

*Proposed Rule to
Streamline the NEPA
Process*

Steve Leathery, NMFS NEPA
Coordinator

Marian Macpherson, Office of
Sustainable Fisheries



Goals

- Comply with NEPA and MSA
- Adhere to the principles of public involvement and agency accountability in the CEQ regulations
- Integrate NEPA into MSA public processes
- Build on recommendations in the CCC Strawman
- Clarify the responsibilities of FMCs and NMFS, and align public participation appropriately
- Allow rapid response, while providing meaningful public input into policy decisions.





Approach

- Started with CEQ regulations as a basis and proposed changes only where necessary to address problems; reorganized for clarity
- Works within parameters of CEQ regulations allowing flexibility; establishes limits on flexibility
- The need for additional internal guidance will be assessed in light of the final regulatory changes if any





Key Changes

- **Content:** Retains basic content requirements for analyses with modifications to address fisheries issues
- **Documentation:** Retains EA/FONSI and CEs; new forms of documentation to maximize flexibility and encourage tiering, frameworking, and integration of analyses
- **Public Involvement:** Adapts comment and response requirements to align with FMC and NMFS policy development
- **Timelines:** Allows modification of timelines to fit within MSA processes





Content Requirements

Applies content requirements for EISs set forth at 40 CFR 1502 with certain clarifications

- Alternatives
- Incomplete/Unavailable Information
- Cumulative Impacts Analysis





Alternatives: What is Reasonable?

Retains requirement to consider "all" reasonable alternatives

- Defines "reasonable" as derived from statement of purpose and need
- Not reasonable if
 - Inconsistent with MSA and N.S.
 - Impractical or ineffective
 - Fails to achieve stated goals





Alternatives: "No Action"

- Does not mean the literal "no action" (i.e., does not mean open access or closures due to sunsets)
- Does mean "continued management of the fishery as it is being managed" with reasonable assumptions
- Key is to provide a baseline for comparison



Incomplete/Unavailable Information



- Retains CEQ requirement to identify this info and obtain it if not "exorbitant"
- Adds relationship to NS 2 and MSA 303(a)(8)
- Preamble sets forth factors to consider in determining "exorbitance"
 - Availability of appropriated funds
 - Research priorities of the SSCs
 - The cost of delay
 - The inherent uncertainties in fishery management
- If previously analyzed, may cite prior analyses





Cumulative Impacts

Adds a specific requirement for IFEMS to include a cumulative impacts analysis

This requirement is not set forth in current CEQ regulations, but is acknowledged by caselaw for EISs.





Forms of Documentation

- IFEMS
- EA/FONSI
- Memorandum of Framework Compliance
- DCE



Framework Implementation Procedures (FIPs)



- NMFS or FMCs may establish an FIP within an FMP
- FIP: A formal mechanism to allow actions to be undertaken pursuant to a previously planned and constructed management regime without requiring additional NEPA analysis





Framework Implementation Procedures (FIPs) cont'd

- Based on early broad-based analysis of management approaches and impacts that provide a foundation that specified subsequent actions, or categories of actions, may rely on.
- If subsequent management actions and their effects fall within the scope of a prior analysis, no additional action-specific analysis would be necessary.
- The individual FMP would specify what criteria would require supplementation and how the fishery would be managed during the supplementation process.



Opportunities for Public Involvement



Two Opportunities to comment:

- At FMC level on DIFEMS
- At NMFS level on FIFEMS
- Comments on scope, and alternatives must be raised at FMC level





Timelines

- Retains EPA time periods as defaults
- Allows for limited reductions based on specified considerations:
 - need to address overfishing; potential harm to the resource, the marine environment, or fishing communities; the ability of the FMC to consider public comments in advance; public need and consequences of delay; external time limits; degree to which affected communities had prior notice; complexity; degree of exigency; and the degree to which the science upon which the action is based is uncertain or missing.
- Allows completion of IFEMS within 2 council meeting cycle





Timelines: FMC Level

Minimum Timelines for Two-Meeting Cycle with IFEMS: FMC Level

1. Publish NEPA Scoping Notice with Meeting Agenda
↓ 14 days (minimum prior to Meeting 1)
2. FMC Meeting 1 – FMC reviews comments, selects alternatives, directs staff to prepare DIFEMS
↓ No minimum time/FMC/staff discretion
3. Publish NOA of Draft IFEMS/ Initiate Comment Period 1
↓ 45 day comment period (may be reduced to
↓ 14 if justified)
4. FMC Meeting 2: FMC reviews public comment. May take final vote to recommend action.
↓ No minimum timelines
5. FIFEMS is prepared as part of transmittal package by FMC or NMFS. (*consult proposed rule for guidance on when supplementation is necessary and options for supplementing on clock).
↓ No minimum timelines
6. Transmittal: NMFS accepts package as complete for review



Timelines: NMFS Level



FMPs/Amendments	Regulations
↓ 5 days	↓ 15 days
7. Comment Period: NMFS publish NOA on FIFEMS with NOA on FMP or amendment for ↓ 60 day comment on FIFEMS and FMP/Am Includes NEPA 30-day cooling off period	NMFS publish NOA on FIFEMS with pro. rule ↓ 15 – 60 day comment period on FIFEMS and proposed rule runs concurrently
8. Cooling Off Period: 30 day NEPA Cooling off period runs concurrently with 60 day comment period above 0 additional days	30-day NEPA cooling off period runs with comment period except where comment period is 15 days, and there is a need to make a final decision sooner than a 30 day cooling off period would allow. Cooling off could be reduced by 15 days. ↓ 0 – 15 additional days
9. Decision Day: Day 90 after NOA, deadline for final MSA decision and NEPA ROD	↓ 0- 30 additional days : Day 30 after close of public comment on proposed rule is deadline for publication of final rule and ROD.
10. Effective Date	↓ 30 days: APA delay in Effectiveness Effective 30 days after publication





Supplementation

- Hybrid alternatives or new alternatives within the range of the analysis do not require new analysis
- If FMC votes for alternative outside the range analyzed, supplementation is required to analyze new alternative
- Options for Circulating Supplemental Analysis for Public Review
 - Public Comment may occur at FMC level; additional vote at FMC's discretion
 - Public Comment may occur at Secretarial level after transmittal to Secretary; no additional FMC vote



Supplementation on MSA Clock: FMPs



- SIFEMS submitted with transmittal package
- For FMP/AM, SIFEMS has 45 day comment period (FMP - 60 days)
- Publish FIFEMS by Day 60
- 30 -day cooling off period complete on Day 90





Supplementation on Clock: Regs

- Final rule must publish within 30 days cpe for the Proposed rule: Comment period on IFEMS must be short enough to allow for conversion to Final and minimum 15 day Cooling Off prior to MSA publication deadline
- This may require comment period on SIFEMS to be shorter than comment on proposed Rule.





Next Steps

- May 14 - Aug 12 Comment Period
- June - Aug - FMC Meetings
- Public Meetings
 - St. Petersburg, FL July 15
 - Seattle, WA July 24
 - Washington, DC June 25





Quick Reference Guide

- Alternatives: 700.212
- Cumulative Impacts: 700.214(b)
- Incomplete/Unavailable Info: 700.220
- Forms of Documentation (including IFEMs and FIPs) 700.102-.105
- Scoping: 700.108
- Timing, Flow, and Supplementing: 700.203(b)(5), 700.207(c)
- Comment and Response: 700.302-.305
- Minimum time periods: 700.604





Conclusion

New tools for streamlining

Allows process to move forward from FMC to NMFS for final decision

Directs public participation to appropriate points in the process

Utilizes flexibility while defining minimum procedural parameters and retaining core requirements

Link: <http://www.nmfs.noaa.gov/msa2007/>

