to gear marking requirements.
A2	Preparation of a recovery plan pursuant to section 4(f)(1) of the ESA. Such plans are advisory documents that provide consultative and technical assistance in recovery planning and do not implement site-specific or species-specific management actions. However, implementation of specific tasks identified in a recovery plan may require an EA or EIS depending on the nature of the action.	
A3	Temporary fishery closures or extensions of closures under Section 305(c)(3)(C) of the Magnuson-Stevens Fishery Conservation and Management Act to ensure public health and safety.	Fishery closure(s) due to an oil spill. Fishery closure(s) due to a Harmful Algal Bloom. Fishery closure(s) due to declared disasters.

A4	Minor updates to existing national marine sanctuary management plans. This CE does not apply to sanctuary designations, expansions, changes in terms of designation, or new sanctuary management plans.	
A5	Updates to existing National Estuarine Research Reserve (NERR) management plans, provided that the update does not change NERR boundaries or add or significantly change allowable uses, uses requiring a permit, or restrictions on uses. This CE does not apply to new NERR management plans, or to the execution of any specific action subsequently funded to support the updated NERR management plan.	
A6	Review and approval of changes to state coastal management programs under the Coastal Zone Management Act (CZMA) § 306(e) (16 U.S.C. § 1455(e)) and NOAA’s regulations at 15 C.F.R. Part 923.	
Trust Resource Authorization and Permitting Actions		
Reference Number	Categorical Exclusion	Examples
B1	Issuance of permits or permit modifications under section 10(a)(1)(A) of the ESA for take, import, or export of endangered species for scientific purposes or to enhance the propagation or survival of the affected species, or in accordance with the requirements of an ESA section 4(d) regulation for threatened species.	<p>Issuance of a permit or modification to a permit for takes from:</p> <ul style="list-style-type: none"> • aerial, vessel, and ground surveys using remotely operated vehicles and manned vehicles; • controlled, close approach photography and remote sampling (e.g., biopsy, breath); • behavioral observations of animals (e.g., snorkel, or on-foot observers trained to collect data with minimum impact); • remote monitoring, including passive acoustic or video monitoring and recording; • import, export, receipt, and transfer of legally collected parts (e.g., by permit or subsistence harvest); • collection of feces and sloughed skin or taking tissue samples from dead animals;

		<ul style="list-style-type: none"> • studies on captive animals, except for captive propagation/breeding for release to the wild; and • capturing, handling, immobilizing, marking, tagging with instrumentation and tissue sampling.
B2	<p>Issuance of permits or permit amendments under section 104 of the MMPA for take or import of marine mammals for scientific research, enhancement, commercial or educational photography or public display purposes; and issuance of Letters of Confirmation under the General Authorization for scientific research involving only Level B harassment.</p>	<p>Issuance of a scientific research or enhancement permit or modification for take, import, or export of marine mammals during:</p> <ul style="list-style-type: none"> • aerial, vessel, and ground surveys using remotely operated vehicles and manned vehicles; • controlled, close approach photography and remote sampling (e.g., biopsy, breath) and tagging with instrumentation; • behavioral observations of animals (e.g., snorkel, or on-foot observers trained to collect data with minimum impact); • remote monitoring, including passive acoustic or video monitoring and recording; • import, export, receipt, and transfer of legally collected parts (e.g., by permit or subsistence harvest); • collection of feces and sloughed skin or taking tissue samples from dead animals; • studies on captive animals, except for captive propagation/breeding for release to the wild; and • capturing, handling, immobilizing, marking, tagging with instrumentation and tissue sampling.
B3	<p>Issuance of, and amendments to, “low effect” Incidental Take Permits and their supporting “low effect” Habitat Conservation Plans under section 10(a)(1)(B) of the ESA.</p>	
B4	<p>Issuance of incidental harassment authorizations under section 101(a)(5)(A) and (D) of the MMPA for the incidental, but not intentional, take by harassment of marine mammals during specified activities and for which no serious injury or mortality is anticipated.</p>	
B5	<p>Issuance of, or amendments to, general permits for activities that are included in established permit categories at 15 C.F.R. pt. 922 and that meet the regulatory review criteria at 15 C.F.R. pt. 922, that limit any potential impacts so that the proposed activity will be conducted in a manner compatible with the National Marine Sanctuaries Act’s primary objective of resource protection.</p>	<p>Issuance of, or amendments to general permits for activities including, but not limited to:</p> <ul style="list-style-type: none"> • on the water tours to observe sanctuary resources for purposes of education; • documentary filming while conducting low overflights (e.g., Big Blue Live); and • ocean outfall and other types of water quality and

		physical ocean monitoring.
B6	Issuance of, or amendments to, special use permits for activities in a national marine sanctuary that are necessary to either establish conditions of access to and use of any sanctuary resource or promote public use and understanding of a sanctuary resource and must be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources in accordance with the National Marine Sanctuaries Act.	<p>Issuance of, or amendments to special use permits for activities including, but not limited to:</p> <ul style="list-style-type: none"> • the placement and recovery of objects associated with public or private events on non-living substrate of the submerged lands of any national marine sanctuary (e.g., buoys for boat races); • the placement and recovery of objects related to commercial filming (e.g., filming props); • the continued presence of commercial submarine cables on or within the submerged lands of any national marine sanctuary; • the disposal of cremated human remains within or into any national marine sanctuary; • recreational diving near the USS <i>Monitor</i>; • fireworks displays; and • operation of aircraft below the minimum altitude in restricted zones.
B7	Issuance of or amendments to, authorizations for activities allowed by a valid federal, regional, state, local or tribal government approval (e.g., leases, permits and licenses) issued after the effective date of sanctuary designation or expansion, so long as such authorizations are based upon a consideration of the regulatory review criteria at 15 C.F.R. pt. 922, and will only result in negligible effects to sanctuary resources.	<p>Issuance of or amendments to, authorizations for activities including, but not limited to:</p> <ul style="list-style-type: none"> • California Coastal Commission Coastal Development Permits, such as those for seawalls, coastal armoring, etc.; • river breach activities; • National Pollutant Discharge Elimination System (NPDES) permits; • nearshore construction and repairs; and • placing markers or mooring buoys for purposes other than those that would solely qualify for a general permit.
B8	Issuance of, or amendments to certifications for pre-existing activities authorized by a valid federal, regional, state, local, or tribal government approval (e.g., leases, permits and licenses) or rights of subsistence use or access in existence on the date of the designation or expansion of any national marine sanctuary where the Office of National Marine Sanctuaries issues terms and conditions that are either ministerial or prescribe avoidance, minimization, or mitigation measures designed to ensure negligible effects to sanctuary resources.	Issuance of, or amendments to, certifications for pre-existing activities such as submarine cables and oil platforms.

<p>B9</p>	<p>Issuance of, or amendments to Papahānaumokuākea Marine National Monument (as established by Presidential Proclamation 8031) permits for activities that are included in established permit categories (50 C.F.R. pt. 404) and that meet the regulatory review criteria at (50 C.F.R. § 404.11), that limit any potential impacts so that the proposed activity will be conducted in a manner compatible with the monument’s primary objective of resource protection.</p>	<p>Issuance of or amendments to permits for activities including, but not limited to:</p> <ul style="list-style-type: none"> • biological and ecosystem assessment monitoring • connectivity studies; • ocean exploration and education • distance-learning curriculum development and implementation; • marine debris removal and alien invasive species monitoring; • marine heritage, conservation, and management; refuge operations and management; • non-instrumental navigation training aboard traditional Polynesian voyaging wa’a; • Native Hawaiian cultural research, observation, and practices; and • recreational activities within the Midway Atoll Special Management Area.
<p>B10</p>	<p>Issuance of, or amendments to, Papahānaumokuākea Marine National Monument special ocean use permits for activities or use of the monument that are engaged in to generate revenue or profits for one or more of the persons associated with the activity or use, and do not destroy, cause the loss of, or injure monument resources.</p>	<p>Issuance of or amendments to special ocean use permits for activities, including, but not limited to:</p> <ul style="list-style-type: none"> • ocean-based ecotourism and other activities, such as educational and research activities that are engaged in to generate revenue; • documentary filming and photography activities of wildlife, cultural, and historical features; and • eco-tourism and history focused travel tours.
<p>B11</p>	<p>Issuance of, or amendments to permits or authorizations for activities that are conducted within Marine National Monuments other than Papahānaumokuākea that are limited in scope so that the potential impacts of the proposed activities will be conducted in a manner compatible with a monument’s primary objective of resource protection, and do not destroy, cause the loss of, or injure monument resources.</p>	
<p>B12</p>	<p>Issuance of Exempted Fishing Permits (EFPs) under the authority of the Magnuson-Stevens Act and Scientific Research Permits (SRPs) and other permits for research that may impact species regulated under the authority of the Magnuson-Stevens Fishery Conservation and Management</p>	<p>Issuance of permits for:</p> <ul style="list-style-type: none"> • additional catch of regulated or unregulated species for the purposes of market testing, scientific research, or educational display; • the collection of specimens for public display purposes (e.g. for aquaria);

	<p>Act (MSA) and the Atlantic Tunas Convention Act (ATCA). This includes permitted research of limited size, magnitude or duration with negligible individual or cumulative impacts, which requires temporary relief of fishery management regulations.</p>	<ul style="list-style-type: none"> • trial participation of fishery participants in new or modified fishery management programs (e.g. cooperatives, limited access, stamps or tags); and • minor activities, allowances, or exemptions to facilitate a previously-authorized Research Set-Aside program.
--	---	--

Habitat Restoration Actions

Reference Number	Categorical Exclusion	Examples
C1	<p>Habitat restoration actions, provided that such action: 1) transplants only organisms currently or formerly present at the site or in its immediate vicinity (if transplant is a component of the action); 2) does not require substantial placement of fill or dredging; 3) does not involve any removal of debris, excavation, or conditioning of soils unless such removal of debris, excavation, or conditioning of soils is geographically limited to the impact area such that site conditions will not impede or negatively alter natural processes, is in compliance with all permit and disposal requirements, and will not impact critical aquifers or recharge areas; and 4) does not involve an added risk of human or environmental exposure to toxic or hazardous substances, pathogens, or radioactive materials.</p> <p>Notes: If applicable, limitations and mitigation measures identified in the NOAA Restoration Center Programmatic Environmental Impact Statement for Habitat Restoration Actions must be followed. This CE includes, but is not limited to, response or restoration actions under CERLCA, OPA, or NMSA, if such actions are intended to restore an ecosystem, habitat, biotic community, or population of living resources to a determinable pre-impact condition prior to the incident leading to the response or restoration.</p>	<p>Revegetation of habitats or topographical features, such as planting or restoration of seagrass meadows, mangrove swamps, salt marshes, coastal dunes, stream banks, or other wetland, coastal, or riparian areas.</p> <p>Enhancement of natural recovery processes through the use of exclusion methods such as fencing to protect stream corridors, riparian areas or other sensitive habitats.</p> <p>Dune restoration following walkover installation, including, but not limited to planting native vegetation and regrading.</p> <p>Replacement or restoration of shellfish beds through placement of reef substrate, transplant, or restocking.</p> <p>Structural or biological repair or restoration of coral reefs.</p> <p>Restoration of tidal or non-tidal wetland inundation through enlargement, replacement or repair of existing culverts, or through modification of existing tide gates.</p> <p>Restoration, rehabilitation, or repair of fish passageways or spawning areas.</p>

Additional External Funding

Reference Number	Categorical Exclusion	Examples
------------------	-----------------------	----------

D1	Financial activities for the following financial services: (1) Loans for purchase, refinancing, or reconstruction of fishing vessels and purchase or refinancing of individual fishing quota through the Fisheries Finance Program; (2) Deferred tax program provided to fishermen to construct, reconstruct, or acquire fishing vessels through the Capital Construction Fund Program; and (3) Compensation to fishermen for economic and property losses caused by oil and gas obstructions on the U.S. Outer Continental Shelf under the Fishermen’s Contingency Fund.	
D2	Provision of a grant, a contract or other financial assistance to a State, Fishery Management Council or Marine Fisheries Commission under 16 U.S.C §1881a(d).	
Research Actions		
Reference Number	Categorical Exclusion	Examples
E1	Activities conducted in laboratories and facilities where research practices and safeguards prevent environmental impacts.	<p>Research, development, testing, and evaluation studies, including but not limited to analysis of previously collected samples or data.</p> <p>Development and use of mathematical models and computer simulations.</p> <p>Synthesis of previously collected data or information.</p> <p>Database development or maintenance.</p> <p>Software development and testing; fabricating or enhancing prototype or bench-scale research equipment or instrumentation and equipment calibration.</p> <p>Processing methods to include, but are not limited to filtration, fluorimeters, high performance liquid chromatography, and mass spectrometers.</p> <p>Research and development or pilot projects conducted to verify a concept before demonstration actions (e.g., testbeds and proving grounds such as the Space Weather Prediction Testbed, Hazardous Weather Testbed, Climate Testbed that facilitate</p>

		transition of research capabilities to operational implementation including pre-deployment testing and operational readiness/suitability evaluations).
E2	Social science projects and programs, including economic, political science, human geography, demography, and sociology studies, including information collection activities in support of studies.	<p>Developing and administer social science surveys.</p> <p>Collecting and analyzing information from telephone, mail, online, and in-person surveys.</p> <p>Cataloging and compiling sources of socioeconomic data.</p>
E3	Activities to collect aquatic, terrestrial, and atmospheric data in a non-destructive manner.	<p>Use of conductivity, temperature, and depth instruments or a moving vessel profiler from a platform, including the use of drop cameras.</p> <p>Collection of grab samples.</p> <p>Collecting and analyzing water samples through hand sampling, small pumps, a deployment rope or diver collections.</p> <p>Collection of physical, chemical, and biological measurements from existing buoys, moorings, and similar instrumentation.</p> <p>Deployment, operation, and retrieval of a limited number of ROVs, ASVs, AUVs, buoys, moorings, or similar instrumentation to conduct non-destructive sampling and collection of data from those instruments once installed, including physical, chemical, and biological measurements, and visual data.</p> <p>Monitoring of established deep rod Surface Elevation Table (SET) marks, tide and current gauges in coastal habitats, such as bays, estuaries, marshes, and wetlands, to measure wetland elevation change to support science and monitoring.</p>
E4	Activities that survey or observe living resources in the field with little to no potential to adversely affect the environment or interfere with organisms or habitat.	<p>Visual observation of marine mammals and sea turtles from stationary or mobile platforms using best management practices.</p> <p>Deploy and use electronic monitoring devices including cameras, environmental data loggers, buoys, passive acoustics, and other non-invasive data recording instruments to study population structure, behavior, and movements.</p> <p>Behavioral observations of animals (e.g., snorkel, or</p>

		<p>on-foot observers trained to collect data with minimum impact).</p> <p>Scuba diver visual observation surveys, photographic and video surveys, use of quadrats, meter tapes and other hand-held equipment or devices to measure water quality parameters (i.e. hand-held PAMS) or to quantify fish, benthic, mobile and sessile communities where there is no adverse impact to benthic communities and best management practices are observed.</p>
<p>E5</p>	<p>Activities involving invasive techniques or methods that are conducted for scientific purposes, when such activities are conducted in accordance with all applicable provisions of the Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, and Magnuson-Stevens Fishery Conservation and Management Act. Such activities will be limited to impacting living resources on a small scale relative to the size of the populations, and limited to methodologies and locations to ensure that there are no long-term adverse impacts to benthic habitats, essential fish habitat, critical habitat, or listed species.</p>	<p>Acoustic or traditional fish tagging.</p> <p>Activities related to the collection of data and handling of marine mammals that strand and are responded to through the official marine mammal stranding network.</p> <p>Studies on previously collected captive animals, not including captive propagation/breeding for release to the wild.</p> <p>Conduct small-scale, short-term finfish, crustacean, and bivalve sampling using standard gear and methods including crab/fish traps, gill nets, otter trawls, and electrofishing; provided permits from state authorities are obtained when necessary.</p> <p>Fin clips or scales collected from fish.</p> <p>Collection of coral tissue samples (single polyp - 1cm² or larger sections up to 10 cm branch tip) using hand tools such as syringes, shears, or pliers.</p> <p>Coral musus samples using blunt tip syringes.</p> <p>Coral coring (large cores, 10-15 cm diameter X 0.5-5 m length, and small cores, 2.5 cm diameter X 0.5-1m length) removed from large massive colonies using BMPs (and other requirements from consultations).</p> <p>Measurement of coral colonies using hand-place calipers or flexible tapes which briefly stay in contact with the coral colony.</p> <p>Collection of wild spawned gametes.</p> <p>Collection (removal or manipulation experiments)</p>

		<p>of corallivores (e.g. snails, starfish, fish).</p> <p>Limited collection of fish and motile invertebrates to characterize life history stage, fecundity, growth rates, and/or diet (this one might fit in with some of the info fisheries has submitted).</p> <p>Marking coral colonies using plastic tags, nails, flagging tape, or other identifying markers placed adjacent to coral colony in non-living substrate.</p> <p>Collection of colonizing and cryptic species using collection devices (Autonomous Reef Monitoring Structures or settling plates) temporarily placed on reefs.</p>
E6	Research that involves the development and testing of new and modified fishing gear and technology in order to reduce adverse effects from fishing gear on non-target species.	Engineer and test bycatch reduction gear (e.g., Turtle Excluder Devices, leader lines, lazy chains, hook types, weak links).
E7	Collection of data and biological samples on fishing vessels or dockside as part of previously authorized commercial and/or recreational fishing activities.	<p>Observer coverage onboard commercial and recreational fishing vessels.</p> <p>Deploying electronic monitoring technology on fishing vessels to gather catch, effort, and bycatch information.</p>
E8	Biological, chemical, or toxicological research conducted in closed system mesocosm/aquaculture facilities that are conducted according to recommended protocols that provide containment and disposal of chemicals, toxins, non-native species, etc., in compliance with established Federal and state regulatory guidelines, and best management practices.	
Real and Personal Property Improvement, Maintenance, and Construction Actions		
Reference Number	Categorical Exclusion	Examples
F1	Siting, construction (or modification), and operation of support buildings and support structures (including, but not limited to, trailers and prefabricated buildings) within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible).	

<p>F2</p>	<p>In-kind replacement of personal property and fixtures and other components of real property when such activities do not result in a substantial change in the existing construction footprint. In-kind replacement includes installation of new components to replace outmoded components if the replacement does not result in a substantial change to the design capacity, or function of the facility.</p>	<p>Replacement, retrofit, and upgrade of existing microwave/radio communications towers that only require disturbance of previously disturbed ground.</p> <p>Replacement of existing piers or floats.</p> <p>Replacement of small structures and equipment such as sheds and ice machines.</p>
<p>F3</p>	<p>(a) Routine repair, maintenance, and improvement of real and personal property, where such activities are required to maintain and preserve buildings, structures, infrastructures, vehicles, and equipment in a condition suitable to be used for its designed purpose.</p> <p>(b) New construction, expansion and/or improvement of facilities where all of the following conditions are met:</p> <p>(1) The site is in a developed area and/or a previously disturbed site;</p> <p>(2) The structure and proposed use are compatible with applicable Federal, Tribal, State, and local planning and zoning standards and consistent with Federally approved State coastal management programs and the National Historic Preservation Act;</p> <p>(3) The proposed use will not substantially increase the number of motor vehicles, marine vessels, or aircraft at the facility or in the area;</p> <p>(4) The site and scale of construction or improvement are consistent with those of existing, adjacent, or nearby buildings;</p> <p>(5) The construction or improvement will not result in uses that exceed existing infrastructure capacities (e.g., electrical, roads, sewer, water, parking);</p> <p>(6) The construction or improvement will not result in operational uses that adversely affect the surrounding community (e.g., noise); and</p> <p>(7) The community-valued view sheds are not adversely affected.</p>	<p>Weatherization of NOAA-owned real or personal property.</p> <p>Routine maintenance on NOAA small boats, aircraft, or ships.</p> <p>Minor construction actions take to repair safety and fire deficiencies, improve indoor air quality, or renovate interior spaces conducted in accordance with approved facility master plans on the interiors of non-historic NOAA-owned or leased buildings.</p> <p>Routine maintenance and repair of existing piers, booms, buoys, or floats.</p> <p>Renovation of an interior floor of an office building.</p> <p>Construction of picnic facilities and gazebos in already-disturbed areas.</p> <p>Modification of laboratory facilities within an existing building.</p> <p>Installation and repair of fencing.</p> <p>Installing and maintaining refuse and recycling stations.</p> <p>Installing and maintaining security sensors and safety equipment, including, but not limited to railings and fire suppression systems.</p> <p>Installation, repair, maintenance, and enhancement of: short public access trails and walkways; beach or dune walkovers; boardwalks; boat ramps; docks; benches; observation platforms. Small-scale routine repair/maintenance of such public access facilities and access routes, including grading, clearing</p>

	<p>(c) Installation, repair, maintenance, and enhancement of public access facilities and infrastructure, if the activity:</p> <p>(1) Is small-scale and nondestructive; and</p> <p>(2) Is consistent with applicable right-of-way conditions and approved land use plans.</p> <p>This CE does not apply where the project must be submitted to the National Capital Planning Commission (NCPC) for review and NCPC determines that it does not have an applicable Categorical Exclusion.</p>	<p>vegetation, and minor soil stabilization.</p> <p>Installing signage.</p> <p>Installing and maintaining refuse and recycling stations.</p>
F4	<p>Routine groundskeeping and landscaping activities where ground disturbance is limited to previously disturbed areas (e.g., previously filled paved, or cleared areas).</p>	
F5	<p>Installation, operation, maintenance, improvements, repair, upgrade, removal, and/or replacement of instruments or instrument systems in or on:</p> <ol style="list-style-type: none"> 1. an existing structure or object (e.g., tower, antenna, building, pier, buoy, terrestrial vehicle, or bridge) or 2. on previously disturbed (e.g., filled, paved, or cleared) ground, or 3. on undisturbed ground, if the equipment installation, operation, and removal will require no or minimal ground disturbance. <p>Microwave/radio communications towers and antennas must be limited to 200 feet in height without guy wires.</p>	<p>PORTS® instruments and systems, either permanent, temporary, or re-locatable (e.g., antennas, telemetry, water level instruments, tide stations).</p> <p>Radar equipment that conforms to the current American National Standards Institute/Institute of Electrical and Electronic Engineers guidelines for maximum permissible exposure to electromagnetic fields.</p> <p>Temporary installation and operation of sampling instrumentation (e.g., tide gauges).</p> <p>Installation of deep rod Surface Elevation Table (SET) marks, tide and current gauges in coastal habitats, such as bays, estuaries, marshes, and wetlands, to measure wetland elevation.</p>
F6.	<p>The determination that real property is excess to the needs of the Agency, when the real property is excessed in conformity with General Services Administration procedures or is legislatively authorized to be excessed.</p>	
F7.	<p>The disposal, demolition or removal of real property and related improvements, buildings and structures, including associated site restoration,</p>	<p>Disposal of equipment or waste, (or contracts for waste disposal) to established, permitted landfills and facilities (e.g., recycling, reclamation, and</p>

	and the disposal of personal property and debris in accordance with all applicable agency procedures and legal requirements.	treatment facilities and incinerators). Declaration of aircraft and/or ships as excessed to MARAD.
Operational Actions		
Reference Number	Categorical Exclusion	Examples
G1	Routine administrative actions such as (1) program planning, direction and evaluation, (2) administrative tasks, services and support including personnel and fiscal management, advisory services, document and policy preparation, and records management, and (3) development, establishment, and revisions to documents including, but not limited to interagency agreements, memoranda of understanding, memoranda of agreement, cooperative agreements, and university agreements. This CE does not include any associated activities proposed in these documents beyond the administrative task of creating and establishing the document. Actions subsequently funded by or undertaken pursuant to the approved documents may require additional NEPA review at the time those actions are proposed.	Executive direction, strategic, operational, and program planning. Budgeting. Administrative services, including personnel, fiscal, management, and administrative activities (e.g., recruiting, processing, paying, recordkeeping, resource management, budgeting, training, and travel). Administrative support to advisory bodies. Establishment or modification of an interagency agreement, memorandum of understanding, or university agreements for administrative purposes. Interagency or inter-line office funds transfer for administrative purposes. Full or partial cooperative conservation agreements under section 6 of the ESA.
G2	Routine movement of mobile assets, such as vessels and aircraft, for homeport reassignments or repair/overhaul, where no new support facilities are required.	
G3	Topographic, bathymetric, land use and land cover, geological, hydrologic mapping, charting, and surveying services that do not involve major surface or subsurface land disturbance and involve no permanent physical, chemical, or biological change to the environment.	Use of lidar technology and other remote sensing, including aircraft operations for mapping applications
G4	Basic environmental services and monitoring, such as weather observations, communications, analyses, and predictions; environmental satellite operations and services; digital and physical environmental data and information services; air and water quality observations and analysis, and	Office-based weather observations, communications, predictions, and data analyses. Office-based integrated ocean observing system data analysis and management. Office-based tidal and tsunami data analysis and

	IT operations. All such activities must be conducted within existing facilities.	<p>management.</p> <p>Collection and processing of navigation, schedule status, calibration, and system information from satellites in orbit to monitor their operations.</p> <p>Collection and processing of data and images transmitted from satellites.</p> <p>Operation and maintenance of the NOAA Satellite Information Service website.</p> <p>Collection, processing, and electronic dissemination of climatic, geophysical and oceanographic data</p>
G5	Enforcement operations conducted under legislative mandate such as the MSA, ESA, MMPA, the Lacey Act Amendments of 1981 (Lacey), and/or the National Marine Sanctuaries Act. This does not include bringing judicial or administrative civil or criminal enforcement actions which are outside the scope of NEPA in accordance with 40 CFR 1508.18(a).	<p>Investigations and patrols for civil and criminal violations, seizure of illegal property and contraband, and gathering of information on criminal activities.</p> <p>Developing and deploying Vessel Monitoring Systems on fishing vessels for the enforcement of fishery regulations.</p>
G6	Actions that change the NEXRAD radar coverage patterns that do not lower the lowest scan elevation and do not result in direct scanning of previously non-scanned terrain by the NEXRAD main beam.	
G7	Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis.	
G8	Activities that are educational, informational, or advisory to other agencies, public and private entities, visitors, individuals, or the general public, including training exercises and simulations.	<p>On-site personnel providing support (e.g., data, modeling, interpretation, and administrative) to the National Response Framework of National Oil and Hazardous Substances Pollution Contingency Plan.</p> <p>Formal or informal education and scholarship programs (e.g., NOAA's Bay Watershed Education and Training Program, National Marine Sanctuary Foundation and associated programs, Nancy Foster Scholarships, The Jason Project, Science on a Sphere, Cooperative Program for Earth System Education).</p>

		<p>Outreach events to provide training, education, and environmental literacy.</p> <p>Experiential learning activities that take place in the environment (e.g., field trips to terrestrial, coastal, and marine/aquatic habitats for educational purposes; Nature’s Classroom).</p> <p>Marine debris public education and outreach.</p>
G9	<p>Actions taken to identify, determine sources of, assess, prevent, reduce, remove, dispose, or recycle marine debris when removal is undertaken in a non-destructive manner and actions are in accordance with Federal, State, and local laws and regulations for environmental protection, and where all relevant regulatory consultation, and/or permit requirements have been satisfied.</p>	<p>Compaction, recycling, or financial incentives for returning fishing gear or other materials that may potentially become marine debris.</p> <p>Identification, assessment and sourcing activities include field-, laboratory-, and computer-based research, assessment and monitoring activities.</p> <p>Activities to remove marine debris (e.g., waste products, derelict fishing gear, derelict vessels) from upland, coastal and marine (surface and submerged) environments including the use of manual and mechanical removal techniques.</p>
Acquisition and Real Property Actions		
Reference Number	Categorical Exclusion	Examples
H1	<p>Procurement of labor, equipment, materials, data and software needed to execute mission requirements in accordance with applicable procurement regulations, executive orders, and policies. This includes, but is not limited to, procurement of mobile and portable equipment that is stored in existing structures or facilities.</p>	<p>Procurement of general supplies.</p> <p>Procurement of architectural and engineering studies and supplies.</p> <p>Procurement of non-invasive site surveys to support environmental compliance requirements.</p> <p>Procurement of Vessel Monitoring Systems or navigation instrumentation</p>
H2	<p>Procurement of space by purchase or lease of or within an existing facility or structure in accordance with applicable procurement regulations, executive orders, and policies when there is no change in the general type of use, no new construction of buildings or utilities, and minimal change in design from the previous occupancy level.</p>	<p>New leases.</p> <p>Succeeding leases.</p> <p>Extensions of leases.</p>

<p>H3</p>	<p>Outgranting of government-controlled property in accordance with applicable regulations, executive orders, and policies to a Federal entity for any purpose consistent with the existing land or facility use or to a non-Federal entity, when the use will remain substantially the same.</p>	
<p>H4</p>	<p>Acquisition of real property (including fee simple estates, leaseholds, and easements) that is not acquired through condemnation of a lease interest, and will not result in significant change in use and does not involve construction or modification.</p>	<p>Lease of real property rights to utilize existing structures (e.g., towers, facilities, piers, bridges) to site equipment.</p> <p>Lease of existing piers without any modification.</p> <p>Lease of land (submerged or not submerged) for purposes that do not involve construction or modification.</p> <p>Funding for land acquisition under the CZMA and Fish and Wildlife Conservation Act to purchase land (submerged or not submerged) or interests in land that includes but is not limited to conservation easements, for purposes that do not involve construction or modification.</p>
<p>H5</p>	<p>Granting easements or rights of entry to use NOAA controlled property for activities that, if conducted by NOAA, could be categorically excluded. Grants of easements or rights-of-way for the use of NOAA controlled real property complementing the use of existing rights-of-way or real property use for use by vehicles (not to include significant increases in vehicle loading); electrical, telephone, and other transmission and communication lines; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and facilities; and similar utility and transportation uses.</p>	
<p>H6</p>	<p>Relocation of employees into existing Federally-owned or commercially leased office space within the same metropolitan area not involving a substantial increase in the number of motor or other vehicles at a facility.</p>	
<p>H7</p>	<p>Transferring real property to a non-Federal entity, an agency other than GSA, as well as to States, local agencies and Indian Tribes, including return of public domain lands to the Department of the Interior.</p>	

