

## **Laws and Executive Orders Pertinent to Federal Fisheries Actions NEPA Project Planning Checklist**

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The Council on Environmental Quality regulations for implementing the National Environmental Policy Act (NEPA) at Sec. 1500.2 (c) establish policy as “Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.” Information and analyses required by other applicable laws and executive orders (EOs) should be integrated into the NEPA analysis document (Environmental Analysis or Environmental Impact Statement). Decision documents (Categorical Exclusion, Finding of No Significant Impact, Record of Decision) are appropriate documents in which to document determinations of compliance with other laws and EOs.

This checklist is designed as a planning tool to identify pertinent laws and EOs that will be triggered by implementation of a proposed federal fisheries action. It is meant to be used early in the NEPA process. Not all marine fisheries actions need to comply with all these laws and executive orders. It is up to the project manager to determine which apply, and plan for compliance to occur at the appropriate time in the process. If unfamiliar with these laws and executive orders see the accompanying synopses, or refer to the source document and consult legal counsel. Links to these laws and E.O.s are provided off the NOAA Fisheries Alaska Region web site <http://www.fakr.noaa.gov/analyses/default.htm>

Concurrent compliance process time lines between NEPA and the applicable laws and E.O.s should be developed once the universe of laws and executive orders the proposed action will need to be in compliance with are identified. Some of these laws and E.O.s are triggered multiple times in the process (Federal Register Act).

Applicable (requires an analysis or permit or a determination of compliance)	Law or Executive Order Regulations or Guidelines
Environmental Assessment or Environmental Impact Statement	<b>National Environmental Policy Act.</b> Use NEPA as the umbrella document in which to document compliance with other applicable laws and executive orders. Determine appropriate level of analysis (EA or EIS) and follow required public involvement and comment periods. Evaluate significance of impacts in accordance with context and intensity per <b>Council on Environmental Quality Regulations</b> at §1508.27.
Guidance	<b>NOAA Administrative Order 216-6</b> Projects in which National Marine Fisheries Service (NOAA Fisheries) is the responsible program official need also to comply with additional guidance and significance criteria provided by the Department of Commerce in this administrative order.
Process, publications, comment periods, response to comments	<b>Administrative Procedures Act</b> Requires public be kept informed of agency organization, procedures, and rules; provides for public participation in the rulemaking process; prescribes uniform standards for the conduct of formal rulemaking and adjudicatory proceedings.
Web posting requirements	<b>American Disabilities Act</b> Section 508 of the Rehabilitation Act contains the web access guidelines to meet the requirements of the American Disabilities Act
Analysis and, if applicable, requirements	<b>Archaeological and Historic Preservation Act</b> (16 U.S.C. 469 and 36 CFR Part 800)
Coordination with EPA	<b>Clean Air Act</b> (42 U.S.C. 7401 and CFR Parts 6, 51, and 93) Emissions permits not generally necessary for fishery management actions. Review of draft EISs by EPA required by this Act.
Permit applications	<b>Clean Water Act</b> (33 U.S.C 1251-1387) Permits are required if the project includes a regulated liquid discharge (Section 402 NPDES), or discharge of fill in wetlands or intertidal areas (Section 404). Federal fishery actions rarely if ever have included placement of fill, therefore Section 402 permits are rarely if ever needed. Fishing vessels and processors are responsible for obtaining Section 402 permits independently.

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Consistency determination	<b>Coastal Zone Management Act</b> (15 CFR 930 Subpart D and 15 CFR 923) Federal fishery management actions are required to be in compliance with states coastal zone management plans.
Ensure quality of information	<b>Data Quality Act</b> (Public Law 106-554/NOAA Section 515 Guidelines)
Biological Assessment as part of EA or EIS  Biological Opinion as an appendix to EA or EIS	<b>Endangered Species Act.</b> If endangered or threatened species are present in the action area and may be affected by the action, compliance with ESA is required. The NEPA analysis (EA or EIS) may function as the biological assessment if one is required for formal consultation. Biological opinions (Section 7) may be prepared concurrently with NEPA analyses as well as packaged within them. ESA documents should be prepared in accordance with guidance in the <b>FWS/NMFS Section 7 Consultation Handbook</b> . Public review of biological opinions has occurred concurrently with public review of Draft EISs.
Open meetings	<b>Federal Advisory Committee Act (FACA)</b> Regional Fishery Management Council committees are exempt from FACA
Release of information	<b>Freedom of Information Act</b> Allows the public to obtain government information.
Publication	<b>Federal Register Act</b> Requires uniform system of handling agency regulations by requiring filing of documents with the Office of the Federal Register, placement of documents on public inspection, publication of documents in the Federal Register, and permanent codification of rules in the Code of Federal Regulations.
Agreements	<b>Fish and Wildlife Coordination Act</b> (16 U.S.C. 661) In some cases interagency assistance agreements can be negotiated.

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Fishery Impact Statement	<b>Magnuson-Stevens Fisheries Conservation and Management Act</b> Applies to fishery management plans, amendments to fishery management plans, and federal fisheries management notices, rules and regulations. The Act stipulates ten <b>National Standards</b> to which fishery conservation and management actions must conform. Section 303 directs contents of fishery management plans and requires preparation of a <b>Fishery impact statement</b> to describe likely effects of conservation and management measures on participants in the fishery or fisheries being managed, fishing communities and participants in neighboring fisheries. Also required by Section 303 are essential fish habitat (EFH) descriptions. The agency has <b>guidance for EFH consultations</b> which should be followed.
Fishery Classification	<b>Marine Mammal Protection Act</b> Interactions between commercial fisheries and marine mammals are managed to provide protection for marine mammals so their populations are maintained as a significant functioning element of their ecosystem.
Coordination	<b>Migratory Bird Treaty Act</b> applies to the territory of the United States and coastal waters extending 3 miles from shore.
Requirements if triggered	<b>National Historic Preservation Act</b> (16 U.S.C. 470 and 36 CFR Parts 61, 63, 65, 68, 79, and 800)
Requirements if triggered	<b>National Marine Sanctuaries Act</b> No National Marine Sanctuaries are designated or nominated in waters off Alaska at this time.
Approval	<b>Paperwork Reduction Act</b> Requires that agencies obtain Office of Management and budget approval before requesting most types of information from the public.
IRFA	<b>Regulatory Flexibility Act</b> Actions that will have a significant impact on a substantial number of small entities require preparation of an Initial Regulatory Flexibility Analysis (IRFA). The IRFA should be integrated into (or an appendix within) the NEPA document.
Federalism Assessment	<b>E.O. 12612</b> Federalism

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Takings Implication Assessment	<b>E.O. 12630</b> Governmental Actions and Interference with Civil Constitutionally Protected Property Rights
Regulatory Impact Review	<b>E.O. 12866</b> Regulatory Planning and Review
Environmental Justice Analysis	<b>E.O. 12898</b> Federal Actions to Address Environmental Justice in Minority and Low Income Populations
Analysis and mitigation	<b>E.O. 13089</b> Coral Reef Protection
Compliance	<b>E.O. 13158</b> Marine Protected Areas
Consultation	<b>E.O. 13175</b> Consultation and Coordination With Indian Tribal Governments
Analysis and mitigation	<b>E.O. 13186</b> Responsibilities of Federal Agencies to Protect Migratory Birds