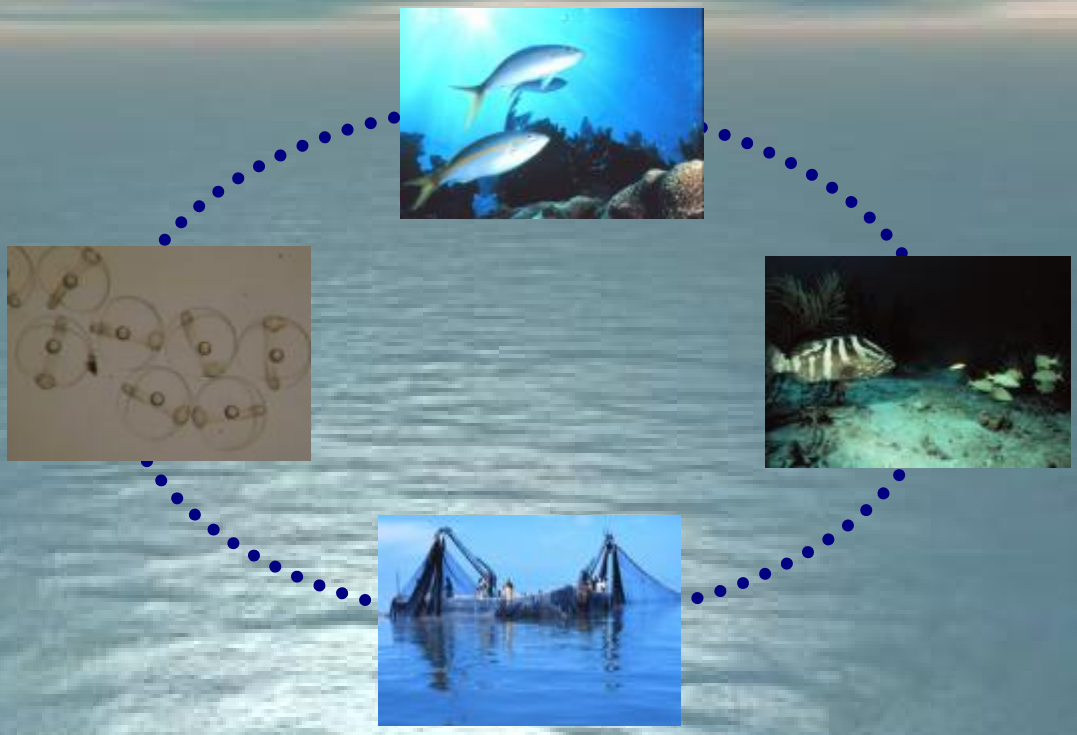
Reviewing Environmental Impact Statements for Fishery Management Plans

U.S. Environmental Protection Agency, Office of Federal Activities



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Reviewing Environmental Impact Statements for Fishery Management Plans

Final Guidance

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DISCLAIMER

The mention of company or product names is not to be considered an endorsement by the U.S. Government or by the Environmental Protection Agency (EPA). This document was prepared with the technical assistance of Labat-Anderson, Inc. (LABAT), under subcontract to Gannett Fleming, Inc., in partial fulfillment of EPA Contract 68-W-03-029, Task Order 0008.

This guidance is intended to improve the internal management of EPA's review of environmental documents, including Environmental Impact Statements (EISs) for fishery management plans (FMPs) and FMP Amendments as these relate to EPA reviews made under Section 309 of the Clean Air Act. As such, this is not a regulation. It does not create any right, benefit, or trust obligation either substantive or procedural, enforceable by any person, or entity in any court against the agency, its officers, or any other person. EPA's compliance with this guidance is not judicially reviewable. EPA may elect not to follow this guidance as circumstances warrant and may revise it in the future.

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PREFACE

This document is designed to provide guidance for U.S. Environmental Protection Agency (EPA) reviewers responsible for the review of Draft and Final Environmental Impact Statements (EISs) prepared for Fishery Management Plans (FMPs) and FMP Amendments (Amendments) by the National Marine Fisheries Service (NMFS), which is part of the National Oceanic and Atmospheric Administration (NOAA). The FMPs and Amendments are prepared under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The EISs for FMPs and Amendments are prepared by NMFS and Regional Fishery Management Councils in accordance with the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations, and NOAA Administrative Order 216-6. EPA's review of EISs is in accordance with Section 309 of the Clean Air Act.

This document was prepared with the technical assistance of Labat-Anderson, Inc. (LABAT), under subcontract to Gannett Fleming, Inc., prime contractor to EPA's Office of Federal Activities, as a tool to assist EPA reviewers when reviewing and developing comment letters on EISs for FMPs/Amendments; it has been reviewed by NOAA. NOAA Counsel has reviewed this document and states it is accurate with respect to its description of NOAA's statutes and regulations. This guidance should be considered a work in progress that we expect to revise from time to time to address additional issues and, as necessary, to reflect any new policies, regulations and judicial determinations. We encourage your suggestions and feedback to improve the usefulness of the guidance.

Note that references to relevant websites are provided throughout this document. While the internet citations (uniform resource locators, or URLs) were accurate at the time the data were collected, websites change frequently due to changes in data availability or reorganization. The cited URLs may not work in the future. If this occurs, "backing up" to a less specific web address may allow retrieval of the information.

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SECTION 1 Introduction and Overview

1.1 EPA's Role and Authority: Why does EPA review FMP EISs?

The United States (U.S.) Environmental Protection Agency (EPA) has a responsibility to review and comment on major Federal actions significantly affecting the quality of the human environment, including Fishery Management Plans (FMPs) and FMP Amendments (Amendments) as developed, approved, and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) where those Plans and Amendments are subject to the environmental impact statement (EIS) requirement of the National Environmental Policy Act (NEPA). EPA's review and comment also helps to further the goals of several other statutes, including the goal of the Clean Water Act to achieve "fishable" waters wherever attainable.

> *FMP Amendments*
> *Once an FMP has been approved and implemented, continuing management of the subject fishery involves monitoring the fishery, evaluating new information, and adjusting the management program through changes to the FMP and/or to its implementing regulations. In continuing fishery management, program changes may be accomplished by amending an FMP and implementing the FMP Amendment's measures through final regulations. See Section 2.1.2.*

1.1.1 Clean Air Act

Section 309 of the Clean Air Act, as amended in 1970 (42 U.S.C. 7609, Public Law 91-604 12(a), 84 Stat. 1709), directs the EPA to review certain proposed actions of other Federal agencies in accordance with NEPA and to make those reviews available to the public. If EPA determines a matter is environmentally unsatisfactory, EPA must refer the matter to the President's Council on Environmental Quality (CEQ).

NEPA, as amended (42 U.S.C. 4321 *et seq*., Public Law 91-190, 83 Stat. 852), and the CEQ regulations implementing NEPA, require that a Federal agency proposing legislation and other major actions significantly affecting the quality of the human environment, obtain comments from any other Federal agency having jurisdiction by law or special expertise with respect to any environmental impact involved, and thereafter prepare a detailed statement of these environmental effects (see 40 C.F.R. 1503.1).

Section 309 places an additional requirement to review EISs upon EPA because NEPA "does not assure that Federal environmental agencies will effectively participate in the decision-making process. It is essential that mission-oriented Federal agencies have access to environmental expertise in order to give adequate consideration to environmental factors." (Sen. Rept. No. 91-1196, 91st Congress, 2nd Sess. 43, 1970).

Section 309 confers upon EPA broad review responsibilities for proposed Federal actions. The EPA Administrator delegates this responsibility to the Office of Federal Activities (OFA), and to the ten EPA Regional Administrators for review of regional specific actions. OFA has developed a set of criteria for rating draft EISs. The rating system provides a basis upon which EPA makes recommendations to the lead agency for improving the draft. If EPA determines a matter continues to be environmentally unsatisfactory, EPA must refer the final EIS to CEQ.

The Clean Air Act Section 309, Section 7609. Policy Review.

"(a)The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this act or other provisions of the authority of the Administrator, contained in any (1)legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 102(2)(C) of Public Law 91-190 [*] applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.

(b) In the event the Administrator determines any such legislation, action, or regulation is unsatisfactory from the standpoint of public health, welfare, or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality."

[*] NEPA (42 U.S.C. 4332(2)(C) et seq.)

Annually, OFA and its regional counterparts review about 500 EISs and some 2,000 other actions. In addition to conducting environmental reviews, OFA develops guidance materials and provides training courses on NEPA and Section 309 requirements for EPA regional staff, and promotes coordination between EPA offices and other Federal agencies.

EPA conducts Section 309 reviews consistent with its *Policy and Procedures for the Review of Federal Actions Impacting the Environment* (EPA 1984). EPA recognizes that fisheries management and associated regulatory processes are complex. EPA further recognizes that ultimate responsibility lies with the Department of Commerce (DOC), acting through the National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS), also known as NOAA Fisheries.[1] However, EPA has a unique opportunity, through its NEPA and Section 309 obligations, to support NMFS in this effort. FMP/Amendment EISs, when developed in the spirit of NEPA, can facilitate meaningful and holistic decisions for fisheries management.

EPA's involvement at the early planning and scoping stages is strongly encouraged in its Policy and Procedures (EPA 1984) to help provide a clearer understanding of the issues involved, support the development of appropriate alternatives, help ensure that the analysis considers all direct, indirect and cumulative impacts, and identify appropriate mitigation where needed.

[1] The terms "NMFS" and "NOAA Fisheries" are synonymous and both appear throughout the literature, including FMP/Amendment EISs; however, only NMFS is used in this guidance document.

EPA's review responsibilities also provide an opportunity to establish effective working relationships with their NEPA counterparts at NMFS and NOAA and within the Fishery Management Councils. As a result, EPA's contributions can be numerous and valuable, including:

- Participating in interagency coordination early in the planning and scoping process to identify significant environmental issues;
- Defining issues or identify sources of information;
- Identifying conflicts with protected marine species and fishing activities;
- Supporting full incorporation of conservation and environmental protection goals;
- Supporting an ecosystem-based management approach to fisheries management, where appropriate;
- Supporting better decision-making; and
- Supporting streamlining of the FMP/Amendment NEPA process.

Section 2.2.3.3 provides additional detail on EPA's role in the FMP/Amendment EIS process, and Section 4 includes a discussion on the areas upon which EPA typically focuses in its reviews of FMP/Amendment EISs.

1.1.2 Clean Water Act

The Clean Water Act (33 U.S.C. 1251-1387) sets forth as an objective of the Act to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" and also sets forth as a goal of the Act to provide for the protection and propagation of fish, shellfish and wildlife wherever attainable (Section 101(a)(2)). The Clean Water Act authorizes EPA to, among other actions, conduct water quality and pollution research, provide grants for sewage treatment facilities, promulgate technology-based requirements, issue water quality criteria guidance, and establish water quality standards. The Act also establishes the National Estuary Program (NEP) which focuses on improving water quality in an estuary. For point source discharges of pollutants, the Act establishes a permitting program to regulate discharges to waters of the U.S., including discharges to ocean waters. There also is a permitting program for discharges of dredge and fill material to waters of the U.S., including wetlands. Wetlands are a vital component of ecosystems for many of the fish species considered in FMP/Amendments. NMFS provides direct consultation to the EPA and the U.S. Army Corps of Engineers as to the impacts of proposed activities on living marine resources and the methods for avoiding such impacts.

While fishing and fishery management activities may have only minimal (if any) impact on water quality, to the extent that adverse water quality effects do occur, EPA reviewers should consider, evaluate, and, as appropriate, comment on the water quality aspects of fishery management activities. Section 3.4 includes a discussion of water quality concerns in fisheries management.

1.2 Overview and Authority for Fishery Management Plans

The MSA is the principle Federal statute providing for management of the U.S. marine fisheries. Originally enacted in 1976 as the Fishery Conservation and Management Act (Public Law 94-265), it established the first Federal system to govern fishing within the newly-declared 200-mile exclusive economic zone (EEZ). This management system established eight Regional Fishery Management Councils (Councils) charged with developing FMPs/Amendments based, in part, on scientific information provided by NMFS. The Councils submit their recommended FMPs/Amendments to NMFS, acting on behalf of the Secretary of Commerce (Secretary), for review, approval, and implementation by regulations. MSA's fishery management system was established to meet the goals of conserving fishery resources and promoting the U.S. commercial and recreational fishing industry. Under a set of statutory standards, the Councils were tasked to make major management recommendations, such as the size of the allowable catch, the length of the fishing season, the allocation of any quotas to states and fishers, and permitting and licensing provisions. The MSA, along with a number of other factors (including Federal subsidies), led to a rapid expansion of the U.S. fishing industry. By the early 1990s, domestic landings had increased five-fold since 1977, while foreign trawlers had virtually disappeared from U.S. coasts. This rapid expansion of domestic fisheries has, in some cases, led to overfishing.

> Exclusive Economic Zone (EEZ)
> *"zone established by Presidential Proclamation 5030, 3 C.F.R. part 22, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles (370.40 km) from the baseline from which the territorial sea of the United States is measured."*
> 50 C.F.R. 600.10

Passage of the Sustainable Fisheries Act (SFA) in 1996, which amended the MSA, added new National Standards concerning: (a) the minimization of bycatch to the extent practicable, and (b) the sustained participation of fishing communities and the minimization, to the extent practicable, of adverse economic effects on such communities. Also, the SFA established new requirements to rebuild overfished stocks and to minimize, to the extent practicable, adverse effects on essential fish habitat (EFH) caused by fishing.

> Bycatch
> *"fish that are harvested in a fishery, but that are not sold or kept for personal use. Bycatch includes the discard of whole fish at sea or elsewhere including economic discards and regulatory discards, and fishing mortality due to an encounter with fishing gear that does not result in capture of fish (i.e., unobserved fishing mortality)." (16 U.S.C. 1802(3) and 50 C.F.R. § 600.350(c)) Note that some bycatch species may be listed as endangered and threatened under the Endangered Species Act.*
>
> Essential Fish Habitat (EFH)
> *"those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity."*
> 16 U.S.C. 1802(10)

Preparation of FMPs/Amendments (and supporting EISs) is authorized and guided by the following documents:

- MSA, Section 301 (16 U.S.C. 1851), National Standards for Fishery Conservation and Management: "Any fishery management plan ... shall be consistent with the [ten] national standards for fishery conservation and management." The MSA also mandates the Secretary to develop advisory guidelines to assist FMP development. NMFS has issued National Standards Guidelines that serve primarily to interpret and aid compliance with the National Standards (codifed at 50 C.F.R. 600);
- MSA, Section 303 (16 U.S.C. 1853), Contents of Fishery Management Plans. The MSA mandates the development of FMPs as the primary responsibility of the Councils, although the Secretary has authority to develop FMPs and Amendments for Highly Migratory Species (HMS) (MSA Section 302(a)(3) and 304(g)) (see also Section 2.1). Section 303(a) of the MSA (16 U.S.C. 1853(a)) requires NMFS to include 14 provisions in an FMP or Amendment, whereas section 303(b) of the MSA provides NMFS with the discretion to include 12 additional measures in an FMP or Amendment. Some of the FMP provisions reflect, in some cases, competing objectives which must be balanced in the course of decision-making.
- *Operational Guidelines Fishery Management Process*, National Marine Fisheries Service (Silver Spring, MD), May 1, 1997 (NMFS 1997), with update Appendices May 11, 1998;
- *Environmental Review Procedures for Implementing the National Environmental Policy Act.* NOAA Administrative Order 216-6 (NAO 216-6), May 20, 1999 (NOAA 1999).

1.3 Purpose of Guidance

This guidance has been developed as a tool for EPA reviewers of EISs prepared only for those FMPs and Amendments as developed, approved, and implemented under the MSA and managed by the eight Councils and NMFS. It does not relate to plans prepared under state or regional interstate fishery commission regulatory authority. The objectives of this guidance are to improve the quality of EPA Section 309 reviews of FMP/Amendment EISs, help ensure a more effective and efficient use of EPA's limited staffing resources, and help ensure more consistent commentary across the Regions. The guidance also may support NMFS in its ongoing efforts to streamline the regulatory process, reduce litigation, and improve decision-making regarding the long-term sustainability of U.S. fisheries. By implementing its NEPA responsibilities and commenting effectively on fishery management actions that impact our oceans and marine ecosystem, EPA can help in the overall effort to support sustainable fisheries and protect our marine resources.

This guidance includes important "tools" (e.g., glossary, acronyms, contacts, references) to support reviewers in their review of the science (e.g., fishery biology) and impacts of fisheries management. Appendices include additional information on the following topics: fisheries currently managed by the eight Councils and NMFS and the FMPs/Amendments under which they are managed (Appendix A), other fishery management authorities (Appendix B), related statutes and Executive Orders (E.O.s) (Appendix C), EFH (Appendix D), and fishing gear descriptions (Appendix E); as well as a complete copy of NMFS' *Environmental Review Procedures for Implementing the National Environmental Policy Act*, NAO

216-6 (Appendix F) for easy reference. Figure 1-1 provides a roadmap with specific reference to where in the guidance certain information can be found.

Figure 1-1: Guidance Roadmap

WHERE DO I FIND INFORMATION ON…	
Topic / Question	**Related Guidance Section(s) / Table(s) / Figure(s)***
SUBJECT: Guidance Purpose	
Why is this guidance document important to EPA reviewers?	Section 1.3 Purpose of Guidance
SUBJECT: Roles and Responsibilities of the FMP Development and Review Process	
What is my role/ importance as a reviewer?	Section 1.1 EPA's Role Section 2.2.3 EPA (*From Roles and Responsibilities, Section 2.2.3.1*)
Who is responsible for each step of the FMP development and review(s) process?	Section 2.2.3 Roles and Responsibilities Table 2-1 Comparison of Roles and Responsibilities Appendix B Other Fishery Management Authorities
SUBJECT: Fishery Management Plans (FMPs) Defined and FMP Development Process	
Summary of the complete, overall process of developing FMPs…	Section 2 The Regulatory Framework Section 2.2.4 FMP/Amendment Process – Phases and Steps Figure 2-1 Comparison of the FMP/Amendment and NEPA Processes
FMP purpose and general contents…	Section 1.2 Overview Section 2.1 Regulatory Actions Section 2.1.1 Fishery Management Plans
Current FMP documents / information per region…	Appendix A Regional Council FMPs and Amendments
SUBJECT: Federal Regulations and FMPs	
How is NEPA involved with FMPs?	Section 1.1 EPA's Role Section 1.2 Overview Section 2.2.1 FMPs/Amendments and NEPA Section 2.2.2 Approaches to Preparing EISs and EAs for FMPs/Amendments Section 2.2.3 EPA (*From Roles and Responsibilities, Section 2.2.3.3*) Table 2-1 Comparison of Roles and Responsibilities Section 3 Fishery Issues in NEPA Documents Section 4.2 Section 309 Reviewer's Checklist of NEPA Compliance and Environmental Issues
What are some of the related Federal guidelines (e.g., statues, executive orders) related to fisheries management that I should consider in my review/comments?	Section 2 FMPs – Process and Requirements under MSA Section 2.1 Regulatory Actions, including MSA Appendix C Related Statutes/Executive Orders Appendix D Essential Fish Habitat

WHERE DO I FIND INFORMATION ON…	
Topic / Question	**Related Guidance Section(s) / Table(s) / Figure(s)***
SUBJECT: Generating Comment Letters–Main Issues to Consider/Include and Examples	
What are some of the related environmental impacts I should address during my review?	Section 3 Fishery Issues in NEPA Documents (*Including sections on Bycatch, Essential Fish Habitat, Protected Species, Water Quality, Subsistence and Indigenous Fishing, and Ecosystem-based Management Approach*) Section 3.7 Science of Fishery Management Section 3.8 Data Needs/Incomplete or Unavailable Information
What are some of the main issues that past reviewers [especially EPA reviewers] have flagged during past reviews of FMP EISs?	Section 3.9 Readability Section 4 Writing EPA Comment Letters (*Inclusive section that covers Purpose and Need, alternatives, affected environment, impacts, mitigation)* Section 4.2.3 EPA Comments Concerning Alternatives Section 4.2.5 Commenting on the Assessment of Impacts Section 4.2.7 Procedural Issues
Where can I find examples of EPA comments?	Section 4 Writing EPA Comment Letters
SUBJECT: Reading and Internet Resources on Technical, Scientific, and Legal Issues	
I need to find information on the technical nature of what is described in the FMP document…	Appendix E Fishing Gear Descriptions Section 5.2 Recommended Reading and Websites (*this section is categorized by subject area*) Section 7 Acronyms/Glossary (*for general definitions*)
I need to find more information on the scientific nature of what is described in the FMP document…	Section 3.6 Science of Fisheries Management Section 5.2 Recommended Reading and Websites (*this section is categorized by subject area*) Section 7 Acronyms/Glossary (*for general definitions*)
I need to find more information on legal/litigation issues associated with FMP documents…	Section 5.2 Recommended Reading and Websites (*this section is categorized by subject area; e.g., Laws and Regulations, Litigation, Overview/Background*)
SUBJECT: Points of Contact within EPA, Regional Councils, and NMFS	
Who do I call for additional information on any FMP topic?	Section 5.1 Points of Contact (*sorted by Federal agency, Regional Fishery Management Council, and other private organizations*)
SUBJECT: Anticipated Future Trends	
What is in store for the future?	Section 2.2.5 Future Direction

* Section(s) numbers, table(s), or figure(s) within this guidance document. Please refer to the Table of Contents for specific page numbers

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SECTION 2 Fishery Management Plans – Process and Requirements Under MSA

2.1 Regulatory Actions

The MSA provides the basic statutory framework for the protection, conservation and management of the fishery resources found off the coast of the U.S. and the anadromous species and continental shelf fishery resources of the U.S. It also extended U.S. jurisdiction over the fishery resources out to 200 miles offshore from the three-mile seaward boundary of each of the coastal states (nine miles off Florida's Gulf Coast, Texas, and Puerto Rico); and established eight Regional Councils, including the New England, Mid-Atlantic, South Atlantic, Caribbean, Gulf of Mexico, Pacific, Western Pacific and North Pacific Councils. Each Council has the authority and responsibility to recommend conservation and management measures, through proposed FMPs/Amendments, for the ocean fisheries under its jurisdiction. Once a Council prepares and adopts an FMP/Amendment as final, it submits the FMP/Amendment to NMFS for Secretarial review, approval, and implementation. NMFS implements approved FMP/Amendment measures by issuing appropriate regulations. NMFS, acting on behalf of the Secretary, may approve, disapprove, or partially approve an FMP /Amendment submitted by a Council for Secretarial review. Also, the MSA gives the Secretary emergency and interim rulemaking authority (MSA section 305(c)) for all fisheries subject to management under the MSA, as well as specific authority to develop and implement FMPs and Amendments for Atlantic HMS within the geographic area of authority of more than one of the following Councils: New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf of Mexico. HMS here refers to tuna species, marlin, oceanic sharks, sailfishes and swordfish.

2.1.1 Fishery Management Plans

An FMP and its Amendments specify how a particular fishery (fish stocks and fishing for such stocks) will be managed. An FMP/Amendment identifies important problems or issues in the fishery and specifies conservation and management measures to address them. One of the primary objectives of FMPs/Amendments is to achieve and maintain, on a continuing basis, the optimum yield from each fishery. The optimum yield is that amount of fish from the fishery that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems. Other purposes of the MSA that may be reflected in the measures of an FMP are stated in MSA sections 301 (National Standards for Fishery Conservation and Management), 2(b) (Purposes), and 303(a) (Required Provisions of an FMP).

Appendix A identifies the fisheries currently managed by the eight Councils and NMFS and the FMPs under which they are managed. Appendix B identifies the U.S. fisheries currently managed by other fishery management authorities (e.g., Commissions, states) and the plans under which they are managed. It should be noted that this Section 309 guidance relates only to the review of EISs prepared for FMPs, Amendments and other fishery management actions . However, it is important to be aware of the plans

developed under other statutory authorities to the extent that their actions may impact those fisheries managed by NMFS and the Councils, and the extent that NMFS and Council actions may impact fisheries managed by others.

In order to assist the Councils in preparing FMPs, MSA specifies ten National Standards with which all FMPs must comply and 14 mandatory provisions that must be contained in each FMP. In addition to the National Standards and mandatory provisions, FMPs may also address 12 discretionary provisions.

2.1.1.1 National Standards for Fishery Conservation and Management

Under the MSA, all FMPs/Amendments and their implementing regulations must comply with ten National Standards for Fishery Conservation and Management (National Standards) that serve as the overarching criteria and objectives for fishery conservation and management measures. NMFS has issued National Standards Guidelines for use in ensuring that such measures are consistent with the MSA requirements (50 C.F.R. 600.305-600.355). The National Standards are as follows:

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (A) fair and equitable to all fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of the resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

> *For purposes of this guidance, "fish" means "finfish, mollusks, crustaceans, or parts thereof, and all other forms of marine animal and plant life other than marine mammals and birds." This includes marine turtles. Fishery means "one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics, or method of catch." Stock of fish means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.*
>
> MSA Section 3 (Definitions) and
> 50 C.F.R. 600.10 (Definitions)

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

Overfishing: "Overfishing occurs whenever a stock or stock complex is subjected to a rate or level of fishing mortality that jeopardizes the capacity of a stock or stock complex to produce MSY [maximum sustainable yield] on a continuing basis."

50 C.F.R. 600.310

Overfished: "...any stock or stock complex whose size is sufficiently small that a change in management practices is required to achieve an appropriate level and rate of rebuilding."

50 C.F.R. 600.310

(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

(10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

The first national standard (prevent overfishing while achieving optimum yield) is the heart of any FMP. The optimum yield is prescribed based on the maximum sustainable [biological] yield from the fishery, as reduced by relevant economic, social and ecological factors (MSA Section 3). In the case of overfished fisheries, the optimum yield must provide for rebuilding the fish stock to a level that is consistent with producing the maximum sustainable yield for the fishery (MSA Section 3). An FMP must establish specific and measurable criteria for determining when the managed fishery is overfished. Each FMP is to contain measures to prevent overfishing or to end overfishing and rebuild an overfished fishery within a specified time period (MSA Sections 303(a) and 304(e)). These measures apply when the Council or the Secretary has determined that a fishery is overfished or is approaching an overfished condition.

Optimum Yield

"...the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems; is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor.."

MSA Section 3 and 50 C.F.R. 600.10

Maximum Sustainable Yield

"...the largest long-term average [annual] catch or yield that can be taken from a stock or stock complex under prevailing ecological conditions." (50 C.F.R. 600.310) It is used as a management goal. It differs from optimum yield by considering only the biology of the species.

2.1.1.2 FMP Content Requirements – Required Provisions

In addition to complying with the National Standards, each FMP must contain the following 14 required provisions (MSA Section 303(a)):

(1) Measures to prevent overfishing and rebuild overfished stocks and measures to protect, restore and promote the long-term health and stability of the fishery.

(2) A description of the fishery, including number of vessels involved, type and quantity of fishing gear used, species of fish involved and their location, cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights.

(3) An assessment of the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and a summary of the source material used to make the assessment.

(4) An assessment of the capacity and extent to which fishing vessels of the U.S. on an annual basis, will harvest the optimum yield; the portion of the optimum yield which, on an annual basis, will not be harvested by fishing vessels of the U.S. and can be made available for foreign fishing; and, the capacity and extent to which the U.S. fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the U.S.

(5) Specify the data that must be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of and the actual processing capacity utilized by U.S. fish processors.

(6) Options for temporary adjustments for access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean condition affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery.

(7) A description and identification of EFH for the fishery, measures to minimize to the extent practicable adverse effects on such habitat caused by fishing, and other actions to encourage conservation and enhancement of such habitat.

(8) An assessment of kinds and amounts of scientific data needed for effective implementation of the plan.

(9) A fishery impact statement for the plan or amendment which assesses and describes the likely effects of the conservation and management measures on: (a) participants in the fisheries and fishing communities affected by the plan or amendment, and (b) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants.

(10) Criteria for identifying when the fishery is overfished, including an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery. In the case of a fishery which is approaching an overfished condition or is overfished, conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery.

(11) A standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery as well as measures to minimize bycatch and the mortality of unavoidable bycatch to the extent practicable.

(12) An assessment of the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and conservation and management measures to minimize mortality and ensure the extended survival of such fish.

(13) A description of the commercial, recreational, and charter fishing sectors which participate in the fishery and quantification of trends in landings of managed fishery resource by these sectors.

(14) A fair and equitable allocation of the resource among the commercial, recreational and charter fishing sectors in the fishery when rebuilding plans or other conservation and management measures that reduce the overall harvest in a fishery are necessary.

2.1.1.3 FMP Content Requirements – Discretionary Provisions

Section 303(b) of MSA identifies 12 discretionary provisions that also may be included in an FMP as follows:

(1) Require permits and fees from any fishing vessel or fish processor who receives fish that are subject to the plan.

(2) Establish time, area, and gear restrictions to limit fishing effort as necessary.

(3) Establish catch, sale, or transportation limits based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors consistent with any applicable Federal and State safety and quality requirements.

(4) Prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement provisions.

(5) Incorporate (consistent with the National Standards, other MSA provisions, and other applicable laws) the relevant fishery conservation and management measures of coastal states nearest to the fishery.

(6) Establish a limited access system for the fishery in order to achieve optimum yield subject to specific considerations.

(7) Require fish processors to submit data necessary for the conservation and management of the fishery.

(8) Require observers to be carried onboard a vessel for the purpose of collecting data necessary for the conservation and management of the fishery.

(9) Assess and specify the impact of the plan on the naturally spawning anadromous fish stocks of the region.

(10) Include incentives to employ fishing practices that minimize bycatch and decrease bycatch mortality.

(11) Reserve portions of the allowable catch for use in scientific research.

(12) Prescribe other measures, requirements, conditions, and restrictions necessary for the conservation and management of the fishery.

2.1.2 FMP Amendments (Amendments)

Once an FMP has been approved and implemented, continuing management of the subject fishery involves monitoring the fishery, evaluating new information, and adjusting the management program through changes to the FMP and/or to its implementing regulations. The ease of continuing management for a fishery depends largely on the foresight exercised in preparing the FMP and on the identification of continuing research and data needs required to monitor changing fishery conditions. In continuing fishery management, program changes may be accomplished by amending an FMP (Amendment) and implementing the Amendment's measures through final regulations. Alternatively, certain management adjustments may be made through (a) "framework" measures and their allowable or authorized framework actions (i.e., framework actions are taken by promulgating regulations), (b) regulatory amendments (i.e., usually a type of framework action involving changes only to the FMP implementing regulations), and (c) emergency and interim actions. This section addresses Amendments. The other types of continuing fisheries management actions are discussed in Sections 2.1.3 and 2.1.4.

An FMP has been prepared, approved and implemented for most major or otherwise important stocks of fish subject to management by NMFS and the Councils under the MSA. Consequently, NMFS' and the Councils' ongoing efforts are largely focused on amending FMPs as fishery circumstances warrant. The Councils and NMFS know through considerable experience that fishery conditions change over time and may even change quickly. Once an FMP for a fishery has been approved and implemented, NMFS and the Council monitor the fishery on a continuing basis to see whether the FMP's goals are being met and to make necessary conservation and management adjustments. If the Council (or NMFS) determines that an Amendment is necessary to address new issues or changed fishery circumstances, then the same basic process is followed for developing, reviewing, approving, and implementing the Amendment as was followed for the original FMP. Of course, the Amendment will contain new information regarding the relevant issues or changed fishery circumstances (e.g., stock size increases or decreases, increasing number of fishery participants, etc.), new alternative measures for addressing these matters, and new analyses of the possible impacts of these alternative measures (including the proposed or preferred

alternative). FMP Amendments may be necessary due to other factors such as new statutory requirements (e.g., the SFA of 1996 required amendments to all existing FMPs to incorporate new statutory requirements regarding overfishing and EFH). Some Amendments result directly from proposals by stakeholders such as recreational and commercial fishermen; other Amendments may be initiated by NMFS (on behalf of the Secretary) through encouragement of the Council to take such action. Under the MSA, the Secretary (NMFS) has the authority to prepare an FMP or Amendment for a fishery requiring conservation and management should the Council not prepare it in a reasonable period of time. Also, if the Secretary finds that an emergency or overfishing exists in a fishery, the Secretary has authority under the MSA to promulgate emergency regulations or interim measures necessary to address the emergency or overfishing situation without regard to whether an FMP exists for such fishery. As discussed earlier, the Secretary has specific management authority for HMS, including the preparation and implementation of FMPs and Amendments for these species. Finally, the Secretary has general authority to carry out any FMP or Amendment approved or prepared by him/her in accordance with the provisions of the MSA (Section 305(d)). It is noted that an environmental assessment (EA) or EIS must be prepared for an Amendment depending on whether or not significant impacts are expected (See NAO 216-6, 6.03a.3).

2.1.3 Framework Measures and Actions

The process of developing, reviewing, approving, and implementing FMP Amendments is time consuming and often can take several years or more. To address certain changes in fishery circumstances requiring timely or urgent action, NMFS and the Councils have devised the "framework concept" in which an FMP is amended to include a "framework measure" that allows subsequent expedited regulatory action when needed. Such framework measures and their authorized framework actions must still meet the requirements of the MSA and all other applicable law, including NEPA and E.O.s. Framework actions are critical in fisheries with annual quotas or where quick, responsive "inseason" actions must be taken during a fishing season (e.g., opening and closing a fishery or designated gear areas, inseason quota allocation adjustments, etc.).

The essence of the framework concept is the adjustment of fishery management measures (framework action) within the scope and criteria established by the FMP and its implementing regulations. As explained previously, this is distinguished from changing a fishery management program through an FMP Amendment. A framework measure is intended to describe future framework management actions that would be implemented within a range of actions as defined and analyzed to the extent possible at the time the framework measure is incorporated into the FMP. If a proposed regulatory action under an FMP's framework measure is outside the scope of the FMP and its implementing regulations, then the FMP must be amended before the action can be implemented. In summary, the purpose of a framework measure is to make it possible to manage fisheries more responsively under conditions requiring "real time" management.

The framework concept is not intended to circumvent the FMP Amendment process that must take place when circumstances in the fishery change substantially or when a Council adopts a different management philosophy and objectives that trigger significant changes in the management regime (e.g., single species management changed to ecosystem-based fisheries management). However, every framework measure

and its authorized framework actions must meet the applicable requirements of the MSA, NEPA, the Administrative Procedure Act (APA), and other applicable laws and E.O.s. Also, every framework measure must be assessed for its probable impacts (e.g., its environmental impacts under NEPA requirements) and made available for public review and comment prior to its approval and implementation. Depending upon the type of framework measure, an additional analysis of impacts and opportunity for public comment may be provided in conjunction with the subsequent framework actions authorized by the framework measure. The extent of this analysis and opportunity for public comment for a framework action will depend on the level of specificity of the original framework measure.

There are two types of framework measures which may be considered: (1) traditional or "closed" framework measures and (2) "open" framework measures. A "closed" framework measure describes with great specificity the circumstances under which a particular subsequent framework action is to be taken. The closed framework action is essentially ministerial and virtually without discretion. Closed framework actions include such things as closure of a fishery based on projection of attainment of a quota, adjustment of trip limits or hours of fishing based on actual effort, and adjustment of quotas based on computational error or late reporting. Closed framework actions, many of which are routine inseason management actions, are taken by rule-related notices (termed by NMFS as "notice actions" even though they are rulemakings) published in the "Rules and Regulations" section of the *Federal Register* (FR). While such inseason or notice actions may be taken in an expedited manner pursuant to an FMP's framework measure, they are still subject to the requirements of the APA.

An "open" framework measure is one where the authorized framework actions cannot be forecast or described with specificity beforehand. Consequently, there is more latitude in choosing the subsequent framework action in response to a less well defined set of circumstances. The anticipated environmental and other effects of open framework measures are less susceptible to thorough prior analysis than those of closed framework measures. Therefore, an adequate assessment of probable impacts must be conducted in conjunction with each specific framework action. Open framework measures commonly provide for annual specification of optimum yield, domestic annual harvesting limits, total allowable level of foreign fishing, domestic annual processing estimates, and fishery sector allocations. Other open framework measures may adjust area boundaries in response to shifting fish populations, change size limits to reduce discards, prohibit use of certain gear to ameliorate gear conflicts, and collect additional data. Open framework actions may be inseason or annual actions and may last no longer than a fishing season or continue indefinitely if consistent with the underlying framework measure's provisions.

For approval and implementation, framework measures and their authorized framework actions must be consistent with the same NEPA requirements that apply to FMPs and Amendments. As noted earlier, the analysis of environmental impacts for a proposed framework measure should, to the extent possible, assess the full range of impacts that may result from the allowable options for framework actions. This "up front" analysis will reduce the scope of NEPA analysis required for subsequent specific framework actions taken. Most closed framework measures allow for a full and adequate "up front" assessment of possible environmental impacts resulting from the framework measure and its allowable range of framework actions. In this case, there is no further analysis of environmental impacts required for each specific framework action under NEPA. See NAO 216-6, 6.03d(3).

2.1.4 Regulatory Amendments and Emergency and Interim Actions

Regulatory amendments amend regulations rather than FMPs. Section 303(c)(2) of the MSA provides that a Council may submit proposed regulations (i.e., proposed regulatory amendment) to NMFS that it deems necessary or appropriate for modifying regulations implementing an FMP or Amendment at any time after the FMP or Amendment has been approved and implemented. For example, a Council may submit a proposed regulatory amendment to NMFS to clarify Council intent or to interpret broad terms contained in an approved FMP or Amendment. A regulatory amendment may also be used to implement a portion of an approved FMP or Amendment that was reserved and the Council now intends that NMFS implement it.

Regulatory amendments are often used in the context of a framework action, as authorized by an underlying FMP "open" framework measure. This approach may be used when a Council believes that a particular category of fishery issues or problems may occur in the future that must be addressed in a time efficient manner by means other than amending the FMP. In such cases, the exact nature of the issues, their particular precipitating events, and their specific remedial actions cannot be foreseen precisely at the time that the FMP is first developed. For example, a Council may propose the use of a regulatory amendment to address the concern that, with the growth of a fishery, a gear conflict might arise that could lead to a serious fishery disruption. In this case, a Council may not be able to predict the nature, location or magnitude of the future circumstances causing the problem with sufficient certainty to specify, ahead of time, the particulars of the issue, the effects of the regulatory amendment addressing the issue, or the specific authorizing criteria for regulatory action. Thus, use of the "closed" framework approach as a means of addressing the potential future problem in an expedited manner is precluded. Nevertheless, there may be a need to act more rapidly than is possible through the FMP amendment process. Therefore, as a means of expedited and abbreviated rulemaking, the FMP may be amended to incorporate a framework measure or procedure that provides for future regulatory amendments (framework actions) given the occurrence in the fishery of certain problems or issues.

Regulatory amendments must follow normal rulemaking procedures including proposed and final rules, determinations of significance under E.O. 12866 (Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA), and compliance with the APA rulemaking requirements such as notice-and-comment and delayed effectiveness. Accordingly, regulatory amendments require some opportunity for public input prior to NMFS' approval and implementation by final rule. A regulatory amendment offers considerable time savings over an FMP Amendment because future regulatory changes are anticipated within the scope of the FMP. An FMP framework measure authorizing future regulatory amendments as framework actions, along with supporting documents (e.g., EA, Regulatory Flexibility Analysis, etc.), should still define and analyze, as completely as possible: (a) the foreseen types of fishery issues or problems, (b) the kinds of future regulatory amendments that may be taken to address them, (c) any criteria or future regulatory action, (d) the economic, social, and environmental effects that may occur from a future regulatory amendment, and (e) specific regulatory amendment procedures that are to be used to take future action.

Regulatory amendments are subject to the same environmental review requirements under NEPA as are any other NMFS rulemaking actions. As indicated previously, an analysis of environmental impacts prepared for an original FMP framework measure that authorizes future regulatory amendments may necessarily be rather general. As is often the case with the regulatory amendment approach, the more action-specific impacts, including environmental effects, are assessed fully at the time the regulatory amendment is developed. During the notice and comment period for a regulatory amendment, the regulatory amendment measures and the supporting analyses of expected impacts are published for public comment.

Emergency and interim actions. Section 305(c) of the MSA provides authority for NMFS (on behalf of the Secretary) to issue emergency regulations to address emergency circumstances in a fishery or to implement interim measures to reduce overfishing in a fishery. A Council may recommend that NMFS issue emergency regulations or implement interim measures based on appropriate findings regarding fishery circumstances. Alternatively, NMFS may undertake such emergency or interim actions without prior Council deliberations or determinations but based on its own findings about the fishery circumstances. Regulations issued as an emergency action or interim measures under section 305(c) of the MSA are effective for up to 180 days, with an additional 180-day period possible if the public has had an opportunity to comment on the action during the first 180-day period. If a Council had recommended the emergency regulations or interim measures from the outset, then a time extension for an additional 180 days is possible if the Council is currently preparing an FMP, Amendment, and/or proposed regulations to address the emergency or overfishing on a permanent basis.

Section 305(c) actions are not exempted from meeting the requirements of NEPA, the Endangered Species Act (ESA), E.O. 12866, the Paperwork Reduction Act (PRA), the Coastal Zone Management Act (CZMA), APA, and other applicable Federal statutes and E.O.s. However, exemptions, waivers, and special arrangements are possible under certain circumstances. The NEPA requirements for preparing environmental review documents for emergency actions are the same as for non-emergencies. Specific NOAA guidance on meeting NEPA requirements for emergency actions is provided by Section 5.06 of NAO 216-6. For many emergency or interim actions under the MSA, NMFS may meet all requirements under NEPA for environmental review without delaying the emergency action sufficiently to prevent attaining its objectives. However, in those instances where compliance with CEQ regulations will impede or limit meeting the critical objectives of the emergency or interim action, the NOAA NEPA Coordinator may consult CEQ regarding alternative arrangements for NEPA compliance. Refer also to the NMFS Operational Guidelines for guidance on NEPA compliance for emergency and interim actions (NMFS 1997; see Section F.2).

2.2 Regulatory Process – Roles and Responsibilities and Steps in the Process

Under the MSA, the FMP process involves the preparation, review, approval, and implementation of FMPs and Amendments by regulations. As discussed in Section 2.1.3, framework management actions under the authority of an FMP framework measure can be considered part of the "FMP process."

The MSA gives the eight Councils responsibility for developing fishery conservation and management measures that will achieve "optimum yield" from the fisheries in their respective areas of jurisdiction while preventing overfishing. Congress delegated to NMFS, through the Secretary, and to the Councils broad scientific and policy discretion on issues ranging from the identification of a fishery "management unit" to the evaluation of social, economic, and ecological factors in determining "optimum yield." As long as the fishery management measures recommended by the Councils are consistent with the provisions of the MSA, its National Standards for fishery conservation and management, and other applicable law, the Secretary must approve and implement them. Generally, the Secretary may not substitute an alternative Federal management strategy unless he/she determines that further management changes are necessary and that the Council failed to act within a reasonable time period. Under MSA section 305(d), the Secretary has broad authority to carry out any FMP or Amendment approved or prepared by him/her... and may promulgate such regulations....as may be necessary to discharge such responsibility or to carry out any other provision of this Act. The MSA also provides for the Secretary to develop his/her own management measures in certain circumstances (e.g., for Atlantic HMS such as tuna species, marlin, oceanic sharks, etc.). In these cases the Secretary, too, has broad discretion in determining how to meet the goals of the MSA within the constraints of the MSA's National Standards and other applicable law.

The MSA's National Standards set forth an array of competing policy goals that Councils and NMFS must balance. The standards require that fishery management measures meet ten criteria for approval and implementation, as identified in Section 2.1.1.1.

2.2.1 FMPs/Amendments and NEPA

Section 102(2)(C) of NEPA requires that an EIS be prepared for "major Federal actions significantly affecting the quality of the human environment." Section 6 of NAO 216-6 (NOAA 1999) requires preparation of an EIS when developing a new FMP for a previously unregulated species. This section also requires preparation of at least an EA for an FMP Amendment unless the responsible program manager decides to proceed directly with an EIS or supplemental EIS (SEIS). NAO 216-6 Section 6.03(d)(2) identifies fishery actions that require preparation of an EIS for new FMPs. Section 6.02 provides related guidance for making an EIS determination. Specifically, it identifies those conditions or criteria which are used to determine if a proposed action is significant, thus warranting preparation of an EIS. MSA actions normally requiring an EA or that are eligible for a categorical exclusion (CE) are discussed in Section 6.03.[2] While a number of EAs were prepared for both FMPs and Amendments in prior years, the tendency in recent years has been to proceed directly to an EIS, given the potential for

[2]Section 6.03 (Integrating NEPA Into NOAA's Decisionmaking Process) of NAO216-6 specifies that all plans must be accompanied by an EA or EIS and identifies those that typically require an EA but not necessarily an EIS. The section further specifies that management plan amendments not requiring an EIS must be accompanied by an EA unless they meet the criteria of a CE (Section 5.05b). CEs are for actions which do not normally have the potential for significant impact, either individually or cumulatively, on the quality of the human environment. Examples of CEs for management plan amendments include, but are not limited to, ongoing or recurring fisheries actions of a routine administrative nature such as reallocations of yield within the scope of a previously published FMP or fishery regulation, combining management units in related FMP, and extension or change to the period of effectiveness of an FMP or regulation; and minor technical additions, corrections, or changes to an FMP.

significant impacts. While the Councils historically have made the determination regarding what level of NEPA review is required (based on an interpretation of what the NMFS' Operational Guidelines intended), NMFS now takes a much more active role in the determination and must concur with each such decision.

In addition to new FMPs/Amendments requiring the appropriate NEPA documentation, FMPs/Amendments that are more than five years old should be reviewed by NMFS to determine if a new EIS (or SEIS) should be prepared (NAO/216-6, Section 6.03(a)). The five-year assessment should focus on the overall status of the fishery, particularly the cumulative impacts of management actions over this time period. If it is determined that fishery conditions have changed significantly so that the sustainable aspects of the resource are affected (when compared to that described in the original EIS), or cumulative effects over time have resulted in other significant environmental impacts, then NMFS may require that a SEIS be prepared, according to NAO 216-6.

2.2.2 Approaches to Preparing EISs and EAs for FMPs/Amendments

The Operational Guidelines specify that NMFS and the Councils may follow one of two general approaches in preparing EISs/EAs for FMPs and Amendments: (1) the FMP or Amendment and its corresponding EIS/EA may be prepared as separate, stand alone documents, or 2) the FMP or Amendment and its corresponding EIS/EA may be combined into one integrated document.

Under the first approach, the NEPA analysis or environmental review is prepared as a separate document and is not incorporated into the related FMP/Amendment. Cross references between the NEPA document and the FMP/Amendment are encouraged to minimize redundancies between texts, but, under this approach, the EIS/EA is a stand-alone document that fully complies with the CEQ regulations and NAO 216-6 requirements. Under the second approach, the EIS/EA and the related FMP or Amendment are combined in a single consolidated or integrated document. Such combined documents must still satisfy the CEQ regulations and NAO 216-6. According to NAO 216-6, such consolidated documents need not be prepared according to the CEQ recommended outline for NEPA documents, but they must contain a detailed table of contents identifying required sections of the EIS or EA.

Under the CEQ regulations, agencies are encouraged to combine environmental review documents with other documents to reduce paperwork and avoid duplication (40 C.F.R. 1500.4(o), 1500.5(i) and 1506.4). Section 6.03.d of NAO 216-6 also encourages such integration: "To the extent possible documents developed to support FMPs, FMP Amendments, regulatory amendments, letters of acknowledgment of scientific research, authorization of educational activities, exempted fishing permits, and other fishery regulatory actions developed under the MSA should be integrated with the required NEPA document to produce one combined document." Section 6.03 also states that NMFS and the Councils "should attempt to develop and integrate the NEPA document with the FMP public hearing documents at the earliest possible stage to provide the public and decision makers with an assessment of environmental impacts of the proposed actions prior to NMFS/Council decisions. The NEPA analysis and the analysis required under MSA may be similar, but the scope of the NEPA analysis must include a discussion of the broader impacts of the fishery as a whole on the human environment." NMFS tends

to prefer the second or combined documents approach and the majority of recent FMPs and Amendments reviewed by EPA have consisted of an integrated FMP EIS or Amendment EIS.

It should be noted that while an FMP or Amendment and its supporting EIS are typically integrated as a single document, each of the two components is subject to a somewhat different agency and public review schedule based on differences in NEPA and MSA statutory requirements. These differences are illustrated in Figure 2-1, which provides a general overview of the current relationship between the FMP and EIS development process. Detailed information pertaining to each step is provided in Section 2.2.4.

2.2.3. Roles and Responsibilities

The marine fisheries management system under MSA involves many players including: the eight Regional Councils (including both Council members and advisory bodies), NMFS, NOAA, the DOC/Secretary, states, Indian Tribal Governments, and Congress. The fisheries management structure and process is complex and time consuming. It reflects not only the statutory requirements of the MSA, but also the mandates of numerous other applicable Federal statutes and E.O.s. Related Federal statues and E.O.s are listed in Appendix C. Also, this management system is affected significantly by agency policies, Council operating procedures, Federal rules and procedures regarding administrative procedures, requirements for open government and due process, and interjurisdictional arrangements between the Federal government and the coastal states, and among the coastal states themselves.

The roles and responsibilities of three key players in the regulatory process – the Councils, NMFS/NOAA, and EPA – are described in more detail below; and summarized in Table 2-1 found at the end of Section 2.2.3.

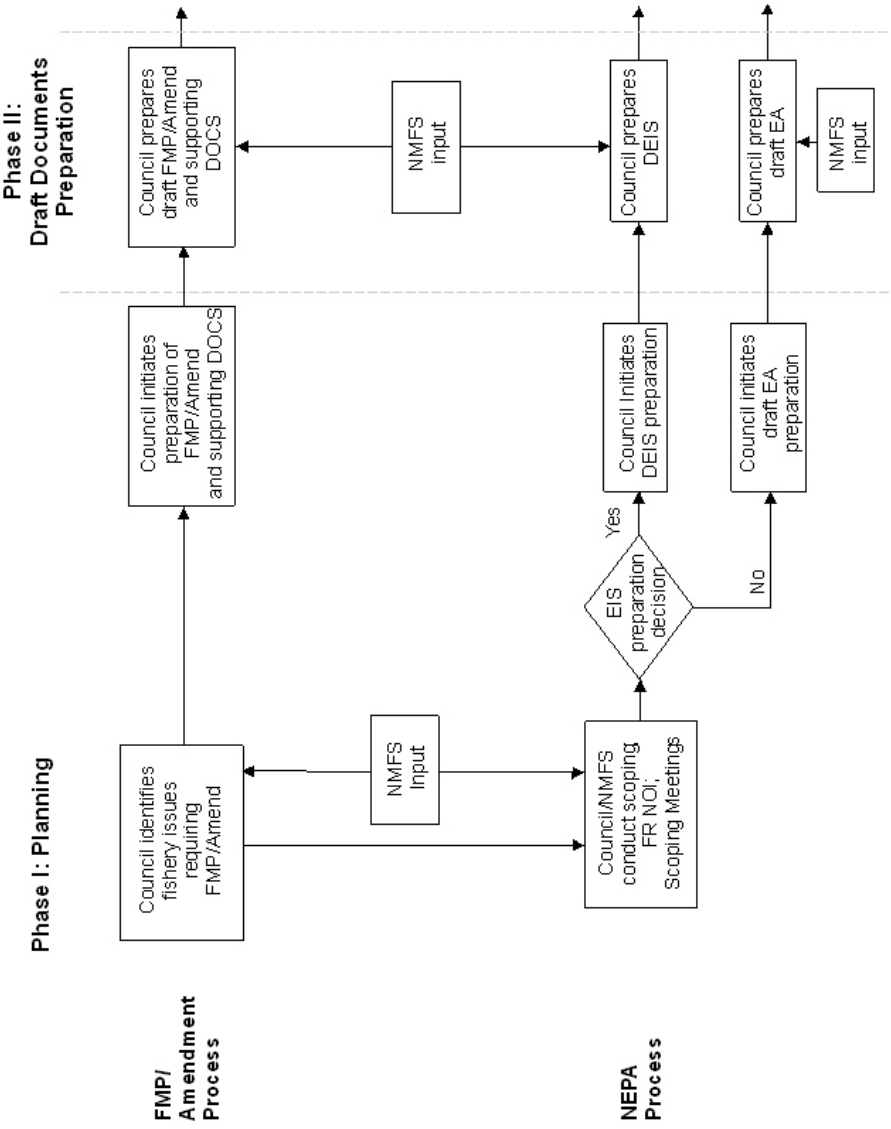

Figure 2-1. Comparison of FMP/Amendment and NEPA Processes*

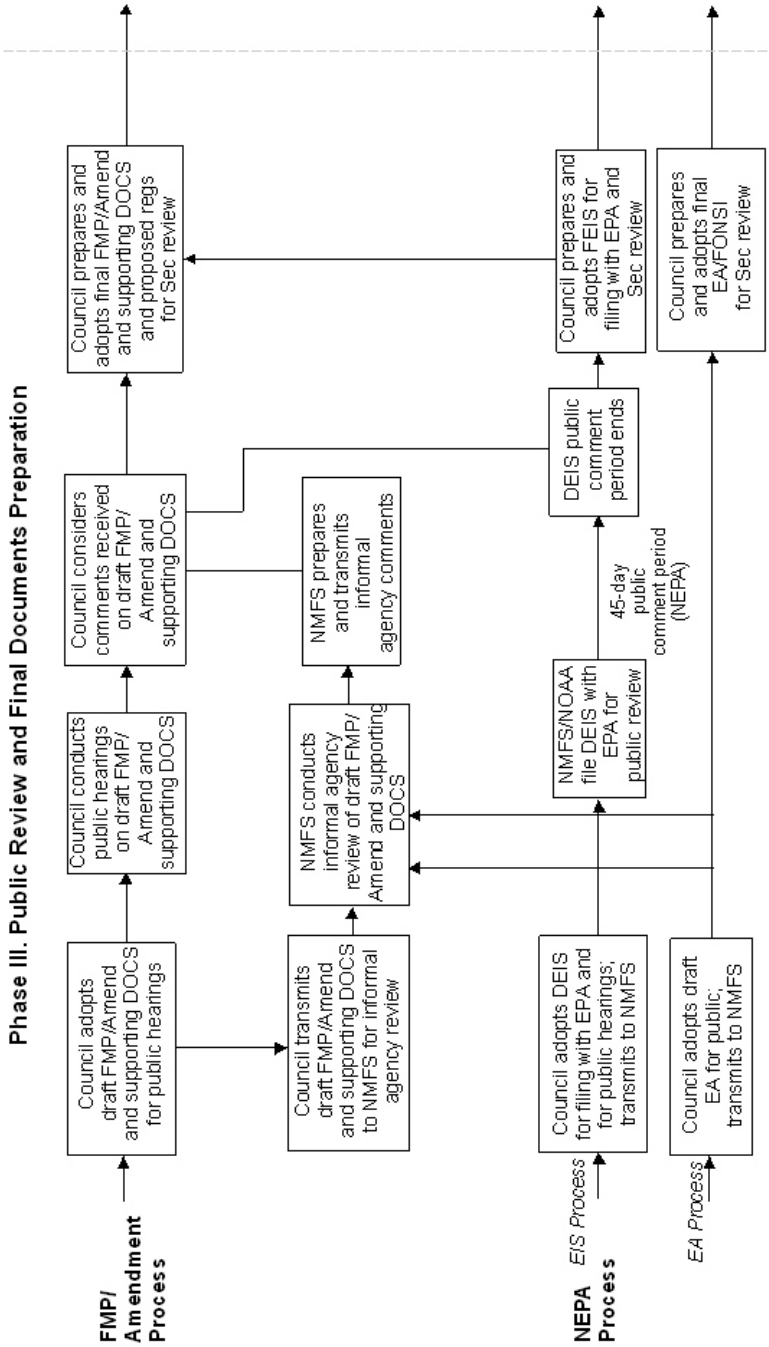

Figure 2-1. Comparison of FMP/Amendment and NEPA Processes* (cont'd)

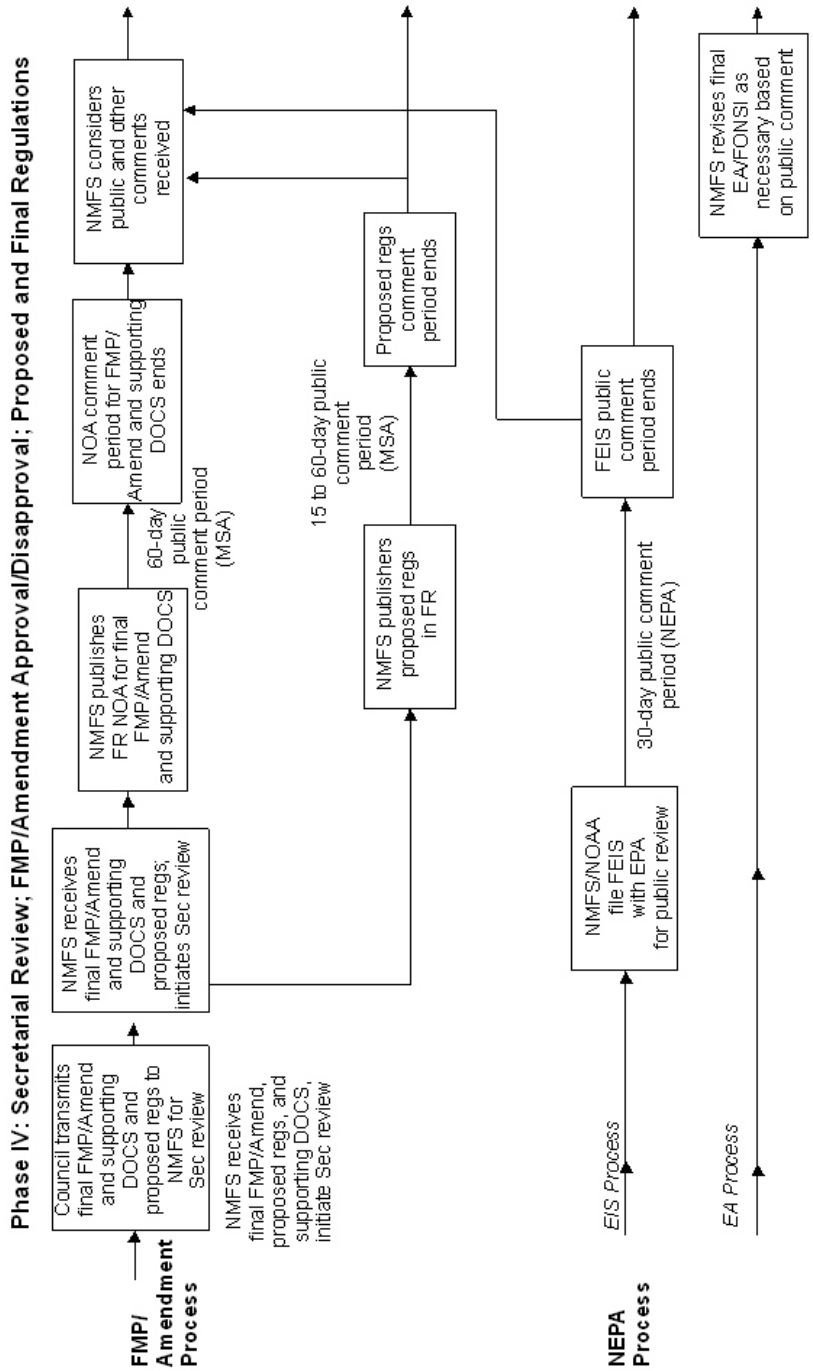

Figure 2-1. Comparison of FMP/Amendment and NEPA Processes* (cont'd)

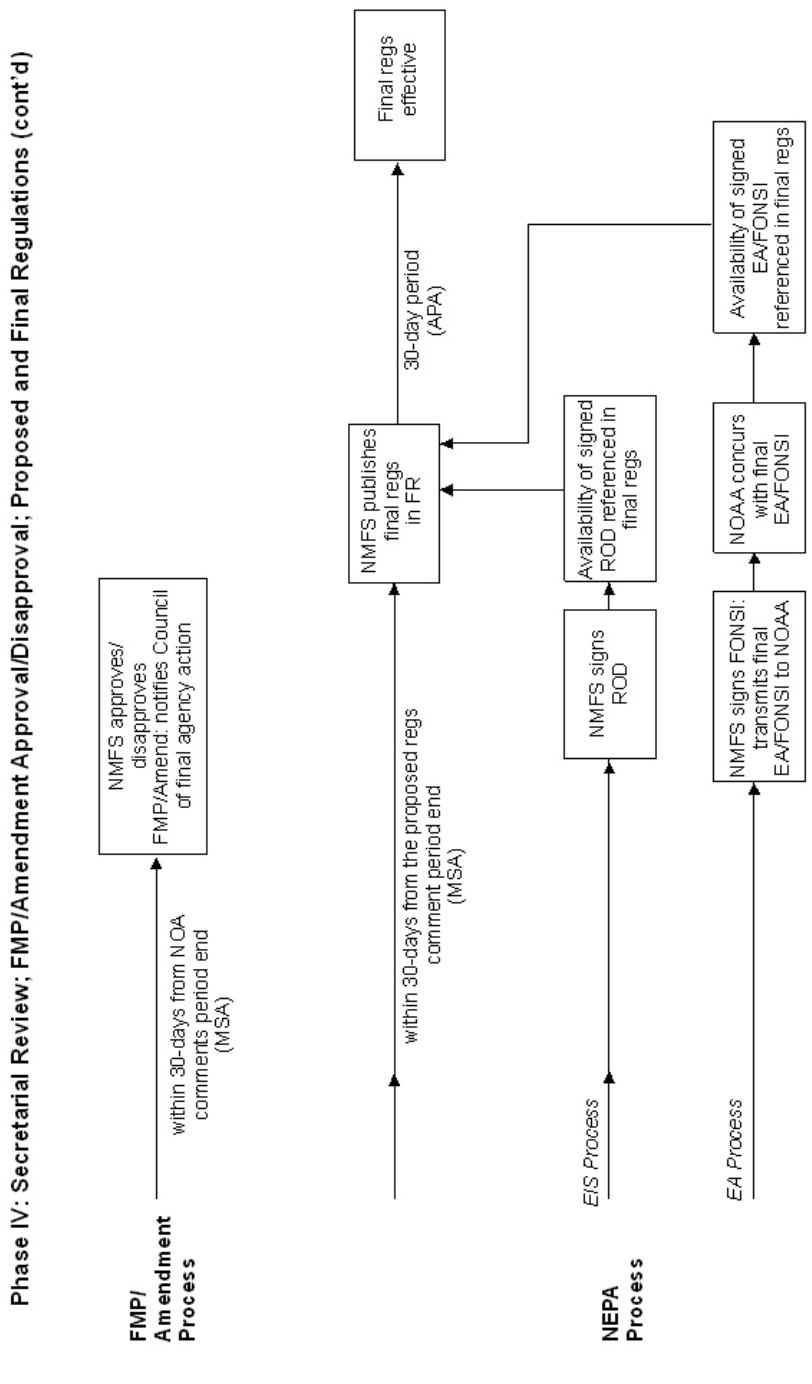

Figure 2-1. Comparison of FMP/Amendment and NEPA Processes* (cont'd)

* This figure presents the current Phases and steps in the FMP/Amendment process and in the supporting NEPA process, as described in detail in Section 2.2.4. For purposes of facilitating the reviewer's understanding of the NEPA process required for FMPs/Amendments and implementing regulations under the MSA, this figure shows the FMP/Amendment and NEPA processes as two separate but parallel and linked processes. In reality, these two processes are closely integrated. Note that the spacing between steps is not based on a consistent length/time scale.

2.2.3.1 Fishery Management Councils

The Councils are responsible under the MSA for the preparation of FMPs/Amendments, and related regulatory actions (e.g., certain framework regulatory actions such as regulatory amendments and annual fishery specifications). The Councils initiate most of the documentation to support fishery conservation and management actions, and collaborate with the NMFS Regional Offices and state agencies as appropriate. Consultation is conducted between NMFS Sustainable Fisheries, in its role as the action agency and either NMFS Protected Resources Division or the U.S. Fish and Wildlife Service (FWS) as the consulting agency, depending on the species in question. The regulations implementing Section 7 of the ESA provide a specific role for applicants, who are persons who require formal approval or authorization from the action agency as a prerequisite to conducting the action. NMFS does not consider the Councils to be applicants because they do not conduct the action, but they sometimes participate in consultations informally.

The MSA charges each of the eight Councils to prepare and submit to NMFS (acting on behalf of the Secretary) an FMP and Amendments to such FMP that are necessary from time to time (Section 302(h)) for each fishery under its authority that requires conservation and management. To this end, the Councils conduct public hearings to provide stakeholders and the general public an opportunity to be heard and participate in the development of FMPs and Amendments. The Councils are also charged with reviewing on a continuing basis, and revising as appropriate, each FMP's specification of the conditions of the managed stocks, the maximum sustainable yield, the optimum yield, domestic harvesting and processing capacities, the portion of the optimum yield available for foreign fishing, and other parameters. The Council's periodic review and revision of these parameters for each FMP or Amendment is based on stock assessment and other scientific information provided by NMFS, the member states, and other sources.

A Council's functions are conducted by Council members with the assistance of an Executive Director and administrative and professional support staff. Professional staff usually include biologists, economists, and environmental review specialists. Each Council is required by the MSA to establish a scientific and statistical committee (SSC) to assist in the development, collection, and evaluation of scientific information (including statistical, biological, economic, and sociological information) relevant to developing FMPs and Amendments. Each Council is also required to establish other advisory panels, including a fishing industry advisory committee, to assist in performing its functions. Each Council is free to establish such advisory panels as it deems necessary. Each Council is also free to establish procedures applicable to its activities and those of its advisory panels within the constraints of specific statutory requirements (Section 302(i)).

A Council's SSC and advisory panels (committees) are used to help develop recommendations on fishery management actions. Committees typically receive public comment during their deliberations. These committees allow public participation during the development of proposed actions, review of available information, identification of alternatives, and clarification of issues brought to Council. The time, place, and agenda for scheduled advisory committee meetings must be published in the FR two weeks prior to

the meetings to give the public adequate prior notification. These committees advise the Councils but do not have voting authority regarding Council adoption of final management measures or other official Council functions.

A Council's SSC usually reviews the work of established technical teams and outside analysts to ensure that Council management decisions are informed by the best available science. An SSC may employ subcommittees for focused work on fishery-specific issues (e.g., review analytical methods that form the basis of species stock size estimates). An SSC may also convene work groups to address the general issues such as bycatch, overcapacity, harvesting policies, and the use of marine protected areas (MPAs) in fishery management.

Councils use advisory panels on a wide variety of subjects including the effects of fishery management measures on local economies, social structure of fishing communities, EFH and environmental issues, conflicts between fishery user groups, enforcement issues, industry operations, and market conditions. The Councils vary in the extent and manner in which they use advisory panels. Advisory panels are usually composed of experienced and knowledgeable members of the public such as recreational and commercial fisherman, law enforcement personnel, conservationists, fish processors, seafood dealers, and academic or research scientists knowledgeable about a specific fishery or biological subject.

The Councils differ in their approaches to preparing FMPs and Amendments and supporting documents (including the supporting NEPA document). Some Councils use only their own staff to draft the FMP/Amendment and all supporting documents. Other Councils use FMP/Amendment development teams that include both Council and NMFS Regional and Science Center staff. For the North Pacific Council and its corresponding NMFS Alaska Region, the NMFS regional (and Science Center) staff have typically taken the lead in preparing significant portions of an FMP/Amendment and its supporting documents (i.e., NEPA document). All Councils rely heavily on the appropriate NMFS Region or Science Center for technical or scientific expertise and information. Council staff often submit draft FMP/Amendment documents to the appropriate NMFS Region and Science Center for informal review and comment prior to public release as either a draft or final document.

Contact information for the eight Councils and NMFS Regional offices is provided in 5.1. Because the specific roles of the Councils and NMFS Regions may vary by region, EPA reviewers are encouraged to contact the appropriate Council or NMFS region to get information on the roles and responsibilities of these players specific to a particular EPA region.

2.2.3.2 NMFS/NOAA/Secretary of Commerce/General Counsel

Various offices within NOAA and NMFS are involved in the FMP/Amendment EIS process. The relationship between these offices is further addressed in this section, including the NMFS Regional Administrator and Regional Staff; the NMFS Science Centers; the NOAA Assistant Administrator for Fisheries, NMFS Headquarters Offices, and NMFS as an Agency; the Secretary; NOAA General Counsel; and NOAA's NEPA Coordinator. A direct link to the NOAA organization chart can be found on NOAA's

Home page at www.noaa.gov/ under the section entitled "About NOAA." The organization chart for NMFS is found at http://www.nmfs.noaa.gov/org_chart.htm.

The NOAA Assistant Administrator for Fisheries, NMFS Headquarters Offices, and NMFS as an Agency. Under the MSA, the Secretary is ultimately responsible for federal management of fishery resources in the EEZ. Through DOC and NOAA delegations of authority, most decision-making authority under the MSA has been delegated to the Assistant Administrator for Fisheries (AAF). The AAF is responsible for: (1) deciding whether to concur in the Regional Administrator's decision regarding approval/disapproval of a Council-recommended FMP or Amendment; (2) deciding whether to approve and issue final rules implementing approved FMP or Amendment measures; (3) determining that the appropriate environmental impact review (EIS or Finding of No Significant Impact (FONSI)/EA) has been completed for the action and is adequate for public release; and (4) resolving with NOAA General Counsel Headquarters any FMP/Amendment issues related to legal sufficiency.

Under authority delegated by the Secretary and NOAA Administrator, the AAF (NMFS) may prepare an FMP and Amendments to such FMP if (a) the applicable Council fails to develop and submit to the AAF within a reasonable time period an FMP or Amendment for such fishery if it requires conservation and management; (b) the AAF disapproves or partially approves a Council's FMP or Amendment and the Council involved fails to submit a revised FMP or Amendment; or (c) the species subject to management are Atlantic HMS. If NMFS prepares a Secretarial FMP or Amendment because of (a) or (b) above, the FMP or Amendment must be submitted to the appropriate Council(s) for consideration and comment during a 60-day public comment period.

Within NMFS Headquarters, the Office of Sustainable Fisheries tracks Council and NMFS FMP/Amendment activities; consults with and advises Regions on national policy implications of FMP-related decisions; packages and forwards Regional/Council documents to NMFS, NOAA and DOC leadership for clearance or approval; and facilitates communications to resolve problem issues raised during Headquarters or NOAA/DOC/Office of Management and Budget (OMB) reviews.

NMFS' Domestic Fisheries Division of the Office of Sustainable Fisheries has the primary Headquarters responsibility for reviewing and processing FMPs, Amendments, framework actions and other MSA regulatory actions as well as their associated NEPA documents. Other NMFS Headquarters offices include the Office of Protected Resources (OPR, also referred to by NMFS regional staff as the Protected Resources Division or PRD), which is responsible for carrying out agency responsibilities under the ESA and the Marine Mammal Protection Act (MMPA), and the Office of Habitat Conservation, whose FMP focus areas include MSA EFH provisions. With respect to ESA, the Office of Sustainable Fisheries is responsible for initiating ESA Section 7 consultation with OPR/PRD at the regional level, and that Section 7 consultations may be elevated to the HQ level (see also Section 3.3 for a discussion of NMFS responsibilities with respect to ESA and its integration with NEPA).

Other NMFS responsibilities include submission of an annual report to Congress on the status of fish stocks within each Council's geographic area of authority, including stocks identified as overfished or approaching a condition of being overfished. When NMFS determines that a stock is overfished, it

publishes a FR notice to this effect and informs the appropriate Council of the need to take action to end overfishing and to rebuild the overfished stock. If a Council fails within one year of notification to develop measures (i.e., via an FMP or Amendment) to stop overfishing and rebuild the depleted stock, NMFS must prepare (within nine months) the requisite FMP or Amendment to end overfishing and rebuild the stock.

NOAA General Counsel. NOAA General Counsel provides legal advice to both the Council and the NMFS Regional Administrator, through NOAA General Counsel Regional Offices, throughout the process of developing documentation and making and reviewing decisions regarding the FMP/Amendment process. The NOAA General Counsel Regional Office provides legal advice to the Regional Administrator confirming legal sufficiency of documentation and process, and elevates to NOAA/General Counsel Headquarters any issue preventing a determination of legal sufficiency. NOAA General Counsel also provides legal advice, through the Office of General Counsel for Fisheries (GCF), to NMFS leadership.

NOAA's NEPA Coordinator. The NOAA NEPA Coordinator, located in the Strategic Planning Office of NOAA's Assistant Administrator for Program Planning and Integration, reviews and provides final agency reviews for all EISs and EAs/FONSIs. Additionally, the NOAA NEPA Coordinator is responsible for filing NOAA's EISs with the EPA and signing all transmittal letters that disseminate NEPA documents for public review.

NMFS Regional Administrator and Regional Staff. As a voting member of each Council, the NMFS Regional Administrator is involved, along with other Council members, in the Council's development and adoption of a final FMP or Amendment and its supporting documents (including proposed implementing regulations) for submission for Secretarial review, approval, and implementation. In a different but related role under the MSA, the NMFS Regional Administrator has been delegated authority (on behalf of the Secretary) to approve, disapprove, or partially approve FMPs and Amendments submitted by a Council, with the concurrence of NOAA Assistant Administrator for Fisheries. The authority to approve and issue regulations (proposed or final) and analytical documents supporting the FMP or Amendment has been, to date, retained by the Assistant Administrator for Fisheries and higher NOAA/DOC level officials who must make certain non-delegated, rule-regulated determinations. The Regional Administrator's approval of an FMP of Amendment normally requires NOAA Regional General Counsel and NMFS Science Center clearances regarding appropriate legal and scientific elements.

The Regional Administrator and his/her staff review FMPs or Amendments and supporting documents submitted by a Council to determine consistency with the National Standards, other provisions of the MSA, and other applicable law. This Regional review is conducted "informally" on draft documents submitted by the Council during Phase III and formally during Secretarial review (Phase IV) as a basis for FMP/Amendment approval and implementation (see Section 2.2.4). The NMFS Region is the principal agency contact with the Council, and may provide guidance and assistance to the Council in preparing FMPs/Amendments, supporting documents, and implementing regulations. The Regions also have the responsibility for: (1) preparing all decision documents for FMP/Amendment approval and implementation (e.g., decision and transmittal memos associated with the Assistant Administrator's

concurrence with the Regional Administrator's approval/disapproval of the FMP/Amendment and with rulemaking actions); (2) ensuring that the Councils are aware of the requirements for their submitted FMP/Amendment packages, including satisfactory regulatory and environmental analyses (i.e., Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), EA/EIS); and (3) certifying that all supporting documents are adequate before approving the related FMP or Amendment. The Region is also responsible for preparing any supporting statement for a collection-of-information under PRA, but consults with the appropriate Science Center as necessary. Both the Region and the Science Center maintain part of the administrative record supporting each agency rulemaking.

NMFS Science Centers. The six NMFS Science Centers provide varying levels of scientific and technical support to the Councils as required for the development of FMPs and Amendments and supporting documents. This may be accomplished by direct and active participation on a Council's FMP/Amendment development team or by providing specific scientific and statistical information at the Council's request. The Science Centers are required to certify definitions of "overfishing" and "overfished" in an FMP or Amendment before the Regional Administrator approves them (see 50 C.F.R. 600.310). The Science Centers are involved in a variety of science-related activities, but primarily in the development of the scientific information base required for fisheries conservation and management. The Science Centers conduct research to address specific information needs regarding fish stock assessment and population dynamics, fishery economics, fishery engineering, fishery biology, habitat conservation, and the status of marine mammals protected under the MMPA and other species protected under the ESA. The Science Centers provide input regarding analyses of environmental impacts for NEPA documents prepared by the Councils or by NMFS. (See also Section 5.1 for Science Center contact information).

2.2.3.3 EPA

EPA's role has been discussed previously in Section 1.1. The objective of the environmental review process conducted by EPA is to foster the goals of the NEPA process by ensuring that EPA's environmental expertise, as expressed in its comments on Federal actions, is considered in agency decision-making. EPA may, as resources allow, assist NMFS in achieving the goals set forth in NEPA; in meeting the objectives and complying with the requirements of laws and regulations administered by EPA; and in developing concise, well-reasoned decision documents that identify and assess a range of project alternatives, project impacts, and mitigation measures that will avoid or minimize adverse effects on the environment (EPA 1984).

Presented below is a discussion of the points in the FMP/Amendment process where EPA is required or may choose to participate. Of course, given EPA's primary role, its participation will focus on the development of EISs (and EAs) for FMPs and Amendments. In addition to conducting Section 309 reviews of draft EISs/SEISs and final EISs/SEISs for FMPs and Amendments (as required), EPA is strongly encouraged to become involved earlier in the FMP-related NEPA process, and EPA regional staff are encouraged by OFA to work with NMFS Regional and Council staff (e.g., Regional NMFS NEPA Coordinators) to the extent possible. This is consistent with EPA's policy of participating early in the NEPA compliance effort of other Federal agencies to the fullest extent practicable. This approach also reflects

EPA's interest in identifying environmental matters of concern regarding proposed agencies' actions at their inception and to assist in resolving these concerns at the earliest possible stage of project development. It is EPA's preference to address project concerns through early coordination with the responsible agency, where possible and as resources allow, rather than to rely on submitting critical comments on completed project NEPA documents (EPA 1984).

The following are suggested steps for EPA staff participation in the NEPA aspects of a phased FMP/Amendment process, with an emphasis on participating as early as possible. The four referenced phases are consistent with those identified in Section 2.2.4 for the FMP/Amendment process.

Phase I Planning: Pre-scoping. Attending regular Council meetings offers a good opportunity to first learn about fishery management actions needed to address fishery problems and to meet the key players in the Council and NMFS Regional arenas. Attending these meetings should also help facilitate better communication and coordination among involved resource management agencies and fishery and environmental interest groups. For example, according to 40 C.F.R. 1506.2(b) of the CEQ regulations implementing NEPA: "Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements." These regulations identify types of cooperation (e.g., joint planning, environmental research and studies, public hearings), and require EISs to discuss any inconsistencies between a proposed Federal action and State or local or tribal plans, policies and laws (regulations). Where an inconsistency exists, the EIS should describe the extent to which the agency would modify its proposed action in order to eliminate or minimize the inconsistency.

Phase I Planning: Scoping. EPA may, as resources allow, participate in the NMFS and Council scoping processes to the fullest extent practicable, emphasizing attendance at scoping meetings (EPA 1984). Traditionally, this is the step where some type of Council-NMFS collaboration begins since NMFS publishes in the FR a Notice of Intent (NOI) to prepare an EIS and that NMFS and the Council plan to hold scoping meetings for the subject management action. The Council and NMFS frequently make available a scoping document or options paper at or before the scoping meeting for public consideration. These documents usually identify the fishery problems under discussion (including any ESA issues) and a general range of options for addressing them. EPA's participation or input during scoping should allow early involvement in defining the environmental issues and their scope as well as identifying the best approaches or options for addressing them in the draft EIS.

Phase I Planning: Responding to Scoping Requests. EPA may, as resources allow, respond to an NOI to prepare an EIS and/or attend any scoping meetings. EPA should review and respond by letter to all scoping requests specifically made to the EPA. While NOIs to prepare an EIS are not considered specific, the EPA environmental review coordinator assigned to follow a particular Council is responsible for being aware of all relevant scoping requests and for participating in those of special interest to the EPA. Note that the level of EPA participation in the scoping process will be determined by the environmental review coordinator on a case by case basis taking into account EPA's responsibilities, the severity of potential environmental impacts, priority concerns identified in the Administrator's Agency Operating Guidance, and available staff and travel resources.

Any EPA staff response to a non-EPA specific scoping request may be made by telephone, but a record of communication should be kept in the official project file (EPA 1984). Responses to specific requests may take the form of either a letter of acknowledgment with a list of generic concerns, or a letter with detailed action-specific comments. A generic scoping letter or telephone response should define EPA's anticipated level of participation in the scoping process and include at least the following information:

- a list of all EPA permits that might be required,
- significant environmental issues that should be emphasized in preparation of the EIS,
- references to publications, including guidelines and current research, that would be useful in analyzing the environmental impacts of various alternatives,
- a statement regarding EPA's intention to carry out its independent environmental review responsibilities under Section 309 of the Clean Air Act, and
- the name, title, and telephone number of the appropriate working-level contact in EPA.

Phase II Preparation of Draft Documents: Preliminary Draft EIS. EPA's review of and comment on a Council's preliminary draft EIS for a proposed FMP/Amendment (e.g., at same time that NMFS is conducting a preliminary informal review and providing informal comments to the Council) would also provide an opportunity to identify and resolve, in advance, any issues EPA may have before the draft EIS is filed for public release and comment. If not already accomplished through scoping, EPA may, as resources allow, discuss with NMFS and the Council the range of alternatives to be carried forward in the draft EIS (which can be either too numerous or too limited) and help to ensure that all remaining alternatives are reasonable or feasible. If EPA is not involved in scoping or the review of a preliminary draft EIS, such comments on the alternatives analysis may also be provided during the EPA review of the filed and publicly released draft EIS.

Phase II Preparation of Draft Documents: Detailed Analysis of Conservation and Management Alternatives in the Preparation of the Draft NEPA Document (EIS/SEIS or EA). It is noted that in Phase II, the Council and NMFS fully evaluate the impacts of the alternatives carried forward from the earlier scoping and preliminary draft steps. It is further noted that NMFS encourages the Council to identify its preferred management or regulatory alternatives at the draft EIS/SEIS or EA stage. In the past, there have been numerous instances where the Council did not make final decisions regarding its preferred management alternative(s) until it voted on the final FMP Amendment measures and associated final EIS/SEIS or EA. Under NMFS's Regulatory Streamlining Project (see Section 2.2.5), joint Council-NMFS efforts to "frontload" the critical environmental and other issues should facilitate the Council's identification of its preferred management alternative in a preliminary draft NEPA document (e.g., preliminary draft EIS/SEIS or EA), if possible, and in the filed draft EIS/SEIS.

Phase III Public Review of Draft Documents; Filing Draft EIS/SEIS for Public Review, and Council Preparation and Adoption of Final FMP/Amendment and Final Supporting Documents, Including final EIS/SEIS or Final EA: Identification of the Preferred Alternative and Conceptual Mitigation Plan in the Final NEPA Document. Upon filing of the draft EIS with EPA for public review, EPA may support this analysis by using its program expertise to provide specific information on the direct, indirect and cumulative effects of each alternative, including actions that could be taken to reduce the indirect effects

of each alternative. This is also the stage where the Council and NMFS are to address EPA's comments on the draft EIS/SEIS, as provided in a Section 309 letter, when preparing the final EIS/SEIS. Ideally, EPA's NEPA Regional staff participation throughout the full FMP/Amendment process will facilitate the Council's and NMFS' addressing all major EPA concerns prior to filing and public release of the final EIS/SEIS.

Phase IV Secretarial Review and Approval/Disapproval of Final FMP/Amendment; Filing of Final EIS/SEIS for Public Comment and Conclusion of Record of Decision (ROD); Proposed and Final Regulations for the FMP/Amendment. EPA's review of a final EIS/SEIS upon its filing and public release during the Secretarial review period for the final FMP or Amendment should be the basis for follow-up coordination with NMFS on actions where EPA had identified significant environmental impacts at the draft EIS/SEIS stage that are not yet resolved. This is to ensure a full understanding of the issues and to ensure implementation of appropriate corrective actions. Unfavorable ratings, consultation with other agencies, and potential referral to CEQ are EPA options for problematic proposals that have not been resolved by earlier NEPA coordination/negotiating efforts with NMFS.

Table 2-1 summarizes and compares the roles and responsibilities of the three sets of key players in the FMP process. Throughout Section 2, particularly Figure 2-1, Table 2-1, and Section 2.2.4 which follows, EPA has attempted to capture to the greatest extent possible, and with significant input from NMFS[3], the current regulatory process with respect to: (1) the process for developing, reviewing, approving and implementing FMPs/Amendments, and (2) the process for preparing and filing for public review draft EISs/SEISs and final EISs/SEISs.

Appendix B identifies other entities, in addition to the coastal states, that also have responsibility for conservation and management of U.S. fishery resources, such as the three Interstate Regional Fishery Commissions.

[3] In addition to EPA's review, both NMFS General Counsel Fisheries (GCF) and NMFS technical staff have reviewed and commented on the guidance document, particularly Sections 2 and 3, relating to the FMP process and fishery issues respectively.

Table 2-1. Comparison of Roles and Responsibilities

Regional Fishery Management Council (Council)	NMFS/NOAA/DOC	U.S. Environmental Protection Agency
PHASE I – PLANNING		
Identifies need for new FMP or Amendment to address fishery issues/problems; usually first identified and discussed at regular Council meeting.	NMFS Regional Administrator (RA) participates in early Council planning discussions/activities as voting Council member; NMFS Regional and Council staff usually maintain close coordination regarding identified fishery issues/problems during all Phases.	EPA Regional staff may participate in planning and pre-scoping discussions with the Council and/or NMFS as requested.
Initiates scoping under NEPA requirements to determine scope and significance of issues and impacts; prepares NOI to prepare EIS (even if ultimately decide to prepare EA); NOI usually combined with notice of scoping meetings (NOS); forwards NOI/NOS to NMFS for FR publication; prepares publicly available scoping document; holds public scoping meetings.	Publishes NOI in FR; RA participates in scoping as Council member; Regional staff may participate in scoping process as agreed between Council and Region; Regional staff may comment on scoping document and issues.	EPA Regional and Headquarters staff may comment on the NOI and scoping document and issues and attend scoping meetings.
Determines level of environmental review and NEPA documentation with NMFS and NOAA GC concurrence.	RA and NOAA GC concur in determination about NEPA documentation.	
PHASE II – PREPARATION OF DRAFT DOCUMENTS		
Prepares draft FMP/Amendment and draft supporting documents, including draft NEPA document (i.e., draft EA or EIS/SEIS) containing initial assessment of impacts on protected species under ESA and MMPA.	Regional staff assist, as requested by Council and agreed upon by RA, in document preparation (e.g., drafting sections or entire documents) and informal review/comment regarding draft documents.	EPA Regional staff may be involved in draft document preparation, as requested by Council and/or NMFS.
Council and NMFS Region may share early drafts of documents with each other for review, comment, and appropriate revision. Considerable variation in this practice depending upon Council, Region, and particular action involved.		

Regional Fishery Management Council (Council)	NMFS/NOAA/DOC	U.S. Environmental Protection Agency
PHASE III – PUBLIC REVIEW OF DRAFT DOCUMENTS; FILING DRAFT EIS/SEIS FOR PUBLIC REVIEW; AND COUNCIL PREPARATION AND ADOPTION OF FINAL DOCUMENTS		
Adopts (usually by formal vote): (a) draft FMP/Amendment and draft supporting documents, including draft NEPA document (i.e., draft EA or EIS/SEIS) as adequate for public hearings; and (b) draft EIS/SEIS as adequate for filing with EPA through NMFS/NOAA for public comment (if applicable).	RA votes with other Council members to (a) take draft FMP/Amendment and draft supporting documents to public hearings and (b) find draft EIS/SEIS adequate for filing with EPA.	
Submits draft FMP/Amendment and draft supporting documents to NMFS for informal agency review; submits draft EIS/SEIS to NMFS for filing with EPA for public comment (draft EIS/SEIS may or may not identify preferred action alternative); distributes draft FMP/Amendment and draft supporting documents (including draft EA or EIS/SEIS) to interested/affected government agencies and public for comment.	NMFS/NOAA files draft EIS/SEIS with EPA for publication of FR Notice of Availability (NOA) for public comment if document found adequate; NMFS (with Council assistance) distributes draft EIS/SEIS and related draft FMP/Amendment and draft supporting documents to interested/affected government agencies (e.g., EPA) and public for usual 45-day NEPA comment period; NMFS returns draft EIS/SEIS to Council for changes if found inadequate for filing.	Publishes FR NOA of draft EIS/SEIS; 45-day (minimum) public comment period begins.
Prepares and submits to NMFS a draft FR notice of public hearings on draft FMP/Amendment and draft supporting documents, including draft EA or EIS/SEIS; conducts public hearings on draft FMP/Amendment and draft supporting documents, including draft EA or EIS/SEIS (hearings may be held in conjunction with Council meeting).	Publishes FR notice of Council's scheduled hearings; conducts informal agency review of draft FMP/Amendment and draft supporting documents, including draft EA or EIS/SEIS.	Reviews and comments on draft EIS/SEIS and related draft FMP/Amendment and supporting documents within 45 days (or longer time period if extended by NMFS); EPA typically reads FMP/Amendment as part of draft EIS/SEIS review since usually an integrated document.
Prepares final FMP/Amendment, final supporting documents, including final NEPA document (i.e., final EA or EIS/SEIS), and "final" proposed regulations based on public, NMFS, and other federal agency (e.g., EPA) comments.	Regional staff assist, as requested by Council and agreed upon by RA, in final document preparation (e.g., drafting sections or entire documents).	

Regional Fishery Management Council (Council)	NMFS/NOAA/DOC	U.S. Environmental Protection Agency
Adopts by formal vote final FMP/Amendment, final supporting documents, including final NEPA document (i.e., final EA or EIS/SEIS), and "final" proposed regulations as adequate for submission to NMFS for formal Secretarial review. Note: The final EA or EIS/SEIS (and accompanying final FMP/Amendment and other final supporting documents) adopted by the Council identify, and evaluate as appropriate, a preferred alternative management action pursuant to NEPA (40 C.F.R. 1502.14 (e)).		
PHASE IV – SECRETARIAL REVIEW AND APPROVAL/DISAPPROVAL OF FINAL FMP/AMENDMENT; FILING FINAL EIS/SEIS FOR PUBLIC COMMENT; PROPOSED AND FINAL REGULATIONS FOR THE FMP/AMENDMENT		
Council submits final FMP/Amendment and final supporting documents, including final NEPA document (i.e., final EA or EIS/SEIS), and proposed regulations to NMFS for Secretarial review.	NMFS immediately publishes FR NOA of final FMP/Amendment and supporting documents for 60-day public comment period; NMFS distributes final FMP/Amendment and final supporting documents, including final NEPA document (i.e., final EA or EIS/SEIS) to interested/affected government agencies and public.	
	NMFS immediately begins review of proposed regulations for consistency with FMP/Amendment, MSA, and other applicable law; if regulations found consistent, NMFS publishes proposed regulations in FR for 15- to 60-day public comment period; if regulations found inconsistent, NMFS returns them to Council with recommended changes.	

Regional Fishery Management Council (Council)	NMFS/NOAA/DOC	U.S. Environmental Protection Agency
May assist, at NMFS' request, in distribution of the filed final EIS/SEIS and related final FMP/Amendment and final supporting documents to interested/affected government agencies and public.	NMFS/NOAA files final EIS/SEIS with EPA for publication of FR NOA for 30-day day public comment period if document found adequate; NMFS (with Council assistance as requested)distributes final EIS/SEIS and related final FMP/Amendment and final supporting documents to interested/affected government agencies and public for 30-day "cooling-off" comment period.	Publishes FR NOA of final EIS/SEIS for 30-day public review period ("cooling-off" or "holding" period, as some EPA regions call it) prior to final NMFS action to approve/disapprove/ partially approve FMP/Amendment; reviews final EIS/SEIS and provides comments to NMFS; EPA may choose not to comment on a final EIS/SEIS, particularly if Draft EIS/SEIS rating was LO [Lack of Objections].
	NMFS considers public and Federal agencies' comments on final FMP/Amendment, final supporting documents (including final EIS/SEIS), and proposed rule received during 60-day comment period for FMP/Amendment.	
	NMFS approves/disapproves/partially approves final FMP/Amendment and informs Council of final agency action within 30 days of end of 60-day comment period for FMP/Amendment; concurrent with final approval/disapproval decision, NMFS signs FONSI for final EA (as applicable) and transmits to NOAA for concurrence or signs ROD if final EIS/SEIS (as applicable).	
	Secretary promulgates (publishes) final regulations in FR within 30 days of close of 15- to 60-day public comment period for proposed regulations that (a) implement approved FMP/Amendment measures, (b) summarize and address public comments received, and (c) become effective usually following a 30-day delayed effectiveness period under APA.	

2.2.4 FMP/Amendment Process – Phases and Steps

NMFS's description of the phases and steps of the FMP/Amendment process is provided in depth in its Operational Guidelines (NMFS 1997). The following revised appendices were issued in May 1998: Appendix 2.a. (Coastal Zone Management Act); Appendix 2.c. (Procedures for Development of Regulations); Appendix 2.d. (Guidelines for Regulatory Analysis of Fishery Management Actions); and Appendix 2.f. (Paperwork Reduction Act). The Operational Guidelines may be found at the following URL address, with a link to the guidelines at the bottom of website page: http://www.nmfs.noaa.gov/sfa/domes_fish/index.htm.

It is noted that NMFS' Regulatory Streamlining Project, currently under implementation, involves significant changes in the Operational Guidelines (see Section 2.2.5 Future Direction).

The FMP/Amendment process is described in five phases:

- Phase I – Planning;
- Phase II – Preparation of Draft Documents;
- Phase III – Public Review of Draft Documents; Filing Draft EIS/SEIS for Public Review; Council Preparation and Adoption of Final Document;
- Phase IV – Secretarial Review and Approval/Disapproval of Final FMP/Amendment; Filing Final EIS/SEIS for Public Review; Proposed and Final Regulations to Implement Approved Measures; and
- Phase V – Continuing Fishery Management.

Presented below is an outline of the major action steps under each phase of the FMP/Amendment process. This outline represents a simplification of the process, which involves other actions (both significant and minor) under the MSA as well as under numerous other applicable Federal laws and E.O.s (see listing in Appendix C).

2.2.4.1 Phase I: Planning

This phase comprises the actions required prior to the preparation of an FMP or Amendment and its implementing regulations. It involves: (1) identification of fishery problems/issues requiring conservation and management through a new FMP or FMP Amendment, (2) conduct of the scoping process, (3) determination of the appropriate level of NEPA review (i.e., which NEPA document will be prepared), and (4) initiation of actions having schedules independent of those established under the MSA. Although required by different individual statutory or administrative mandates, each of these actions is closely interconnected, sharing the common purposes of defining the fishery management issues to be addressed and the objectives for addressing them. The output of this phase should be an early overview and understanding of the management issues or problems, the general options for resolving them, and the statutory and other requirements that must be met before taking any final agency action. Integrating the several identified required actions as fully as possible is desirable, and is the most efficient approach to accomplishing the steps in this phase.

The Phase I steps presented below reflect the current "Operational Guidelines" as last amended in 1997 (NMFS 1997). Thus, most of the Phase I steps indicate that the Council has the primary or even exclusive responsibility for initiating and conducting the scoping activities and determining the appropriate environmental review document required under NEPA for a given management action. As part of its ongoing Regulatory Streamlining Project, NMFS is revising these Operational Guidelines to reflect a modified FMP process that places greater emphasis on NEPA compliance (see discussion in Section 2.2.5, Future Direction). One change envisioned is a stronger focus on collaborative efforts between the Councils and NMFS Regional Offices in developing the documentation that supports the fishery management decisions under consideration. Under this proposed scenario, the Council and NMFS Regional Office staff would collaborate, beginning at the earliest planning stage (Phase I), in preparing all necessary documents (including NEPA documents). Therefore, it would not be assumed that either the Council or NMFS Regional Office has a particular responsibility for doing all of the staff work for any given required document. Thus, under Phase I, NMFS and the Council would have joint responsibility for conducting the scoping process and for determining what NEPA document will be prepared for the action. How this would be implemented for each Council and Regional Office pairing would be established through an agreement between the two. Under the Regulatory Streamlining Project, the Council-NMFS collaborative efforts in developing both draft and final documents would continue until Secretarial review commences (Phase IV).

Steps

- Council identifies fishery requiring conservation and management (new FMP) or requiring management changes under an approved/implemented FMP due to fishery problems and issues (i.e., changes via an FMP Amendment or framework regulatory action).

- Council initiates scoping (NEPA requirement) to determine the scope and significance of biological, ecological, economic, and social issues to be addressed; scoping can begin with FR publication of a NOI to prepare an EIS, (whether or not decision to prepare EIS has been made), usually combined with a notice of initiation of the scoping process and of scheduled scoping meetings.

- Council holds scoping meetings for public input on all major scoping issues; Council prepares scoping documents summarizing the fishery issues or problems, alternative actions, if considered at this point, to address identified issues, and potential impacts; public comments on scoping issues and documents.

- Council determines, based on scoping information and public comment, and with NMFS' concurrence, the appropriate environmental review document in support of the FMP/Amendment (i.e., EIS/SEIS, EA, or CE) and begins preparation. Note: ESA, MSA EFH, and MMPA considerations are addressed at this point to the extent that potential significant impacts on protected and managed species are identified that would require an EIS/SEIS.

- Council and NMFS initiate supporting actions under applicable law (e.g., ESA, MSA EFH, MMPA, CZMA, E.O. 12866), as appropriate. A preliminary assessment of impacts on listed species and critical habitats under ESA and on marine mammals under MMPA is required at this point.

2.2.4.2 Phase II: Preparation of Draft Documents

This phase involves the preparation of the draft FMP or Amendment, the draft NEPA document (draft EIS or EA that includes the ESA and MMPA impact analysis, as appropriate), Draft Regulatory Impact Review (DRIR), IRFA (if needed), draft PRA statement in support of new or revised information collection (estimate of burden hours for record keeping and reporting requirements), and draft proposed regulations. Note that in some regions (Northeast in particular), IRFAs are often only included in Final FMP/Amendment EISs since the preferred alternative is not identified in the draft. When this happens, the final RFA is included in the final rule package.

The responsibility for preparing these documents, except for ESA consultations and biological opinions (BOs), lies primarily with the Council, with assistance from NMFS. While the Councils have assumed most or all of the responsibility for preparing NEPA analyses in support of an FMP/Amendment (e.g, EA or EIS), NMFS does have the final responsibility, as the Federal agency that will take the subject action, for ensuring that such NEPA documents comply with NEPA, the CEQ regulations and NAO 216-6. For this reason, there is significant collaboration between the Councils and NMFS Regions in determining the appropriate level of environmental review for a proposed action and in preparing the EA or EIS in support of it.

The amount of time taken by Councils to prepare these documents is discretionary, but once submitted for public and informal agency review (Phase III) and formal Secretarial review (Phase IV), fixed schedules come into play (as dictated by other applicable laws, hearing and public comment schedules, and MSA requirements). Specific steps for Phase II are not provided; the timing and procedures for this phase are individual to each Council and the fisheries under consideration. Close cooperation with the Council and NMFS during Phases II and III is essential for reducing the risk of FMP/Amendment disapproval or partial approval during Phase IV.

A central theme common to E.O. 12866, RFA, PRA, and MSA is the requirement to analyze the direct and indirect effects of regulations, to demonstrate that regulations will result in net benefits to society, and to explain why a chosen regulatory measure is superior to other alternatives. To the extent that MSA documents are to be integrated with NEPA documents, FMP EISs would also discuss and analyze net benefit. Likewise, a foundation for decision-making regarding approval/disapproval of an FMP or Amendment is an analysis of the alternative fishery management measures that have been identified as possible means of addressing the subject fishery issues or problems, while ensuring that the overall objectives of the FMP or Amendment continue to be met. The FMP or Amendment is expected to set forth and analyze the short-term, long-term, and cumulative effects of the preferred action and its alternatives upon the total relevant human environment, which entails assessing potential biological/ecological, economic, and social impacts. A Council's choice of a particular optimum yield for a fishery should be

based on an analysis of these considerations, and must be carefully documented as consistent with the National Standards for Conservation and Management, other MSA provisions, and other applicable law.

Steps

- Council prepares, based on scoping results and with NMFS' assistance, the draft FMP/Amendment and all draft supporting documents, including the draft NEPA document (e .g., EIS/SEIS or EA), DRIR, Draft IRFA (if applicable), draft PRA statement, and draft proposed regulations, if possible.

- FMP/Amendment preparation team identifies the proposed and alternative management measures addressing the identified fishery problems/issues and assesses probable biological, ecological, economic, and social impacts. Note: Councils, with NMFS's assistance, will assess possible impacts on listed species and critical habitats under ESA requirements and on marine mammals under MMPA.

2.2.4.3 Phase III: Public Review of Draft Documents; Filing Draft EIS/SEIS for Public Review; and Council Preparation and Adoption of Final Documents

This phase involves: (1) Council adoption (usually by formal vote), for purposes of taking to public hearings, the draft FMP or Amendment, draft supporting documents (including DRIR, draft IRFA, if applicable; draft EA or EIS/SEIS; and an initial analysis of potential impacts on protected species under ESA and MMPA (part of the environmental impact analysis)), and draft proposed implementing regulations, if available; (2) NMFS/NOAA filing of draft EIS/SEIS, if applicable, with EPA for public comment per NEPA requirements; (3) public comment on the draft FMP or Amendment, draft supporting documents, and draft proposed regulations, if available, through Council-conducted public hearings; (4) NMFS comment on the draft FMP or Amendment, draft supporting documents, and draft proposed regulations (if available); (5) Council preparation of final FMP or Amendment, final supporting documents (including FRIR, final IRFA, final EA or EIS/SEIS), and proposed implementing regulations; and (6) Council adoption (by formal vote) of the final FMP or Amendment, final supporting documents, and proposed regulations for submission for Secretarial review.

The Council's draft documents released for public review should identify, if possible, its preferred alternative for addressing the specified fishery issues or problems. The Council conducts public hearings in Phase III on the draft FMP or Amendment (and supporting draft documents and draft proposed regulations if available) as required by the MSA. NMFS/NOAA participates, as necessary and appropriate, regarding NEPA requirements during Phase III (e.g., NMFS/NOAA determines if draft EIS/SEIS is adequate for filing; if so, NMFS/NOAA files the draft EIS/SEIS with EPA for public review and comment).

Once NMFS has determined that the Council has completed all necessary components of the draft FMP or Amendment package and submitted them to NMFS, NMFS will begin its informal review of these documents. If a draft EIS/SEIS is required, NMFS/NOAA will determine whether it is adequate for filing.

If the draft EIS/SEIS is determined to be inadequate, it will be returned by the Regional Administrator to the Council with the deficiencies identified and appropriate modifications suggested. If an EA will satisfy NEPA requirements for the proposed action, the draft EA will be reviewed and commented on by NMFS as part of the draft FMP or Amendment package.

Based on a finding of consistency with the requirements of NEPA, NAO 216-6 and CEQ regulations, NMFS/NOAA will file the draft EIS/SEIS with EPA for public comment. Just prior to filing the draft EIS/SEIS, NMFS and the Council will distribute copies and associated draft FMP or Amendment and draft supporting documents to all interested parties for review and comment during Phase III, including appropriate Federal agencies (e.g., EPA Regional Offices).

Following filing of the DEIS/DSEIS and publication of its Notice of Availability (NOA) (if applicable), NMFS will review the draft FMP or Amendment and supporting draft documents (including draft EIS/SEIS or EA) in depth. The Regional Administrator will provide the Council with agency comments (by letter), which will include both critical and substantive issues, by the 60th day after the start of the public review period (usually a 45-day comment period for the draft EIS/SEIS). If the action does not involve filing a draft EIS/SEIS for public review, NMFS will provide comments by the 60th day after the draft FMP or Amendment package is distributed to Regional and Headquarters reviewers, in accordance with the NMFS 1997 Operational Guidelines. For those FMPs or Amendments that involve complex issues, establishment of new agency policy, drafting legal opinions, or resolving substantive differences of opinion within the agency, NMFS comments may be delayed beyond the 60th day (NMFS 1997). It is noted that a Council has the option of requesting an early consultation with NMFS or even an advance agency review of its draft FMP/Amendment and draft supporting documents (including draft NEPA document) prior to the Council's public hearings in Phase III.

Steps

- Council adopts (usually by formal vote), for purposes of taking to public hearings, the draft FMP or Amendment, draft supporting documents (including DRIR, draft IRFA, if applicable, draft EA or EIS/SEIS, and an initial analysis of potential impacts on protected species under ESA and MMPA (part of the draft environmental impact analysis)); and draft proposed implementing regulations, if available.

- Council submits draft FMP/Amendment, draft supporting documents (including draft EA or EIS/SEIS), draft proposed regulations (if available), and any source documents to NMFS for informal agency review.

- NMFS/Council distributes the draft FMP/Amendment and draft supporting documents (including draft EA or EIS/SEIS (see below)) to interested/affected government agencies and public for comment.

- NMFS conducts an informal review of draft FMP/Amendment and draft supporting documents for critical issues (potentially affecting approval) and substantive issues and for consistency with

applicable laws, E.O.s and agency guidance; NMFS provides informal agency review comments to the Council (usually within 60 days of receipt of draft FMP/Amendment package from Council) reflecting agency's internal review and comments from other Federal agencies.

- NMFS/NOAA reviews the draft EIS/SEIS (if applicable) for consistency with NEPA, CEQ regulations, and NAO 216-6 requirements; if held consistent, NMFS/NOAA files draft EIS/SEIS with EPA for public review and comment; EPA publishes FR NOA for usual 45-day NEPA public comment period. NMFS distributes, with Council assistance as requested, the filed draft EIS/SEIS and associated draft FMP/Amendment and other draft supporting documents to interested/affected government agencies (e.g,. EPA) and public. Note: EAs are not filed with EPA at either draft or final stages; public reviews of EAs are optional.

- If endangered or threatened species, related critical habitat, or EFH may be affected, NMFS consults with itself and/or the FWS, depending upon the species involved; NMFS informs Council of agency ESA decisions resulting from formal or informal consultations, or agency EFH decisions resulting from abbreviated or expanded consultations; MSA EFH and ESA Section 7 consultations should be completed prior to Phase IV (submission for Secretarial review).

- Council holds public hearings on draft FMP/Amendment, draft supporting documents (including draft EA or EIS/SEIS), and draft proposed regulations (if available).

- Council prepares final FMP/Amendment, final supporting documents (including FRIR, final IRFA, final EA or EIS/SEIS) and proposed regulations based on public and NMFS/NOAA comments on the draft documents received during Phase III; Council's final FMP/Amendment and final supporting documents reflect ESA consultation determinations and incorporate measures identified in the BO and incidental take statement (if applicable).

- Council adopts (formal vote) final FMP/Amendment, final supporting documents (including FRIR, final IRFA, final EA, or EIS/SEIS), and proposed regulations for submission to NMFS for formal Secretarial review.

2.2.4.4 Phase IV: Secretarial Review and Approval/Disapproval of Final FMP/Amendment; Filing FEIS/FSEIS for Public Review; Proposed and Final Regulations for the FMP/Amendment

This phase involves: (1) Secretarial review of the final FMP or Amendment and final supporting documents (including final EA or EIS/SEIS); (2) NMFS' publication in the FR for public review and comment of the NOA of the final FMP or Amendment and final supporting documents, and of the proposed implementing regulations; (3) NMFS/NOAA filing of final EIS/SEIS (as applicable) with EPA for public review and comment; (4) NMFS' consideration of public comment on the final FMP or Amendment, final supporting documents (including final EIS/SEIS or EA), and proposed regulations; (5) NMFS' approval, disapproval, or partial approval of the FMP or Amendment; (6) NMFS' conclusion of the NEPA process by signing of the FONSI (as applicable when final EA involved) or by signing of the ROD (as applicable when a final EIS/SEIS involved); and (7) implementation of approved FMP or

Amendment measures through issuing final regulations (publication in the FR). Note: If the Council submits a final EIS/SEIS in support of the FMP or Amendment, NMFS/NOAA files it with EPA (if found adequate under NEPA) for publication of an NOA for public review and comment (usual 30-day comment period). Just prior to filing the final EIS/SEIS, NMFS will distribute copies of it and associated final FMP or Amendment and supporting documents to all interested parties for review and comment during Phase IV, including appropriate Federal agencies (e.g, EPA Regional Offices).

Steps

- Council transmits final FMP/Amendment, final supporting document (including FRIR, final IRFA, final EA or EIS/SEIS), and proposed regulations to NMFS for Secretarial review; NMFS declares a "transmittal" date on which it has received all final documents from the Council required to begin Secretarial review.

- NMFS immediately begins review of final FMP/Amendment and final supporting documents for consistency with National Standards, other MSA provisions, and other applicable law.

- NMFS immediately publishes in the FR an NOA of the final FMP/Amendment and final supporting documents for 60-day public comment period.

- NMFS distributes final FMP/Amendment and final supporting documents (including final EA or EIS/SEIS (see below)) to interested/affected Federal agencies for comment.

- NMFS immediately begins review of proposed regulations for consistency with FMP/Amendment, MSA and other applicable law. If found consistent, NMFS publishes proposed regulations in the FR for 45-day public comment period after necessary NOAA/DOC legal and other clearances. If found inconsistent, NMFS notifies Council with recommendations for revisions necessary to make consistent. Note: The MSA provides that proposed regulations be published for a 15-day to 60-day public comment period; standard NMFS practice provides a 45-day comment period for proposed regulations for FMPs/Amendments.

- Council may revise proposed regulations, if found inconsistent with applicable law and returned by NMFS (see previous step), and re-submit to NMFS for re-evaluation and FR publication.

- NMFS/NOAA reviews final EIS/SEIS (as applicable) for consistency with CEQ regulations and NAO 216-6; if held consistent, NMFS/NOAA files final EIS/SEIS with EPA for public review and comment; EPA publishes NOA in FR for 30-day NEPA public comment period. NMFS distributes, with Council assistance as requested, the filed final EIS/SEIS and associated final FMP/Amendment and other final supporting documents to interested/affected government agencies (e.g., EPA) and public. Note: The 30-day public comment period must end prior to NMFS's final action to approve/disapprove/partially approve the FMP/Amendment. Note: EAs are not filed with EPA at either draft or final stages.

- NMFS considers public comment on the final FMP/Amendment, final supporting documents (including final EIS/SEIS or EA), and proposed regulations, as well as comments by other Federal agencies received through the end of 60-day public comment period for the FMP/Amendment (NOA), in taking final action to approve/disapprove/partially approve the FMP/Amendment.

- NMFS approves, disapproves, or partially approves final FMP/Amendment based on determination of consistency with MSA and other applicable law, and notifies Council of agency decision on or before the 30th day after end of public comment period for final FMP/Amendment (NOA). Concurrent with NMFS' final action to approve/disapprove/ partially approve the FMP/Amendment, NMFS concludes the NEPA process either by: (a) signing the FONSI for the final EA (as applicable) and transmitting it to NOAA for concurrence and making the signed FONSI/final EA publicly availably (by mention in the final regulations or the FR notice of final agency action when no final regulations are involved); or (b) by signing the ROD (as applicable when final EIS/SEIS involved; NOAA Administrator for Fisheries signs ROD) and making it publicly available (either through mention in the final regulations or in the FR notice of final agency action when no final regulations are involved).

- NMFS promulgates final regulations within 30 days of end of the proposed regulations comment period to implement approved final FMP/Amendment measures after necessary NOAA/DOC legal and other clearances as applicable (OMB clearance required for significant rules under E.O. 12866 and for collection-of-information measures subject to PRA). Following publication, final regulations are effective after 30-day delayed effectiveness period under APA, unless waived for good cause or if the measures lift regulatory restrictions. Final regulations summarize and address all public comments received on the FMP/Amendment, supporting documents (including final EIS/SEIS or EA), and proposed regulations.

2.2.4.5 Phase V: Continuing Fishery Management

Phase V involves continuing management adjustments for a fishery after an FMP has been approved and implemented. These adjustments may be taken through: (1) an FMP Amendment (see Section 2.1.2 for general discussion and Phases I-IV for specific process steps); (2) an FMP's framework measures and authorized framework regulatory actions, including use of regulatory amendments (see Sections 2.1.3 and 2.1.4); (3) emergency and interim regulatory actions (see Section 2.1.4); and (4) Secretarial FMPs or Amendments and implementing regulations (see Section 2.1.2). As discussed earlier, all such continuing fishery management actions following the implementation of an FMP or Amendment will necessitate supplemental or new environmental review documents consistent with NEPA requirements.

2.2.5 Future Direction

The preparation, review, approval and implementation of FMPs and Amendments and the attendant rules and regulations under the MSA is, by its very nature, a complex process in which the Councils and NMFS have distinct, yet overlapping roles. In many instances, the issues presented are controversial, politically

charged, and difficult to analyze. In addition, a variety of other applicable laws impose even more analytical and procedural requirements on an already complex system.

NMFS, with direction from Congress, initiated the Regulatory Streamlining Project to improve the way the agency and the Councils integrate the multiple mandates governing fisheries management; increase efficiency in designing and implementing fishery management measures; and improve overall the decision-making process. The goal of this Project is to improve the efficiency and effectiveness of NMFS fishery conservation and management activities and to increase compliance with all procedural requirements. In different terms, the ultimate intent of the Project is to ensure that the fisheries management process is done correctly the first time.

On December 26, 2002, the Secretary submitted a report on NMFS's Regulatory Streamlining Project to Congress. The report outlined the changes that NMFS proposed or had already implemented to improve its regulatory process. The report discusses NMFS' intended administrative and regulatory process changes, focusing on the NEPA process as a framework within which to conduct all of the analytical requirements imposed on the regulatory decision-making process for fisheries management.

The open and public processes required by the MSA and NEPA are to provide the basis for implementing regulatory streamlining. Together, the MSA and NEPA require the incorporation of all of the relevant factors into fisheries conservation and management decisions; prescribe an open process for identifying issues and considering a range of alternatives; provide for review and participation by affected states and Indian tribes; and promote effective public review and input. The MSA requires fishery management actions to be consistent with other applicable laws. Similarly, the CEQ regulations for implementing NEPA require agencies, to the fullest extent possible, to integrate the NEPA process with other planning and regulatory compliance requirements (such as the consultation requirement under Section 7 of the ESA, and consistency determinations under the CZMA). This integration must occur at the earliest possible time to ensure that planning and decisions take into account environmental values reflected in these other laws and regulations, avoid delays later in the process, and prevent potential conflicts with alternatives and mitigation methods required by other laws. Documents prepared under the MSA and NEPA do not replace other applicable requirements, such as the RIR which is prepared in compliance with EO 12866 or the Preliminary Regulatory Economic Evaluation (PREE) prepared in compliance with the RFA. Rather, the public resources of the MSA and NEPA are to provide a venue for addressing all applicable requirements under the Regulatory Streamlining Project. NMFS has identified and is taking a number of actions to implement the Regulatory Streamlining Project. Those with a NEPA focus include the following:

Front-Loading the NEPA Process. Environmental, social, and economic factors need to be considered early in the development of management actions. Regulatory streamlining efforts are currently underway at NMFS that include front-loading the regulatory analysis based on what NMFS views as the most demanding analytical tasks - those required by NEPA. Front-loading the NEPA process will allow more effective use of NEPA procedures to identify and resolve important issues earlier in the FMP/Amendment process, such as the interface of NEPA and ESA. This will be accomplished through the active participation of all Regional, Science Center, and Council staff in key responsibilities (e.g,. sustainable

fisheries, protected resources, habitat, economics, legal review), as well as appropriate Headquarters staff, at the early stages of the development of the fishery management action – a "no surprises" approach. All relevant reviewing parties are to participate early in the FMP/Amendment process to ensure that all significant legal and policy issues are identified to the extent possible. Draft documents will be circulated to all involved parties, including EPA reviewers who are willing to review and offer comments on NEPA documents as they are being developed.

Revise the NMFS Operational Guidelines for the Fishery Management Process. Operational Guidelines are being revised to incorporate, in part, the "front-loading" of the NEPA process referenced above, i.e., to promote early input from all interested parties and to utilize existing processes under NEPA as a forum for bringing together all relevant stakeholder input in an early and open way. These Guidelines represent NMFS' official procedural guidelines under the MSA for assisting Councils and all other involved parties in the development, review, approval, and implementation of FMPs, Amendments, and their implementing regulations.

Establishing a National NEPA Training Program. NMFS has set up ongoing national training programs to ensure that Regional, Headquarters, and Council staff are trained in NEPA and the requirements of all related statutes and mandates. Numerous, agency-wide NEPA training courses have been conducted to date and this training will continue in some form on a long-term basis.

Hiring Environmental Policy Coordinators. A NMFS Headquarters "National Environmental Policy Coordinator" and Regional NEPA Coordinators have been hired to ensure national and regional consistency, facilitate front-loading of the NEPA process, provide advice on integrating statutes, and remain current on national policy issues related to environmental compliance. The major role of Regional NEPA Coordinators will be to conduct training and quality control reviews of EAs and EISs to make sure they are adequate and in compliance with NEPA, the CEQ regulations, NAO 216-6, and all other applicable requirements. It is also anticipated that the NMFS Regional NEPA Coordinators will serve as a primary point of communication with the EPA reviewers regarding the development and/or review of specific EISs and related issues. Many of the Regional NEPA Coordinators have already established ongoing working relationships with appropriate staff in EPA Regional Offices. Regional NEPA Coordinators may be contacted at the NOAA Regional phone numbers provided in Section 5. Finally, many of the Councils have hired NEPA specialists.

Improving the Administrative Process. Elimination of unnecessary levels of agency review of documents, including all NEPA documents, and changes in delegations of signature authority will be considered over the next two years.

Improving the Fishery Management Process. The front-loading of the NEPA process, as it is integrated with the MSA FMP/Amendment process, is expected to result in significant efficiency/effectiveness improvements in fisheries management and in reductions in litigation.

The Regulatory Streamlining Project is well under way but there are still major steps yet to be undertaken. Once the revised Operational Guidelines are finalized, they will be implemented as soon as possible.

There will be a transition time required for full and successful implementation of the revised FMP/Amendment process while NMFS, Councils, and other participants adjust to changed roles and responsibilities. It is anticipated that NMFS will share with EPA these revised Operational Guidelines once they are released and will coordinate with appropriate EPA Headquarters and Regional staff in how they may best work with the Councils and NMFS in achieving the Project objectives. Certainly, earlier and more systematic communications between NMFS/Council staff and EPA staff regarding the identification and assessment of environmental impacts of proposed fishery management actions should result.

Of additional note are EPA's own efforts to address existing problems with the FMP/Amendment EISs through the development of this Section 309 review guidance.

Finally, it should be noted that MSA has been scheduled for re-authorization for the last four years. During that time, Congress has held numerous hearings on various aspects of hte MSA, and key members of both the Senate and House of Representatives have proposed legislation to re-authorize the MSA. Congressional hearings to date have taken public testimony on a number of major issues that may results in changes to the MSA. These issues have included overcapitalization of fisheries, cooperative research within the fishing industry, individual fishing quotas (IFQs), and interactions between fisheries and marine mammals, ecosystem-based management, the proper use of scientific information, Council operations, and the effects of sonar on marine mammals. Congress is expected to revisit MSA re-authorization in 2005.

SECTION 3 Fishery Issues in NEPA Documents

While past emphasis has been on fishery development and expansion, with single-species management the practice, fishery managers are now transitioning to a future that involves stabilization, contraction, and ecosystem-wide effects of the fisheries. The diversity of fishing regions, the pressures on resources, the variability of management performance, the complexity of ecosystem-based management, and the varying status of fish stocks all make conservation and management of fisheries a complex and interdependent effort.

The major challenge of fisheries management is to find a balance between social, economic and biological considerations that ensures healthy fisheries and healthy ecosystems. Balance is critical to sustainability – balance between the present and the future needs, resource use and conservation, biology and economics, communities and individuals, variability and stability. It should be noted that economic and social impacts are considered major components to finding this balance.

For a fish stock to remain biologically productive over time, the fish mortality rate must not exceed the rate at which the fish can renew themselves through reproduction and growth. Fish mortality rates are affected by natural, environmental, and human causes. Natural effects include fish preying on each other, disease and age. Environmental conditions that affect fish include oceanic conditions that may affect the availability of food, thereby affecting the rates of growth and survival for fish, and quality and quantity of their habitat. Human impacts include fisheries in which fish are removed in targeted fishing – as a harvested resource – and are removed as they are caught incidentally to targeted fishing – as bycatch. Incidentally caught fish, or bycatch, can be impacted by direct injury or death from the fishing gear, from injury during handling and release, or from the "ghost fishing" of lost gear. Bycatch that is discarded can be indirectly impacted by the fishery due to loss of fitness which allows them to become easy prey for predators. Fish are also impacted indirectly from gear disturbances to habitat (particularly EFH) or from fishing practices that alter the mix of fish stocks (e.g., reduced food source where one species feeds on another). All of these effects also impact non-fish marine animals (e.g., marine mammals, sea turtles, and birds).

Figure 3-1illustrates the possible ecological impacts of fishing, showing how fishing can alter ecosystem structure and function. The physical impact of some fishing gear on the seafloor may impact habitats for important commercial species and other marine life. Together these impacts can lead to habitat damage, reduced biodiversity, changes in food webs, and reduced ecosystem function.

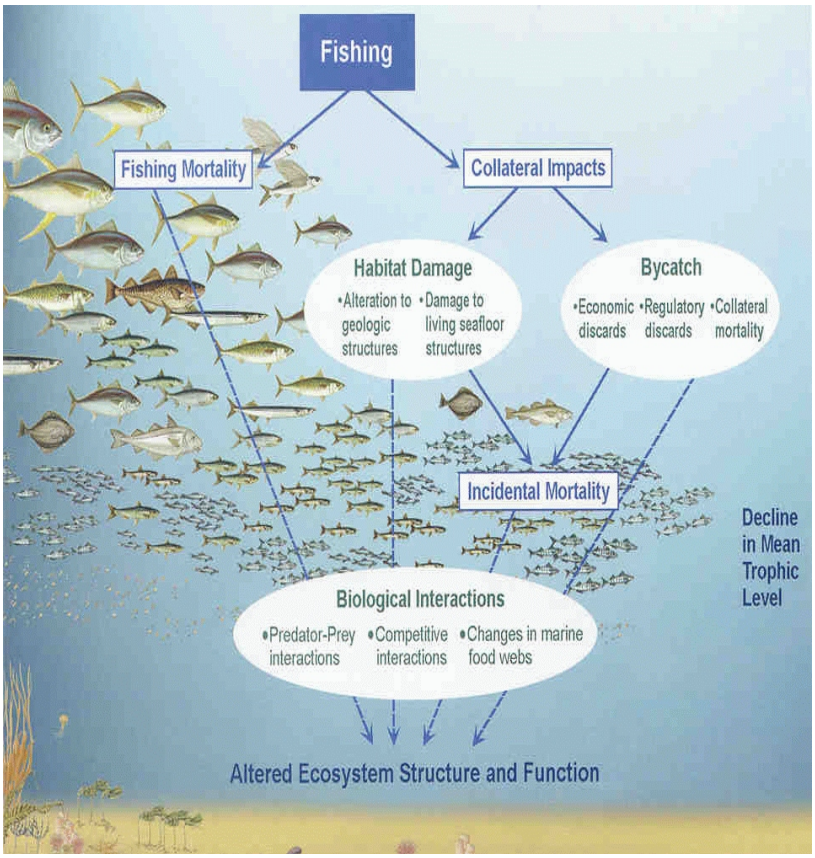

Figure 3-1. Ecological Impacts of Fishing
Source: Morgan and Chuenpagdee 2003 (*Shifting Gears, Addressing the Collateral Impacts of Fishing Methods in U.S. Waters*)

The overall approach to fisheries management is slowly changing. Looking beyond individual fish stocks to the sustainability of ecosystems is an idea that is now being encouraged and implemented, consistent with NMFS' mission statement of "...stewardship of living marine resources through science-based conservation and management and promotion of healthy ecosystems." Innovation is needed for methods to catch fish, and reduce bycatch, protect EFH, rebuild over-fished stocks, reduce over-capitalized fleets, resolve user and interest group conflicts, and increase accountability.

Another important component of fisheries management is the ability to base decision-making on the best available scientific information that encompasses all biological and human components of the fishery system, as set forth in MSA's National Standard 2 (50 C.F.R. 600.315). To the extent that information is available, it must be included in an FMP/Amendment NEPA document. Even with the best available data, however, there may be large gaps in knowledge and considerable uncertainty surrounding fishery management decisions, particularly given the complex and dynamic nature and interrelationships of marine ecosystems. Where information is lacking or uncertainties exist, these data deficiencies need to

be clearly explained in the EIS as per CEQ regulations at 40 C.F.R. 1502.22. In addition, the EIS should clearly identify monitoring and research efforts to address data gaps and/or uncertainties.

The following sections provide a more detailed look at the major environmental fishery issues including: bycatch, EFH, protected species, water quality, subsistence and indigenous fishing, and ecosystem-based management. Three additional "big picture" issues important in the development of FMP/Amendment EISs are addressed. These include the science of fisheries management, data needs (e.g., use of best scientific data and incomplete or unavailable information), and document readability.

3.1 Bycatch

During fishing operations, a substantial number of fish and/or other organisms may be incidentally caught, sometimes resulting in mortality (depending on the species caught, the fishing gear, season, and area). As such, bycatch and discards add to fishing mortality and should be considered a direct effect of fishing. MSA and its implementing regulations define bycatch as "fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Bycatch does not include fish released alive under a recreational catch and release fishery management program." Fish, in turn, are defined under MSA as "finfish, mollusks, crustaceans, or parts thereof, and all other forms of marine animals and plant life other than marine mammals and birds." Under this definition, sea turtles are considered "fish" although all sea turtles in U.S. waters are protected under the ESA. Protections for marine mammals and sea birds are provided by ESA, and further protections are found in the MMPA and Migratory Bird Treaty Act (MBTA), respectively. Within MSA, bycatch is further defined as regulatory discards and economic discards. Regulatory discards are defined as harvested fish that fishers are required by regulation to discard whenever caught (e.g., fish or other organisms designated prohibited species that by law must be returned to the sea) or are required by regulation to retain but not sell, including fish that may be below legal size or which are caught in excess of established bycatch or catch quotas. Economic discards are defined as fish that are the target of a fishery but which are not retained because they are of an undesirable size, sex or quality, or a species for which no market exists, or for other economic reasons. Some specific examples of economic discards include fish of the wrong species (non-target species), fish of unmarketable size, or fish damaged by gear through mishandling or by predation while in nets or hooked. Some specific examples of regulatory discards include juvenile fish, fish of the wrong sex (berried female lobster), fish captured beyond quota, and fish or other organisms designated as prohibited species that by law must be returned to the ocean.

Bycatch is not a new issue or problem. It has existed since fishing began and virtually all fisheries in the world have some bycatch associated with them. Bycatch exists because of the imperfect nature of fish capture, the limited selectivity of certain fishing gear, the behavior and distribution of fish, and the structure of management programs. Some examples of how these factors cause bycatch are:

- Limited selectivity of certain fishing gear, e.g., longlining for swordfish often results in catches of sharks, marlin, tuna, and turtles.
- Fish behavior and distribution, e.g., bait in lobster pots attracts and captures black sea bass, tautog, and crabs, as well as lobsters.

- Management programs, e.g., a quota system that may result in "high-grading", i.e., discarding small specimens of the target species to make room for more valuable specimens of the same species when the total allowable catch (TAC) is limited.

The quantity of fish killed as bycatch is a significant factor for many stocks. Evidence suggests that these levels of mortality are unsustainable and that we are above the maximum sustainable level of many fisheries' biological productivity. Alverson *et al* (1998) estimated that roughly 25% of fishery catch is discarded. Using this estimate, Dayton and Colleagues (as cited in Roady 2002) estimated that in the year 2000, U.S. fisheries discarded approximately 2.3 billion pounds (1.05 million metric tons) of sea life. Bycatch of this magnitude can significantly impact individual species and marine ecosystems. It can also create significant challenges for both fishers and managers, and has become a primary driver in how some fisheries are managed. Bycatch of species protected under MMPA and ESA can cause fisheries to be closed; and when a fishery exceeds its bycatch limit for certain species, it is closed for the season.

It should be noted that under MSA, the primary bycatch or discard concern pertains to discards associated with the harvesting of finfish and the incidental taking of sea turtles. However, the incidental taking of species other than fish (as defined by the MSA), such as marine mammals and sea birds, is also considered bycatch according to NMFS in its 1998 report, *Managing the Nation's Bycatch* (NMFS 1998), which defines bycatch as "the discarded catch of any living marine resource plus retained incidental catch and unobserved mortality due to a direct encounter with fishing gear." However, NMFS is not emphasizing the inclusion of "retained incidental catch" as bycatch in its recent National Bycatch strategy. The taking of non-fish species also has been referred to as "incidental catch," "incidental species," and "incidental take, " although the latter phrase (incidental take) usually refers to the taking of protected species, including non-fish species, as defined under ESA and MMPA ("take"). EPA reviewers may see reference to one or more of these terms in the course of reviewing an FMP/Amendment EIS, so it is helpful to be aware of the varying terminology and its implications under the respective regulations.

The MSA requires FMPs/Amendments to be consistent with ten National Standards, including National Standard 9, which states that "conservation and management measures shall, to the extent practicable, minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch." Section 303 of the MSA requires NMFS to establish a standardized reporting method for bycatch and to minimize bycatch and the mortality of unavoidable bycatch to the extent practicable. Practicability criteria for National Standard 9 also have been set forth in 50 C.F.R. 600.350(d)(3). Specific factors to be considered in an analysis of practicability of management measures to minimize bycatch include: population effects for the bycatch species; ecological effects due to changes in the bycatch of that species; changes in bycatch of other species of fish and the resulting population and ecosystem effects; effects on marine mammals and birds; changes in fishing, processing, disposal, and marketing costs; changes in fishing practices and behavior of fishermen; changes in research, administration, and enforcement costs and management effectiveness; changes in economic, social and/or cultural value of fishing activities and non-consumptive uses of fishery resources; changes in distribution of benefits and costs; and social effects.

A number of advances have been made to address issues relating to the management of bycatch within the Nation's fisheries - by NOAA, the Councils, fishermen, private industry, and other groups, often

working cooperatively. As part of its National Bycatch Strategy, NMFS has developed goals and objectives for standardized bycatch reporting methodologies, and a national approach to standardized bycatch monitoring programs (NOAA 2004). Each NMFS region also has identified bycatch priorities and developed implementation plans. A complete listing of bycatch related documents, including the above and recent regulatory actions and FMP Amendments, etc. are available on the NMFS website at http://www.nmfs.noaa.gov/bycatch.htm.

Numerous methods currently in use to monitor and estimate fishery bycatch include: the use of data collected onboard fisheries research vessels and chartered vessels, self-reporting by fishermen and/or other industry representatives, at-sea fisheries observers, and video cameras and digital scanning devices. Estimates of bycatch should be incorporated into FMPs/Amendments and taken into account in setting fishing quotas and in understanding and managing fishing to protect ecosystems and non-fished ecosystem components. Reducing fishing intensity on target species can also reduce bycatch.

In addition to bycatch limits and bycatch monitoring, gear modifications, gear restrictions, and other regulations have been implemented to reduce bycatch. In the North Pacific, biodegradable panels are required for pot gear to minimize bycatch associated with so-called ghost fishing of lost gear; and gillnets for groundfish have been prohibited to prevent ghost fishing and bycatch of non-target species. Recently, NOAA announced the development of a new technology to help commercial longline vessels reduce accidental capture and harm to endangered sea turtles, following three years of gear research in the Atlantic Ocean to develop turtle friendly fishing gear and methods for commercial longline vessels. The agency and partners have concluded that encounters with leatherback and loggerhead turtles can be reduced by as much as 90 percent by switching the type of hook and bait from the traditional "J" style hook with squid to a large (18/0) circle style hook with mackerel. The research has been so successful that NOAA now requires the use of these technologies in U.S. longline fisheries in both the Atlantic and Pacific. (*NOAA News Online Story*, January 5, 2004, and August 16, 2004; found at: www.noaanews.noaa.gov/stories2004/s2147.htm and
http://www.magazine.noaa.gov/stories/mag144.htm.

Technological developments and careful selection of fishing gear (e.g., bycatch-reduction devices) also can be effective in reducing bycatch. Such options should be encouraged, developed, and required where appropriate, and FMPs/Amendments should document that bycatch is being reduced to the extent practicable. Section 4.2.5 includes a checklist of environmental issues, including bycatch, that a Section 309 reviewer should consider when reviewing FMP/Amendment EISs.

3.2 Essential Fish Habitat

3.2.1 General

Few question the need for habitat protection in order to maintain and rebuild fish stocks. Congress defines EFH as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity" (16 U.S.C. 1802 (10)). In Section 303 (a)(7) of MSA, Congress directed the NMFS and the eight Councils, under the authority of the Secretary, to describe and identify EFH in each FMP, minimize

to the extent practicable the adverse effects of fishing on EFH, and to identify other actions to encourage the conservation and enhancement of EFH. Further, Section 305(b)(2) of MSA, directs other Federal agencies to consult with the Secretary with respect to "any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken by such agency that may adversely affect any essential fish habitat identified under the Magnuson-Stevens Act." The goal of the EFH provisions is to bring attention to habitat conservation necessary for sustainable fisheries management.

The identification of EFH requires information on current and historic stock size, geographic range, time and space distribution, and life stages within habitats occupied by the managed species. As a result, EFH is multi-dimensional and can be identified for a specific species in a certain geographic area or in a particular level of the water column. EFH descriptions and identifications should also account for spatial and temporal variation in the distribution of each major life stage (defined by developmental and functional shifts) to aid in understanding managed species habitat needs. While a specific habitat may only be essential to a particular species during a certain time of year or season, the regulations governing EFH designation do not provide for temporal designation (i.e., once a habitat is designated EFH, it is EFH all year long.

Many parties participate in the public process of designating EFH. The eight Councils and NMFS (HMS Division), which have the responsibility for drafting FMPs, are charged with proposing EFH descriptions and identifications for each life stage of the managed species in their jurisdiction. These descriptions and identifications must be based on the best available science regarding the habitat requirements of each managed species and are developed through a public process with many opportunities for input. Once proposed descriptions and identifications have been made by a Council through an FMP or Amendment, a notice is published in the FR to inform the general public that the FMP or Amendment has been submitted to NMFS for Secretarial review. NMFS reviews public comments on the FMP or Amendment before making a final decision on whether to approve a Council's proposed EFH descriptions and identifications.

Specific Council responsibilities under EFH are threefold: (1) Councils address the description and identification of EFH and Habitat Areas of Particular Concern[4] (HAPCs), minimization of adverse impacts to EFH to the extent practicable, and make recommendations for actions and conservation and enhancement techniques; (2) Councils may take part in consultation with the Secretary, NMFS and Federal agencies on the Federal projects that may adversely affect EFH; and (3) Councils continue to manage and support a sustainable fishery. Guidance and procedures for implementing the 1996 amendments (which included a requirement to protect EFH), were provided through final rules published by the NMFS in the FR on January 17, 2002, and promulgated at 50 C.F.R. 600.805-600.930. As new FMPs are developed, EFH for newly managed species will be defined as well.

[4] Habitat Areas of Particular Concern are subsets of EFH identified based on one or more of the following considerations: importance of ecological function; extent to which the habitat is sensitive to human-induced degradation; whether and to what extent development activities are stressing the habitat type; or rarity of habitat type (50 C.F.R. 600.815(a)(8))

Specific Federal agency responsibilities under EFH are to consult with the Secretary with respect to any Federal action that may adversely affect any identified EFH (MSA Section 2(b)(7)). Guidance and procedures for EFH consultations are promulgated at 50 C.F.R. 600.905-600.930. As part of the EFH consultation process, the guidelines require Federal action agencies to prepare a written EFH Assessment describing the effects of that action on EFH (50 C.F.R. 600.920(e)(1)). EFH Assessment guidance is provided by NMFS at www.nmfs.noaa.gov/habitat/habitatprotection [links to "essential fish habitat" and then to EFH guidance documents].

3.2.2 Mandatory Contents – Description and Identification of EFH

NMFS regulations at 50 C.F.R. 600.815 "Contents of Fishery Management Plans" require each FMP to describe and identify EFH in text that clearly states the habitats and habitat types determined to be EFH for each life stage of the managed species; to explain the physical, biological and chemical characteristics of the EFH, if known; and to explain how these characteristics influence the use of EFH by the species/life stage. FMPs also must identify the specific geographic location or extent of habitats described as EFH and include maps of the geographic locations of EFH or the geographic boundaries within which EFH for each species and life stage is found.

The FMP Amendments also must identify and describe potential threats to EFH, including threats from development, fishing, or any other non-fishing related activities (e.g., dredging, fill, excavation, mining, impoundment, discharge, runoff, conversion of aquatic habitat). Specifically, they must: (1) address how different fishing methods affect EFH by assessing the impacts of fishing practices on EFH in their regions (e.g., gear impacts on habitat and benthic organisms, prey species and their habitat); and then, if a fishing practice is determined to have an adverse effect on EFH that is more than minimal and not temporary, (2) adopt measures to minimize that impact, to the extent practicable. To meet this requirement, Councils may develop measures such as the following to help protect EFH:

- Fishing equipment restrictions: limit seasonal and area uses of trawl gear and bottom longlines; restrict net mesh sizes, traps, and entanglement gear to allow escapement of juveniles and non-target species; reduce fish and shellfish traps set near coral reefs and other hard bottoms; limit seasonal and areal uses of dredge gear in sensitive habitats; prohibit use of explosives and chemicals; restrict diving activities that have potential adverse effects; prohibit anchoring of fishing vessels in coral reef areas and other sensitive areas; and prohibit fishing activities that cause significant physical damage in EFH.

- Time/Area closures: closing areas to all fishing or specific gear types during spawning, migration, foraging and nursery activities; and designating zones to limit effects of fishing practices on certain vulnerable or rare areas/species/life history stages.

- Harvest limits: limits on the take of species that provide structural habitat for other species assemblages or communities, and limits on the take of prey species.

Adverse effects may be direct or indirect; physical, chemical or biological alterations of the waters or substrate; loss of, or injury to benthic organisms, prey species and their habitat; and other ecosystem components. Adverse effects may be site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions (50 C.F.R. 600.910(a)). Much information is available to the Councils, but research is especially important where the gear of one fishery affects the habitat of another, or where both fishing and non-fishing activities affect EFH and result in potential cumulative impacts.

Councils also are encouraged to give special consideration to the adverse impacts of fishing on HAPCs, whose designations are encouraged by NMFS to focus conservation priorities and efforts on localized areas that are vulnerable to degradation, and on specific habitat areas that play a particularly important role in the life cycles of Federally managed fish species.

The identification of EFH, adverse impacts, and recommendations must be included in the FMPs/Amendments of managed fisheries. Councils have approached this directive in three ways: drafting individual EFH amendments for FMPs for specific fisheries, drafting a generic EFH amendment for all managed fisheries in a particular region, or jointly preparing amendments to address co-managed species that may occur in two or more regions. Appendix D contains more information on EFH, including EFH related consultation requirements (including integration of EFH and ESA consultation and roles and responsibilities within NMFS), EFH in State waters, and links to relevant websites.

3.3 Protected Species

Statutory requirements relating to species protected under ESA, MMPA, and MBTA and the related E.O. (E.O. 13186, Protection of Migratory Birds) are addressed below. These statutes and E.O. directly govern fishery interactions with threatened and endangered species and other specially protected species, although fishery interactions with marine mammals and birds are also addressed to some extent in NOAA's bycatch reduction strategy.

Marine mammals, seabirds, and other species can be impacted by fisheries through competition for prey, direct injury and/or mortality (e.g., bycatch), and habitat disturbance (e.g., EFH). There are many examples:

- Longline fishery interacting with protected sea turtles, especially loggerheads, leatherbacks, and green turtles; as well as seabirds, such as the Laysan albatross and black-footed albatross; and to a lesser extent, whale and dolphin species. Marine species may attempt to feed on the baited hooks or may get a flipper or wing caught by an exposed hook.
- Sea turtles may get trapped in shrimp trawls and be killed or seriously injured.
- Entanglement of whales, marine mammals, and sea turtles in gillnets and trap lines (e.g., lobster pots in New England entangle endangered right whales, gillnet gear entangle bottlenose dolphins).

Advances in fishing gear have resulted in some modifications to reduce impacts to protected species. For example, shrimp trawls often include a Turtle Excluder Device (TED), a grid of bars with an opening in the net at either the top or the bottom that is fitted into the neck of the trawl. Target species (shrimp) slip through the bars and are caught in the bag at the end of the trawl. Larger, non-target animals, such as turtles, strike the grid bars and are ejected through the opening in the net.

Species protected under ESA (16 U.S.C. 1531 *et seq.*)[5]

EPA reviewers should be familiar with the requirements for interagency consultation on FMP/Amendments that may affect endangered or threatened species listed under the ESA or their designated critical habitat. Under Section 7 of the ESA, "each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species...". FMP/Amendments are actions subject to Section 7 of the ESA. The FMP/Amendment DEIS should include the status of any ESA-related coordination with other agencies and associated documentation and incorporate consultation results in the final EIS. For marine and anadromous species listed under the ESA that may be affected by a proposed FMP/Amendment, NMFS typically consults within itself (OPR/PRD) and the FWS (if marine birds or other species under their jurisdiction could be affected). The two agencies are collectively referred to as the Services.

In FMP/Amendments and related documents, the Councils, in coordination with NMFS, must assess the potential impacts of the action on listed species and any critical habitat. NMFS OPR/PRD and FWS (if applicable) should provide a list of endangered and threatened species, critical habitat(s), and species proposed for listing to Councils so that Councils can assess whether proposed fishery management, under FMPs/Amendments, may affect listed or proposed species or critical habitat.[6] The NMFS Sustainable Fisheries Division (SFD) should assist the Councils in assessing whether any effects on protected species and critical habitat may occur. Although not required by law, candidate species may also be considered. Candidate species are those for which the Services have sufficient information to support a proposal to list, but the proposal is precluded by higher-priority listing actions. Consideration of candidates can assist planning through advance notice of potential listings, allowing resource managers to alleviate threats and thereby possibly remove the need to list the species as endangered or threatened.

If SFD determines the proposed action may affect any listed species or critical habitat, informal or formal consultation must be completed. Informal consultation is appropriate for low risk situations, formal consultation for situations posing more risk. To determine whether informal or formal consultation is

[5]Note that the ESA consultation process may vary by Council, NMFS region, and with NEPA document development; and the internal consultation process within NMFS may vary by region.

[6]Section 7(a)(4) of the ESA establishes a procedural duty to confer with the Services regarding species proposed for listing and proposed critical habitat if an action is likely to jeopardize the species or adversely modify the habitat. The purpose of this conference is to identify potential conflicts when the species or critical habitat is finally listed.

necessary, SFD provides an assessment to OPR/PRD showing whether the action is likely to adversely affect the species or critical habitat. To initiate informal consultation, the SFD should submit an analysis – which may be incorporated into the DEIS or drawn from analysis in the DEIS – with its determination that a proposed FMP/Amendment is not likely to have adverse effects. The Services will use this and other information to independently analyze effects during informal consultation. The Services will review the finding through an informal consultation and, if Services concur on an effect determination of "not likely to adversely affect," they will issue a letter stating their concurrence and the Section 7 consultation requirements will have been met.

However, if the FMP/Amendment is likely to adversely affect a listed species (through direct or indirect take or any adverse impacts on habitat or ecosystems) or designated critical habitat, SFD will initiate formal Section 7 consultation with the appropriate Service who will then conduct consultation which is concluded with the issuance of a BO by the Services assessing whether or not the action is likely to jeopardize the continued existence of a species or adversely modify critical habitat. Note: formal consultation is initiated after the action agency, NMFS SFD in this case, makes a request and submits an initiation package that meets the requirements at 50 C.F.R. 402.14(c). The information from the initiation package may be included in other required draft environmental documents in-so-far as the requirements of those other documents are met. If NMFS or FWS conclude that the action is likely to jeopardize or adversely modify, they are required to provide reasonable and prudent alternatives (RPAs) to the proposed action(s), that will avoid jeopardy or adverse modification. If "take" is anticipated – harm or killing of listed species otherwise prohibited under Section 9 of the ESA – the Services specify reasonable and prudent measures (RPMs) to minimize the take that, if implemented, provide an exemption from the take prohibition.

A draft BO is unlikely to be prepared by the writing of the EIS; however, the Council and SFD should be working with PRD and/or FWS as they begin the FMP/Amendment formulation and some background information about the affected listed species and any critical habitat, and preliminary effects/impact assessments may be available and should be incorporated if they are.

At a minimum, the FMP/Amendment DEIS should identify the following:

1. whether consultation is needed, has occurred, the status of consultation, a schedule for when consultation will be completed (if available);
2. any documents (e.g., a biological evaluation), or reference to such documents stemming from Section 7 consultation, with a summary in the DEIS; and
3. a discussion of how the results of consultation will be incorporated and addressed in the Final FMP/Amendment EIS (if they are not included in the draft FMP/Amendment EIS).

The results of consultation and a discussion of how any RPAs or RPMs will be implemented should be included in the Final FMP/Amendment EIS and should be discussed in the ROD.

Consultation status and/or required documentation may not be addressed in FMP/Amendment DEISs, such that conclusions regarding "no effect" to a listed species or critical habitat cannot be substantiated. Although biological evaluations and FMP/Amendment DEISs are often integrated into one document, if an assessment is available at the Draft EIS stage yet not incorporated into the DEIS, the reviewer could

request a copy to review concurrently. If the documentation is not yet available, the draft assessment should provide sufficient analysis that can be included in the Draft EIS to support general conclusions made regarding potential impact. To help facilitate document review, EPA could suggest that related ESA consultation and issues information be included in one section of the FMP/Amendment DEIS. This is particularly useful if a preferred alternative has been identified in the DEIS. If the DEIS lacks the biological evaluation or other supporting information to determine potential effects to listed species, the reviewer may want to meet with NMFS to suggest the DEIS be revised and resubmitted.

Regulatory streamlining efforts are currently underway at NMFS that include front-loading the regulatory analysis based on what NMFS views as the most demanding analytical tasks - those required by NEPA - including the interface of NEPA and ESA. The issue of when to begin formal consultation under ESA is of particular concern since sometimes there is no preferred alternative identified in the DEIS, therefore there is no defined action on which to base a BO. As part of regulatory streamlining, NMFS is working more closely with the Councils in development of alternatives, and its preferred alternative, to evaluate possible impacts and effects of alternatives on protected and ESA listed species. While this process cannot take the place of formal Section 7 consultation, it is designed to aid the Council in its decision-making process. Whenever consultation has been completed and a BO is available, the EIS should, at a minimum, cross reference the status, effects, conclusion, RPAs, and incidental take statement sections of the BO in the NEPA document and reference the BO.

Species protected under MMPA (16 U.S.C. 1371 *et seq.*)

Impacts on marine mammals may be addressed through the ESA consultation process, however, not all marine mammals are listed on the ESA so reviewers should be familiar with the MMPA and the protections it provides to marine mammals. The MMPA establishes a moratorium on the taking and importing of marine mammals and marine mammal products, with certain exceptions. Responsibility is divided between NMFS' Office of Protected Resources (over 150 stocks of whales, dolphins, and porpoises, as well as seals and sea lions) and FWS (other marine mammals: sea otters, polar bears, manatees, dugongs, and walrus) for authorizing takings under limited circumstances, including incidental takings during commercial fishing operations. NMFS maintains an informative website regarding its MMPA responsibilities and activities, as well as the MMPA itself, at: http://www.nmfs.noaa.gov/pr.

The MMPA was amended in 1994 and one of the most important changes was the goal of "incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate..." To aid in fulfilling this goal, the MMPA requires that NMFS categorize commercial fisheries in one of three categories, based upon level of marine mammal takes, impose permit registration and monitoring requirements for fisheries for which marine mammal take is a concern (Category I or II fisheries), establish take reduction teams and plans to minimize take of marine mammals in fisheries, and produce annual marine mammal stock assessment reports, to ensure that the categorization of fisheries is correct.

Every year NMFS publishes a List of Fisheries (LOF) which lists all commercial fisheries in the U.S. into one of three categories dependent upon level of marine mammals mortalities or serious injury resulting from

operation of the fishery. Categories are based on the level of potential biological removal (PBR), essentially the number of individuals that can be removed from the marine mammal stock, through human activities, and still allow the stock to meet or maintain its optimal sustainable population (see 50 C.F.R. 229.2 for the implementing regulations). Category I fisheries are those for which marine mammal serious injury or mortality is greater than or equal to 50% of PBR (frequent interactions); Category II fisheries have serious injury/mortality rates between 1 and 50% (occasional interactions); Category III fisheries have serious injury/mortality rates less than or equal to 1% of PBR (remote likelihood of interaction). Category I and II fisheries require a permit from NMFS and may be required to take observers on the fishing vessels and may require that NMFS create a Technical Review Team (TRT) to advise management on appropriate measures to reduce take of marine mammals. TRTs are more likely to be created if a depleted or strategic stock of marine mammals is being taken. Designation of a depleted or strategic stock provides some additional protections for marine mammals of concern, however, it does not provide the same level of protection as an ESA listing and does not require a separate consultation. An FMP/Amendment should identify the fishery's categorization on the annual LOF and any additional permit requirements pursuant to the listings. It should also include a review of the status of the marine mammal stocks that may interact with the fishery and actions to mitigate impacts.

Species protected under Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*)

The Migratory Bird Treaty Act (MBTA) was enacted to implement a convention between the United States and a number of other countries to protect migratory birds, including sea birds. This federal law makes it illegal to "pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, caused to be shipped, deliver for transportation, transport, cause to be transported, carry, cause to be carried by any means whatever, any migratory bird, included in the terms of this Convention…for the protection of migratory birds…or any part, nest, or egg of such bird." Seabirds are frequent companions to commercial marine fishing vessels, attracted to the churning waters of a boat's wake to feed on escaping fish from trawl nets, seines, and other fishing gear, and on baited hooks of hook-and-line vessels. Some seabirds can be incidentally caught during fishing operations; most can get caught on baited hooks set by hook and line gear. The DEIS FMP/Amendment should include potential interactions between the fishery and migratory birds and possible mitigations for take.

In addition, NMFS has developed a National Plan of Action (NPOA) to address sea bird bycatch in longline fisheries, which is part of a larger international effort to reduce sea bird bycatch in longline fisheries. The final version of the plan is available on the NMFS website at: www.fakr.noaa.gov/protectedresources/seabirds/national.htm. For some endangered bird species, take in longline fisheries significantly affects the species potential to survive or recovery. EPA reviewers should make sure that any DEIS FMP/Amendment addressing longline fishing have included a discussion on seabird mortalities. Sea bird interactions can also be significant in gillnets and trawls.

The Pacific Fishery Management Council (PFMC) is developing the first FMP that includes mandatory seabird avoidance measures (U.S. West Coast Fisheries for Highly Migratory Species). In 1996, the North Pacific Fishery Management Council (NPFMC) established mandatory seabird avoidance measures to

reduce the incidental take of seabirds in hook-and-line fisheries. Through collaboration with Sea Grant researchers and the hook and line fishing industry, the Council approved more stringent requirements in 2001. Most recently, on January 13, 2004, NMFS issued a final rule to revise the regulations requiring seabird avoidance measures in the hook-and-line groundfish fisheries of the Bering Sea Aleutian Islands (BSAI) Management area and Gulf of Alaska (GOA), and in the Pacific halibut fishery in U.S. Convention waters off Alaska (69 FR 1930). This action is intended to improve the current requirements and further mitigate interactions with the short-tailed albatross, an endangered species protected under ESA, and other seabird species in hook-and-line fisheries in and off Alaska.

In summary, EPA reviewers should ensure that FMP/Amendment EISs address all potential direct, indirect (e.g., shift in fishing effort to rebuild fisheries may impact protected species), and cumulative impacts to protected species and consider measures, such as gear modifications, to help minimize impacts to protected species.

3.4 Water Quality

Since water quality is an EPA mandate, EPA reviewers should comment on water quality in Section 309 comment letters, as appropriate, and as it relates to fisheries. Fishery management actions may have only minimal impacts on water quality. However, to the extent that adverse water quality effects (both from fishing and from cumulative effects from other sources) can adversely affect fish (e.g., turbidity, oil sheen from vessels, fish advisories), EPA reviewers should focus on both types of concern. EPA reviewers have commented regarding impacts to water quality and have noted several concerns with respect to the Clean Water Act, including the potential for water quality degradation from discards of fish processing waste from vessels, mercury bioaccumulation in fish (and associated human health concerns from fish consumption), fuel/oil spills from vessels, and perhaps most frequently, potential cumulative effects of turbidity/sedimentation impacts resulting from mobile fishing gear (e.g., dredges and trawls).

3.5 Subsistence and Indigenous Fishing

Consistent with E.O. 12898, EPA can help ensure that other agencies identify and address, as appropriate, environmental justice concerns which could include native peoples involved in subsistence and indigenous fishing. Subsistence fisheries are those conducted for food and other products but not for commercial or recreational use. These fisheries are pursued mostly, but not exclusively, by native peoples (e.g., the Inupiats of Alaska) and represent a small proportion of total catch, although they may be important locally.

Indigenous fisheries are often established through treaties and other agreements between the Federal government, tribal governments, and other native groups. They are concentrated in California, Oregon, Washington, and Alaska. Treaty tribes are formally represented in Pacific fisheries management, where the total catch quotas of salmon and several stocks of groundfish and shellfish include direct treaty allocations (although it should be noted that the Pacific Council does not manage shellfish stocks). Indigenous fishing includes commercial, subsistence, and ceremonial catches. While indigenous fisheries are a small proportion of total U.S. landings, they are of large importance regionally. Some EPA

reviewers have expressed concern regarding the lack of communication with tribal governments and native populations and whether impacts to subsistence and indigenous fishing have been considered. The DEIS should clearly state what efforts were taken to involve native populations, what issues were identified, if any, and how they were addressed.

3.6 Ecosystem-based Management Approach

Fishing and ecosystems interact. Both are affected by environmental changes and human activities. Fishing has obvious direct effects on fished stocks. It can alter abundance, age and size structure, sex ratio, genetic structure of fished populations, and species composition of marine communities. The removal of important commercial species (who prey on other fish) also can have large effects on ecosystems. Fishing also can affect habitats, most notably by modifying bottom topography and the associated benthic communities. Thus the effects of fishing on many marine ecosystems, including changes in productivity and biological diversity, can be significant.

The challenge facing fishery managers is to ensure that fishing – commercial, recreational, and subsistence – allows the health of the marine ecosystem to be maintained. The single-species approach of the past may not fully accommodate the broader concerns for ecosystem health. Ideally, fishery management decisions would be made with a full understanding of the impacts of fish harvesting on all components of the marine ecosystem, and the ability to answer questions such as: Will the population of prey species of the target species increase as a result of reduced predation? Will the larger population of that prey species, in turn, reduce its own food supply (another prey species or vegetation such as seagrasses) to unsustainable levels, and if so, would this have other ecological effects (e.g., loss of vegetation could result in habitat loss or beach erosion)? In another scenario: Could overfishing of the target species adversely affect another managed fishery nearby and perhaps be counterproductive to its rate of recovery? Although considerably more complex, an ecosystem-based approach to fisheries management takes into account the effects of changing interactions of fishery resources at different trophic levels (e.g., striped bass and crabs) that are not necessarily addressed in single-species management.

A number of reviewers, including EPA, have noted the value of evaluating fisheries management using an ecosystem-based approach rather than focusing only on the target species. A DOC NMFS 1999 report to Congress by the Ecosystem Principles Advisory Panel *(Ecosystem-Based Fishery Management)* (NMFS 1999) identified such a need and offered a practical combination of principles and actions that they believe "will propel management onto ecological sustainable pathways." Specifically, the report identified basic principles, goals and policies for ecosystem-based fisheries management and provided recommendations related to developing and implementing fisheries ecosystem plans and the research required to support management. The eight recommendations included:

- delineation of the geographic extent of the ecosystem(s) that occur within the Council's authority;
- development of a conceptual model of the food web (predator-prey relationships);
- description of habitat needs of different life history stages for all plants and animals "significant" to the food web;

- calculation of total removals - including incidental mortality - and relationship to standing biomass, production, optimum yields, natural mortality, and trophic structure;
- assessment of uncertainty (how to characterize and buffer against);
- development of indices of ecosystem health as targets for management;
- description of available long-term monitoring data and how used; and
- assessment of ecological, human and institutional elements of ecosystem most significant to fisheries and outside Council/DOC authority.

The first recommendation includes the establishment of MPAs.[7] Such areas, where fishing may be prohibited, have been effective in protecting and rebuilding populations of many marine species. They often increase the numbers of fish and other species in nearby waters.

With respect to ongoing activities analyzed in FMPs/Amendments, the panel recommended, in particular, that Councils be encouraged to apply ecosystem principles, goals and policies in the following three areas to ensure effective development and implementation of a new type of plan, the fishery ecosystem plan:

- Consider predator-prey interactions affected by fishing allowed under the FMP/Amendment. Set optimum yields considering ecological factors and the integrity of the ecosystem, and justify TAC with respect to total ecosystem biomass, production and interspecies relationships.

- Consider bycatch taken during allowed fishing operations and the impacts such removals have on the affected species and the ecosystem as a whole, in terms of food web interactions and community structure. FMPs/Amendments should identify bycatch taken by gear types and describe how bycatch changes temporally and spatially in a given fishery; management actions should consider implications of such removals and their consequences; FMPs/Amendments should identify and consider existing or potential alternative gear types of fishing practices which could reduce such bycatch.

- Minimize impacts of fisheries operations on EFH identified with the FMP/Amendment. FMPs/Amendments should not only identify gear effects on habitat (direct or indirect effects on

[7] E.O. 13158 defines MPAs as "any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources within." There are many different types of MPAs in U.S. waters, including National Marine Sanctuaries, fishery management zones (e.g., where use of specific types of fishing gear are restricted), national seashores, national parks, national monuments, critical habitats, national wildlife refuges, national estuarine research reserves, State conservation areas, State reserves, and many others. MPAs have different management characteristics and have been established for different purposes - to protect, maintain, or restore natural and cultural resources in coastal and marine waters. They have been used effectively both nationally and internationally to conserve biodiversity, manage natural resources, protect endangered species, reduce use conflicts, provide educational and research opportunities, and enhance commercial and recreational activities. NOAA and the Department of Interior maintain a website on Marine Protected Areas of the United States at: http://www.mpa.gov/.

managed or unmanaged species), but also identify existing or potential alternative gear types or fishing patterns, such as area closures, which could alleviate these impacts.

Ecosystem considerations are being taken into account more and more in fisheries management, such as the effect of fishery removals on protected species (e.g., marine mammals and sea turtles) and forage for marine birds, and the effect of fishing gear on habitat. Several Programmatic FMP/Amendment EISs, in fact, are currently underway or have been recently released that incorporate an ecosystem-based approach. Other FMP authorities, such as the Chesapeake Bay Council, also recognize the value of an ecosystem-based approach to fisheries management and have committed to incorporating ecosystem considerations and multi-species interactions in the management of bay fishery resources. It is important to note, however, that the success of this approach depends, at least in part, on the availability of better scientific information relating to the complex interactions within an ecosystem or ecosystems. EPA recognizes that the science for ecosystem management is not fully developed, and that additional research is needed in many areas, including how fishing affects ecosystems, how fishing gear impact habitat, bycatch reduction, the optimal size of MPAs, and stock conditions.

Under NOAA's Strategic Plan of September 2004 titled "New Priorities for the 21st Century," a major goal is to "protect, restore, and manage the use of coastal and ocean resources through an ecosystem approach to management." (See NOAA's Strategic Planning Office website at http:/www.spo.noaa.gov.) NMFS's Strategic Plan of October 14, 2004, identifies specific long term actions necessary to fulfill the NOAA goal as it applies to the conservation and management of living marine resources. These actions include (a) improved monitoring and assessments of ecosystems to provide routine forecasts on the effects of human activities, changes in the physical and chemical environment (e.g,. seasonal short-term and long-term climate change), and interactions among biological resource communities and their habitats that affect the structure and productivity of regional marine ecosystems; (b) conducting mandated economic and social science monitoring, assessment, and analysis; and (c) increasing the agency's ability to conduct community profiles, evaluate protected species, and analyze the impacts of marine protected areas.

Over the next several years, NMFS will undertake priority efforts to better understand the multiple components that comprise sustainable marine ecosystems, including fishery resources, threatened and endangered species, marine mammals, biodiversity, and important habitats, as well as the risks to these ecosystems. NMFS intends to use this information to better manage human actions and to predict and monitor the impact of fishery management decisions on the fishery resources, economy, and coastal communities. These efforts will require improved scientific understanding of both the natural and human-induced factors that result in ecosystem changes.

NMFS priority management objectives in the near future that are dependent on the scientific information obtained by the above research and monitoring activities include: (a) an increased number of fish stocks managed at sustainable levels; (b) an increased number of regional coastal and marine ecosystems delineated with approved indicators of ecological health and socioeconomic benefits that are monitored and understood; and (d) an increased number of marine habitat acres conserved and restored. The agency's basic challenge is to manage uses of ecosystems by applying scientifically sound observations,

assessments, and research findings to ensure the sustainable use of resources and to balance competing uses of coastal and marine ecosystems.

EPA recognizes that NMFS' efforts to date to incorporate an ecosystem-based approach is an agency initiative with no direct legal requirement. EPA acknowledges and supports these efforts.

3.7 Science of Fisheries Management

In accordance with MSA, all fished stocks with FMPs must be assessed to determine if they are overfished, or are undergoing overfishing that could lead to a stock becoming overfished. The basic goal of stock assessment is to estimate the amount of fish that can be safely removed (allowable biological catch) while keeping the fish population healthy.[8] Accurate stock assessments require information on: (1) catch and fishing activities for the stock, (2) surveys of fish abundance, and (3) the biology of the stock. To the extent possible, environmental and ecosystem factors that influence the stock are incorporated into the assessment.

A stock assessment is designed to determine the abundance of individuals in the stock, the amount of additional mortality caused by fishing, and the productive potential of the stock to sustain itself. Usually, estimates of the fishing mortality rate and stock size that can optimize (or maximize) the catch on a sustainable basis are provided. Thus, major outputs of an assessment are a determination of the status of the stock relative to present fishing intensity, the stock's ability to sustain additional fishing, and the rate at which a depleted stock is expected to rebuild to its target level of abundance.

Inherent to the development of fisheries management measures (i.e., alternatives) analyzed in an FMP/Amendment EIS is the status of a stock (or stocks), as well as the methodology used to determine the quotas/catch of the fishery itself (landings, gear, fishing grounds, allocation, processing, markets, etc.). Much of this highly technical discussion is based on sophisticated modeling and can be very difficult to understand. One of the major concerns that has been raised by reviewers of FMPs/Amendments (other than EPA) has been the methodology used to determine the amount of TAC and whether all factors have been considered. EPA reviewers may choose to defer the review of the more technical analyses performed by fishery scientists and biostatisticians to NMFS (e.g., one of six regional science centers). Another approach might be to incorporate or adopt the comments and/or recommendations of an independent panel of experts that has been convened specifically for the development or review of a particular FMP/Amendment or related fishery resource issue. Contact with the appropriate NMFS regional office, science center or Council could help identify such a panel, if one exists. For example, the Recovery Science Review Panel was convened by NMFS in 2001 to help guide the scientific and technical aspects of recovery planning for listed salmon and steelhead species in the Pacific Northwest. The use of such

[8] It is important to distinguish between species, population and stock in discussing fishery biology. Biologists define them as follows: species is a group of similar animals that can freely interbreed; population is a group of animals of the same species living in a certain area; while stock refers to the practical unit of a population that is selected for management of harvesting purposes. In some cases a managed stock may include more than one species.

panels and the incorporation of panel recommendations into an EIS are additional questions EPA may raise during the EIS review, as noted below.

EPA reviewers who are untrained in fishery biology could focus on the following questions:

- Does the analysis make sense?
- Is sufficient information included?
- Has the best available scientific information been used?
- Does the analysis provide a basis for the statements made?
- Are conclusions justified?
- Has the model used been identified?
- Has the model been reviewed/accepted by scientific community?
- Have all uncertainties been properly addressed?
- Have any dissenting opinions been identified and an explanation provided if the opinion was discounted?
- Was any special panel formed to address a specific issue(s) in the FMP/Amendment EIS and if so, does the EIS include a discussion of any panel recommendations?

The review also could focus on the extent to which the fishery and biological elements identified above are addressed in the FMP/Amendment. The age of first spawning and the age of fish being caught are particularly relevant to the establishment of size limits and gear restrictions to protect fish (at least until they have a chance to spawn once). For example, minimum mesh size limits for gill nets is a gear restriction that allows smaller fish to escape.

Finally, those Section 309 reviewers who are interested in learning more about fishery biology and population modeling may want to refer to the following additional resources:

- A National Research Council publication, *Improving Fish Stock Assessments* (1998), which describes the different conceptual and mathematical models currently used to guide fisheries management.
- *Understanding Fisheries Management: A Manual for Understanding the Federal Fisheries Management Process, including Analysis of the1996 Sustainable Fisheries Act (*Wallace and Fletcher 2001), a publication funded by NOAA and prepared by Mississippi-Alabama Sea Grant Consortium. This manual is especially suited for the layperson; it is available online at: http://nsgl.gso.uri.edu/masgc/masgch00001.pdf/. Part 1 includes some basics on stock assessment, age, growth and death, virtual population analysis (VPA), overfishing, indices and allocation. Appendices address surplus production and provide a comparison of annual mortality rates and instantaneous mortality rates.

- *Annual Report to Congress on the Status of U.S. Fisheries - 2001, Toward Rebuilding America's Marine Fisheries* (mandated by the SFA amendments) (NMFS 2002). Appendix 1 of this annual report includes a description of the methodology for determining stock status.

3.8 Data Needs, Including Incomplete and Unavailable Information

The second National Standard under MSA relates to the need to include the best scientific information available. One of the major concerns with FMP/Amendment EISs is the degree to which they have included the necessary scientific data/best available information and the extent to which this information is used appropriately. A second concern relates to the adequacy of scientific information (including how to deal with unavailable information and/or uncertainties) and how it should be handled in an EIS. This latter situation occurs all too frequently in fisheries management since, even in the best assessments, it is rare that everything that should be known about a stock is known.

Based on past EPA reviews, areas where additional information is required but has not always been provided, include listed species (e.g., depleted, threatened, and endangered species), modeling results, EFH, and specific mechanisms or approaches to ensure enforceability. In some cases, information is available, but simply not included (e.g., BO). In other cases, information is presented but not related to the discussion or conclusions. Still in other instances, the data are simply not available, are outdated (e.g., fishery assessment data), or the EIS preparers failed to obtain or include the required data (e.g., bycatch data), or incorporate the best available scientific information.

In many cases, the scientific data necessary to conclusively evaluate environmental impacts may be incomplete or unavailable at the time an EIS is being prepared, thereby making evaluation and comparison of alternatives difficult. In recognition of this possibility, CEQ regulations at 40 C.F.R. 1502.22 specifies an approach for handling data gaps in a manner which allows the environmental evaluation process to proceed in a reasonable fashion. The burden on the agency preparing the EIS is to fully disclose the situation, i.e, "the agency shall always make clear that such information is lacking."

If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining that information is not exorbitant, the agency shall include the information in the EIS. However, if the information is unavailable, or if the cost of obtaining the information is exorbitant, then agencies must: (1) acknowledge that the information is incomplete and unavailable; (2) explain the significance of the information to evaluating reasonable foreseeable adverse impacts; (3) summarize existing credible scientific evidence relevant to evaluating the reasonable foreseeable adverse impacts; and (4) evaluate the impacts based on theoretical approaches or research methods generally acceptable to the scientific community.

The adequacy of existing science is often questioned. Many argue, for example, that stock assessments could greatly benefit from improvements in the capacity for resource assessment surveys, recreational fishery data, incorporation of more ecosystem interactions, etc. All parties are concerned that the status of nearly two thirds of our nation's fish stocks is still unknown. And many fishery stakeholders note a critical gap in information needed for ecosystem management, especially relating to ecological

relationships and EFH requirements. EPA reviewers can question dated information or data gaps. However, EPA should defer to the expertise of NMFS and the Councils regarding the adequacy of, or uncertainties associated with, modeled fishery data (e.g., optimum yield, maximum sustainable yield, overfishing, biomass, etc.).

In summary, fisheries are managed in the context of an incomplete understanding of fish population dynamics, interactions among species, effects of environmental factors on fish populations, and effects of human actions. As a result, successful fisheries management must address and deal with uncertainties and errors. Reviewers should be aware of such information gaps and needs when reviewing the EISs.

3.9 Readability

> "Writing. Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts."
>
> (40 C.F.R. 1502.8)

FMPs/Amendments often prove very difficult to read because of the level of science and extensive amount of technical jargon presented in the documents. This concern has been expressed in several of the EPA comment letters. Notwithstanding the fact that some of the EISs are complicated by the science and the nature of the action, it is important that EPA continue to encourage NMFS to prepare documents that can be understood by the lay public, and to translate scientific information into a format that is useful to decisionmakers. No action should be so complicated that it cannot be described and evaluated in simple terms. EPA reviewers should encourage the use of visual aids (tables, figures, graphics) to help the reader better understand the complex, more difficult concepts, and to allow comparison. Several other items related to readability include ensuring that technical terms are explained in lay terms, acronyms are identified in a list of acronyms and defined in a glossary (or not used) and that the use of scientific jargon is minimized. While readability should not be a central focus of EPA's review [1500.1(c) …"it is not better documents but better decisions that count"], it is proper for EPA to encourage more readable, easily understood documents. Sample comments relating to document readability are found in Section 4.2.7.

SECTION 4 Writing EPA Comment Letters

The preceding section described how fisheries management issues should be discussed in NEPA documents. While EPA reviewers, in general, should give deference to NMFS and the technical experts with respect to the detailed aspects of fisheries management, there are ways for Section 309 reviewers and NEPA coordinators to use their Section 309 comment letters to improve NEPA documents. This section provides a brief overview of Section 309 reviews, followed by a checklist tool for reviewers. The checklist is broken out by sections of an EIS including example comments where appropriate.

4.1 Commenting on Fishery Management in Section 309 Letters

EPA must comment on any matter relating to EPA's duties and responsibilities contained in, among other things, actions subject to NEPA's EIS requirement (42 U.S.C. 7609, Public Law 91-604 12(a), 84 Stat. 1709). EPA's comments on any aspect of the NEPA process are most useful when they provide specific instructions concerning information needs or provide specific direction to the preparing agency. For example, if EPA determines that the fisheries management alternatives or overall approach is too narrowly targeted or is likely to produce significant impacts, the Section 309 comment letters should say so. If analyses or critical information is missing from the document, the letters should indicate what additional analyses should be undertaken or information should be included. At the same time, Section 309 reviewers need to recognize that considerable uncertainty and data gaps remain with respect to fisheries. In instances where reviewers may request additional data, Section 309 comments should be as constructive as possible with emphasis on incremental improvement in the analysis of environmental impacts from fisheries management. Better documentation of fisheries management issues will lead to greater public disclosure and involvement, and ensure better decisions relating to maintaining the sustainability of our fisheries. Finally, Section 309 reviewers should strive for consistency in comments, using established language that has proven successful.

The primary EPA mandate relevant to FMPs is water quality, specifically its potential degradation by fishing gear (e.g,. clam or scallop dredging causing turbidity clouds) and possible overboard disposals (e.g. finfish and shellfish viscera) (see Section 3.4 for a discussion of possible water quality concerns). NEPA issues include comments on the alternatives analysis, direct/indirect/cumulative impacts and mitigation, as well as general document inconsistencies and readability. Under Section 309 of the Clean Air Act, EPA reviewers should comment on other issues where appropriate, such as Federally protected species, effects of the FMP/Amendment on EPA National Estuary Plans, habitat loss (EFH, dredge and bottom trawl damage to seafloor), environmental justice, the overall FMP approach (e.g., whether it is ecosystem-based, whether another fishery or nonfishery species would be affected and how if the target species is overfished), and selected issues of interest (e.g, bycatch, ghost fishing effects, or predator-prey relationships).

Detailed comments in NOAA/NMFS/Council areas of expertise should generally be avoided (e.g., fishery data modeling to develop values for optimum yield, maximum sustainable yield, mortality rates, biomass levels defining overfishing, landing quotas, minimum size restrictions, time/area closures, fleet reductions,

etc.), unless the EPA reviewer has a particular expertise in one or more of these areas and can elaborate upon the environmental issues or concerns with a proposed action. Exceptions include common sense comments concerning the adequacy of data (e.g., whether they are current), the inclusion of data (e.g., are there data for gear effects; are there bycatch data from independent observers onboard, etc.), and the substantiation of each conclusion that was based on modeling data. Reviewers also should consider the "logic flow" such as whether sufficient information has been provided to the reader to reach a conclusion or form an opinion.

4.2 Checklist for Conducting Section 309 Reviews of FMPAmendment Draft EISs

While the following checklist is not all-inclusive, it provides an overview of the regulatory and environmental issues that a Section 309 reviewer should consider when reviewing FMP/Amendment EISs. This checklist should be used only as a guide or tool. It is NOT a mandatory list that must be followed, nor are all items in the checklist necessarily applicable to a certain action. Note that the list is broken down by topic and includes selected example comments, where appropriate.

4.2.1 Notice of Intent (NOI)

EPA reviewers may wish to provide comments and suggestions for preparation of the EIS during the public scoping process. Commenting at this early stage, in response to a NOI to prepare an EIS and before actual preparation of the document begins, would assist the document preparer by providing indications of areas that are important to EPA and the benefit of EPA's perspective of potentially significant issues and reasonable alternatives.

Comments in response to a NOI should be placed in the official Section 309 review file for easy reference when the DEIS comes in for review. Some examples of the types of general comments EPA may wish to make at this early stage of document development are:

- "The draft EIS should describe the existing environment and any sensitive species in detail sufficient to understand potential impacts that may occur from the proposed action and alternatives."

- "In accordance with Section 1502.14 of the CEQ regulations for implementing NEPA, the draft EIS should:

  - rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their elimination,
  - devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits,
  - include any reasonable alternatives not within the jurisdiction of the lead agency,
  - include the alternative of no action,
  - identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement,

- identify such alternatives in the final statement unless another law prohibits the expression of such a preference, and
- include appropriate mitigation measures not already included in the proposed action or alternative."

If a specific issue is known to be important to a particular region, EPA may wish in its comments to remind the preparing agency of that importance. For example:

- "The importance of Native subsistence fishing needs to be described and discussed in the draft EIS in detail sufficient to provide a basis for considering the potential for impacts resulting from the proposed FMP."

4.2.2 Purpose and Need

Under the MSA, as amended, all FMPs/Amendments must comply with the ten National Standards and contain "measures to prevent overfishing and rebuild overfished stocks and measures to protect, restore and promote the long-term health and stability of the fishery" (see Section 2.1.1.1). These mandates typically form the basis for a sometimes broad statement of purpose and need that relates to the sustainability of a particular fishery. More focused management measures or approaches may be developed in response to specific fishery management problems or needs, such as addressing a specific conflict between different gear users or addressing an allocation request by a fishery sector. The FMP/Amendment purpose and need would be more narrowly presented in these latter instances.

Under NEPA, the purpose and need section of the EIS presents a brief statement explaining why agency action is being considered, i.e., the underlying purpose and need to which the agency is responding. This statement is a critical element which sets the overall direction of the document and serves as an important screening criterion for determining which alternatives are reasonable and should be carried forth in the analysis. If a purpose and need statement appears to allow only one reasonable solution, then it may be too narrowly written and the statement and reasons for rejecting other alternatives should be re-examined and confirmed or revised, as appropriate.

Some EPA reviewers have observed that the purpose and need statement in FMP/Amendment EISs is difficult to understand and appears to unduly restrict the range of alternatives analyzed. It is important for the purpose and need statement to be clearly written so that the decisions to be made, and the options available, are clearly understood. Purpose and need should answer the following questions:

- ✓ What is the basic problem or deficiency with the existing situation and why is this a problem?
- ✓ How does purpose and need relate to the agency's mission and what facts support the need?
- ✓ Why is this problem occurring here and why is it important? If it is occurring somewhere else too, why is it being addressed only here? Where does "here" end and why?

- ✓ Why are we addressing this problem now? Why not before, or later? What could happen if the problem is not addressed now (e.g., statutory, operational policy, new program)? What has happened since the problem was not addressed earlier? What will happen if the current situation is allowed to continue?

Additional questions an EPA reviewer may wish to consider when reviewing a purpose and need statement could include the following:

- ✓ Is the statement of purpose and need clearly worded so that the decision to be made is understood?

- ✓ Does the statement of need provide a clear explanation of why there is a need for action?

- ✓ Does the statement of purpose and need lead to a reasonable range of alternatives?

The EPA reviewer could provide the following type of comment either before document preparation begins, i.e., in response to the NOI, or as a result of reviewing a draft EIS where the reviewer felt the purpose and need was unclear:

- We suggest that the document, consistent with the language of 40 C.F.R. 1502.13 "briefly specify the underlying purpose and need", succinctly list the purpose and need statements driving the project, and use these statements as the starting point for formulating alternatives and analysis.

4.2.3 Alternatives

CEQ Requirements

The importance of alternatives development and evaluation in an EIS cannot be overstated. The CEQ regulations consider the alternative section (including the proposed action) to be the heart of the EIS and provide substantial direction and discussion on how alternatives are to be developed and treated. Section 1502.14 of the regulations state that the alternative section of an EIS should present the environmental impacts of the proposal and the alternatives in a comparative form, sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. Further, the alternatives section is to: 1) rigorously explore and objectively evaluate all reasonable alternatives and to briefly discuss reasons for rejecting those alternatives eliminated from detailed study; 2) devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits; 3) include reasonable alternatives not within the jurisdiction of the lead agency; 4) include the alternative of no action; 5) identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference; and 6) include appropriate mitigation measures not already included in the proposed action or alternatives.

No Action Alternative

A "no action" alternative must be considered in all EISs, as required by Section 1502.14(d) of the CEQ NEPA regulations. It provides a benchmark, enabling decisionmakers to compare the magnitude of environmental effects of the action alternatives. It also can be an example of a reasonable alternative potentially outside the jurisdiction of the agency which must be analyzed (46 FR 18026, March 23, 1981). CEQ guidance discusses two types of "no action", depending on the nature of the proposal being evaluated: continuing the present course of action (maintenance of the status quo) or the proposed activity not taking place at all (46 FR 18026, March 23 1981). In the case of updating a management Plan, like FMPs/Amendments, where ongoing programs initiated under existing legislation and regulations will continue, even as the new plans are developed or updated, the "no action" alternative would be "no change" from the current management regime or no regulatory change. Thus, the "no action" alternative may be thought of in terms of continuing with the present course of action, or maintenance of the *status quo*, until the action is changed. The second interpretation of "no action" is illustrated in instances involving federal decisions on proposals for projects, where the "no action" would mean the proposed activity would not take place 46 FR 18026, March 23 1981, Question 3).

The No Action alternative should not automatically be considered the same as the existing condition of the affected environment, since reasonably foreseeable future actions may be taken whether or not any of the action alternatives are chosen; this is especially true in fisheries management. When the No Action alternative, such as maintenance of the *status quo*, is different from the existing condition, as projected into the future, the difference should be clearly defined. "No Action" therefore is often described as the "future without the proposed action." Example "future" changes may include other NMFS resource management actions that affect the fishery and resource use changes. Sufficient discussion should be devoted to the No Action alternative so that readers can make the needed comparisons for evaluation.

Alternatives in FMP/Amendment EISs

Alternatives in FMP/Amendment EISs may be derived from combinations of various fishery management actions or strategies relating to resource management, habitat conservation, stock rebuilding, etc., and which include, but are certainly not limited to:

- size of the unit to be managed (including areas closed to fishing),
- establishment and size of marine protected areas,
- fishing gear, methods, and restrictions,
- number of fishers,
- length of the season (including closed seasons),
- amount of catch,
- monitoring of catch,
- bycatch and protected species,
- allocations, and
- permit requirements.

All management measures may not be relevant to all plans, and reviewers should be flexible and prepared to exercise judgement when evaluating whether all reasonable alternatives have been considered. Reviewers also should expect to find some discussion of alternatives that were eliminated from detailed study and the rationale for their elimination as required by CEQ regulations.

Other criticisms of alternatives in FMP/Amendment EISs include the following: the alternatives are so vague such that they would result in almost any action allowed to be taken and the environmental consequences cannot be adequately defined; the alternatives are too narrow and do not include a sufficient range; and the alternatives consider only short-term fixes rather than incorporate longer-term goals and objectives.

All reasonable alternatives considered in an FMP/Amendment, including the preferred alternative and other reasonable alternatives that are not within NMFS' jurisdiction, must adequately incorporate the standards and requirements of MSA.

When reviewing the alternative discussion in an EIS, the EPA reviewer may wish to consider the following questions:

- ✓ Is the proposed action clearly defined?
- ✓ Is a reasonable range of alternatives analyzed in the document?
- ✓ Has sufficient information been presented to explain why alternatives eliminated from detailed study were eliminated?
- ✓ Are the environmental impacts of alternatives presented in a comparative form to sharply define the issues and provide a clear basis for choice among alternatives?
- ✓ Has sufficient information been presented to allow the decisionmaker or other readers to evaluate the difference among alternatives?
- ✓ Is the No Action alternative clearly identified and described in sufficient detail so that its scope is clear and potential impacts can be identified?
- ✓ Are the impacts presented in a manner which allows the decisionmaker and other reviewers to rigorously compare and evaluate the comparative merits of the alternatives?
- ✓ Are the alternatives treated fairly and in an even handed manner?
- ✓ Is a preferred alternative identified? (Optional in a draft EIS, but required in a final EIS - see Section 1502.14(e) for the conditions which provide flexibility on this requirement).

✓ Do the proposed action and alternatives considered as reasonable achieve the stated purpose and need?

EPA Comments Concerning Alternatives on Previous EISs

EPA reviewers of previous draft, final and supplemental EISs, have commented extensively on alternatives. Among the concerns noted in these previous reviews were: 1) lack of identification of a preferred alternative in the draft EIS [Note that 40 C.F.R. 1502.14 says "agencies shall identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference"], 2) consideration of an unduly restrictive range of alternatives (in some cases the restrictive range presented potential problems for the decisionmaker, in others the restrictive range failed to provide protection to the ecosystem and to sensitive species), 3) alternative presentation (format) was difficult to follow and didn't allow for comparative evaluations (see example comment below), 4) specific shortcomings of a specific alternative (see example below), and 5) the preferred alternative might not achieve its intended goal. In one case, the preferred alternative involved closing part of a fishing area to U.S. fishermen because of concerns with sea turtle bycatch. EPA noted that since foreign fishermen were not restricted by the ESA to release any caught sea turtles, closing of the area to U.S. fishermen could actually result in more turtles being caught and killed (by foreign fishermen). Some EPA reviewers have observed that some FMPs/Amendments contain too many alternatives and that many could probably have been dismissed from further consideration - with appropriate justification in the DEIS for each alternative rejected - to help streamline the NEPA process.

If the EPA reviewer finds that the alternatives are not clearly compared in an EIS with respect to impacts, the following type of comment might be made:

- In order to better meet the spirit of public disclosure of impacts under NEPA, the FEIS should provide a clear overview of all of the alternative FMP actions and potential impacts to relevant resources. An effective way to present this information would be to include a table or matrix which lists all of the proposed actions and alternatives on one axis and briefly identifies [sic] the associated environmental impacts along the other axis. This would give an overview of all the proposed actions, and offer a quick comparison of the different environmental impacts associated with each action and the entire FMP.

Should the EPA reviewer be concerned about the ability of the proposed alternatives to maintain sustainability of the target (or non-target species), a comment that identifies specific shortcomings of an alternative(s) would be appropriate. An example comment is provided below that relates to the need to include Stellar sea lion protection measures as part of the alternative(s):

- "EPA is concerned that the alternatives do not contain sufficient protective measures to conserve Stellar sea lions. Pages 2-3 and 2-4 describe the history of the Stellar sea lion protection measures. Measures that have been implemented to protect Stellar sea lions to date include preventing willful and accidental deaths of Steller sea lions and the limiting of fishing activities

both temporally and spatially. All action alternatives, except alternative 2, are continuations of these same themes and we are concerned that a larger ecosystem approach may be needed to maintain viable populations or Steller sea lions, specifically by lowering the total allowable catch in the fishery as a whole."

4.2.4 Affected Environment

This section of the EIS provides a general description of the area and resources that may be affected by the agency's proposal. If available, historic changes and trends affecting a resource or feature, up to and including present conditions, should be described to set the stage for the projection of future changes and trends concerning that resource or feature. Emphasis should be placed on environmental parameters that would be significantly affected by the alternatives and only brief treatment should be given to characteristics that would be affected to only a minimal degree. The EIS should also state that for resources predicted not to be impacted, no further analysis or discussion is warranted due to the lack of impact.

Questions that EPA may wish to consider in the review of a draft EIS could include:

- ✓ Is the existing environment described in sufficient detail to form a basis for evaluating the potential for direct, indirect and cumulative impacts?

- ✓ Is the physical environment of the project area, including the associated ecosystem (if appropriate), identified and described? Important ecosystem characteristics may include ocean regime conditions, food web, predator-prey relationships, habitat (water column and benthic), including EFH.

- ✓ Are descriptions of the target and potentially affected non-target species (e.g., fish, mammals, birds) and protected species included?

- ✓ Is the existing relationship between the target species and other components of the target species' environment addressed? Were all life stages of target fish discussed and related to appropriate species in the food chain?

- ✓ Are unique characteristics of the affected geographical area described, such as proximity to historic or cultural resources, MPAs, national estuaries, park lands, or ecologically critical areas?

- ✓ Are cultural and human features of the affected environment described, such as cultural, recreational, unique or significant marine life/areas, socioeconomic, low-income and minority populations, tribal, subsistence and indigenous fishing, fishing communities, etc.? [Note that with respect to environmental justice and tribal consultation, NMFS is in the process of developing its own guidance and approach to conducting environmental justice assessments.]

- ✓ Have important resources been identified and described in detail commensurate with the potential for impact?

- ✓ Is the affected environment section balanced by the environmental impact section? (Lengthy descriptions of the existing resources that are unaffected by the proposed action or alternatives may make interesting reading, but are of little value to the decision maker and should be excluded.)

- ✓ If environmentally sensitive resources are present which require an environmental review under another law, regulation or E.O., has that review requirement been met or integrated into the EIS? (If the review requirement has been met, does the EIS acknowledge that the requirement has been completed and summarize and incorporate any pertinent or relevant information?)

- ✓ If consultation has been completed confirming environmentally sensitive resources are not present in the affected area, are the consultation letters included in an appendix?

An example comment that the EPA reviewer might wish to make concerning the status of consultation on protected species is as follows:

- The draft [NEPA document] references the NMFS BO and approval of an incidental take permit for the [type of fisheries] as proof that the proposed action will not jeopardize the subject protected species. We recommend that the final [NEPA document] either attach these documents as appendices and/or summarize the underlying rationale provided for the no jeopardy opinion.

4.2.5 Environmental impacts

For the purposes of NEPA, "effects" and "impacts" are synonymous. Direct effects are caused by the action and occur at the same time or place as the action. The direct effect typically is the taking of the target species. Indirect effects are reasonably foreseeable effects caused by the action that occur later in time or are farther removed in distance. Cumulative effects are those that result from the incremental impact of an action when added to other past, present and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. Indirect and cumulative effects result from the relationship between the target species and other components of the environment (e.g., predators, competitors, prey species, bycatch, habitat, etc.). For example, measures to rebuild fisheries may shift fishing efforts that, in turn, could adversely impact a protected species. Because fisheries are part of a larger, connected ecosystem, potential indirect and cumulative impacts are an especially important consideration in an FMP EIS. For example, overfishing of the target species in an extreme case could result in a population explosion of a non-target competitor or prey species and subsequent adverse ecological impacts. Potential cumulative effects are one driving factor for the current emphasis on ecosystem-based approach to fisheries management in an effort to improve the sustainability of fisheries.

Both EPA and CEQ have developed guidance documents relating to the consideration of cumulative impacts. These include the *Consideration of Cumulative Impacts in EPA Review of NEPA Documents* (EPA

1999) and *Considering Cumulative Effects - Under the National Environmental Policy Act* (CEQ 1997). In reviewing the cumulative impacts analyses, EPA's guidance suggests that reviewers should focus on the specific resources and ecological components that can be affected by the incremental effects of the proposed action and other actions in the same geographic area. Further, it suggests that the reviewer should determine whether the NEPA analysis has identified the resources and ecosystem components cumulatively impacted by the proposed action and other actions by considering: (1) whether the resource is especially vulnerable to incremental effects; (2) whether the proposed action is one of several similar actions in the same geographic area; (3) whether other activities in the area have similar effects on the resource; (4) whether these effects have been historically significant for this resource; and (5) whether other analyses in the area have identified a cumulative effects concern.

Major environmental concerns associated with FMPs and Amendments include impacts not only to target species but to non-target species, including protected species, such as from bycatch and ghostfishing, and loss of EFH; water quality; and minority populations, who rely on subsistence fishing for food. In some cases, the non-target species can be released unharmed and survive. In other cases, the non-target fish may be unable to survive, such as from abrupt hydrostatic pressure changes when brought to the surface. Most impacts to non-target species occur from bycatch or loss of essential habitat (e.g., harvesting of sargassum which may serve as a nursery area for juvenile sea turtles). Other impacts may include depletion of a food supply (where one species serves as food for another species) or impacts to the benthic (seafloor) community from bottom-fishing gear which can reduce habitat complexity or destroy physical refuges for animals such as the tubes of tube-worms, etc.

Impacts are considered substantive if they jeopardize the sustainability of any target or non-target species; cause substantial damage to the ocean and coastal habitats or EFH; adversely impact public health or safety; adversely impact an endangered or threatened species, marine mammal or the critical habitat of these species; or have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships).

Questions an EPA reviewer may wish to consider in reviewing the environmental impacts (consequences) section of an EIS include:

- ✓ Is sufficient information present to support the conclusion regarding impact level?
- ✓ Is sufficient information provided about the proposed action and alternatives to support comparison of impacts?
- ✓ Have the beneficial and adverse effects, and direct, indirect and cumulative effects been identified for target and non-target species (e.g., fish, sea turtles, marine mammals, seabirds) and quantified to the extent possible?
- ✓ Would the proposed action affect any EPA mandates, including water quality (e.g., particularly relevant to actions where processing onboard the fishing vessel is an option)?

- ✓ Would the proposed action threaten the violation of Federal, State, Tribal, or local law or requirements imposed for the protection of the environment?
- ✓ Would the proposed action cause substantial damage to the ocean and coastal habitats and/or EFH as defined under the MSA and identified in the FMP/Amendment?
- ✓ Would the proposed action have a substantial adverse impact on public health or safety?
- ✓ Would the proposed action have a substantial adverse impact on worker/fisher health or safety (e.g., operation in poor weather conditions as a result of restricted fishing seasons and/or closed fishing areas - could also affect water quality if vessel sank)?
- ✓ Where relevant, have the following social and economic impacts been considered: impacts to low-income or minority (human) populations, impacts to fishing communities, impacts to those who rely on living marine resources for subsistence?
- ✓ Would the action result in the introduction or spread of a non-indigenous or invasive species?
- ✓ Does the proposed action have the potential to jeopardize the sustainability of any target species or non-target species that may be affected by the action?
- ✓ Does the EIS consider the potential for cumulative effects of the proposed action and other activities in the area under consideration (e.g., fishery over time, past fishing practices, other fisheries, other human activities)?
- ✓ Would the proposed action have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships)?
- ✓ Have ecosystem considerations been incorporated to the extent possible, such as changes in biomass, impacts to habitat (including water column, benthic, EFH) from fishing gear, and impacts to food supply (predator prey, harvest of key prey, prey availability)?
- ✓ Have bycatch and EFH issues been adequately addressed?
- ✓ Does the EIS include an estimate of bycatch and address the extent to which it will be reduced?
- ✓ Is there sufficient information to conduct an EFH consultation? If consultation has been completed (e.g., for final EIS), are the results of the consultation included as well as any EFH conservation recommendations and NMFS' responses?
- ✓ Does the EIS use the "best scientific information available"?

- ✓ Does the EIS adequately address uncertainties and incomplete/unavailable information, including how such information might influence the analysis and conclusion?

- ✓ Is the right gear of the proper scale being used? (For example, the efficiency of using large trawls and dredges when fishing days at sea are reduced needs to be balanced against potential habitat destruction, increased turbidity/sedimentation of adjacent areas, bycatch, etc.)

- ✓ Have potential direct, indirect and cumulative impacts to sensitive/protected species (e.g., threatened and endangered, marine mammals) and environments (designated marine protected areas, estuaries in the NEP, etc.) been adequately discussed for the proposed action and alternatives?

- ✓ If threatened or endangered species are potentially impacted, is the status of the coordination process under ESA clearly identified (e.g., Draft EIS)?

- ✓ If ESA consultation is completed (e.g., final EIS) and a BO has been prepared, is it (or a summary) included in the draft/final EIS/SEIS?

- ✓ Have unavoidable impacts been clearly identified?

- ✓ Does the EIS discuss the relationship between the use of man's environment and the maintenance and enhancement of long-term productivity and any irreversible or irretrievable commitments of resources involved if the proposed action is implemented? (Note that this provision of the CEQ regulations tracks very closely with the intent of the MSA provision concerning overfishing, stock rebuilding and sustainability of the resource.)

- ✓ Are environmental impacts addressed in proportion to their potential significance? (Note that the impacts analysis and discussion should focus on those aspects of the proposal that have the potential for significant impacts. Insignificant impact discussions should provide sufficient information to demonstrate that all relevant environmental attributes were considered and enough information to show why greater consideration is not needed.)

EPA reviews may include the following types of comments concerning environmental impacts; these comments are issue-specific and serve only as examples:

- The Draft SEIS references the NMFS 1998 BO and approval of an incidental take permit (ITP) for the salmon fisheries as proof that the FMP will not jeopardize the ESA listed salmonid species. A summary of the assumptions, conclusions, and recommendations of the BO are not provided. We strongly recommend that the Final SEIS either attach these documents as appendices and/or summarize the underlying rationale provided for the no jeopardy opinion and the ITP.

- The document indicates (page 15) that some vessels may not clean their shellstock at sea until the shallow waters are reached inside the Days-at-sea (DAS) monitoring lines. Such actions could

result in seasonal water quality issues such as lower dissolved oxygen and higher biological oxygen demand due to the decay of discarded scallop viscera. What enforcement actions or amendment provisions would preclude such water quality degradation? Also, use of dredges as well as trawls would have a cumulative effect on water quality (turbidity).

- The SEIS should state clearly what the cumulative impact is over time of continually removing a portion of the remaining target species. The continuous slimming of the fish population could cause significant changes in the fishery over time, including the age and size class distribution of the remaining fish, and affect the number, size and location of fish available for protected Stellar sea lions.

- Fish move between protected and unprotected areas of the fishery. While spatial and temporal fishing restriction in areas inhabited by Steller sea lions might provide some short-term relief, a continued reduction in the amount of fish in the ecosystem beyond a critical point would make such protection measures superfluous. For these reasons, we believe that the SEIS must clearly state both the annual and long-term reduction in target species biomass from fish activities and analyze the effects of that reduction on Steller sea lions (see 40 C.F.R. 1508.7). Ultimately, the SEIS, BOs and other decision-making documents for the fishery must demonstrate that proposed actions conserve listed species, other marine mammals, and target species per the ESA, MMPA, and MSA, respectively.

- The discussion of the estimated effectiveness of the proposed management actions in reducing bycatch should be expanded in the FEIS to include information on how bycatch rates will be monitored and evaluated under the new FMP.

- The FEIS should specifically address the issue of bycatch associated with fishing on seamounts, and evaluate actions which might reduce the level of bycatch associated with this technique.

- We encourage the FMP to implement a ghost panel in the traps used at the directed red crab fishery because of the relatively slow reproductive capacity of this species. Ghost fishing occurs when traps are lost but remain on the sea floor and continue to entrap marine life – including target species – for years. Trap materials of wood and wire mesh can last a long time in a marine environment, especially in a deep-sea cold water environment.

- Given the predicted impacts on protected sea turtles, EPA recommends that the proposed re-initiation of Section 7 consultation pursuant to the ESA be completed and the issue resolved before the final SEIS is published.

- The FEIS should describe any cumulative impacts resulting from the proposed action and similar ongoing or future actions in other related fisheries, such as the recently released Amendment 9 for this Western Pacific Pelagic Fishery, the Coral Reef Ecosystem FMP and FMP for Pacific Coast Highly Migratory Species.

- Given the large percentage of trawlers in the groundfish fleet, the FEIS should address the specific impacts associated with trawl exemptions to depth and area closures. In particular, the document should discuss the effectiveness of gear adjustment in avoiding or limiting impacts on overfished species, and the impacts to EFH.

- The document should discuss the indirect effects on the ecosystem through changes in the relative numbers and size structure of various species populations. In particular, the document should address whether some species are more affected by density dependent predator prey dynamics, and what impact that has on rebuilding models.

Because many of the impacts addressed in FMPs/Amendments relate to fishing gear (e.g., bycatch and EFH), this guidance includes a primer (Appendix E) to help familiarize the Section 309 reviewer with the various types of commercial fishing gear in use today. It includes a brief description and photograph of the major types of gear and website links (see also Section 5.2). The reviewer is also referred to the following website of NOAA photographs, which include photos of various fishing techniques and other fish illustrations [under link to "Fisheries"]: http://www.photolib.noaa.gov/collections.html.

4.2.6 Mitigation

Typically, as potentially adverse impacts are identified during scoping and as the NEPA document is being prepared, mitigation measures are identified and incorporated into the alternative actions. The alternatives may include some form of active mitigation (modifying fishing gear, reducing the number of fishing vessels, reducing the number of fishing days) or passive mitigation (closing area, establishing marine reserve).

Mitigation measures also may include monitoring, with the prospect of supporting adaptive management (i.e., need to monitor the accuracy of predictions and allow sufficient flexibility in process to make future corrections). Use of third party (independent) observers onboard fishing vessels is one example. NOAA currently deploys fishery observers to collect catch data from U.S. commercial fishing and processing vessels in some fisheries. The data collected under NOAA's Fisheries Observer Programs can also be used to reduce bycatch. When available, they provide for credible estimates of the type, rate, and level of bycatch. They also collect information on fishing practices and other factors that may contribute to bycatch; and are used to monitor the effectiveness of bycatch reduction measures, such as gear modifications or time/area restrictions. EPA reviewers should encourage the incorporation of monitoring data to the extent that it is available, or indicate the need for additional monitoring if the necessary data are not available or adequate.

If it is determined that mitigation, as incorporated into the management action alternatives, is not achieving the desired goals, then further mitigation may be necessary. Any new mitigation requirements would likely be incorporated through a notice action or framework action (see Section 2.1.3), and could include those identified above, as well as reducing a fishing area (e.g., if it is determined that damage to existing coral reefs is occurring from the originally proposed levels); further reducing the number of fishing vessels; reducing quotas; changing size restrictions; changing gear type to be permitted or

prohibited; and designating new (or expand existing) MPAs. All of these measures could be used to further reduce impacts to target and non-target species.

Questions that the EPA may wish to consider when reviewing an FMP/Amendment EIS relating to mitigation include:

- ✓ Are measures to mitigate or reduce impacts built into the alternatives, as appropriate, and clearly identified?

- ✓ If further mitigation to reduce adverse impacts is reasonable, such as those recommended as a result of EFH or ESA consultation, has that been described and included in the EIS?

While monitoring is often an appropriate mitigation measure and should be encouraged in EPA reviews, there are limitations to its effectiveness of which EPA reviewers should be aware. Possible complications depend on the type of monitoring needed, but can include: safety (e.g., of observers), vessel size, cost, availability and cost of electronic monitoring options, etc.).

Finally, another component to successful mitigation is effective enforcement. Enforcement of fishery regulations is accomplished by complementary efforts of NOAA and State enforcement agencies, and the U.S. Coast Guard, both at sea and dockside. The Coast Guard enforces both domestic regulations and international treaties, including enforcement of maritime boundaries and high seas driftnet violations. NOAA Enforcement conducts patrols and investigations to enforce fisheries regulations and total catch limits. Vessel monitoring systems may also be required on many fisheries to enforce time and area closures (e.g., required for protected species).

EPA has commented on the need for mitigation in past FMP EISs. Sample comments are included below:

- The EIS should explore strategies for reducing post-hatchling turtle mortality. Prohibiting Sargassum harvesting from July to October, when the turtle hatching season is over, is one strategy that might be explored.

- Some means of protecting Federally managed fin fish species and Federally protected sea turtles needs to be discussed. Current harvesting methods using trawls would entrain and drown sea turtles, especially the young.

A sample comment relating to enforcement is also provided:

- The FEIS should provide a thorough discussion of how NMFS and the Council will ensure enforcement of the proposed guidelines. The current status of efforts to obtain funding and technical assistance to implement Vessel Monitoring System systems and/or increased observer coverage on vessels as a means of enforcing the 2003 specifications should also be discussed. In the absence of these methods of enforcement, the FEIS should provide a substantive discussion

of how NMFS and the Council will monitor and enforce depth and area closures in 2003 through other management measures.

4.2.7 Procedural

One of the major challenges an agency faces when preparing an EIS is to take often highly complex scientific data and present it in a manner understandable to the decisionmaker and lay public. Further, in order to ensure relative consistency in approach among Federal agencies preparing EISs, the CEQ developed and issued procedural regulations which all Federal agencies are to follow. EPA reviewers may wish to consider the following procedural questions when reviewing an FMP/Amendment EIS:

- ✓ Is the EIS written clearly and in a manner easily understood by a lay person? (Note that background and detailed, highly technical information, if necessary, is best included in an appendix to the EIS.)
- ✓ Are all of the sections required by the CEQ regulations contained in the EIS?
- ✓ Is a contact person clearly identified in the EIS?
- ✓ Is a list of names and qualifications (expertise, experience, and professional disciplines) of persons who were primarily responsible for preparing the EIS included?
- ✓ Is there a list of cooperating agencies (State, Tribal, or Federal)?
- ✓ Is the name and address of the person within the lead agency who can answer questions about the EIS stated?
- ✓ Was the distribution of the draft EIS to the public completed prior to filing with EPA?
- ✓ Do stated time periods for public comment provide the minimum time period required by the CEQ regulations (i.e., 45-day minimum on the draft EIS)?

The EPA reviewer may wish to offer comments to improve the clarity of the EIS or to make the document more user friendly to both the decisionmaker and lay public. Example comments relating to readability include:

- We recommend that detailed historical records including life-history information and supporting information be included in an appendix rather than the main body of the EIS.
- Several characteristics of the draft EIS lessen its readability and reduce its value to the public and the decision-maker. In order to make the document more "user friendly", we recommend the following: 1) the document be revised and reformatted to present information in a simple and logical manner; 2) the use of scientific jargon be reduced; 3) a glossary of fishing terms and list

of acronyms used in the EIS be included; 4) historical records and life history information be summarized in the main body of the document and the detailed information, if necessary, be relegated to an appendix; 5) historical information deemed important to the decision-making process be analyzed and that analysis be included in the EIS; and 6) clearer maps be used that reflect only important information (extraneous material results in confusion and cluttered appearance makes maps difficult to read).

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SECTION 5 Resources

5.1 Points of Contact

The following is a list of potentially useful contacts provided by agency and organization. This listing is based on direct contacts made during development of this guidance as well as referrals from these contacts to other knowledgeable professionals in this field. This list is not comprehensive, and EPA welcomes additional names to this list, as identified by NOAA and other reviewers of this draft guidance. Contact information is current per the date of this guidance document and are provided for the following agencies/organizations:

- U.S. Department of Commerce (NOAA and NMFS, Regional Offices, EFH regional contacts, Regional Fisheries Science Centers)
- Fishery Management Councils
- CEQ, Executive Office of the President
- National Resources Defense Council
- Chesapeake Bay Program
- Natural Rivers Heritage/Coastal America
- The Ocean Conservancy

NMFS Domestic Fisheries - Headquarters and Regional Offices	
OFFICE LOCATION	CONTACT INFORMATION*
National/HQ 1315 East West Highway Silver Spring, MD 20910	Phone (301) 713-2341 FAX (301) 713-0596
Alaska Regional Office PO Box 21668 Juneau, AK 99802-1668	Phone (907) 586-7221 FAX (907) 586-7249 www.fakr.noaa.gov
Northwest Regional Office 2725 Montlake Blvd. East Seattle, WA 98112-2097	Phone (206) 860-3200 FAX (206) 860-3217 www.nwr.noaa.gov/
Pacific Island Region Honolulu 1601 Kapiolani Blvd, Suite 110 Honolulu, HI 96814	Phone (808) 973-2937 FAX (808) 973-2941 http://swr.nmfs.noaa.gov/pir
Southwest Regional Office Long Beach 501 West Ocean Blvd. Long Beach, CA 90802-4213	Phone (562) 980-4000 FAX (562) 980-4018 http://swr.nmfs.noaa.gov/
Southeast Regional Office 9721 Executive Center Drive North Koger Bldg., Suit 201 St. Petersburg, FL 33702	Phone (727) 570-5301 FAX (727) 570-5300 http://sero.nmfs.noaa.gov/
* NEPA Coordinators can be contacted at regional phone numbers.	

NMFS Domestic Fisheries - Headquarters and Regional Offices	
OFFICE LOCATION	CONTACT INFORMATION*
Northeast Regional Office One Blackburn Drive Gloucester, MA 01930-2298	Phone (978) 281-9300 FAX (978) 281-9333 www.nero.noaa.gov/nero/
Highly Migratory Species National Office Gloucester, MA St. Petersburg, FL	 Phone (301) 713-2347 Phone (978) 281-9260 Phone (727) 570-5447 www.nmfs.noaa.gov/sfa/hms

NMFS Regional Fisheries Science Centers*			
REGION	NAME OF CENTER	RESPONSIBILITIES	CONTACT INFORMATION
Alaska	Alaska Fisheries Science Center (AFSC)	Responsible for research in the marine waters and rivers of Alaska. The AFSC develops and manages scientific data and technical advice to the North Pacific Fishery Management Council, the NMFS Alaska Regional Office, to U.S. representatives participating in international fishery negotiations, and to the fishing industry and its constituents. Center scientists estimate the size and value of the commercial fishery resources and monitor changes in stock abundance. AFSC staff also compile and analyze broad data bases on marine mammals, domestic and international fisheries, fisheries oceanography, environmental, fishery economics, and fishing gear research.	Alaska Fisheries Science Center Department of Commerce National Oceanic and Atmospheric Administration National Marine Fisheries Service 7600 Sand Point Way N.E., Bin C15700, Building 4 Seattle, Washington 98115-0070 Phone: (206) 526-4000 Fax: (206) 526-4004 http://www.afsc.noaa.gov/
Northwest	Northwest Fisheries Science Center (NWFSC)	Conducts multi disciplinary research to provide fisheries management information and technical advice. Such information supports national programs of NMFS and the NMFS Northwest Regional Office, and responds to the needs of the Pacific Fishery Management Council and other constituencies along the U.S. West Coast. NWFSC staff develop the scientific data bases required for status of stocks and status of fisheries reports, EAs and EISs for management plans and international negotiations. The Northwest Center pursues research to answer specific needs in the subject areas of habitat conservation, aquaculture, endangered and protected species, food science, fishery economics, and resource utilization.	Northwest Fisheries Science Center 2725 Montlake Blvd. East Seattle, WA 98112-2097 Phone: (206) 860-3200 Fax: (206-860-3210 http://www.nwfsc.noaa.gov/

NMFS Regional Fisheries Science Centers*			
REGION	NAME OF CENTER	RESPONSIBILITIES	CONTACT INFORMATION
Pacific Islands	Pacific Islands Fisheries Science Center (PIFSC)	Work at the Science Center is focused in three areas: fisheries and coral reef research and protected species research and recovery. The laboratory conducts biological, ecological, and economic research in support of five FMPs. The laboratory also conducts fisheries oceanographic research from a marine ecosystem standpoint. The protected species efforts examine the status and problems affecting the populations of the Hawaiian monk seal and the green sea turtle and makes recommendations for their recovery. The Center is organized into five research investigations: coral reef ecosystem, fish biology and ecology, ecosystems and environment, fishery management and performance, and protected species.	Pacific Islands Fisheries Science Center 2570 Dole Street Honolulu, Hawaii 96822-2396 (808) 983-5307 Fax: (808) 983-2902 http://www.pifsc.nmfs.noaa.gov/
Southwest	Southwest Fisheries Science Center (SWFSC)	Conducts integrated research programs in biology, mathematics, oceanography, economics and computer sciences for the purpose of developing scientific information to support the management and allocation of Pacific coastal and high seas fishery resources. SWFSC activities are designed to support the scientific, statistical and economic needs of the Western Pacific Fishery Management Council and the Pacific Fishery Management Council; the NMFS Southwest Regional Office; and International Commissions for world-wide tuna and Antarctic resources. Center efforts are also directed toward the reduction of porpoise mortality, and better understanding of the biological and environmental factors affecting U.S. commercial and recreational fisheries.	Southwest Fisheries Science Center 8604 La Jolla Shores Drive La Jolla, California 92037-1508 (858) 546-7000 Fax: (858) 546-7003 http://swfsc.nmfs.noaa.gov
Southeast	Southeast Fisheries Science Center (SEFSC)	Conducts multi disciplinary research in waters adjacent to the southeastern U.S., as well as Puerto Rico and the U.S. Virgin Islands. The Southeast Center supports large marine ecosystem programs, conducts fishery research, and collects and reports fisheries statistical data. SEFSC staff develop the scientific information base required for fishery resource conservation, fishery development and utilization, habitat conservation, and protection of marine mammals and endangered species. The Center also conducts impact analyses and EAs for international negotiations and for FMPs/Amendments for the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council , and the Caribbean Fishery Management Council. SEFSC also supports national programs of NMFS and the NMFS Southeast Regional Office	Southeast Fisheries Science Center 75 Virginia Beach Drive Miami, Florida 33149 (305) 361-4286 (Office of the Director) http://www.sefsc.noaa.gov/

NMFS Regional Fisheries Science Centers*			
REGION	NAME OF CENTER	RESPONSIBILITIES	CONTACT INFORMATION
Northeast	Northeast Fisheries Science Center (NEFSC)	Manages a multi disciplinary program of basic and applied research to (1) better understand living marine resources of the Northeast Continental Shelf Ecosystem from the Gulf of Maine to Cape Hatteras, and the habitat quality essential for their existence and continued productivity; and (2) describe and provide to management authorities such as the New England Fishery Management Council and the Mid-Atlantic Fishery Management Council, industry, and the public, options for the conservation and utilization of living marine resources. NEFSC also provides information in support of national programs of NMFS and the NMFS Northeast Regional Office.	Northeast Fisheries Science Center 166 Water Street Woods Hole, MA 02543-1026 (508) 495-2000 Fax: (508) 495-2258 http://www.nefsc.noaa.gov/

* NOAA Fisheries' principal scientific and technical expertise lies with the more than 1500 personnel assigned to the five regional fisheries science centers around the country. NMFS laboratories provide stock assessment information and management advice to support the NOAA stewardship mission for the living marine resources in their regions. These cross disciplinary efforts are undertaken in cooperation with other Federal and State agencies, international organizations, foreign governments, the fishing industry, and academia. The scope of the work is broad in time, space, and discipline. In addition to these essential responsibilities, each science center has unique research strengths and capabilities. (*This information taken directly from the NMFS' website,* http://www.st.nmfs.gov/st2/scictr.html) Access this website for links to detailed information about each science center.

U.S. Department of Commerce (NOAA and NMFS)
Office of Habitat Conservation/Habitat Protection Division (301) 713-4300
NOAA, Office of Strategic Planning (301) 713-3318
NOAA Legislative Affairs (202) 482-4981
NOAA General Counsel, Regulatory Streamlining Project (301) 713-2231
Sustainable Fisheries, State/Federal (301) 713-2334

NOAA/NMFS EFH Coordinators, Office of Habitat Conservation	
TITLE/LOCATION	CONTACT INFORMATION
Habitat Protection (HQ/National)	Phone (301) 713-4300
Alaska Regional Office	Phone (907) 271-3029
Northwest Regional Office	Phone (503) 231-6266
Pacific Islands Regional Office	Phone (808) 973-2935 or 2937
Southwest Regional Office	Phone (562) 980-4044
Southeast Regional Office	Phone (504) 389-0508
Northeast Regional Office	Phone (978) 281-9277

Fishery Management Councils
North Pacific Fishery Management Council http://www.fakr.noaa.gov/npfmc/ 605 West 4th Avenue, Suite 306 Anchorage, Alaska 99501-2252 (907) 271-2809
Western Pacific Regional Fishery Management Council http://www.wpcouncil.org/ 1164 Bishop Street, Suite 1400 Honolulu, Hawaii 96813 (808) 522-8220
Pacific Fishery Management Council http://www.pcouncil.org 7700 NE Ambassador Place, Suite 200 Portland, OR 97220-1384 (503) 820-2280
Gulf of Mexico Fishery Management Council http://www.gulfcouncil.org/ The Commons at Rivergate 3018 U.S. Highway 301 North, Suite 1000 Tampa, Florida 33619-2266 (813) 228-2815
Caribbean Fishery Management Council http://www.caribbeanfmc.com/ 268 Muñoz Rivera Ave., Suite 1108 San Juan, Puerto Rico 00918-2577 (787) 766-5926
South Atlantic Fishery Management Council http://www.safmc.net/ One Southpark Circle; Suite 306 Charleston, SC 29407-4699 (803) 571-4336
Mid-Atlantic Fishery Management Council (NEPA Coordinator and Fishery Management Specialist) http://www.mafmc.org/mid-atlantic/mafmc.htm Room 2115 Federal Building; 300 S. New Street Dover, DE 19904 (302) 674-2331
New England Fishery Management Council http://www.nefmc.org/ 50 Water Street, Mill 2 Newburyport, MA 01950 (978) 465-0492

Council on Environmental Quality, Executive Office of the President
722 Jackson Place, N.W. Washington, DC 20503 (202) 456-6541 Phone (202) 456-0753 FAX

Other Organizations
National Resources Defense Council (415) 777-0220
Marine Fisheries Conservation Network (202) 543-5509
Natural Rivers Heritage/Coastal America (202) 401-0226
National Resources Defense Council (New York) (212) 616-1320
The Ocean Conservancy (415) 979-0900

5.2 Recommended Reading and Websites

Below is a list of documents and websites that reviewers can examine to assist in preparing comment letters. The documents and websites have been separated by subject area and include a summary of the document or website. While this list mainly focuses on documents in addition to those that have been identified as relevant and discussed in the main text of the guidance, some documents may be included both places.

The Internet citations (uniform resource locators, or URLs) were accurate at the time the data were collected. However, note that the websites change frequently due to changes in data availability or reorganization of information, and the cited URLs may not work in the future. If this occurs, "backing up" to a less specific web address may allow retrieval of the information.

Overview/Background

Speir, J. (ed.). 1998. Sustainable Fisheries for the 21st Century. New Orleans, LA: Tulane Institute for Environmental Law and Policy.

Summary: A critical examination of issues associated with implementing the Sustainable Fisheries Act.

U.S. Commission on Ocean Policy. September 2004. An Ocean Blueprint for the 21st Century.

Summary: Report containing the Commission's final recommendations for a new, comprehensive national ocean policy that ensures sustainable use and protection of our ocean, coasts, Great Lakes for today and far into the future. The Commission recommends moving towards an ecosystem-based management approach by focusing on three cross-cutting themes: (1) a new, coordinated national ocean policy framework to improve decision making; (2) cutting edge ocean data and science translated into high-quality information for managers; and (3) lifelong ocean-related education to create well-informed citizens with a strong stewardship ethic.
On line version: Report available through Commission website.
www.oceancommission.gov/

U.S. Ocean Action Plan (2004), The Bush Administration's Response to the U.S. Commission on Ocean Policy.

Summary: Report identifies immediate, short-term actions that provide direction for ocean policy and highlights and also outlines additional long-term actions for the future. Example actions include establishment of new Cabinet-level Committee on Ocean Policy; promotes work with Regional Fisheries Councils to promote greater use of market-based system for fisheries management; development of ocean research priorities plan and implementation strategy; implement coral reef local action strategies; seeks passage of NOAA Organic Act establishing NOAA within the Department of Commerce; supports State and Federal Partnerships in the Gulf of Mexico; and advance ocean stewardship through implementation of Cooperative Conservation Executive Order.
On line version: Report available at http://ocean.ceq.gov

U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Public and Constituent Affairs. September 2, 1999. Turning to the Sea: America's Ocean Future.

Summary: General report presenting recommendations, in twenty-five subject areas, for a comprehensive Federal policy to explore, protect, and sustain the oceans. Overall categories are: economic benefits, global security, and marine resources. Ongoing concerns and specific recommendations are outlined for endangered marine species, marine sanctuaries, ocean / costal habitats, water quality, nonindigenous species, marine debris, international fisheries, and domestic fisheries.

U.S. Department of Commerce. 2003. National Bycatch Strategy.

Summary: Report outlines how NOAA Fisheries will improve upon and expand current bycatch reduction efforts and undertake new bycatch initiatives.

On line version: Report available on NOAA website at www.nmfs.noaa.gov/bycatch.htm

Pew Oceans Commission. 2003. America's Living Oceans: Charting a Course for Sea Change, A Report to the Nation: Recommendations for a New Ocean Policy. June.

Summary: This report summarizes the state of the US oceans and puts forward sweeping recommendations calling for a new ocean governance framework that recognizes our dependence on health ocean ecosystems and practices precaution. The report offers innovative recommendations on ocean governance, fisheries management, coastal development, marine pollution and aquaculture. Among the threats to our oceans are increasing pollution from cities and farmland, intensive coastal development, overfishing, habitat alterations, bycatch, invasive species, aquaculture, and climate change [these are all potential factors to be considered in addressing cumulative impacts in FMP/Amendment EISs]. The primary problems with ocean governance identified in the report included its fragmented nature, traditional focus on exploitation over conservation, and an individual species focus as opposed to an ecosystem focus. In response to these problems, the Commission has laid out five priority objectives: (1) reforming ocean governance; (2) restoring fisheries; (3) protecting the coasts; (4) cleaning coastal waters; and (5) guiding sustainable aquaculture. Highlights of the recommendations include creation of a unified and independent governance system under a new National Oceans Policy Act with regional Ocean Ecosystem Councils, a national system of marine reserves, and an independent National Oceans Agency. For fisheries, it is suggested that Magnuson Stevens Act be amended to use ecosystem health as a baseline for management. Other measures recommended to help restore America's fisheries include: separating conservation and allocation decisions, implementing ecosystem-based planning and marine zoning, regulating the use of fishing gear that is destructive to marine habitats, requiring bycatch monitoring and management plans as a condition of fishing, requiring comprehensive access and allocation planning as a condition of fishing, and establishing a permanent fishery conservation and management trust fund. Report also provides good information on status of fisheries (ecologically and commercial crucial fish species) and on problems with marine aquaculture and invasive species, such as salmon from farm pens, which establish themselves in our coastal waters, often crowding out native species and altering habitat and food webs).

NOAA, NMFS. 2003. Implementing the Sustainable Fisheries Act. Achievements from 1996 to the Present. June.

Summary: This report highlights NOAA Fisheries' accomplishments since 1996 with respect to overfishing, rebuilding overfished stocks, protecting EFH, minimizing bycatch, enhanced research and improved monitoring. Also includes nice history and summary, by Council region, of all the FMPs/Amendments for each managed fishery [good background for EPA reviewers on past actions taken with respect to each fishery.]

Ecosystem-based Management

U.S. Department of Commerce, NOAA, NMFS, Ecosystem Principles Advisory Panel. April 1999. Ecosystem-based Fishery Management - A report to Congress as mandated by the Sustainable Fishery Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act of 1996.

Summary: Recognizing the potential of an ecosystem-based fisheries management approach to improve fisheries management, Congress requested that the NMFS convene a Ecosystem Principles Advisory Panel (Panel) of experts to assess the extent to which ecosystem principles are currently applied in fisheries management, and to recommend how best to integrate ecosystem principles into future fisheries management and research. This 54 page report was created in response to the Congressional request. This report summarizes of the Panel's efforts including the establishment of principles, goals, and policies; and detailing a set of specific recommendations toward Congress for the implementation by NMFS, the Fishery Management Councils, and other relevant agencies/organizations. The document is an excellent source of global recommendations, references, and definitions.

On-line version: http://www.nmfs.noaa.gov/sfa/EPAPrpt.pdf

Research

NMFS Strategic Plan For Fisheries Research

Summary: This Plan, which updates the original Strategic Plan for Fisheries Research released in 1998, is a requirement of Section 404 (a) of the Magnuson-Stevens Act and requires the Secretary of Commerce to develop, triennially, a strategic Plan for fisheries research for the subsequent five years. Furthermore, this Plan outlines NMFS' proposed research efforts on fisheries, habitat, and protected species research that solely address requirements of the Magnuson-Stevens Act.

On-line version: http://www.st.nmfs.gov/st2/strategic_plan.html

Fishery Biology

National Marine Fisheries Service. 1999. Our Living Oceans. Report on the status of U.S. living marine resources, 1999. U.S. Dep. Commerce, NOAA Tech. Memo. NMFS-F/SPO-41.

Summary: The "National overview" section of this document shows the significant living marine resources (LMR's) and their fisheries, including the biological status of the LMR's in 25 separate units. Contains data on productivity of stocks, degree of utilization (level of use of a fisheries resource), regional and species-group synopses, recent yields, protected resources, and issues of

national concern. Also is a good source for contact information within NMFS, the councils, and acronyms and definitions.
On-line version: http://spo.nwr.noaa.gov/olo99.htm

National Marine Fisheries Service, Office of Sustainable Fisheries. April 2002. Toward Rebuilding America's Marine Fisheries. Annual Report to Congress on the Status of U.S. Fisheries as Mandated by the SFA amendments to the MSFCMA of 1996.

Summary: Describes in a series of tables, the status of marine fish stocks under Federal management in the U.S. EEZ. The report shows significant progress has been made in recent years; two stocks were declared to be fully rebuilt in 2001. In addition, the number of stocks with sustainable harvest rates and stock sizes have risen sharply since 1999. The stocks with sustainable harvest rates rose by 45 percent between 1999 and 2001, while those with sustainable stocks increased by a third. These positive changes have been a result of rebuilding programs that are in place or under development for virtually all overfished stocks.
On-line version: www.nmfs.noaa.gov/sfa/reg_svcs/statusostocks/Stock_status01.htm

National Research Council. 1999. Sustaining Marine Fisheries.

Summary: This book documents the condition of marine fisheries today, highlighting species and geographic areas that are under particular stress. Challenges to achieve sustainability within fisheries are identified and addressed, and strengths and weaknesses of current fishery management efforts are examined.

Modeling

National Research Council. 1998. Improving Fish Stock Assessments. Washington, D.C. National Academy Press.

Summary: This study responds to a request by NMFS to conduct a broad review of U.S. stock assessment methods and models. Five different models are evaluated: a production model, a delay-difference model, and three age-structured models. The publication reviews data collection and assessment methods, model performance, use of harvest strategies, peer review of assessments and assessment methods, and education and training of stock assessment scientists. It concludes with recommendations for new approaches.

Laws and Regulations

National Marine Fisheries Service, Pacific Islands Regional Office. August 2004. NEPA: A Planning Tool for Effective Project Management. A Handbook for National Environmental Policy Act Compliance (Draft).

Summary: This handbook describes the NMFS directives, policies, and guidelines for implementing NEPA, CEQ NEPA Regulations and NOAA 216-6 Environmental Review Procedures for Implementing NEPA. It brings together the legal requirements and describes how to apply them to the NMFS program areas, including FMPs. It also presents and summarizes other related

environmental laws and E.O.s that should be addressed in NMFS NEPA Documents, and provides additional clarification regarding NOAA 216-6.

NEPA Task Force. September 2003. NEPA Task Force Report to the Council on Environmental Quality. Modernizing NEPA Implementation.

Summary: This report represents the professional expertise of the task force members and their collective thinking and deliberation of how NEPA implementation can be improved, particularly with respect to: technology and information management and security; Federal and intergovernmental collaboration; programmatic analyses and tiering; adaptive management and monitoring; CEs; and EAs. The report includes only recommendations (in many cases for additional guidance) rather than findings, however it is probably worth referencing in the guidance document, and there may be some tidbits of use to include in the guidance relating to upcoming guidance and/or recommended approaches to Federal and intergovernmental collaboration, programmatic analyses and tiering, and adaptive management and monitoring since these are all relevant to fisheries management.

National Marine Fisheries Service (U.S. Department of Commerce). May 1, 1997 (Revised). Operational Guidelines Fishery Management Plan Process.

Summary: Detailed overview and guidelines describing the applicable laws and regulations, and responsibilities involved in the planning, preparation, review, and implementation of the FMPs by the Fisheries Management Councils and NMFS.

National Oceanic and Atmospheric Administration (U.S. Department of Commerce). Issued 06/03/99; Effective 05/20/99. Environmental Review Procedures for Implementing the National Environmental Policy Act - NAO 216-6.

Summary: This order describes NOAA's policies, requirements, and procedures for complying with NEPA and implementing regulations issued by the CEQ (40 C.F.R. 1500-1508) and regulations issued by the DOC. It provides guidance on the relationship between the FMP and the EIS, including format issues. NAO 216-6 requires that environmental documents accompany other decision documents in the decision process.

On-line version: http://www.rdc.noaa.gov/~nao/216-6.html and http://www.nepa.noaa.gov [formatted document].

U.S. Department of Commerce, National Oceanic and Atmospheric Administration. October 11, 1996. Magnuson-Stevens Fishery Conservation and Management Act; Public Law 94-265 - As amended through October 11, 1996; To provide for the conservation and management of the fisheries, and for other purposes.

Summary: Magnuson-Stevens Act, an amended version of the SFA (P.L. 104-297), calls for direct action to stop or reverse the continued loss of fish habitats essential to managed species and measures to conserve and enhance this habitat. It also includes a mandate that the Regional Fishery Management Councils amend each FMP to include a description of EFH which is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.

Online version: http://www.nmfs.noaa.gov/sfa/magact/

Fishing Gear Impacts

NMFS EFH website at http://www.nmfs.noaa.gov/habitat/habitatprotection/

Summary: This website provides links to several important documents related to fishing gear impacts on EFH [link to "Essential Fish Habitat" and then link to "Literature on EFH and the Effects of Fishing" on EFH web page]

Morgan, Lance E. and Ratana Chuenpagdee. 2003. Shifting Gears, Addressing the Collateral Impacts of Fishing Methods in the U.S. Waters. PEW Science Series.

Summary: Report documents and ranks the collateral impact of various fishing gear classes. Integrates information on bycatch and habitat damage for all major commercial fishing gears, gauge the severity of these local impacts, and compare and rank the overall ecological damage of these gears. In particular, Figure 3 (Descriptions of Fishing Gears) and Table 1 (Overview of Bycatch and Habitat Damage by Gear Class) from this report could be particularly useful to EPA reviewers.

Online version: A pdf file of this report can be downloaded from the Marine Conservation Biology Institute website: http://w1.adhost.com/mcbi/ShiftingGears/SG_download.htm/

Essential Fish Habitat (EFH)

U.S. Department of Commerce, National Marine Fisheries Service. January 17, 2002. Magnuson-Stevens Act Provisions; Essential Fish Habitat (EFH); Final Rule - 50 C.F.R. 600; Docket No. Docket No. 961030300-1007-05.

Summary: This final rule revises the regulations implementing the EFH provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and establishes guidelines to assist the Regional Fishery Management Councils (Councils) to develop EFH sections of FMPs (identify adverse impacts from fishing and non-fishing activities, and identify actions required to conserve and enhance EFH) and establish procedures to be used by NOAA Fisheries and other agencies to consult and coordinate regarding Federal and State agency actions that may adversely affect EFH, including providing recommendations on Federal and State actions that may adversely affect EFH. The intended effect of the rule is to promote the protection, conservation, and enhancement of EFH.

On-line version: www.nmfs.noaa.gov/habitat/habitatprotection/efhfinalrule.pdf

U.S. Department of Commerce, National Marine Fisheries Service, South Atlantic Region. February 2002 (Revised date). Essential Fish Habitat: A Marine Fish Habitat Conservation Mandate for Federal Agencies - Habitat Conservation Division.

Summary: This document was prepared by the Southeast Regional Office of the NMFS to provide an overview of the EFH provisions of the MSFCMA. Document provides a brief legislative and regulatory background, introduces the concept of EFH, and describes consultation requirements. Document also identifies FMPs/managed species for the South Atlantic Region, species managed

under the Federally-implemented FMPs, EFH identified in FMP Amendments of the south and Mid-Atlantic FMCs, geographically defined habitat areas of particular concern in FMP amendments affecting the South Atlantic Area, and a summary of EFH requirements for species managed by the South Atlantic FMC.

U.S. Department of Commerce, National Marine Fisheries Service. January 2001. Guidance for Integrating Magnuson-Stevens Fishery Conservation and Management Act - EFH Consultations with Endangered Species Act - Section 7 Consultations.

Summary: Integrating EFH consultations and ESA consultations. ESA Consultation Requirements. If the action will have no effect, then no consultation is necessary. If proposed action may affect listed species or critical habitat, then the Federal action agency must request Section 7 consultation with NMFS. If NMFS finds that the proposed action may affect but is not likely to adversely affect listed species or critical habitat, NMFS provides the Federal action agency with a concurrence letter and consultation is complete (50 C.F.R. 402.13(a)). If the proposed action is likely to adversely affect, then the agency must request initiation of formal consultation and provide the information outlined in 50 C.F.R. 402.14. NMFS issues a BO (50 C.F.R. 402.14(h)), including in most cases an incidental take statement with RPMs to minimize the impact of incidental take of listed species (50 C.F.R. 402.14(i)).
On-line version: http://swr.nmfs.noaa.gov/hcd/guidance1.pdf

NMFS EFH website at http://www.nmfs.noaa.gov/habitat/habitatprotection/

Summary: This website is a comprehensive source of information and issues related to EFH. Information includes, but is not limited to: Background information, EFH defined, EFH Terminology, EFH Contents, EFH Habitat Divisions, EFH EISs, Fact Sheets, etc.

Legal/Social and Economic Aspects

Buck, Eugene H. April 21, 1995. Social Aspects of Federal Fishery Management. Congressional Research Service.

Summary: At issue is whether the Federal Government should examine its approach to the social aspects of fishery management. This report examines historic and current references to the social aspects of fishery management as they appear in legislation, and discusses the importance of considering these issues.
On-line version: http://www.cnie.org/nle/crsreports/marine/mar-7.cfm

The H. John Heinz III Center for Science, Economics and the Environment. 2000. Fishing Grounds - Defining a New Era for American Fisheries Management.

Summary: This book offers a comprehensive assessment of the legal, social, economic, and biological context of marine fisheries management in the U.S. Drawing on the interviews with more than 77 stakeholders, the authors of this book sought out common ground and points of unresolved controversy among several groups in reference to the various interests and viewpoints related to fisheries management. The book also cites the involvement of NEPA in relation to fisheries management.

National Academy of Public Administration, Panel: Mary A. Gade; Terry Garcia, Jonathan B. Howes, Theodore M. Schad, Susan Shipman. July 2002. Courts, Congress, and Constituencies - Managing Fisheries by Default.

Summary: A report by a Panel of the National Academy of Public Administration for the Congress and the U.S. Department of Commerce, National Marine Fisheries Service. The Panel preparing this document was composed of legal and scientific professionals with extensive background, expertise, and insight in environmental policy issues; as well as individuals with experience in government management. This document focuses on the fisheries management system, its regulatory process, litigation analysis through 2001, constituent relations, and NMFS' program budget and science activities.

On-line version: http://www.napawash.org/Pubs/NMFS_July_2002.pdf?OpenDocument

National Environmental Justice Advisory Council Indigenous Peoples Subcommittee (Federal Advisory Committee to the U.S. EPA), November 2000. Guide on Consultation and Collaboration with Indian Tribal Governments and the Public Participation of Indigenous Groups and Tribal Members in Environmental Decision Making.

Summary: A report that addresses concerns raised about the lack of effective consultation and collaboration between Federal agencies, American Indian and Alaska Native tribal governments. The Guide is intended to help EPA and other interested stakeholders better understand the necessity and principles for effective consultation with tribal governments and the meaningful involvement of tribal communities and tribal members in the public participation process.

On-line version: www.epa.gov/compliance/resources/publications/ej/ [link to publications by NEJAC and then to document - pdf fild].

Office of Sustainable Fisheries, NMFS, NOAA Fisheries. August 16, 2000. Guidelines for Economic Analysis of Fishery Management Actions.

Summary: The overall purpose of this document is to provide guidance on understanding and meeting the procedural and analytical requirements of E.O. 12866 and the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et. Seq.) for regulatory actions of Federally managed fisheries. However, much of the guidance provided in this document is relevant for other types of regulatory actions that are subject to E.O. 12866 and RFA. Appendix B of this document is especially useful in describing the typical regulatory processes of how the council typically works.

On-line version: http://www.nmfs.noaa.gov/sfa/RFA%20Guidelines.PDF

Fishery Management Councils

US Department of Commerce, National Marine Fisheries Service. January 2002. 2001 Report on Apportionment of Membership on the Regional Fishery Management Councils (RFMCs) - Pursuant to Section 302(b)(2)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

Summary: Introduction to the Regional Fishery Management Councils including contacts and a detailed summary of the FMPs which the Councils produce. Appendix includes statistical fisheries

data for each Council (e.g., species/species group, landings, vessels, gear, fishing areas/seasons, and processing)
On-line version: www.nmfs.noaa.gov/sfa/reg_svcs/Report_Congress01.pdf

Reviewing EISs and Writing Comment Letters

U.S. Environmental Protection Agency, Office of Federal Activities. May 1999. Consideration of Cumulative Impacts in EPA Review of NEPA Documents.

Summary: Guidance document to assist EPA reviewers of NEPA documents in providing accurate, realistic, and consistent comments on the assessment of cumulative impacts. Cumulative impacts [to other fisheries] is one of the major areas of concern in review of FMP EISs.

U.S. Environmental Protection Agency. October 3, 1984. Policy and Procedures for the Review of Federal Action Impacting the Environment.

Summary: This document is a manual that establishes policies and procedures for carrying out the EPA's responsibilities to review and comment on Federal actions affecting the quality of the environment. In addition to establishing the policies and procedures for the Environmental Review Process, the manual also assigns specific responsibilities and outlines mechanisms for resolving problems that arise in the Environmental Review Process.

Council on Environmental Quality, Executive Office of the President. January 1997. Considering Cumulative Effects - Under the National Environmental Policy Act.

Summary: This document presents the results of research and consultations by the CEQ concerning the consideration of cumulative effects in analyses prepared under NEPA. It introduces the complex issues of cumulative effects, outlines general principles, presents useful steps, and provides information on the methods of cumulative effects analysis and data sources.

Other

U.S. Environmental Protection Agency. 2001. National Coastal Condition Report. EPA620/R-01-005. Sept 2001 (available online at www.epa.gov/owow/oceans/nccr/)

Summary: This report compiles several available data sets from different agencies and areas of the country and summarizes them to present a broad baseline picture of the condition of coastal waters. The Report, primarily evaluates estuaries. Indicators of coastal conditions were derived from data on water quality, sediment quality, biota, habitat, and ecosystem integrity, as they relate to ecological and human health. Report also highlights several exemplary programs at Federal, state, tribal and local levels that show coastal condition at various regional scales. Good reference/resource material to reference in guidance document.

National Science and Technology Council. 1997. Integrating the Nation's Environmental Monitoring and Related Research Networks and Programs.

Summary: Cooperative venture involving all Federal agencies that have major environmental monitoring and related research networks. Effort to allow comprehensive evaluation of our

environmental resources and its ecological systems. It will provide an integrated scientific information base to support natural resource assessment and decision-making. Integration will add value to existing programs by linking broad-based survey, inventory, and monitoring information to research on environmental processes.

Section 6 Bibliography

Certain information cited in the guidance was obtained from Internet sites maintained by government agencies or other reliable sources. The Internet citations (uniform resource locators, or URLs) were accurate at the time the data were collected. However, websites change frequently due to changes in data availability or reorganization of information, and the cited URLs may not work in the future. If this occurs, "backing up" to a less specific web address may allow retrieval of the information.

Buck, Eugene H. April 21, 1995. Social Aspects of Federal Fishery Management. Congressional Research Service.

CEQ. See Council on Environmental Quality

Coral Reef Task Force. November 1999. Oversight of Agency Action Affecting Coral Reef Protection - Interim Policy Adopted by the U.S. Coral Reef Task Force.

Council on Environmental Quality, Executive Office of the President. January 1997. Considering Cumulative Effects - Under the National Environmental Policy Act.

EPA. See U.S. Environmental Protection Agency

Hogarth, William T.. May 9, 2002. Testimony of Dr. William T. Hogarth Assistant Administrator of Fisheries, National Oceanic and Atmospheric Administration before the Subcommittee on Oceans, Atmosphere and Fisheries Commerce, Science, and Transportation Committee - U.S. Senate, Washington, DC.

Larson, James. Natural Resources Defense Council, Inc., et al., Plaintiffs, v. Donald Evans, Secretary of Commerce, et al., Defendants; United States District Court; Northern District of California; Order granting partial summary judgment for plaintiffs and defendants - Case No. C 01-0421 JL.

Morgan, Lance E. and Ratana Chuenpagdee. 2003. Shifting Gears, Addressing the Collateral Impacts of Fishing Methods in the U.S. Waters. PEW Science Series.

NAPA. See National Academy of Public Administration.

National Academy of Public Administration. July 2002. Courts, Congress, and Constituencies - Managing Fisheries by Default.

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NEJAC. See National Environmental Justice Advisory Council.

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NMFS. See National Marine Fisheries Service.

NOAA. See National Oceanic and Atmospheric Administration.

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Section 7 Acronyms/Glossary

7.1 Acronyms

AAF – NOAA Administrator for Fisheries (NMFS Director)
ABC – Allowable Biological Catch
ACCSP – Atlantic Coastal Cooperative Statistics Program
ALWTRP – Atlantic Large Whale Take Reduction Plan
AFA – American Fisheries Act
Amend – Amendment
Amendment – Amendment to Fishery Management Plan
AO – Annual Operating Plan
AP – Advisory Panel
APA – American Procedure Act
ASMFC – Atlantic States Marine Fisheries Commission
B – Biomass
BA – Biological Assessment
BO – Biological Opinion
Bmsy – Biomass at MSY-levels
Bo – Virgin Stock Biomass
BRD – Bycatch Reduction Device
BSAI – Bering Sea Aleutian Islands
C/E – Catch-Per-Unit-Effort
CE – Categorical Exclusion
CEQ – Council on Environmental Quality
CFMC – Caribbean Fishery Management Council
CFR – Code of Federal Regulations
Council – Fishery Management Council
CPUE – Catch-Per-Unit-Effort
CWA – Clean Water Act
CZMA – Coastal Zone Management Act
DAS – Days-at-sea
DEIS – Draft Environmental Impact Statement
DOC – Department of Commerce
DOCS – Documents
DRIR – Draft Regulatory Impact Review
DSEIS – Draft Supplemental Environmental Impact Statement
EA – Environmental Assessment

EC – Environmental Concerns
EEZ – Exclusive Economic Zone
EFH – Essential Fish Habitat
EIS – Environmental Impact Statement
EMAP – Environmental Monitoring and Assessment Program
EO – Environmental Objections
E.O. – Executive Order
EPA – U.S. Environmental Protection Agency
ERC – Environmental Review Coordinator
ESA – Endangered Species Act
EU – Environmentally Unsatisfactory
FCZ – Fishery Conservation Zone
FEIS – Final Environmental Impact Statement
FMP – Fishery Management Plan
Fmsy – Fishing morality rate at MSY- levels
FOG – Fisheries Obligation Guarantee *or* Fishing Vessel Obligation Guarantee Program
FONSI – Finding of No Significant Impact
FR – Federal Register
FRIR – Final Regulatory Impact Review
FSEIS – Final Supplemental Environmental Impact Statement
FTE – Full Time Equivalent
FWS – U.S. Fish and Wildlife Service
GC – General Counsel
GCF – Office of General Counsel for Fisheries
GIS – Geographic Information System
GMFMC – Gulf of Mexico Fishery Management Council
GOA – Gulf of Alaska
GSMFC – Gulf States Marine Fisheries Commission
HAPC – Habitat Areas of Particular Concern
HMS – Highly Migratory Species
HQ – Headquarters
IFQ – Individual Fishing Quota
IPHC – International Pacific Halibut Commission
ITP – Incidental Take Permit
ITS – Incidental Take Statement
IVQ – Individual Vessel Quota
IRFA – Initial Regulatory Flexibility Analysis
LO – Lack of Objections

LOF – List of Fisheries
LOA – Letter of Authorization
M – Natural Mortality Rate
MBTA – Migratory Bird Treaty Act
MEY – Maximum Economic Yield
MFC – Marine Interstate Fisheries Commission
MFMT – Maximum Fishing Morality Threshold
MAFMC – Mid Atlantic Fishery Management Council
MMPA – Marine Mammal Protection Act
MPA – Marine Protected Areas
MSA – Magnuson-Stevens Fishery Conservation and Management Act
MSFCMA – Magnuson-Stevens Fishery Conservation and Management Act
MSST – Minimum Stock Size Threshold
MSY – Maximum Sustainable Yield
NAO – NOAA Administrative Order
NAPA – National Academy of Public Administration
NCER – National Center for Environmental Research
NEFMC – New England Fishery Management Council
NEP – National Estuary Program
NEPA – National Environmental Policy Act
NMFS – National Marine Fisheries Service, also knows as NOAA Fisheries
NMSA – National Marine Sanctuaries Act
nm – Nautical Mile
NOA – Notice of Availability
NOAA – National Oceanic and Atmospheric Administration
NOI – Notice of Intent to prepare an Environmental Impact Statement
NOS – Notice of Scoping Meetings
NPFMC – North Pacific Fishery Management Council
NPOA – National Voluntary Plan of Action
NRDC – Natural Resource Defense Council
OEA – Office of External Affairs
OFA – Office of Federal Activities
OMB – Office of Management and Budget
OPR – Office of Protected Resources
ORD – Office of Research and Development
OY – Optimum Yield
PBR – Potential Biological Removals
PEIS – Programmatic Environmental Impact Statement

PFMC – Pacific Fishery Management Council
PRA – Paperwork Reduction Act; draft PRA is statement in support of new or revised information collection (record keeping or reporting requirements)
PRD – Protected Resources Division
PREE – Preliminary Regulatory Economic Evaluation
PSC – Pacific Salmon Commission
PSMFC – Pacific States Marine Fisheries Commission
RA – Regional Administrators
Regs – Regulations
RFA – Regulatory Flexibility Act
RIR – Regulatory Impact Review
ROD – Record of Decision
RPA – Reasonable and Prudent Alternatives
RPM – Reasonable and Prudent Measures
RSP – Regulatory Streamlining Project
S – Survival Rate
SAFE – Stock Assessment and Fishery Evaluation
SAFMC – South Atlantic Fishery Management Council
SBA – Small Business Administration
Sec – Secretary
Secretary – Secretary of Commerce
SEIS – Supplemental Environmental Impact Statement
SFA – Sustainable Fisheries Act
SFD – Sustainable Fisheries Division
SIA – Social Impact Assessment
SSC – Scientific and Statistical Committee
TAC – Total Allowable Catch
TED – Turtle Excluder Device
TIA – Takings Implications Assessment
TIP – Trip Interview Program
TRT – Technical Review Team
U.S. – United States
VPA – Virtual Population Analysis
VTR – Vessel Trip Report
WO – Weigh Out
WPFMC – Western Pacific Fishery Management Council
YPR – Yield-per-recruit
z – Intrinsic Rate of Increase

Z	Total Mortality

7.2 Glossary

Acceptable Biological Catch – The ABC is a scientific calculation of the sustainable harvest level of a fishery, and is used to set the upper limit of the annual total allowable catch. It is calculated by applying the estimated (or proxy) harvest rate that produces maximum sustainable yield to the estimated exploitable stock biomass (the portion of the fish population that can be harvested).

Advisory Panel (AP) – A group of people appointed by a fisheries management agency who review information and provide advice. Members are usually not scientists, but most familiar with the fishing industry or particular fishery.

Allocation – Direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Shares are sometimes based on historic harvest amounts.

Allowable Biological Catch (ABC) – The range of allowable catch/sustainable harvest level, as determined by a scientific calculation, for a species or species group which is determined by Federal fisheries biologist. The agency then takes the ABC estimate and sets the annual total allowable catch (TAC).

Amendment – A change to a management plan or regulation required by various statutes such as the Magnuson-Stevens Act (MSA) and the National Marine Sanctuaries Act (NMSA). A management plan amendment could b prepared to achieve a specific goal for a fishery or a marine sanctuary. Amendments may include regulations necessary to carry out management objectives. A regulatory amendment could clarify the intent of a Regional Fishery Management Council established by the Magnuson-Stevens Act or interpret broad terms or measures contained in existing FMPs. Amendments must go through standard rulemaking procedures under the Administrative Procedure Act (APA) and must include the appropriate environmental analysis under NEPA..

Anadromous – Fish that spend their adult life in the sea but swim upriver to freshwater spawning grounds in order to reproduce (e.g., salmon).

Annual Mortality (A) – The percentage of fish dying in one year due to fishing and natural causes.

Aquaculture – The raising of fish or shellfish under some controls. Ponds, pens, tanks, or other containers may be used. Feed is often used. A hatchery is also aquaculture but the fish are released before harvest size is reached.

Benthic – Refers to organisms that live on or in the ocean floor or habitat found on the ocean floor.

Biological Opinion (BiOp or BO) – A scientific assessment issued by the NMFS or USFWS, as required by the Endangered Species Act for listed species. Determines the likelihood of an action to jeopardize the existence of a species listed under the Endangered Species Act.

Biomass (B)	– The total weight of a stock of fish. Measured in terms of total weight, spawning capacity, or other appropriate units of production. Amount of living matter per unit of water surface or volume expressed in unit weight.
Biomass at MSY-levels (Bmsy)	– The biomass that allows maximum sustainable yield to be taken. Long term average exploitable biomass that would be achieved if fishing at a constant fishing mortality rate equal to Fmsy. For most stocks Bmsy is about ½ of the carrying capacity. The proposed overfishing definition control rules call for action when biomass is below 1/4 or ½ Bmsy, depending on the species.
Bycatch	– The Magnuson-Stevens Fishery Conservation and Management Act defines bycatch as "fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards…[but not] fish released alive under a recreational catch and release fishery management program." Examples are blue crabs caught in shrimp trawls or sharks caught on a tuna longline. Bycatch is sometimes called incidental catch. Bycatch plus landed catch equals the total catch or total estimated fishing mortality.
Bycatch Reduction Device (BRD)	– Devices (such as finfish excluders) incorporated into fishing gears designed to reduce the take of non-target species.
Catch	– Catch, take or harvest includes, but is not limited to, any activity that results in killing any fish or bringing any live fish onboard a vessel. Catch refers to the total number or poundage of fish captured from an area over some period of time. This includes fish that are caught but released or discarded instead of being landed.
Categorical Exclusion (CE)	– Decisions granted to certain categories of actions that individually or cumulatively do not have the potential to pose significant impacts on the quality of the human environment and are therefore exempted from both further environmental review and requirements to prepare environmental review documents (40 C.F.R. 1508.4). The main text of NAO 216-6 presents specific actions and general categories of actions found to warrant a CE. CEs may not be appropriate when the proposed action is either precedent-setting or controversial, although such a determination must be made on a case-by-case basis.
Catch-Per-Unit-Effort (C/E)	– See CPUE (Catch-Per-Unit-Effort).
Catch-Per-Unit-Effort (CPUE)	– The quantity of fish caught (in number of weight) with one standard unit of fishing effort. For example, the number of fish taken per 1,000 hooks per day, or the weight of fish, in tons, taken per hour of trawling. CPUE is often considered an index of fish biomass (or abundance). Sometimes referred to as catch rate. CPUE may be used as a measure of economic efficiency of fishing as well as an index of fish abundance. Typically, effort is a combination of gear type, gear size, and length of time the gear is used. Also referred to as C/E.
Community Development Quota	– A federal fisheries program that involves coalitions of communities who have formed six regional organizations. The program allocates a portion of the Bering Sea and Aleutian Island harvest amounts to groups.

Council – One of the eight Regional Fishery Management Councils established by the Magnuson Stevens Act.

Days at Sea (DAS) – The total days, including steaming time that a boat spends at sea to fish.

Disappearance (Z') – Measures the rate of decline in numbers of fish caught as fish become less numerous or less available. Disappearance is most often calculated from catch curves.

Discard – Release or return fish to the sea, whether or not such fish are brought fully onboard a fishing vessel. Discards are fish that are caught but not kept.

Economic Discard – Fish which are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or a species for which no market exists, or for other economic reasons.

Endangered Species Act (ESA) – The Federal law, enacted by Congress in 1973, to provide protection for, and promote the recovery of, animal and plant species considered as threatened or endangered because of natural or anthropogenic conditions.

Environmental Objections (EO) – One of the alpha categories used by EPA reviewers to rate a DEIS. An EO rating means The review has identified significant environmental impacts that should be avoided in order to adequately protect the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative).

The basis for Environmental Objections can include situations:

1. Where an action might violate or be inconsistent with achievement or maintenance of a national environmental standard;
2. Where the Federal agency violates its own substantive environmental requirements that relate to EPA's areas of jurisdiction or expertise;
3. Where there is a violation of an EPA policy declaration;
4. Where there are no applicable standards or where applicable standards will not be violated but there is potential for significant environmental degradation that could be corrected by project modification or other feasible alternatives; or
5. Where proceeding with the proposed action would set a precedent for future actions that collectively could result in significant environmental impacts.

See also: LO, EC, and EU.

Environmental Concerns (EC) – One of the alpha categories used by EPA reviewers to rate a DEIS. An EC rating means that the review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. See also: LO, EO, and EU.

Environmentally Unsatisfactory (EU) – One of the alpha categories used by EPA reviewers to rate a DEIS. An EU rating means that the review has identified adverse environmental impacts that are of sufficient magnitude that EPA believes the proposed action must not proceed as proposed. The basis for an environmentally unsatisfactory determination consists of identification of environmentally objectionable impacts as defined above and one or more of the following conditions:

2. The potential violation of or inconsistency with a national environmental standard is substantive and/or will occur on a long-term basis;
3. There are no applicable standards but the severity, duration, or geographical scope of the impacts associated with the proposed action warrant special attention; or
4. The potential environmental impacts resulting from the proposed action are of national importance because of the threat to national environmental resources or to environmental policies.

See also: EC, LO, and EO.

Essential Fish Habitat (EFH) – Those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.

Exclusive Economic Zone (EEZ) – The zone established by Presidential Proclamation 5030, 3 C.F.R. 22, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles (370.40 km) from the baseline from which the territorial se of the United States is measured.

Fecundity – The potential to produce offspring; a measurement of the egg-producing ability of a fish. Fecundity may change with the age and size of the fish.

Federal Waters – See Exclusive Economic Zone.

Federal Register (FR) – The official daily publication for Rules, Proposed Rules, and Notices of Federal agencies and organizations, as well as Executive Orders and other Presidential Documents.

Fish – Finfish, mollusks, crustaceans, and all other forms of marine animals and plant life other than marine mammals and birds.

Fishery – One or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographic, scientific, technical, recreational, or economic characteristics, or method of catch; or any fishing for such stocks.

Fishery resource – Any fish, any stock of fish, any species of fish, and any habitat of fish.

Fish stock – A population of a species of fish from which catches are taken in a fishery. Use of the term "fish stock" usually implies that the particular population is more or less isolated form other stocks of the same species, and hence self-sustaining.

Fisheries Obligation Guarantee *or* Fishing Vessel Obligation Guarantee Program (FOG)	– Loan guarantees under the Fisheries Obligation Guarantee (FOG) Program to help restructure existing debt ($1 million). The $1million that NOAA applied to the FOG program effectively leveraged $20 million in loan guarantees for the purposes of refinancing and restructuring mortgage debt, as well as for the retrofitting and re-equipping of fishing vessels and shoreside facilities.
Fishery Conservation and Management Act	– The Federal law that originally created the Regional Councils and is the Federal government's basis for fisheries management in the EEZ. Now known as (see also) the Magnuson Stevens Act.
Fishery Management Council (FMC)	– A fisheries management body established by the Magnuson-Stevens Fishery Conservation and Management Act to manage fishery resources in designated regions of the United States. Membership varies in size depending on the number of states involved. There are eight regional Councils.
Fishery Management Plan (FMP)	– A plan, and its amendments, that contains measures for conserving and managing specific fisheries and fish stocks. It is developed by a regional fishery management Council, or the Secretary of Commerce/NOAA, to manage a fishery resource in the Exclusive Economic Zone pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. It includes data, analyses and management measures for a fishery.
Fishery	– (a) One or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and (b) any fishing for such stocks.
Fishing morality rate at MSY- levels (Fmsy)	– A fishing mortality rate that would produce MSY when the stock biomass is sufficient for producing MSY on a continuing basis.
Fishing Mortality Rate (F)	– Instantaneous fishing mortality rate. A measurement of the rate of removal of fish from a population by fishing. Fishing mortality can be reported as either annual or instantaneous. Annual mortality is the percentage of fish dying in one year. Instantaneous is that percentage of fish dying at any one time. The acceptable rates of fishing mortality may vary from species to species.
Full Time Equivalent (FTE)	– Total number of workers, including part-time, in an area as the equivalent of full-time positions.
General Linear Model (GLM)	– A mathematical formula that relates one biological factor to another. Once a mathematical relationship is established, scientists use the formula to predict one factor over another.
Ghost Fishing	– The capture of fish or other living marine resources by lost or discarded fishing gear.
Gillnetting	– A gillnet is a curtain of netting that hangs in the water, suspended from floats. Gillnets are almost invisible to marine life and rely on this fact to catch fish. The spaces in the net are designed to be big enough for the head of a fish to go through but not its body. As the fish startles and backs out, its gills get caught in the net.

Groundfish – Fish that lives on or near the sea bottom part of the time. Some examples of groundfish are: Atlantic cod, haddock, walleye pollock, Pacific cod, rock sole, flatfish, rockfish, sablefish, among others.

Growth Model – A mathematical formula that describes the increase in length or weight of an individual fish with time.

Habitat areas of particular concern (HAPC) – Subsets of essential fish habitat containing particularly sensitive or vulnerable habitats that serve an important ecological function, are particularly sensitive to human-induced environmental degradation, are particularly stressed by human development activities, or comprise a rare habitat type.

Harvest – The total number or poundage of fish caught and kept from an area over a period of time.

High Seas – All waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States.

Highly Migratory Species (HMS) – Tuna species, marlin, ocean sharks, sailfishes, and swordfish. These fish are managed by the National Marine Fisheries Service HMS Division.

Incidental Catch of species – See also Bycatch. Species caught when fishing for the primary purpose of catching a different species. For fishermen, this term also means that these catches can be sold or kept if allowed under certain fishery plan regulations.

Individual Fishing Quota (IFQ) – Established by MSA, it is the annual catch limit for a person who has a permit to harvest a specific portion of the Total Allowable Catch of a species. A Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person.

Individual Transferable Quota – A form of limited entry that gives harvest rights to fishermen by assessing a fixed share of the catch to each fishermen. A type of quota (a part of a total allowable catch) allocated to individual fishermen or vessel owners and which can be transferred (sold, leased) to others.

Intrinsic Rate of Increase (z) – The change in the amount of harvestable stock. It is estimated by recruitment increases plus growth minus natural mortality.

Lack of Objections (LO) – One of the alpha categories used by EPA reviewers to rate a DEIS. A LO rating means that review has not identified any potential environmental impacts requiring substantive changes to the preferred alternative. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposed action. See also EO, EC, and EU.

Landings – The number or poundage of fish unloaded at a dock by commercial fishers or brought to shore by recreational fishers for personal use. Landings are reported at the points at which the fish are brought to shore.

Length Frequency – A breakdown of the different lengths of a kind of fish in a population or sample.

Length-Weight Relationship	– Mathematical formula for the weight of a fish in terms of its length. When only one is known, the scientist can use this formula to determine the other.
Limited Entry	– A program that changes a common property resource like fish into private property for individual fishermen. A fishery for which a fixed number of permits have been issued in order to limit participation. License limitation and the individual transferable quota (ITQ) are two forms of limited entry.
Longlining	– Central fishing line strung with many smaller lines holding baited hooks; line left to "soak" for a time to attract fish and then catch is hauled in. Pelagic longlining takes place near the surface targeting midwater fishes like swordfish and tuna; demersal or "bottom" longlining targets fishes that linve closer to the seafloor, like cod, halibut and sablefish. NOAA requires large circle style hook in both Atlantic and Pacific Oceans to help reduce turtle bycatch in longline fishing.
Magnuson Stevens Act (MSA)	– Magnuson Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq*.), formerly known as the Magnuson Act. See also Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) or Fishery Conservation and Management.
Magnuson Stevens Fishery Conservation and Management Act (MSFCMA)	– The Federal law that created the Regional Councils and is the Federal government's basis for fisheries management in the EEZ. See also Magnuson-Stevens Act (MSA).
Marine Recreational Fishery Statistics Survey (MRFSS)	– An annual survey by the National Marine Fisheries Service (NMFS) to estimate the number, catch, and effort of recreational fishermen, and to estimate the impact of recreational fishing on marine resources. It serves as a basis for many parts of fisheries management plans.
Marine Mammal Protection Act (MMPA)	– An established moratorium, with certain exceptions, on the taking or Harassment of marine mammals in U.S. waters and by U.S. citizens on the high seas, and on the importing of marine mammals and marine mammal products into the United States. Passed in 1972 and reauthorized in 1994.
Marine Interstate Fisheries Commission (MFC)	– One of three compacts of states (Atlantic, Gulf and Pacific) that cooperatively addresses fishery management issues in state jurisdictions.
Maximum Fishing Morality Threshold (MFMT)	– This is the reference point for determining if overfishing is occurring.
Maximum Sustainable Yield (MSY)	– An estimate of the largest annual catch or yield that can be continuously taken over a long period from a stock under prevailing ecological and environmental conditions. This is used as a management goal. Since MSY is a long-term average, it need not be specified annually, but may be reassessed periodically based on the best scientific information available.

Minimum Stock Size Threshold (MSST)	– A threshold biomass used to determine if a stock is overfished.
National Environmental Policy Act (NEPA)	– Passed by Congress in 1969, NEPA requires Federal agencies to consider the environment when making decisions regarding their programs. Section 102(2)(C) requires Federal agencies to prepare an Environmental Impact Statement (EIS) before taking major Federal Actions that may significantly affect the quality of the human environment. The EIS includes: the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the proposed action be implemented, alternatives to the proposed action, the relationship between local short-term uses of the environment and long-term productivity, and any irreversible commitments of resources which would be involved in the proposed action should it be implemented.
National Marine Fisheries Service (NMFS)	– A Division of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA). NMFS is responsible for conservation and management of offshore fisheries (and inland salmon). The NMFS Regional Directors are voting members of the respective Councils. NMFS also oversees the actions of the eight regional Fishery Management Councils.
National Standards	– The ten National Standards for fishery conservation and management set forth in Section 301 of MSA.
Natural Mortality Rate (M)	– A measurement of the rate of death from all causes other than fishing such as predation, disease, starvation, and pollution. Commonly expressed as an instantaneous rate (M). The rate of natural mortality varies from species to species. The natural mortality rate can also be expressed as a conditional rate (termed n and not additive with competing sources of mortality such as fishing) or as annual expectation of natural death (termed v and additive with other annual expectations on death).
Observer	– Any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under MSA.
Optimum Yield (OY)	– The amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems. The OY is developed on the basis of the Maximum Sustainable Yield (MSY) from the fishery, as reduced by any relevant economic, social and ecological factors. In the case of overfished fisheries, the OY provides for rebuilding to a level that is consistent with producing the MSY for the fishery.

Overfishing/ overfished	– Overfishing and Overfished, according to MSA, mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the mzximum sustainable yield on a continuing basis. The PFMC defines "overfishing" as fishing at a rate or level that jeopardizes the capacity of a stock or stock complex to produce MSY on a continuing basis. More specifically, overfishing is defined as exceeding a maximum allowable fishing mortality rate. "Overfished" is any stock or stock complex whose size is sufficiently small that a change in management practices is required to achieve an appropriate level and rate of rebuilding. The term generally describes any stock or stock complex determined to be below its overfished/rebuilding threshold. The default proxy is generally 25% of its estimated unfished biomass, however, other scientifically valid values are also authorized.
Pelagic	– Inhabiting the water column as opposed to being associated with the sea floor; generally occurring anywhere from the surface to1000 meters.
Predator-Prey Relationship	– The interaction between a species (predator) that eats another species (prey). The stages of each species' life cycle and the degree of interaction are important factors.
Processing	– The preparation or packaging of fish to render it suitable for human consumption, retail sale, industrial uses, or long-term storage, including but not limited to cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but not heading and gutting unless additional preparation is done.
Programmatic Environmental Impact Statement (PEIS)	– Comprehensive document in which the agency considers a number of related actions or projects being decided within one program; looks to the environmental consequences of a program as a whole.
Purse Seining	– Large net that encircles a school of fish. Bottom of net is strung with a line that the crew can pull closed. Small boats move out from a mother ship to surround the fish with netting. The bottom of the net is then pulled closed, like a purse, and raised up, trapping the fish inside it. Traditionally used to capture sardines, herring and mackerel, but also used for catching tuna.
Quota	– A specified numerical harvest objective, the attainment (or expected attainment) of which causes closure of the fishery for that species or species group.
Rebuilding Plan	– Plan that describes policy measures that will be used to rebuild a fish stock that has been declared overfished.
Recovery Plan	– Plan for the conservation and survival of threatened and endangered species; plan describes necessary site-specific management actions, measurable criteria to determine when the species should be removed from the list, and estimates of the time required to carry out those measures as well as their cost.
Regulatory Discards	– Fish harvested in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell.

Stock Assessment – The process of collecting and analyzing biological and statistical information to determine the changes in the abundance of fishery stocks in response to fishing, and, to the extent possible to predict future trends of stock abundance. Stock assessments are based on resource surveys; knowledge of the habitat requirements, life history, and behavior of the species; the use of environmental indices to determine impacts on stocks; and catch statistics. Stock assessments are used as a basis to "assess and specify the present and probably future condition of a fishery" (as required by MSA), and are summarized in the Stock Assessment and Fishery Evaluation or similar document. If the stock assessment reveals that the stock is overfished, scientists then conduct a rebuilding analysis. The rebuilding analysis uses information from the stock assessment to describe the probability that a stock will rebuild within a given timeframe under a particular management regime.

Stock Assessment and Fishery Evaluation (SAFE) – A report prepared by the Councils that provides a summary of the most recent biological condition of species in a fishery management unit, and the social and economic condition of the recreational and commercial fishing industries, including the fish processing sector. It summarizes, on a periodic basis, the best available information concerning the past, present, and possible future condition of the stocks and fisheries managed in the FMP. The report provides information to the Federal Fishery Management Councils for determining harvest levels.

Stock – A relatively discrete and identifiable unit of fish or other exploited species, often referring to a management unit. A stock of fish means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

Supplemental EIS – An EIS prepared by an agency 1) to document substantial changes in a proposed action (as described in an original EIS) that are relevant to environmental concerns or 2) when there are significant new circumstances or information relevant to environmental concerns or bearing on the proposed action or its impacts. Supplemental EISs may also be prepared when an agency determines that the purposed of NEPA would be furthered by doing so.

Survival Rate (S) – Rate of survival expressed as the fraction of a cohort surviving a period compared to number alive at the beginning of the period (# survivors at the end of the year / numbers alive at the beginning of the year).

Territorial Sea – The area from average low-water mark on the shore out to three miles for each of the coastal states, except out to nine miles for Texas and the west coast of Florida and the Commonwealth of Puerto Rico. The shore is not always the baseline from which the three miles are measured. In such cases, the outer limit can extend further than three miles from the shore.

Total Allowable Catch – The recommended catch for a species or species group in a given time period, usually a year. The Regional Council sets the TAC from the range of allowable biological catch (ABC).

Total Mortality (Z)	– A measurement of the rate of removal of fish from a population by both fishing and natural causes. Total mortality can be reported as either annual or instantaneous. Annual mortality is the percentage of fish dying in one year. Instantaneous mortality is that percentage of fish dying at any one time. The rate of total mortality may vary from species to species. The instantaneous rate of total mortality The components of Z are additive (i.e., $Z = F+M$).
Total Allowable Catch (TAC)	– Total Allowable Catch is calculated by applying a target fishing mortality rate to exploitable biomass.
Traps and Pots	– Baited cages used to attract the catch and hold it alive until the fisherman returns; often used for lobster, crabs and shrimp; also occasionally used to catch bottom-dwelling fish such as sablefish or West Coast rockfish. Made of wire or wood. Many traps usually laid out attached in a line. Fishermen return in 3-4 days and haul pots aboard, releasing animals that are too small, too large, or not the right species.
Trawling	– Trawlers drag a cone-shaped net behind a boat. Different types of trawl nets are used to fish in midwater (pelagic) and along the seafloor. During fishing the trawl entrance or opening must be kept open. For example, with beam trawls and dredges this is done by mounting the trawl bag on a rigid frame or beam. Beam trawls mainly used for catching flatfishes such as plaice and sole as well as for different species of shrimp. Dredges are commonly used for harvesting scallops, clams, and mussels. Demersal otter and pair trawls are used to catch variety of species like cod, haddock, as well as shrimps. Pelagic trawls are used for various pelagic target species like herring, mackerel, blue whiting and pollock.
Vessel Monitoring System	– A satellite communications system used to monitor fishing activities - for example, to ensure that vessels stay out of prohibited areas. The system is based on electronic devices (transceivers), which are installed onboard vessels. These devices automatically send out data to a shore-based "satellite" monitoring system.
Virgin Stock Biomass (Bo)	– The long term average biomass value expected for the stock in absence of fishing.
Virtual Population Analysis (VPA)	– A type of analysis that uses the number of fish caught at various ages or lengths and an estimate of natural mortality to estimate fishing mortality in a cohort. It also provides an estimate of the number of fish in a cohort at various ages.

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APPENDICES

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Appendix A Regional Council FMPs

As indicated previously, the focus of this guidance is on FMPs/Amendments prepared under the authority of MSA. A current list of FMPs prepared by the Regional Fishery Management Councils or NMFS is provided below. For a more detailed listing of the titles, dates of approval and/or implementation, and contents for all FMPs and FMP Amendments, please refer to the Councils' individual websites. Council contact information is provided in Section 5.1. Further information on the two NMFS FMPs may be found at NMFS's Highly Migratory Species Division website (http://www.nmgs.noaa.gov/sfa/hms).

An excellent resource for detailed information regarding the stock status for all species contained in the FMP's management units is the NMFS Annual Report to Congress on the Status of U.S. Fisheries. The 2003 Report (entitled "Sustaining and Rebuilding - National Marine Fisheries Service - 2003 Report to Congress - the Status of the U.S. Fisheries) provides stock status determinations for those stocks subject to overfishing, that are overfished, or that are approaching an overfished condition (status determinations based on fishing mortality and stock biomass criteria). Stocks are identified within each Council's geographic area of authority and are listed according to their FMP. The Report is accessible on the Internet at http://www.nmfs.noaa.gov/sfa/reports.html.

In addition to the annual Report to Congress on the Status of the U.S. Fisheries, NMFS has made available a database providing (a) full status determinations for all stocks subject to management under the MSA, (b) information related to necessary management actions to be taken, and (c) information on progress being made in rebuilding overfished stocks. This information may be found at the same agency website as referenced above for the Report to Congress. It is noted that this website also provides greater detail on overfishing definitions, stock assessment methodology, species-specific assessments, and a guide to acronyms used throughout the Report.

Current FMPs by Council

New England Fishery Management Council (ME, NH, MA, RI, CT)

7 FMPs:
Atlantic Sea Scallop
Northeast Multispecies
Northeast Skate
Atlantic Herring
Red Crab
Monkfish (prepared jointly with Mid-Atlantic Council)
Atlantic Salmon

A Hagfish FMP is under development.

Mid-Atlantic Fishery Management Council (NY, NJ, DE, MD, VA, NC, PA)
6 FMPs:
Summer Founder, Scup and Black Sea Bass
Atlantic Bluefish
Atlantic Mackerel, Squid and Butterfish
Atlantic Surf Clam and Ocean Quahog
Tilefish
Spiny Dogfish (prepared jointly with the New England Council)

South Atlantic Fishery Management Council (NC, SC, GA, eastern FL)
8 FMPs:
South Atlantic Golden Crab
South Atlantic Shrimp
South Atlantic Snapper Grouper
Atlantic Coast Red Drum
Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region
Pelagic Sargassum Habitat of the South Atlantic Region
Gulf of Mexico/South Atlantic Spiny Lobster (prepared jointly with Gulf Council)
Dolphin-Wahoo of the Atlantic

A Calico scallop FMP is under development.

Gulf of Mexico Fishery Management Council (TX, LA, MS, AL, western FL)
7 FMPs:
Gulf of Mexico Stone Crab
Gulf of Mexico Shrimp
Reef Fish Resources of the Gulf of Mexico
Gulf of Mexico Red Drum
Coral and Coral Reefs of the Gulf of Mexico
Spiny Lobster
Coastal Migratory Pelagics of the Gulf of Mexico and South Atlantic (prepared jointly with the South Atlantic Council)

Caribbean Fisheries Management Council (U.S. Virgin Islands and Commonwealth of Puerto Rico)
4 FMPs:
Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands
Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands
Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands
Corals and Reef Associated Invertebrates of Puerto Rico and the U.S. Virgin Islands

Pacific Fishery Management Council (WA, OR, CA, ID)
4 FMPs:
Coastal Pelagic Species
West Coast Salmon
Pacific Coast Groundfish
U.S. West Coast Fisheries for Highly Migratory Species FMP[9]

Western Pacific Fisheries Management Council (HI, Territory of American Samoa, Territory of Guam, Commonwealth of the Northern Marinas Islands, U.S. Pacific Island Possessions)
5 FMPs:
Western Pacific Pelagics
Western Pacific Crustaceans
Western Pacific Precious Corals
Bottomfish and Seamount Groundfish of the Western Pacific
Coral Reef Ecosystems of the Western Pacific Region

North Pacific Fishery Management Council (AK, WA, OR)
5 FMPs:
Gulf of Alaska Groundfish
Bering Sea and Aleutian Islands (BSAI) Groundfish
Bering Sea and Aleutian Islands King and Tanner Crab
Alaska Weathervane Scallops
Alaska High Seas Salmon

Pacific halibut is managed jointly with the International Pacific Halibut Commission.

NMFS
2 FMPs:
Atlantic Billfish
Atlantic Tunas, Swordfish and Sharks

[9]While that FMP was approved by the Secretary of Commerce on February 4, 2004, it was not fully implemented by NMFS until May 7, 2004.

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Appendix B Other Fishery Management Authorities

In addition to the eight regional Councils, other bodies have responsibility for conservation and management of U.S. fish stocks.

It should be noted that this guidance relates only to the review of plans for fisheries managed by the Councils and NMFS. However, it is important to be aware of the plans developed by other authorities to the extent that their actions may impact those fisheries managed by NMFS and the Councils.

States have authority to manage fisheries in their marine waters, which generally extend three miles from shore (nine miles for Texas, Florida Gulf Coast, and Puerto Rico). States are represented on the Councils and participate in Council discussion to ensure that interstate and Federal waters is coordinated. States also are involved with three commissions to manage interstate marine fisheries. The three regional interstate fishery commissions that have been established by Federal law include the (1) Atlantic States Marine Fisheries Commission (ASMFC), (2) Gulf States Marine Fisheries Commission (GSMFC), and (3) Pacific States Marine Fisheries Commission (PSMFC).

Historically, the commissions have had little power, but recently they were charged by Congress to promote and encourage management of interjurisdictional marine resources. This new initiative did not give the commissions any regulatory power but created a stronger process for coordinating regulations among states. This means that regulations proposed at the state level could have originated at one of the interstate fishery commissions.

Passage of the Atlantic Coastal Fisheries Cooperative Management Act in 1993 gave the ASMFC new powers. The ASMFC is required to adopt FMPs for coastal fisheries (Maine through Florida) caught predominantly in state waters and under state regulations: some are jointly developed with the Councils and NMFS. Each state promulgates its own regulations to achieve FMP objectives adopted by the commission. FMPs developed by the commission may recommend complimentary regulatory actions in the EEZ. States must comply with the plans or face a "non-compliance" finding, subjecting them to a fishing moratorium (imposed by the Secretary) on the applicable fisheries until they comply.

The ASMFC was formed by the fifteen Atlantic Coast states (Maine through Florida including Pennsylvania) in 1942 to assist in managing and conserving their shared coastal fishery resources, including marine, shell and anadromous species. This Commisssion coordinates the management of 22 Atlantic coastal fish species through its Interstate Fisheries Management Program, including lobster, herring, menhaden, bluefish, northern shrimp, red drum, scup, and striped bass. For species that have significant fisheries in both state and Federal waters (e.g., Atlantic herring, summer flounder, Spanish mackerel), the Commission works jointly with the relevant East Coast Regional Councils to develop FMPs. The Commission also works with NMFS to develop compatible regulations for the Federal waters of the EEZ. The FWS and NMFS are also represented on the Commission. In addition to interstate fisheries

management, the other four core ASMFC programs include research and statistics, recreational fisheries, habitat and law enforcement.

The GSMFC is an organization of five states (Texas, Louisiana, Mississippi, Alabama, and Florida) whose coastal waters are the Gulf of Mexico. It coordinates the management of striped bass, Spanish mackerel, blue crab, oyster, black drum, striped mullet, and menhaden. Jurisdiction of the coastal states is defined as within 3 miles except for the Florida Gulf Coast and Texas which are 9 miles.

The PSMFC, authorized by Congress in 1947, represents California, Oregon, Washington, Idaho and Alaska. Although the Commission does not have management authority, it serves as a coordinator of research and as a forum for discussion and liaison between state and Federal authorities for issues that fall outside state or regional fishery management Council jurisdiction. It also provides a communication exchange between the Pacific and North Pacific Fishery Management Councils, a mechanism for Federal funding of regional fishery projects, and information in the form of data services for various fisheries.

NOAA's role in building cooperative partnerships to strengthen marine fisheries management and conservation at the state, interregional and national levels is performed by the Division of State-Federal Fisheries. To accomplish this goal, they provide national policy and oversight for NOAA Fisheries interaction with 30 coastal states and island territories/commonwealths, the three interstate marine fisheries commissions, and national groups.

Chesapeake Bay fisheries are managed separately by Pennsylvania, Maryland, Virginia and the District of Columbia, with guidance from several Fishery Management Councils. Chesapeake Bay FMPs are developed to provide compatible, coordinated management for the conservation and wise use of the Bay's fishery resources. The 1987 Chesapeake Bay Agreement mandated the development of FMPs for commercially, recreationally, and ecologically valuable aquatic species. More than 15 FMPs have been developed jointly by the states in the watershed and now provide guidance to Bay states for coordinated, baywide management of fisheries. The Strategy for the Restoration and Protection of Ecologically Valuable Species goes a step further, requiring that habitat requirements for the species be incorporated into each FMP. More information on Chesapeake Bay FMPs can be found at http://www.chesapeakebay.net/info/fishman.cfm.

The International Pacific Halibut Commission (IPHC) was established by the Convention for the Preservation of the Halibut Fishery signed in 1923 to conserve and manage the halibut stocks in the waters off the west coasts of the U.S. and Canada, including the southern and western coasts of Alaska, under the exclusive fisheries jurisdiction of either the U.S. or Canada. The main functions of the Commission are to coordinate scientific studies relating to the halibut fishery and to formulate regulations designed to develop the stocks of halibut to those levels which permit optimum utilization. Measures recommended by the Commission are submitted to the two governments for approval, and upon approval, the regulations are enforced by the appropriate agencies of both governments. Membership in this Commission is limited to the U.S. and Canada.

The Pacific Salmon Commission (PSC) was established in 1985 by the Treaty between the U.S. Government and the Government of Canada concerning pacific Salmon. The Commission was designed to enable the U.S. and Canada to prevent overfishing and provide for optimum production and to allow each party to receive benefits equivalent to the production of salmon originating in its waters. However, the U.S. and Canada have not been able to agree fully on long-term, coast-wide salmon fishing management regimes since 1992 because of differing philosophical and technical approaches to equity and salmon conservation issues.

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Appendix C Related Statutes and Executive Orders

The formulation and implementation of all Federal fishery management policies and measures must be consistent with requirements stipulated in the body of Federal statutes and E.O.s described below. Some of these mandates speak directly to the conservation and management of fishery resources; some address rulemaking requirements generally; and some ensure, in particular, that potential environmental, economic, and social effects of a proposed action are assessed and considered before the action is taken. For marine fisheries resources, the Executive branch's responsibility for compliance with these mandates resides primarily with the Secretary and has been largely delegated down to NOAA and NMFS.

A listing of major Federal mandates (statutes and E.O.s) affecting the conservation and management of marine fishery resources is provided below based on the following information sources: NMFS *Operational Guidelines - Fishery Management Process*, May 1, 1997; NOAA *Administrative Order 216-6: Environmental Review Procedures for Implementing the [National] Environmental Policy Act*, May 20, 1999; recent FMP EISs; and NMFS/NOAA websites, as noted under certain mandates.

Related general rulemaking statutes and E.O.s include the APA, PRA, RFA, and E.O.s 12114 (Environmental Effects Abroad of Major Federal Actions), 12630 (Government Actions and Interference with Constitutionally Protected Property Rights), 12866 (Regulatory Planning and Review), 12898 (Environmental Justice), 13132 (Federalism), and 13175 (Consultation and Coordination With Indian Tribal Governments). The remaining statutes and E.O.s are fishery resource related.

For more information on these statutes and E.O.s, one resource available to EPA reviewers is the NOAA website which includes various links to statutes and programs, such as:

- Protected species/ESA - http://www.nmfs.noaa.gov/prot_res/overview/es.html
- National Marine Sanctuaries - http://www.sanctuaries.nos.noaa.gov/oms/oms.html (with links to each sanctuary).
- NOAA NEPA Coordination website - http://www.nepa.noaa.gov (links to various E.O.s)
- NOAA Coral Conservation program - http://www.coralreef.noaa.gov.
- Marine Protected Areas (NOAA and Department of Interior website) - http://www.mpa.gov/

Note that references to relevant websites are also provided in this appendix. While the internet citations (uniform resource locators, or URLs) were accurate at the time the data were collected, websites change frequently due to changes in data availability or reorganization. The cited URLs may not work in the future. If this occurs, "backing up" to a less specific web address may allow retrieval of the information.

C.1 Related Statutes

Administrative Procedure Act (APA): 5 U.S.C. 551 *et seq*.
Paperwork Reduction Act (PRA) 44 U.S.C 3501 *et seq*.

Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq*.
Atlantic Striped Bass Conservation Act: 16 U.S.C. 5151 *et seq*.
Atlantic Coastal Fisheries Cooperative Management Act: 16 U.S.C. 5101 *et seq*.
American Fisheries Act (AFA), PL 105-277 (46 U.S.C. 12102 *et seq*.)
Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 *et seq*.
Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq*.
Fish and Wildlife Coordination Act, 16 U.S.C., 661 *et seq*.
Marine Mammal Protection Act (MMPA), 16 U.S.C. 137 *et seq*.
Migratory Bird Treaty Act (MBTA), 16 U.S.C. 703, *et seq*.
National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq*.
National Environmental Policy Act (NEPA), 42 U .S.C. 4321 *et seq*.

C.2 Related Executive Orders

Executive Order 12114: Environmental Effects Abroad of Major Federal Actions
Executive Order 12630: Government Actions and Interference with Constitutionally Protected Property Rights
Executive Order 12866: Regulatory Planning and Review
Executive Order 12898: Environmental Justice
Executive Order 13089: Coral Reef Protection
Executive Order 13112: Invasive Species
Executive Order 13132: Federalism
Executive Order 13158: Marine Protected Areas (MPA)
Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
Executive Orders 13178 and 13196: The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve [E.O. 13178 established the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve; E.O. 13196 modified the earlier E.O. by revising some of the conservation measures and making the Reserve Preservation Areas permanent].
Executive Order 13186: Protection of Migratory Birds.

Appendix D Essential Fish Habitat (EFH)

The 1996 amendments set forth a new mandate for NMFS, Regional Councils, and other Federal agencies to identify and protect important marine and anadromous fish habitats. Specifically, the Councils, with assistance from NMFS, are required to identify and describe EFH in FMPs or FMP Amendments for all Federally managed fisheries, minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat.

Congress defined EFH as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity" (16. U.S.C. 1802(10)) [author's emphasis]. The EFH regulations further interpret the EFH definition as follows:

> 1. *Waters* – include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate;
>
> 2. *Substrate* – includes sediment, hard bottom, structures underlying waters, and associated biological communities;
>
> 3. *Necessary* – means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and "spawning, breeding, feeding, or growth to maturity" covers a species' full life cycle.

These EFH identifications and descriptions must be based on the best available science regarding the habitat requirements of each managed species and are developed through the public process. A listing of identifications and descriptions for EFH for each Council can be found on the NMFS habitat protection website at: http://www.nmfs.noaa.gov/habitat/habitatprotection/ with a direct link to the "essential fish habitat" website:
http://www.nmfs.noaa.gov/habitat/habitatprotection/essentialfishhabitat.htm

From the EFH homepage, there are additional links to information on EFH EISs (by region) as well as scoping documents, and comprehensive information and issues (and links) related to EFH in general. Information includes, but is not limited to: Background information, EFH definitions, EFH Terminology, EFH Laws and Regulations, Regional Habitat Conservation Divisions, EFH EISs, Effects of Fishing, EFH Guidance Documents, Fact Sheets, etc. In particular, the EFH guidance documents include EFH Consultation Guidance, EFH Assessment Guidance, a report on approaches to identify and protect HAPCs, and guidance for integrating consultation requirements associated with ESA and EFH. Links from NMFS' EFH homepage to each of the regional offices provide access to EFH identifications and descriptions for each individual fish species managed by that region. The most recent addition to the website is a second section on EFH descriptions and identifications by Council. A section summarizing the EFH consultation process will be developed in the near future.

Guidance and procedures for implementing the 1996 amendments were provided through interim final rules, as revised by final rules published by the NMFS on January 17, 2002 (50 C.F.R. 600.805-600.930). These rules specify that FMP Amendments be prepared to describe and identify EFH, and identify appropriate actions to conserve and enhance those habitats. As new FMPs are developed, EFH for newly managed species will be defined as well.

Currently, NMFS and many Councils are preparing new EISs for the EFH components of many FMPs. In response to a court order, NMFS will prepare EISs to evaluate the designation of EFH, the identification of Habitat Areas of Particular Concern, and the minimization of the adverse effects of fishing on EFH. The court order stemmed from a lawsuit filed by seven environmental groups and two fishing associations. The suit covered FMP Amendments developed by the New England, Gulf of Mexico, Carribean, Pacific and North Pacific Councils. Each new EIS will evaluate a range of alternatives to designate EFH and Habitat Areas of Particular Concern and to minimize, to the extent practicable, adverse effects on EFH from fishing, using the best available scientific information. Some of these analyses will be combined with evaluations of other issues associated with the particular fisheries. A list of (and links to) the relevant EISs can be found at the EFH homepage.

Ongoing efforts include the incorporation of habitat protection objectives into the development of new FMPs and implementing alternatives for minimizing the adverse effects of fishing gear. For example, a 180-square nautical mile marine reserve has been established in the Dry Tortugas. Fishing and anchoring of fishing vessels has been prohibited in the reserve, which includes Riley's Hump, the sole spawning ground for Mutton snapper. In New England, the use of "street sweeper" gear has been banned since 1999. New England trawl fishermen had previously attached the stiff-bristled brush cylinders from street sweepers to their trawls, allowing them to catch fish more efficiently, but potentially damaging bottom habitats in the process. Additional measures will be considered as more research data on fishing gear impacts becomes available.

With respect to the effects of fishing gear on fish and sensitive habitats, NMFS has dedicated significant effort to studying the effects of various fishing gears as they relate to decreased productivity, survival, or recruitment of managed fish species, and harm to sensitive habitats. Examples of adverse effects from fishing practices can include alteration of the physical terrain from bottom-tending gear, chemical modifications to the sediment and over-lying water column, and biological changes to the benthic community, such as removal of prey species. NMFS is engaged in numerous research projects to improve understanding of the effects of fishing on EFH, including impacts from mobile gears, such as trawls and dredges, and from certain types of fixed gears, such as fish traps. See also Appendix E.

EFH Consultation

Once EFH has been identified, Federal agencies must consult with the Secretary (NMFS) and any Federal or state agency concerning any activity or proposed activity authorized, funded, or undertaken by the agency that may affect EFH. Councils may also comment and make recommendations to Federal agencies regarding their actions that may, in the view of the Councils, adversely affect the habitat, including EFH, of a fishery resource under its authority. If NMFS receives information that a Federal action

would adversely affect EFH, it must recommend measures to conserve and enhance such habitat. Within 30 days, the action agency must respond to NMFS (and the regional Council(s)) with a description of measures that will be taken to avoid, mitigate, or offset the impact of the activity on the habitat. If the response is inconsistent with the recommendations of NMFS, the reasons must be explained. In the case of FMPs, NMFS as the action agency must consult with itself regarding an action that may adversely affect EFH.

EFH consultations may be streamlined in future planning for a large number of Federal actions through programmatic consultations or in existing consultation processes through findings. Programmatic consultations described under 50 C.F.R. 600.920(j) provide a means for NMFS and a Federal agency to consult regarding a potentially large number of individual actions that may adversely affect EFH. NMFS may find that existing action agency environmental review processes can be combined with the EFH consultation process if they meet the criteria under 50 C.F.R. 600.920(f)(1). For example, NMFS finds that the ESA Section 7 consultation process may be used by NMFS and any Federal action agency to satisfy the MSA EFH consultation requirements, provided consultations are implemented consistent with recent NMFS' guidance (February 28, 2001). This guidance includes recommended procedures for integrating MSA EFH consultations with ESA Section 7 consultations in cases where a Federal agency must consult under both statutes and NMFS determines that combining the two consultations improves efficiency. With respect to fisheries management actions, note that NMFS consults within itself on EFH and ESA for those managed and protected species under NMFS' jurisdiction. A copy of the guidance is available on the EFH homepage (link to EFH Guidance Documents and then to EFH/ESA Guidance).

EFH in State Waters

Although the regional Council's jurisdiction over fisheries is limited to Federal waters, the EFH provisions of MSA apply throughout the range of managed species, often extending into state waters for some life stages. The Councils FMP Amendments identify and describe EFH in both state and Federal waters and recommend conservation measures to minimize threats to EFH in both state and Federal waters. However, the consultation and regulation provisions apply differently. While Federal agencies must consult with NMFS on actions that may adversely effect EFH, state agencies are not required to notify NMFS even though NMFS must still provide conservation recommendations. States also do not have to respond to any conservation recommendations received from NMFS. When dealing with the effects of fishing activities that may affect EFH, the regulatory authority of the Councils and NMFS under MSA applies only to fishing impacts in Federal waters.

NOAA/NMFS EFH contact information is included in Section 5.1.

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Appendix E Fishing Gear Primer

The type of fishing gear utilized to collect/catch various fish species may have effects on the environment that must be considered when conducting a review of the DEIS. Just as recently as March 2002, the National Research Council released a report, *Effects of Trawling and Dredging on the Seafloor Habitat*, which discusses potential environmental impact, but emphasizes that still much needs to be learned about the impacts of not only trawls and dredges, but stationary fishing gear such as pots and longlines. This report can be viewed online at:
http://books.nap.edu/books/0309083400/html/index.html.

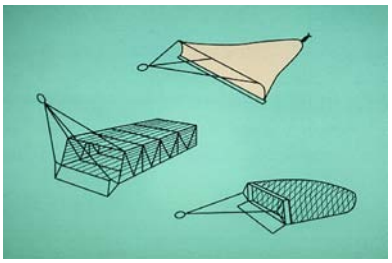
Fishing gear descriptions in this section have been adapted from a new website titled the Fisheries Global Information System (FIGIS), a global network of integrated fisheries information maintained by the Food and Agriculture Organization of the United Nations (FAO). The FAO website for fisheries can be viewed at: http://www.fao.org/fi/default.asp/. Access to the Fisheries Global Information System (FIGIS) also can be obtained through the FAO website. FIGIS contains a wealth of information on aquatic species, marine resources, marine fisheries, and fishing technologies (including fishing techniques, gear types, and fishing vessel types). At the time of this document was written the website profiled over 80 types of fishing gear, including pictures of the gear, specifics on handling equipment, types of fishing vessels using the gear, locations used, environmental effects, and target species. Note that the gear descriptions included in this document are general and not representative of all gear used (i.e., specific examples of all gear types are not included). Finally, the reviewer is also referred to the following website of NOAA photographs at: http://www.photolib.noaa.gov/collections.html, which includes photos of various fishing techniques and other fish illustrations [under link to "Fisheries"].

The main categories of fishing gear, according to the International Standard Statistical Classification of Fishing Gears (ISSCFG) classification, are described below. Further details on gear types, target species, and environmental impacts can be searched at: http://www.fao.org/fi/figis/tech/gears_l.jsp.

Dredges [DR]

This category includes: Boat and Hand Dredges

These are gears which are dragged along the bottom to shellfish and molluscs (e.g., mussels, oysters, scallops, clams). They consist of a mouth frame to which a holding bag constructed of metal rings or meshes is attached. There are two main types (categories) of dredges; heavy dredges towed by boats (boat dredges), and lighter ones operated by hand in shallow waters (hand dredges).



Sample pictures of dredges. *From FIGIS.*

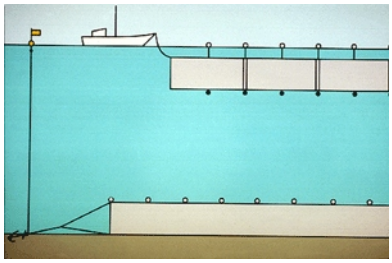
Dredges are generally operated not too far from the coastline always in "hard" contact with the bottom in both inland and in marine waters Dredges might also be used for harvesting sea bed farmed mussels. A

dredge may give rise to various degree of impacts to the sea floor and the benthic organisms living there.

Gillnets and Entangling Nets [GE]

This category includes: Set gillnets; Driftnets; Encircling gillnets; Trammel gillnets; Fixed gillnets (on stakes); Combined gillnets-trammel nets.

Gillnets or entangling nets consist in single or, less commonly, double (both are known as "gillnets", strictly speaking) or triple netting (known as " trammel net") wall mounted together on the same frame ropes. Gillnets are set near the surface, in midwater, or on the bottom and have floats on the upper line (headrope) and weights on the ground-line (footrope). Several types of nets may be combined in one gear (for example, trammel net combined with gillnet). These nets can be used either alone or, as is more usual, in large numbers placed in line ('fleets' of nets). The gear can set, anchored to the bottom or left drifting, free or connected with the vessel.



Sample pictures of GE. *From FIGIS.*

According to their design, ballasting and buoyance, these nets may be used to fish near to the surface, in midwater or at the bottom, either in inland and sea waters. Real gillnets, at least those with a single netting, are, in general, considered as having a high degree of selectivity, in terms of fish species, as well as size of the fish which directly depends on the size of the mesh. Incidental catch of a number of endangered species such as turtles, sharks, marine mammals or seabirds, in certain areas is a matter of growing concern. Research is being conducted to reduce this risk. "Ghost fishing" due to lost (or discarded) gillnets is also a serious concern. For the above mentioned reasons, the United Nations banned, in 1991, the use of large scale high seas driftnets over 2.5 kilometers long. From the point of view of environment, in general, it is also worth noting the low energy consumption for fishing with gillnets.

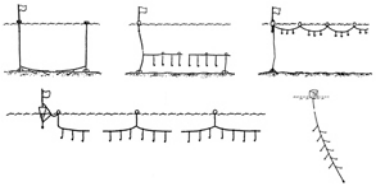
Grappling and Wounding Gears [GAW]

This category includes: Harpoons [HAR]; Clamps; Rakes; Tongs; Spears; and Wrenching Gears.

As in hunting, man has extended the range of his arm by using long-handled implements, which can be pushed, thrown or shot for killing, wounding or grappling fish or molluscs. These gears are commonly operated, by hand, in shallow waters, from the shore or from a boat, more common in inland waters but also in the sea. In certain areas, harpooning is also carried out offshore. In many countries the use of wounding gears is banned as a prey can be hurt by the gear and die after escaping.

Hooks and Lines [LL]

This category includes: Vertical Lines; Set Longlines; Drifting Longlines; Trolling Longlines; Pole and Lines.



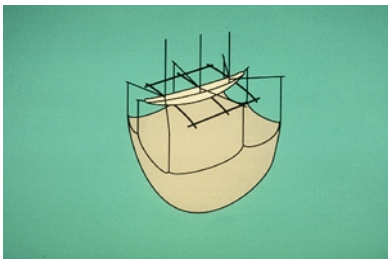
Sample pictures of hooks and lines setups. *From FIGIS.*

Hooks and lines are gear where the fish is attracted by a natural or artificial bait (lures) placed on a hook fixed to the end of a line or snood, on which they get caught. Hooks or metallic points (jigs) are also used to catch fish by ripping them when they pass in its range of movement. Hook and line units may be used singly or in large numbers. Hooks and lines are generally operated in a very wide range of depths, either in inland and sea waters. With line fishing it is possible to catch fish on rough ground, even in their hiding places between the rocks. This category of gear is mainly used to catch Pelagic, demersal and benthic species.

Lift Nets [LN]

This category includes: Portable hand lift nets; Boat-operated lift nets; and Shore operated stationary lift nets.

Used to catch Small pelagic species, fish and squid, lift nets are horizontal netting panels or bag shaped like a parallelepiped, pyramid or cone with the opening facing upwards. These nets are submerged at a certain depth and light or bait to attract fish over the opening. After a predetermined amount of time the nets are lifted out of the water.

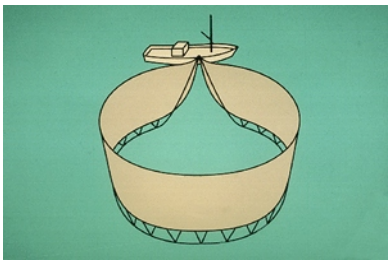


Sample picture of a lift net. *From FIGIS.*

The impact of the use of lift nets depends on how selective is the attraction above the lift net opening, mainly attraction to the light. Certain species or smaller sizes of fish can be attracted, at the same time, in addition to target species (a bycatch which is some time discarded).

Surrounding Nets [LN]

This category includes: Lampara nets; Purse Seines; and Ring Nets.

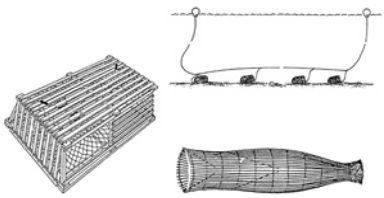


Sample pictures of a surrounding net. *From FIGIS.*

Surrounding nets are large netting walls set for surrounding aggregated fish both from the sides and from underneath, thus preventing them from escaping by diving downwards. Apart from a few exceptions, these are surface nets. The netting wall is framed by lines: a float line on top and lead line at the bottom. Surrounding nets are the most important and most effective gears to catch aggregated pelagic species both large (tuna and tuna-like species) and small ones (for small pelagic fish, midwater trawling in a good alternative in many cases). Apart from a few exceptions, surrounding nets are surface nets which can, in principle, be used everywhere, in both marine and inland areas (as long as there is enough space for the operation of a large net). The only limitation could be in too shallow waters where the water depth is less than the height of the surrounding net during the fishing operations making a risk of damage to the fishing gear. Incidental capture of dolphins by tuna purse seiners is regarded as an irresponsible fishing practice. Special techniques have been developed to reduce bycatch of dolphins; the Medina paneland "back down" operation, which ensure that encircled dolphins are released alive. The increasingly used practice of encircling floating objects, including man-made FADs increases the capture of small sized and immature aggregating around such devices.

Traps [FN]

This category includes: Pots; Fyke Nets; Stow Nets; Barriers, Fences, Weirs, Corrals, etc.; Ariel Traps; Stationary Uncovered Pound Nets.



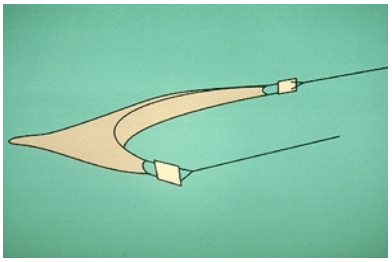
Examples of Pots. *From FIGIS.*

Traps, large stationary nets or barrages or pots, are gears in which the fish are retained or enter voluntarily and will be hampered from escaping. They are designed in such manner that the entrance itself became a non-return device, allowing the fish to enter the trap but making it impossible to leave the catching chamber. Traps may or may not be baited. Pieces of fish are often used as bait. Artificial baits are also used. Other types of traps are provided with large guiding panels made from netting to lead the fish into the catching chamber. Different materials are used for building a trap; wood, split bamboo, netting wire are some examples. Traps are operated in a very wide range of depths, either in inland, in estuarine and sea waters. Large traps (stationary nets or barrages) are set in coastal waters; pots can be anywhere up to several hundred meters depth. Traps have low negative environmental impact because caught juveniles or undersized species can

be released alive. Mesh size in the trap can also be used to release small sized individuals. Lost pots will continue to fish and thus "ghost fish" but, in more and more fisheries, a regulation requires that a pot includes some escapement window/panel. Large stationary nets or barrages are used to catch migrating fish (pelagic and demersal). Pots are used for catching lobster, crabs, shrimps, octopus, eels, and all kinds of reef fish and euryhaline species.

Trawl Nets [TN]

This category includes:
Bottom; Midwater, and Otter Twin.

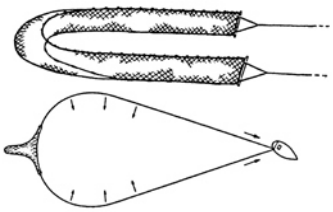


Sample picture of a trawl net. *From FIGIS.*

Used to catch bottom, demersal and pelagic species, the trawl nets are cone-shaped net (made from two, four or more panels) which are towed, by one or two boats, on the bottom or in midwater (pelagic). The cone-shaped body ends in a bag or coded. The horizontal opening of the gear, while it is towed is maintained by beams, otter boards or by the distance between the two towing vessels (pair trawling). Floats and weights and/or hydrodynamic devices provide for the vertical opening. Two parallel trawls might be rigged between two otter boards (twin trawls). The mesh size in the codend or special designed devices is used to regulate the size and species to be captured. The major potential detrimental impact of trawling on species can be the capture and removal from the ecosystem of small sized organisms and non-target species, which frequently are discarded at sea. Such impact can be mitigated by using larger meshes in the codends and/or devices in the trawl that reduce capture of small and unwanted organisms.

Seine Nets [SE]

This category includes:
Beach seines and Boat seines.



Sample picture of a seine net. *From FIGIS.*

A seine net is a very long net, with or without a bag in the center, which set either from the shore or from a boat for surrounding a certain area and is operated with two (long) ropes fixed to its ends (for hauling and herding the fish).

Used mainly to catch demersal species, the potential negative impact may consist in the bycatch/discards (undersize specimens, no marketable specimens, non target species, etc.).

The reviewer is also referred to NMFS' Annual Report to Congress on the Status of U.S. Fisheries that includes a breakout of fisheries by region and type of gear used (available in 2001 report) (NMFS 2001). Another potential source on fishing gear and its impacts, particularly relating to bycatch and habitat, is a report entitled *Shifting Gears, Addressing the Collateral Impacts of Fishing Methods in U.S. Waters,* by Lance E. Morgan and Ratana Chuenpagdee. This report was made available at the November 2003 Fisheries Management Conference in Washington, DC. In particular, Figure 3 (Descriptions of Fishing Gears) and Table 1 (Overview of Bycatch and Habitat Damage by Gear Class) from this report could be particularly useful to EPA reviewers. A pdf file of this report can be downloaded from the Marine Conservation Biology Institute website: http://w1.adhost.com/mcbi/ShiftingGears/SG_download.htm/

Other websites with fishing gear information include:

(1) Chapter 2, "Use of Technical Measures in Responsible Fisheries: Regulation of Fishing Gear" - from Report entitled: *Fishery Management Guidebook Management Measures and Their Applications*, Kevin Cochrane 2002, FAO Fish, Technical paper T424) - looks at passive and active fishing gears, as well as gear selectivity and the ecosystem effects of fishing, and includes recommended reading list; can be viewed at http:/www.fao.org/DOCREP/005/Y3427E/y3427e04.htm];

(2) Through the Monterey Bay Aquarium and Seafood Watch, at (looks at gillnetting, harpooning, hook and line, longlining, purse seining, traps and pots, trawling/dragging, and trolling) and can be viewed at: http:/www.mbayaq.org/cr/cr_seafoodwatch/sfw_fear.asp; and

(3) International Pacific Halibut Commission report on Fishing Gear and Hook Removal Techniques used in the Longline Fisheries in Alaskan Waters; a discussion paper (can be viewed at: http://www.iphc.washington.edu/staff/stevek/basic2.htm)

Appendix F NAO 216-6. Environmental Review Procedures for Implementing the National Environmental Policy Act

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NOAA Administrative Order Series 216-6 May 20, 1999
ENVIRONMENTAL REVIEW PROCEDURES
FOR IMPLEMENTING
THE NATIONAL ENVIRONMENTAL POLICY ACT

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NOAA Administrative Order Series 216-6 May 20, 1999

ENVIRONMENTAL REVIEW PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

Issued 06/03/99; Effective 05/20/99

SECTION 1. PURPOSE.

1.01 Founding Legislation. The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.) is the foundation of modern American environmental protection in the United States and its commonwealths, territories, and possessions. NEPA requires that Federal agency decisionmakers, in carrying out their duties, use all practicable means to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans. NEPA provides a mandate and a framework for Federal agencies to consider all reasonably foreseeable environmental effects of their proposed actions and to involve and inform the public in the decisionmaking process.

1.02 Subjects Addressed by this Order.

1.02a. The Order describes NOAA's policies, requirements, and procedures for complying with NEPA and the implementing regulations issued by the Council on Environmental Quality (CEQ) as codified in Parts 1500-1508 of Title 40 of the Code of Federal Regulations (40 CFR Parts 1500-1508) and those issued by the Department of Commerce (DOC) in Department Administrative Order (DAO) 216-6, Implementing the National Environmental Policy Act. The Order incorporates the requirements of Executive Order (E.O.) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Also, the Order reiterates provisions to E.O. 12114, Environmental Effects Abroad of Major Federal Actions, as implemented by DOC in DAO 216-12, Environmental Effects Abroad of Major Federal Actions.

1.02b. Certain subjects addressed in this Order warrant special emphasis at the beginning. The following warrant such emphasis:

1.02b.1. NOAA's policy has been, and continues to be, that the scope of its analysis will be to consider the impacts of actions on the marine environment both within and beyond the U.S. Exclusive Economic Zone (EEZ). (See Sections 3.02 and 7.01 of this Order.)

1.02b.2. A proposed action, in conceptual stages, does not require an environmental review until it has an established goal and is preparing to make a decision on how to establish that goal. At that stage, the proposed action is subject to environmental review.

1.02b.3. This Order addresses any Federal action whose effects may be major and are potentially subject to NOAA's control and responsibility. (Examples of such are provided in Sections 4.01m. and 6.01a. of this Order.)

1.03 Revisions. This issuance is a complete revision and update to the Order. Major changes include: incorporation of the requirements of E.O. 12898 and E.O. 13112; addition and expansion of specific guidance regarding categorical exclusions, especially as they relate to endangered species, marine mammals, fisheries, habitat restoration, and construction activities; expansion of guidance on considering cumulative impacts and tiering in the environmental review of NOAA actions; and inclusion of a NOAA policies statement regarding the fulfillment of NEPA requirements. Revisions also have been made to format and content to promote clarity and ease of use.

SECTION 2. BACKGROUND.

2.01 Authorities and References.

2.01a. National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 et seq.

2.01b. CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, as codified at 40 CFR Parts 1500 to 1508.

2.01c. E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

2.01d. E.O. 13112, Invasive Species.

2.01e. E.O. 13089, Coral Reef Protection.

2.01f. DAO 216-6, Implementing the National Environmental Policy Act.

2.01g. E.O. 12114, Environmental Effects Abroad of Major Federal Actions.

2.01h. DAO 216-12, Environmental Effects Abroad of Major Federal Actions.

2.02 Responsibilities.

2.02a. NEPA Coordinator. The NEPA Coordinator, within NOAA's Office of Policy and Strategic Planning, is responsible for ensuring NEPA compliance for NOAA. To accomplish, the NEPA Coordinator shall:

2.02a.1. review and provide final clearance for all NEPA environmental review documents covered by this Order;

2.02a.2. after providing final clearance, sign all transmittal letters for NEPA environmental review documents disseminated for public review;

2.02a.3. develop and recommend national policy, procedures, coordination actions or measures, technical administration, and training necessary to ensure NOAA's compliance with NEPA;

2.02a.4. provide liaison between NOAA and the CEQ, including consulting with CEQ on emergencies and making pre-decision referrals to CEQ;

2.02a.5. provide liaison with the Environmental Protection Agency (EPA) on NEPA matters; and

2.02a.6. provide general guidance on preparation of NEPA documents, which includes: approving criteria regarding the appropriate document to be prepared; working with Line, Staff, and Program Offices (LO/SO/PO) and their designated Responsible Program Managers (RPMs) to establish categorical exclusions; establishing and/or approving criteria to define "significant"; providing consultation, as requested; coordinating NOAA's comments on EISs prepared by other Federal agencies; and monitoring DOC activities for NEPA compliance.

2.02b. Assistant Administrators and SO/PO Directors. Subject to concurrence by the NEPA Coordinator, the Assistant Administrators (AAs), SO/PO Directors, or their delegates, through the designated RPM, are responsible for determining whether Federal actions undertaken, including those undertaken by Federal, state, local, or tribal governments in conjunction with the agency, are assessed in accordance with the NEPA process or are excluded from that process. The AAs and SO/PO Directors shall:

2.02b.1. designate an RPM for each proposed action subject to the NEPA process within their functional area, and provide the NEPA Coordinator with the RPM's name, title, telephone number, and specific action for which s/he is responsible; and

2.02b.2. as appropriate, provide the NEPA Coordinator with the name, title, and telephone number of any individual who has been delegated signature authority for approving and transmitting relevant materials to the NEPA Coordinator on behalf of the AA or SO/PO Director, in accordance with this Order.

2.02c. Responsible Program Manager (RPM). The RPM is the individual designated by the AA or SO/PO Director to carry out specific proposed actions in the NEPA process within an assigned functional area. The RPM may be a Regional Administrator, a Science Center Director, a Laboratory Director, or a program director within a Line, or Staff, or Program Office. The designated RPM, subject to approval of the AA or SO/PO Director or delegate, and subject to concurrence by the NEPA Coordinator, shall:

2.02c.1. determine whether Federal actions undertaken, including those undertaken by Federal, state, local or tribal governments in conjunction with the agency, are assessed in accordance with the NEPA process or are excluded from that process; and

2.02c.2. determine the appropriate type of environmental review needed and submit all NEPA documents and associated letters and memoranda to the appropriate AA or SO/PO Director or delegate for transmittal to the NEPA Coordinator in compliance with this Order and other related authority.

SECTION 3. NOAA POLICIES.

3.01 In meeting the requirements of NEPA, it is NOAA's policy to:

3.01a. fully integrate NEPA into the agency planning and decision making process;

3.01b. fully consider the impacts of NOAA's proposed actions on the quality of the human environment;

3.01c. involve interested and affected agencies, governments, organizations and individuals early in the agency planning and decision making process when significant impacts are or may be expected to the quality of the human environment from implementation of proposed major Federal actions; and

3.01d. conduct and document environmental reviews and related decisions appropriately and efficiently.

3.02 NOAA's policy has been, and continues to be, that the scope of its analysis will be to consider the impacts of actions on the

marine environment both within and beyond the U.S. Exclusive Economic Zone (EEZ).

SECTION 4. DEFINITIONS.

4.01 Much of the terminology listed in this Section and elsewhere in this Order is derived from the authorities and references listed in Section 2 of this Order, particularly the CEQ's NEPA regulations. To ensure full compliance, the CEQ regulations should be consulted for comprehensive explanations of the terms. References to relevant CEQ terminology, as codified in 40 CFR 1500 et seq., are provided after each definition, where appropriate.

4.01a. Amendment. A change to a management plan or regulation required by various statutes such as the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act, or MSFCMA) and the National Marine Sanctuaries Act (NMSA). A management plan amendment could be prepared to achieve a specific goal for a fishery or a marine sanctuary. Amendments may include regulations necessary to carry out management objectives. A regulatory amendment could clarify the intent of a Regional Fishery Management Council (RFMC) established by the Magnuson-Stevens Act or interpret broad terms or measures contained in existing fishery management plans (FMPs). Amendments must go through standard rulemaking procedures under the Administrative Procedure Act (APA) and must include the appropriate environmental analysis under NEPA.

4.01b. 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. RFMCs are not considered applicants because of their unique status under Federal law.

4.01c. Categorical Exclusion (CE). Decisions granted to certain categories of actions that individually or cumulatively do not have the potential to pose significant impacts on the quality of the human environment and are therefore exempted from both further environmental review and requirements to prepare environmental review documents (40 CFR 1508.4). The main text of this Order presents specific actions and general categories of actions found to warrant a CE. CEs may not be appropriate when the proposed action is either precedent-setting or controversial, although such a determination must be made on a case-by-case basis (see Sections 5.06 and 6.01 of this Order).

4.01d. Council on Environmental Quality (CEQ). Organization within the Executive Office of the President charged with monitoring progress toward achieving the national environmental goals as set forth in NEPA. The CEQ promulgates regulations governing the NEPA process for all Federal agencies.

4.01e. Cumulative Impacts. Cumulative impacts are those combined effects on quality of the human environment that result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what Federal or non-Federal agency or person undertakes such other actions (40 CFR 1508.7, 1508.25(a), and 1508.25(c)). Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

4.01f. Emergency Action. Circumstances that require an action with significant environmental consequences be taken without observing CEQ regulations. In these cases, the Federal agency taking the action should consult with CEQ regarding alternative arrangements for substitute environmental review procedures.

4.01g. Environmental Assessment (EA). A concise public document that analyzes the environmental impacts of a proposed Federal action and provides sufficient evidence to determine the level of significance of the impacts. The EA shall include a brief analysis of the environmental impacts of the proposed action and its alternatives. An EA will result in one of two determinations: 1) an EIS is required; or 2) a Finding of No Significant Impact (FONSI) (40 CFR 1508.9).

4.01h. Environmental Impact Statement (EIS). A detailed written statement required by NEPA Section 102(2)(C) prepared by an agency if a proposed action significantly impacts the quality of the human environment. The EIS is used by decisionmakers to take environmental consequences into account. It describes a proposed action, the need for the action, alternatives considered, the affected environment, the environmental impacts of the proposed action, and other reasonable alternatives to the proposed action. An EIS is prepared in two stages: a draft and a final. Either stage of an EIS may be supplemented (40 CFR 1502.9(c) and Section 4.01y. of this Order).

4.01i. Environmental Review. The analysis undertaken by the RPM to: 1) identify the scope of issues related to the proposed action; 2) make decisions that are based on understanding the environmental consequences of the proposed action; and 3) determine the necessary steps for NEPA compliance. The environmental review process could result in the preparation of

one or more of the NEPA documents discussed in Section 5. of this Order.

4.01j. Exempted Actions. Certain Federal actions may be exempted from complying with NEPA if such actions are specifically exempted by legislation or have been found to be exempted by the judicial process. For example, listing and delisting actions under Section 4(a) of the Endangered Species Act (ESA) have been determined by the judicial system to be exempt from NEPA.

4.01k. Finding of No Significant Impact (FONSI). A short NEPA document that presents the reasons why an action will not have a significant impact on the quality of the human environment and, therefore, will not require preparation of an EIS. A FONSI must be supported by the EA, and must include, summarize, attach or incorporate by reference the EA (40 CFR 1508.13).

4.01l. Human Environment. The human environment is defined by CEQ (40 CFR 1508.14) as including the natural and physical environment and the relationship of people with that environment. This means that economic or social effects are not intended by themselves to require preparation of an EIS. However, when an EIS is prepared and economic or social and natural or physical environmental impacts are interrelated, the EIS must discuss all of these impacts on the quality of the human environment.

4.01m. Major Federal Action. An activity, such as a plan, project or program, which may be fully or partially funded, regulated, conducted, or approved by a Federal agency. "Major" reinforces, but does not have a meaning independent of "significantly" as defined in Section 4.01.x. and 6.01. of this Order. Major actions require preparation of an EA or EIS unless covered by a CE (40 CFR 1508.18). CEQ's definition of "scope" regarding the type of actions, the alternatives considered, and the impacts of the action should be used to assist determinations of the type of document (EA or EIS) needed for NEPA compliance (40 CFR 1508.25).

4.01n. Management Plan. A Federal action promulgated under statutes such as the Magnuson-Stevens Act, NMSA, or other statutes, that describes a resource or resources, the need for management, alternative management strategies, changes to management measures, possible consequences of such alternatives, and select recommended management measures. Included are FMPs and marine sanctuary plans prepared or implemented by NOAA. Such plans may incorporate a NEPA document into a single consolidated package. Plans not mandated by statute, e.g., habitat conservation plans and restoration plans, do not have regulations

associated with them. For purposes of NEPA, their impacts are analyzed in the same manner as statutory plans.

4.01o. Mitigation. Mitigation measures are those actions proposed to: avoid environmental impacts altogether; minimize impacts by limiting the degree or magnitude of the action; rectify the impact by repairing, rehabilitating, or restoring the affected environment; reduce or eliminate the impact over time by preservation; and/or compensate for the impact.

4.01p. NEPA Document. An EA, FONSI, draft EIS (DEIS), supplement to a DEIS, final EIS (FEIS), supplement to a FEIS, or a Record of Decision (ROD). Consistent with NOAA's practice of issuing a memorandum to document the CE decision for many NOAA actions, the memorandum issued documenting the CE is considered a NEPA document.

4.01q. Non-indigenous species. Any species or other viable biological material that enters an ecosystem beyond its historic range, including any such organism transferred from one country to another. Non-indigenous species include both exotics and transplants.

4.01r. Notice of Intent (NOI). A short Federal Register announcement of agency plans to prepare an EIS. The notice may be published separately or combined with other announcements, e.g., with an Advanced Notice of Proposed Rulemaking or with an RFMC meeting notice (Exhibit 4 to this Order and 40 CFR 1508.22). The NOI shall: 1) describe the proposed action and possible alternatives; 2) describe the proposed scoping process, including whether, when and where any scoping meetings will be held; and 3) state the contact to whom questions should be addressed regarding the action and the EIS.

4.01s. Project. A Federal action such as a grant, contract, loan, loan guarantee, vessel capacity reduction program, land acquisition, construction project, license, permit, modification, regulation, or research program that involves NOAA's review, approval, implementation, or other administrative action.

4.01t. Record of Decision (ROD). A public document signed by the agency decisionmaker following the completion of an EIS. The ROD states the decisions, alternatives considered, the environmentally preferable alternative(s), factors considered in the agency's decisions, mitigation measures that will be implemented, and whether all practicable means to avoid or minimize environmental harm have been adopted (40 CFR 1505.2).

4.01u. Responsible Program Manager (RPM). The person with primary responsibility to determine the need for and ensure the preparation of any NEPA document (see Section 2.02c. of this Order).

4.01v. Rulemaking. A prescribed procedure for implementing regulations or management measures authorized under Federal laws such as the Magnuson-Stevens Act, ESA, Marine Mammal Protection Act (MMPA), or Coastal Zone Management Act (CZMA). Rules may be promulgated independent of plans and permits. Examples include regulations for turtle excluder device, approaches to right whales and protection of sea lion rookeries. Rulemaking procedures must be in accordance with any specific guidelines established under the authorizing law and with the APA. Rulemaking actions are also subject to the provisions of other statutes, such as NEPA.

4.01w. Scoping. An early and open process for determining the scope of issues to be addressed and identifying the significant issues related to a proposed action (40 CFR 1501.7).

4.01x. Significant Impact. A measure of the intensity and the context of effects of a major Federal action on, or the importance of that action to, the human environment (40 CFR 1508.27). "Significant" is a function of the short-term, long-term, and cumulative impacts, both positive and negative, of the action on that environment. Significance is determined according to the general guidance in Section 6.01 of this Order. Specific criteria (Section 6.02 (a) - (i) of this Order) are established to expand the general conditions for determining the significance and the appropriate course of action. Determinations of non-significance will be made by the RPM but reviewed by the NEPA Coordinator prior to clearance. All additional criteria for "significant" must be approved by the NEPA Coordinator and published in the Federal Register as amendments to this Order (40 CFR 1508.27).

4.01y. Supplemental Environmental Impact Statement (SEIS). A NEPA document prepared to amend an original EIS when significant change in the action is proposed beyond the scope of environmental review in the original EIS, or when significant new circumstances or information arise that could affect the proposed action and its environmental impacts (40 CFR 1502.9(c)). SEISs may also be necessary when significant changes to an action are proposed after a FEIS has been released to the public.

4.01z. Tiering. Tiering refers to the coverage of general matters in broader EISs (such as a national program or policy statement) with subsequent narrower statements or environmental

reviews (such as regional or area-wide program environmental statements or ultimately site-specific statements) incorporating by reference the general discussions in the broad statement and concentrating solely on the issues specific to the statement subsequently prepared. Use of tiering is an alternative approach to NEPA analysis (Section 5.09c. of this Order).

4.02 Refer to Exhibit 1 for a list of the acronyms used throughout this Order.

SECTION 5. IMPLEMENTING PROCEDURES.

5.01 Applying the Environmental Review Process.

5.01a. General. Environmental review is the process undertaken by the RPM to identify the scope of environmental issues related to the proposed action, to make decisions that are based on understanding the environmental consequences of the proposed action, and to determine the necessary steps for NEPA compliance (40 CFR 1500.2). Such an analysis must be undertaken for any major Federal action that is subject to NEPA. A similar analysis must be undertaken under E.O. 12114 for certain proposed major Federal actions not otherwise subject to NEPA with environmental effects outside U.S. jurisdiction. See Section 7.01 of this Order for guidance on NEPA compliance for international treaties, commissions, and compacts. The procedures for NEPA compliance with domestic laws, regulations, executive orders, and administrative orders may differ depending on whether the proposed action is a management plan or amendment, a research project, a construction project, regulation, or an emergency action. Section 6. of this Order addresses these differences in detail.

5.01b. Process.

5.01b.1. The environmental review process includes all of the actions required by CEQ in 40 CFR 1502 and 1503 for compliance with NEPA (Exhibit 2 to this Order). The process involves the following series of actions accomplished by or under the direction of the RPM:

5.01b.1(a) define the proposed action;

5.01b.1(b) consider the nature and intensity of the potential environmental consequences of the action in relation to the criteria and guidance provided in this Order to determine whether the action requires an EIS, EA, or CE;

5.01b.1(c) prepare a CE memorandum, as appropriate;

5.01b.1(d) prepare an EA or initiate planning and for an EIS where an EIS is known to be appropriate;

5.01b.1(e) prepare a FONSI (which ends the NEPA environmental review process for actions found not to have a significant impact on the quality of the human environment) or initiate planning for an EIS/SEIS based on the EA;

5.01b.1(f) publish a NOI to prepare an EIS/SEIS and formally scope key issues in the EIS;

5.01b.1(g) conduct the scoping process to determine relevant issues;

5.01b.1(h) prepare a draft EIS/SEIS;

5.01b.1(i) publish a Notice of Availability (NOA) and distribute the draft EIS/SEIS for 45-day public comment period;

5.01b.1(j) hold a public hearing(s), if appropriate, on the draft EIS/SEIS;

5.01b.1(k) incorporate public comments and responses to comments in a final EIS/SEIS;

5.01b.1(l) publish a NOA and distribute the FEIS/SEIS for a 30-day “cooling off” period and public comment; and

5.01b.1(m) release a ROD to the public.

5.01b.2. To provide the maximum help in guiding the environmental review and decision process, the environmental review is to be coordinated by the RPM and initiated as early as possible in the planning process, regardless of whether the RPM anticipates the need for an EA or EIS. In the case of uncertainty regarding either preparation of the proper NEPA documents, or coordinating environmental analyses required by other statutes, early consultation with the NEPA Coordinator will assist the RPM in determining the best means for NEPA compliance. Consultation with the NEPA Coordinator during the early stages of document preparation should facilitate review and clearance at later stages of the decisionmaking process.

5.01b.3. In those cases where programs or actions are planned by Federal or non-Federal agency applicants as defined in Section 4.01b. of this Order, the RPM will, upon request, supply potential applicants with guidance on the scope, timing, and content of any required environmental review prior to NOAA involvement (see Section 5.08 of this Order for more

information). A listing of some programs and actions commonly involving NEPA-related matters, and their corresponding NOAA contact for obtaining further NEPA guidance, is found in Exhibit 3 to this Order.

5.01b.4. RPMs should consult with this Order when their involvement is reasonably foreseeable in an action or program proposed by a state or local agency or by an Indian tribe that could be a major Federal action.

5.01b.5. RPMs should consult with the NEPA Coordinator and this Order before communicating with other Federal agencies regarding whether, and to what extent, NOAA will become involved in developing proposals for such agencies, or in the preparation of NEPA documents and associated environmental reviews initiated by such agencies.

5.01b.6. When a proposed action involves several organizational units in NOAA, the RPMs of each unit should jointly determine which RPM should take the lead coordinating role in preparing environmental reviews and in assuming responsibility for preparation of any NEPA documents. The NEPA Coordinator will assist RPMs in developing a coordinated process for the action.

5.01b.7. Where disagreements arise regarding NOAA's NEPA procedures for any action, the NEPA Coordinator will make the final decision. A complete statement of the NEPA Coordinator's authorities and functions is presented in Section 2.02a. of this Order.

5.01c. Terminating the Process. The environmental review process may be stopped at any stage if action or program goals change, support for a proposed program or action diminishes, the original analysis becomes outdated, or other special circumstances occur. Should an EIS be terminated after publication of a DEIS, the EPA or CEQ, as appropriate, must be notified (see Section 5.04c.8. of this Order).

5.02 Scoping and Public Involvement.

5.02a. Purpose. The purpose of scoping is to identify the concerns of the affected public and Federal agencies, states, and Indian tribes, involve the public early in the decisionmaking process, facilitate an efficient EA/EIS preparation process, define the issues and alternatives that will be examined in detail, and save time by ensuring that draft documents adequately address relevant issues. The scoping process reduces paperwork and delay by ensuring that important issues are addressed early.

5.02b. Public Involvement. Public involvement is essential to implementing NEPA. Public involvement helps the agency understand the concerns of the public regarding the proposed action and its environmental impacts, identify controversies, and obtain the necessary information for conducting the environmental analysis. RPMs must make every effort to encourage the participation of affected Federal, state, and local agencies, affected Indian tribes, and other interested persons throughout the development of a proposed action and to ensure that public concerns are adequately considered in NOAA's environmental analyses of a proposed action and in its decisionmaking process regarding that action.

5.02b.1. Public involvement may be solicited through: public hearings or public meetings, as appropriate; solicitation of comments on draft and final NEPA and other relevant documents; and regular contacts, as appropriate. The RPM should encourage the RFMCs to include the NEPA document with the RFMC's public hearing documents to solicit early public review and involvement. The RPM must provide public notice of NEPA-related hearings, public meetings, and the availability of NEPA documents so as to inform interested or affected parties (40 CFR 1506.6). Interested parties may obtain information and status reports on EAs, EISs, and other elements of the environmental analysis process from the RPM or the NEPA Coordinator. Public involvement is encouraged in the review of EAs, which may not otherwise get adequate public input. To the extent possible, EAs should be published or made available in conjunction with proposed rules and plans subject to public review and comment.

5.02b.2. RPMs will be guided by 40 CFR 1506.6 in providing adequate public involvement in the environmental review process. In particular, RPMs should use state "single points of contact" designated under E.O. 12372. A current list of these contacts may be obtained from the NEPA Coordinator.

5.02c. Scoping Process. Scoping is usually conducted shortly after a decision is made to prepare an EIS. However, scoping is also encouraged during the EA process when the need for an EIS is undetermined. As part of the requirements of the scoping process, the actions described in 40 CFR 1501.7(a), must be fulfilled when appropriate.

5.02c.1. Formal scoping officially begins with publication in the Federal Register of a NOI to prepare an EIS (40 CFR 1501.7), but may in practice begin in the early stages of project development (Section 5.02d of this Order).

5.02c.2. To the maximum extent practicable, comprehensive public involvement and interagency and Indian tribal consultation should be sought to ensure the early identification of significant environmental issues related to a proposed action. Early consultation is an important opportunity to identify planning efforts and environmental reviews done by others (e.g., other agencies, applicants, RFMCs) that may provide important information for NOAA's environmental review process.

5.02c.3. The scoping process should include, where relevant, consideration of the impact of the proposed action on:

5.02c.3(a) floodplains and sites included in the National Trails and Nationwide Inventory of Rivers, as required by Presidential Directive, August 2, 1979;

5.02c.3(b) sites nominated or designated by the Advisory Council on Historic Preservation, as required by 36 CFR 800;

5.02c.3(c) any national marine sanctuary or national estuarine research reserve;

5.02c.3(d) habitat as described in: 1) the National Marine Fisheries Service's 1983 habitat conservation policy; and 2) the National Habitat Plan, "A Plan to Strengthen the National Marine Fisheries Service National Habitat Program", August 30, 1996;

5.02c.3(e) affected state Coastal Zone Management Plans;

5.02c.3(f) the environmental and health impact on low-income and minority populations as required by E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations;

5.02c.3(g) the American Indian Religious Freedom Act;

5.02c.3(h) ESA Section 7 (16 U.S.C. 1531 et seq.);

5.02c.3(i) Section 305(b) of the MSFCMA (16 U.S.C. 1855 et seq.) regarding adverse effects on essential fish habitat; and other appropriate laws and policies; and

5.02c.3(j) nonindigenous species, including any direct impacts on living resources.

5.02c.4. Scoping may be satisfied by many mechanisms, including: planning meetings and public hearings; requests for public comment on public hearing documents; discussion papers, and other versions of decision and background environmental documents.

Scoping meetings should inform interested parties of the proposed action and alternatives and solicit their comments. If the proposed action has already been subject to a lengthy development process that has included early and meaningful opportunity for public participation in the development of the proposed action, those prior activities can be substituted for the scoping meeting component in NOAA's environmental review procedures.

5.02d. Notice of Intent. The NOI to prepare an EIS or to hold a scoping meeting should be published in the Federal Register as soon as practicable after the need for an EIS has been determined.

5.02d.1. The notice must include (40 CFR 1508.22):

5.02d.1(a) the proposed action and possible alternatives;

5.02d.1(b) a summary of NOAA's proposed scoping process, including logistics for any meetings to be held; and

5.02d.1(c) the name and address of the RPM for further information about the proposed action and the EIS.

5.02d.2. Written and verbal comments must be accepted during the identified comment period after publication of the NOI and must be considered in the environmental analysis process. This period should be at least thirty (30) days to provide an adequate opportunity for the public to comment.

5.02d.3. When there is likely to be a lengthy period between the decision to prepare an EIS and actual preparation of the DEIS, publication of the NOI may be delayed until a reasonable time in advance of preparation of that DEIS.

5.02d.4. If an RPM decides not to pursue a proposed action after an NOI has been published, a second NOI must be published to inform the public of the change.

5.02d.5. The NOI may be combined with similar notices required for preparation of other documents (e.g., RFMC meeting notices; Exhibit 4 of this Order). This will minimize redundancy while still notifying the public of proposed actions.

5.02d.6. Multi-agency NOIs must be coordinated among the involved agencies. Each agency must clear the NOI prior to publication.

5.03 General Requirements for Environmental Assessments.

5.03a. Purpose. The purpose of an EA is to determine whether significant environmental impacts could result from a proposed action. An EA is appropriate where environmental impacts from the proposed action are expected, but it is uncertain that those impacts will be significant. An EA is also appropriate as an initial step of the environmental review, where the impacts of the proposed action may or may not be significant. The EA (defined at Section 4.01g. of this Order) is the most common type of NEPA document. For guidance in determining the environmental significance of a proposed action, consult Sections 4.01w., and 6.01 of this Order. If the action is determined to be not significant, the EA and resulting FONSI will be the final NEPA documents required. If the EA concludes that significant environmental impacts may be reasonably expected to occur, then an EIS must be prepared.

5.03b. Contents. Because the environmental review in the EA provides the basis for determining whether or not the proposed action is expected to have a significant impact on the quality of the human environment, the EA must address the appropriate factors as outlined in Section 6.01 of this Order. Additionally, an EA must analyze the proposed action with respect to the laws and policies regarding scoping issues listed under the discussion of scoping under Section 5.02c.3. of this Order. An EA must consider all reasonable alternatives, including the preferred action and the no action alternative. Even the most straightforward actions may have alternatives, often considered and rejected in early stages of project development that should be discussed. In addition, the EA and FONSI must clearly state whether they rely on, or tier off, a previous NEPA document. As discussed in 40 CFR 1508.9, an EA must contain:

5.03b.1. sufficient evidence and analysis for determining whether to prepare an EIS or a FONSI, and to facilitate preparation of any needed EIS;

5.03b.2. a brief discussion of the need for the action;

5.03b.3. alternatives as required by Section 102(2)(E) of NEPA;

5.03b.4. a brief discussion of the environmental impacts of the proposed action and alternatives;

5.03b.5. a listing of agencies and persons consulted;

5.03b.6. a FONSI, if appropriate.

5.03c. FONSI Determination. An EA that results in a FONSI completes NEPA analysis for that action. When an EA results in a

determination that there may be potential significant impacts to the quality of the human environment, a FONSI determination, by definition, is an impossibility and shall not be proposed. Rather, the RPM may proceed directly with preparation of an EIS without submitting the EA for the NEPA Coordinator's approval. Early review of draft environmental review documents by the NEPA Coordinator may help avoid problems and expedite subsequent review of the EA with a FONSI determination or initiation of an EIS.

5.03d. Mitigation. Mitigation measures used in determining a FONSI for an EA may be relied upon only if they are imposed by statute or regulation or submitted by an applicant or the agency as part of the original proposed action. As a general rule, agencies should not rely on the possibility of mitigation as a means of avoiding preparation of an EIS.

5.03e. NOAA Review and Clearance.

5.03e.1. The RPM must submit, through their AA/SO/PO Director to the NEPA Coordinator, one copy of the EA, FONSI and original letter To All Interested Government Agencies and Public Groups (Section 5.07 and Exhibit 6 of this Order) for review, clearance and signature prior to public availability. The FONSI, which must be attached to or incorporated into the final EA, notifies governmental agencies and the public that the environmental impacts of the proposed action have been determined by the RPM to be non-significant on the quality of the human environment under NEPA, and thus an EIS will not be prepared. The RPM should solicit input from other NOAA offices with expertise or jurisdiction prior to submitting the EA for final NEPA Coordinator clearance. Although some EAs are not generally distributed to the public, a cover letter must be prepared in case a copy is requested.

5.03e.2. In cases where the RPM has adequate time and where the EA would benefit from greater public participation, a thirty (30) calendar day public review and comment period is encouraged prior to a FONSI determination. If such review and comment is utilized, the RPM may issue the EA in draft for public comment, and later finalize it with the action. The RPM may consult with the NEPA Coordinator to arrange alternative procedures for providing public involvement, including various combinations of notices and mailings (40 CFR 1506.6).

5.03e.3. EAs should be submitted to the NEPA Coordinator at least three (3) working days prior to the requested clearance date; less time may be sufficient when the NEPA Coordinator has reviewed previous versions of the EA. After NOAA's clearance by

the NEPA Coordinator, the RPM may publish a NOA in the Federal Register for those EAs with national implications or with broad interest to the public. In certain circumstances the NEPA Coordinator, in consultation with the RPM, may require that the proposed action not be taken until thirty (30) calendar days after the NOA has been published. This may include circumstances where consulting agencies or the public have expressed significant reservations, based on environmental concerns. EAs need not be transmitted to EPA for filing.

5.04 General Requirements for Environmental Impact Statements and Supplemental Environmental Impact Statements.

5.04a. Purpose.

5.04a.1. The primary purpose of an EIS is to serve as an action-forcing device to ensure that the policies and goals defined in NEPA are infused into the ongoing programs and actions of the Federal government. An EIS must provide a full and fair discussion of significant environmental impacts and inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. As required by NEPA Section 102(2)(C), EISs are to be included in every recommendation or report on proposals for legislation and for other major Federal actions whose impacts may have a significant impact to the quality of the human environment. Federal actions that the RPM determines are significant require an EIS (defined at Section 4.01h. of this Order) or an SEIS (defined at Section 4.01y. of this Order) if there is a significant change from an earlier EIS. Some projects may be required by law to have an EIS completed for them, regardless of the magnitude of impact. Consult Section 6.01 of this Order for specific descriptions of types of actions considered significant to warrant an EIS.

5.04a.2. Early public review and involvement in the environmental review process is encouraged (Section 5.02b. of this Order). CEQ (40 CFR 1502.25) requires that DEISs be prepared concurrent and integrated with studies and surveys required by other Federal statutes. To meet this requirement, the RPM should recommend that all NOAA programs and RFMCs integrate the NEPA document with the public hearing documents to better ensure adequate environmental review and opportunity for public review of the proposed action as it is developed.

5.04b. Contents. Should the RPM make a determination that significant impacts to the quality of the human environment could result from a proposed action, a draft EIS/SEIS must be prepared. For general guidance on EIS procedures, refer to 40 CFR 1502.

5.04b.1. As discussed in 40 CFR 1502.10-1502.18, the EIS/SEIS shall contain:

5.04b.1(a) a cover sheet and table of contents;

5.04b.1(b) a discussion of the purpose and need for the action;

5.04b.1(c) a summary of the EIS, including the issues to be resolved, and in the FEIS, the major conclusions and areas of controversy including those raised by the public;

5.04b.1(d) alternatives, as required by Sections 102(2)(C)(iii) and 102(2)(E) of NEPA;

5.04b.1(e) a description of the affected environment;

5.04b.1(f) a succinct description of the environmental impacts of the proposed action and alternatives, including cumulative impacts;

5.04b.1(g) a listing of agencies and persons consulted, and to whom copies of the EIS are sent;

5.04b.1(h) an ROD, in the case of a FEIS; and

5.04b.1(i) an index and appendices, as appropriate.

5.04b.2. The EIS/SEIS cover sheet must clearly state whether it is a separate EIS or an EIS consolidated with a management plan or amendment, and whether the document supplements an earlier EIS.

5.04b.3. It is NOAA and CEQ (40 CFR 1502.14(e)) policy to require identification of the preferred alternative(s) in the draft EIS/SEIS, whenever such preferences exist, and in the FEIS unless another law prohibits the expression of such a preference. When preferred alternatives do not exist, the document must provide a range of alternatives or other indication of the alternatives most likely to be selected, thus informing the public of the likely final action and its environmental consequences. The public is thus able to more effectively focus its comments.

5.04c. Public Review and Clearance. Environmental review and procedures should run concurrently with other public review and comment periods (e.g., the FMP development and review process). The DEIS should be cleared by the NEPA Coordinator, filed, and made available for public comment no later than publication of other required documents (e.g., the public hearing draft

FMP/amendment). An SEIS must be prepared in certain cases under 40 CFR 1502.9. An SEIS must be prepared, filed, and distributed for public comment as if it were an initial EIS.

5.04c.1. Preliminary Review. A preliminary version of either the draft or final EIS/SEIS should be submitted to the NEPA Coordinator for review and comment at least one week before submission of the final NEPA review package for clearance. Early review by the NEPA Coordinator helps to ensure a more efficient process by avoiding last minute delays. The RPM should solicit input from other NOAA offices with expertise or jurisdiction regarding the proposed action prior to submitting the EIS for final NEPA Coordinator clearance.

5.04c.2. NEPA Review Package. The NEPA review package consists of the draft or final EIS/SEIS, modified as necessary by the RPM in response to comments received from the NEPA Coordinator and other appropriate NOAA offices, and the appropriate transmittal memoranda. The deadline for the NEPA Coordinator's receipt of the NEPA review package for final clearance is five days prior to filing at EPA; less time may be sufficient in those cases where the NEPA Coordinator has reviewed earlier versions. One copy of the EIS/SEIS and two letters, one transmitting the document to all other reviewers and the other filing the document with EPA, must be prepared by the RPM for the signature of the NEPA Coordinator. The format and content of these letters are addressed in Section 5.07 of this Order (see Exhibits 6 and 7 to this Order.) After the NEPA Coordinator signs the letters, the originating RPM will take all further actions, including filing the document at EPA and distributing it to interested parties. In the case of an SEIS, the transmittal letters to EPA and the public must state the title and publication date of the initial EIS to which the SEIS relates.

5.04c.3. Filing at Environmental Protection Agency (EPA). The deadline for filing at EPA is 3:00 p.m. each Friday for publication by EPA of an NOA in the Federal Register the following Friday. Five bound copies of draft and final EISs are required by EPA headquarters at the time of filing. An additional three bound copies shall be sent to each affected EPA region. If the document is a programmatic EIS (an EIS on an entire program, e.g., deep seabed mining program or the Next Generation Radar (NEXRAD) program) that could affect a large part of the nation, more copies are required. Specific guidance on the number of copies needed for filing is available from the NEPA Coordinator. An equivalent number of any source documents, appendices, or other supporting analyses must also be submitted to EPA headquarters at filing. All EIS copies submitted to EPA headquarters must be bound and be identical in form and content

to the copies distributed or made available to the public and other interested parties.

5.04c.4. Notice of Availability. Once NOAA files an EIS/SEIS with EPA, EPA will publish an NOA in the Federal Register. As noted above, all public review and "cooling off" periods begin the day of publication of the NOA. It is the Office of the Federal Register's policy that a review period will not end on a weekend or holiday unless a requirement of law and/or specifically requested.

5.04c.5. Public Distribution. On the same date as the document is filed with EPA, copies of each DEIS and transmittal letter to interested parties must be sent to all Federal, State, and local government agencies, public groups, and individuals who may have an interest in the proposed action. Copies of each final EIS/SEIS must be sent to parties who submitted substantial comments on the draft EIS/SEIS, interested parties specifically requesting a copy, and others as determined by the RPM. Source documents, appendices, and other supporting information should be made available to the public when the RPM determines that reviewers would benefit from the additional information. The EIS/SEIS and related documents must be made available for public inspection at locations deemed appropriate by the RPM, such as public libraries or state "single points of contact."

5.04c.6. Public Comment. The public comment period on draft EIS/SEISs should be at least forty-five (45) days, unless a specific exemption is granted by EPA, through the NEPA Coordinator, for a different time period. A final EIS/SEIS must include all substantive comments or summaries of comments received during the public comment period of the draft EIS/SEIS. Summaries of comments are allowed when the comments received are exceptionally voluminous or repetitive Comments must be responded to in an appropriate manner in the FEIS, as required under 40 CFR 1503.4. A final agency decision on the proposed action may not be made or recorded less than thirty (30) days after the NOA for the FEIS is published in the Federal Register (the "cooling off" period), unless an exception is granted by EPA through the NEPA Coordinator. Public comment and "cooling off" periods for draft and final SEISs are the same as for the initial draft and the final EIS.

5.04c.7. Record of Decision. The ROD may not be made or filed until after thirty (30) days from the published date of the NOA for the FEIS. 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 regulations or a management plan. The ROD is a public record and must be made available through appropriate public notice as required by 40 CFR 1506.6(b); however, there is no specific requirement for publication of the ROD itself, either in the Federal Register or elsewhere.

5.04c.8. Terminating the Process. The environmental review process may be stopped at any stage if action or project goals change, support for a proposed action diminishes, the original analysis becomes outdated, or other special circumstances occur. If a DEIS has already been filed with the EPA, the RPM must notify the NEPA Coordinator of any contemplated termination of the environmental review process prior to completion of the FEIS. If the environmental review process is terminated at this point, the FEIS will not be prepared. After the RPM's decision to terminate the environmental review process and NEPA Coordinator notification, the termination must be announced in the Federal Register. Project terminations must be explained in writing by the RPM, through the NEPA Coordinator, to EPA so that EPA may withdraw the DEIS and close its file on the action. In addition, for supplemental NEPA documents only, the NEPA Coordinator must notify CEQ if the process stops after issuance of a draft SEIS but before issuance of the final.

5.04d. Special Circumstances.

5.04d.1. Legislative EIS. A legislative EIS (LEIS) is a detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress, and is considered part of the formal transmittal of a legislative proposal to Congress (see 40 CFR 1506.8). It may, however, be transmitted up to 30 days after initial transmittal to allow time for completion of an accurate statement which can serve as the basis for public and congressional debate. It must be available in time for Congressional hearings and deliberations. Preparation of an LEIS must conform to the requirements of an EIS except as follows:

5.04d.1(a) there need not be a scoping process;

5.04d.1(b) the statement should be prepared in the same manner as a DEIS, but should be considered the "detailed statement" required by statute. When any of the conditions identified in 40 CFR 1506.8 exist, both the draft and final EIS on the legislative

proposal must be prepared and circulated as provided by 40 CFR 1503.1 and 1506.10; and

5.04d.1(c) comments on the LEIS must be given to the lead agency, which will forward them along with the agency's responses to the Congressional committees with jurisdiction.

5.04d.2. Shortened public review period. In certain cases, usually characterized by pending emergencies, by negative socio-economic impacts, or by threats to human health and safety, the RPM may request the NEPA Coordinator's assistance in shortening the public review and "cooling off" periods for EISs, SEISs or FEISs. Exemptions for EISs and FEISs may be granted only by EPA, and the CEQ is responsible for granting exemptions for SEISs. All requests must go through the NEPA Coordinator prior to referral to EPA or CEQ.

5.05 General Requirements for Categorical Exclusions.

5.05a. Purpose. Categorical exclusions are intended to exempt qualifying actions from environmental review procedures required by NEPA. A CE is appropriate where a proposed action falls into a category of actions that do not individually or cumulatively have a significant impact on the quality of the human environment as determined through an environmental review by the agency. Where a proposed action is new, under extraordinary circumstances in which normally excluded actions may have a significant environmental impact, or the potential environmental impacts are controversial, an EA or EIS is required. RPMs must consider the cumulative effects of a number of similar actions before granting a CE.

5.05b. Determining Appropriateness for Use of Categorical Exclusions. The proposed action should be evaluated to determine the appropriateness of the use of a CE. That analysis should determine if: 1) a prior NEPA analysis for the "same action demonstrated that the action will not have significant impacts on the quality of the human environment (considerations in determining whether the proposed action is the "same" as a prior action may include, among other things, the nature of the action, the geographic area of the action, the species affected, the season, the size of the area, etc.); or 2) the proposed action is likely to result in significant impacts as defined in 40 CFR 1508.27.

5.05c. Exceptions for Categorical Exclusions. The preparation of an EA or EIS will be required for proposed actions that would otherwise be categorically excluded if they involve a geographic area with unique characteristics, are subject of public

controversy based on potential environmental consequences, have uncertain environmental impacts or unique or unknown risks, establish a precedent or decision in principle about future proposals, may result in cumulatively significant impacts, or may have any adverse effects upon endangered or threatened species or their habitats.

5.05d. NOAA Review and Clearance. The RPM should consult with the NEPA Coordinator while planning actions that may be appropriate for a CE and notify the NEPA Coordinator of actions that receive a CE. Documentation of the basis for a determination of the appropriateness for a CE must be sent to the NEPA Coordinator no later than three (3) months after the subject action has occurred. If the action is determined to be a CE, a brief statement so indicating should be included within an appropriate decision memorandum (see Exhibits 5a and 5b to this Order). The RPM and the NEPA Coordinator can require an EA or EIS for an action normally covered by a CE if the proposed action could result in any significant impacts as described in Sections 4.01x. and 6.01 of this Order. When appropriate, the RPM should consult with states while planning actions that may be appropriate for a CE and notify such states of actions that receive a CE, as described in Sections 5.09e. of this Order.

5.06 Emergency Actions.

5.06a. Emergency actions may include measures to:

5.06a.1. implement management or regulatory plans or amendments;

5.06a.2. implement rules to protect threatened or endangered species or marine mammals;

5.06a.3. establish or implement certain restoration projects; and

5.06a.4. take other actions of an immediate nature (e.g., fishery management actions without an FMP).

5.06b. Emergency actions are subject to the same NEPA requirements as non-emergency actions. Emergency actions are subject to the environmental review procedures outlined in Section 5.06 of this Order, requirements for public involvement and scoping set forth in Section 5.02 of this Order, and requirements and guidance of Sections 5.03, 5.04, and 5.06 of this Order concerning the type of environmental review documents necessary to comply with NEPA. Despite the emergency nature of a proposed action, RPMs must maintain contact with state government agencies to ensure that all state concerns are addressed within

the time constraints of the emergency action. If time constraints limit compliance with any aspect of the environmental review procedures, the RPM should contact the NEPA Coordinator to determine alternative approaches, as discussed in this Section.

5.06c. The RPM should determine whether an EA or an EIS will be prepared for emergency actions. The emergency action may be appropriate for a CE if the RPM determines that the action is below the threshold criteria for "controversial," "major," and "significant" that apply to "non-emergency" actions (Sections 4.01n. and 4.01w. of this Order). In the event of uncertainty regarding the necessary NEPA document for an emergency action, the RPM should consult with the NEPA Coordinator as early as possible.

5.06d. Because an EA or CE has no statutory time requirement for public notice or comment, emergency actions that are appropriate for a CE or require an EA leading to a FONSI should not be delayed by any time constraints or requirements established by NEPA or this Order. If the RPM determines that the emergency action requires preparation of an EIS, the RPM should determine whether the requirements associated with draft and final EIS preparation, filing, and public review would delay implementation of the emergency action and endanger achievement of the objectives of the action. If preparation of the EIS would not delay the emergency action sufficiently to prevent attaining its objectives, an EIS must be prepared according to the environmental review procedures before the emergency action takes effect. If the RPM determines that time or EIS preparation may limit attaining the objectives of the emergency action, the RPM should ask the NEPA Coordinator to consult CEQ regarding alternative arrangements for NEPA compliance. Making alternative arrangements with CEQ is a seldom used practice and the RPM should make every effort to avoid undertaking this approach.

5.06e. Alternative arrangements for NEPA compliance must satisfy the CEQ regulations on emergencies (40 CFR 1506.11). Possible arrangements include shortened public review periods, review periods concurrent with effective emergency regulations but completed prior to implementation of final regulations, or staff assistance from the NEPA Coordinator in preparing necessary documents. Alternative arrangements with CEQ is a seldom used approach by federal agencies and the NEPA Coordinator will only undertake this approach for actions necessary to control the immediate impacts to the quality of the human environment resulting from the emergency action. Other actions remain subject to standard NEPA requirements and review.

5.07 Guidance on Transmittal Letters for EAs and EISs. EAs and EISs should adhere to the following guidance for preparation (examples of transmittal letters are attached as Exhibits 6-9):

5.07a. the RPM will prepare all letters on "Office of the Under Secretary" letterhead;

5.07b. letters will be dated after being signed by the NEPA Coordinator; and

5.07c. the RPM will fill in all appropriate blanks in the sample letter formats.

5.08 Actions Proposed by Applicants. Any applicant to NOAA regarding a proposed action (e.g., permit, funding, license, or approval of a proposal or action) must consult with NOAA as early as possible to obtain guidance with respect to the level and scope of information needed by NOAA to comply with NEPA.

5.08a. The RPM should begin the environmental review process as soon as possible after receiving the application and shall evaluate and verify the accuracy of information received from an applicant.

5.08b. The RPM should complete any NEPA documents, or evaluation of any EA prepared by the applicant, before making a final decision on the application.

5.09 Streamlining Approaches to NEPA Compliance.

5.09a. Programmatic Documents. CEQ encourages agencies to use program, policy, or plan EISs, (i.e., programmatic EISs) to eliminate repetitive discussion of the same issues (40 CFR 1500.4(i)). A programmatic environmental review should analyze the broad scope of actions within a policy or programmatic context by defining the various programs and analyzing the policy alternatives under consideration and the general environmental consequences of each. Specific actions that are within the program or under the policy should be analyzed through project-specific environmental review documents. A project-specific EIS or EA need only summarize the issues discussed in the broader statement with respect to the specific action and incorporate discussion from that environmental review by reference. The principal discussion should concentrate on the issues specific to the subsequent action.

5.09b. Generic Documents. When preparing statements on broad actions (including proposals by more than one agency), EISs can be used to group and analyze several actions that have relevant

similarities, such as common timing, impacts, alternatives, methods of implementation, or subject matter (40 CFR 1502.4(c)). Appropriate actions could include clear-cutting, gear impacts, dredging, or other broad activity. For some types of actions, it may be appropriate to examine cumulative impacts through the use of a generic EIS, rather than preparing a large number of project-specific EAs or EISs.

5.09c. Tiering. Tiering (Section. 4.01z) refers to a stepped approach to environmental review under NEPA. Tiering involves the review of a broad-scale agency action (such as a national program or policy) in a general EIS with subsequent narrower environmental reviews (such as regional or area-wide program environmental reviews or ultimately site-specific environmental reviews) that incorporate by reference the general discussions in the broad environmental review and concentrate solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of environmental reviews is: (a) from a program, plan, or policy EIS to a program, plan, or policy statement or analysis of lesser scope or to a site-specific environmental review; (b) from an EIS on a specific action at an early stage to a supplement or a subsequent environmental review at a later stage. Tiering in such cases is appropriate and encouraged because it helps the lead agency focus on the issues that are ripe for decision and exclude from consideration issues already addressed or those that are premature for review.

5.09d. Incorporation by Reference. CEQ guidance recommends incorporating other materials by reference when the effect will be to cut down on the size of an environmental review document without impeding agency and public review of the action. The incorporated material shall be cited in the EA or EIS and the document shall state how the referenced document or material can be obtained. The contents of the referenced materials should be briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by interested parties within the time allowed for comment in the environmental review document. Material based on proprietary data that are not available for review and comment should not be incorporated by reference. Examples of information that may be incorporated by reference include: “affected environment” chapters from previous EISs when the affected environment for the proposed action has not undergone noticeable changes; and discussions of cumulative impacts of a proposed action, if such impacts were discussed in a previous environmental review addressing a similar action (40 CFR 1502.21).

5.09e. Cooperative Document Preparation. RPMs must cooperate with other Federal, state and local agencies and Indian tribes to

the maximum extent practical to reduce duplication in document preparation.

5.09e.1. Any applicable Federal and state environmental policy laws must be followed in preparing joint documents. The degree to which Federal agencies must adhere to local ordinances and codes is set forth in Public Law 100-678 (40 U.S.C. 601-616). Cooperation will include, where possible, joint planning, environmental research, public hearings, and environmental review documents (40 CFR 1506.2(b)). RPMs should work with the appropriate state or local agencies as a joint lead agency in fulfilling the intent of NEPA.

5.09e.2. The CEQ regulations (40 CFR 1501.1(b)) emphasize cooperative consultation among agencies before an EIS is prepared, rather than submitting adversarial comments on a completed document. Upon the request of the lead agency, any other Federal agency that has jurisdiction by law must be a cooperating agency. In addition, any other Federal agency that has special expertise with respect to any environmental issue that should be addressed in the statement may be a cooperating agency upon request of the lead agency (40 CFR 1501.5 and 1501.6). An agency may also request to the lead agency that it be designated as a cooperating agency. If NOAA determines that its resource limitations preclude any involvement as a cooperating agency, it must so inform the requesting lead agency in writing and submit a copy of the letter to CEQ.

5.09f. Adoption of Other Federal Documents.

5.09f.1. The ultimate responsibility for NEPA compliance always falls on the NOAA program proposing the Federal action, but NOAA may adopt an EA, DEIS, or FEIS or portion thereof prepared by another Federal agency if the language satisfies the standards of the CEQ regulations and this Order.

5.09f.2. When adopting an entire EIS without change, the RPM should recirculate the document as a FEIS. However, if the actions covered by the document are changed in a potentially significant manner, the document should be circulated as a draft and final (40 CFR 1506.3).

5.09f.3. NOAA programs cannot adopt final decisions presented in documents prepared by other agencies. RPMs must prepare a new FONSI if it adopts an EA, or a new ROD if it adopts an EIS.

5.09g. Third Party Documents. Environmental review documents prepared by an outside contractor must meet all the criteria of one prepared internally by another Federal agency.

5.10 Comments on Non-NOAA NEPA Documents.

5.10a. Requirements and Policy. CEQ regulations (40 CFR 1503) require that a DEIS be submitted for review to any Federal agency that has jurisdiction by law or special expertise over the resources potentially affected. It is NOAA's policy to provide considered, timely and factual comments on other agency DEISs. This essential NEPA activity provides the means to exert a significant positive influence on other Federal agency plans and projects and to ensure consideration, protection and mitigation of impacts to NOAA's trust resources.

5.10b. Coordination. The NEPA Coordinator coordinates DOC review and comments on other agency DEISs and forwards all comments to the originating agencies. When comments are requested, copies of the incoming DEIS and a letter noting the deadline for receipt of comments will be sent by the NEPA Coordinator to appropriate DOC elements. Guidance in the preparation of these comments is available in 40 CFR 1503.3 and from the NEPA Coordinator. In particular, the following considerations should be observed when preparing comments.

5.10b.1. Comments should be restricted to areas within the reviewer's competence, and conclusions must be supportable by facts. Each comment should be treated as a specialized piece of scientific writing that must stand up under scrutiny by the reviewer's peers.

5.10b.2. Comments of an editorial nature, opinions on the merit of the project, or phrasing that reveals the personal bias of the reviewer must be scrupulously avoided.

5.10b.3. The reviewer should:

5.10b.3(a) call attention to inadequate or missing data that makes it difficult or impossible to evaluate the conclusions reached in the DEIS;

5.10b.3(b) specify studies or types of information which will supply answers to the technical questions that the reviewer has raised;

5.10b.3(c) recommend modifications to the proposed action and/or new alternatives that will enhance environmental quality and avoid or minimize adverse environmental impacts;
5.10b.3(d) discuss environmental interrelationships between the proposed action and NOAA's trust resources that should be included in the EIS;

5.10b.3(e) outline the nature of any particularly appropriate monitoring of the environmental effects during any phase of the proposed project; and

5.10b.3(f) suggest ways of assisting the sponsoring agency to establish and operate monitoring systems.

5.11 Referrals to CEQ of Environmentally Unsatisfactory Actions. A CEQ referral is a formal, third party arbitration process initiated when two or more agencies come to a complete impasse regarding a major environmental issue. It is CEQ's policy that referrals reflect an agency's careful determination that a proposed action raises significant environmental issues of national importance. CEQ referrals are made only after all other concerted efforts at resolution have failed.

5.11a. RPMs will notify the NEPA Coordinator of actions by other Federal agencies believed to be environmentally unsatisfactory (i.e., those that are appropriate for "referral," under 40 CFR 1504.3). The NEPA Coordinator will recommend referrals to the Under Secretary for Oceans and Atmosphere and Administrator, NOAA. The NEPA Coordinator will work closely with the RPMs to prepare the letters and support materials required in the referral process.

5.11b. Determinations of the kinds of proposals that are appropriate for referral are based on whether:

5.11b.1. the action is environmentally unacceptable;

5.11b.2. the action raises significant and major environmental issues of importance; and

5.11b.3. reasonable alternatives (including no action) to the proposed action exist.

SECTION 6. INTEGRATING NEPA INTO NOAA LINE OFFICE PROGRAMS.

6.01 Determining the Significance of NOAA's Actions. As required by NEPA Section 102(2)(C) and by 40 CFR 1502.3, EISs must be prepared for every recommendation or report on proposals for legislation and other "major Federal actions" significantly affecting the quality of the human environment. A significant effect includes both beneficial and adverse effects. Federal actions, including management plans, management plan amendments, regulatory actions, or projects which will or may cause a significant impact on the quality of the human environment, require preparation of an EIS. Following is additional explanation per the definitions used in determining significance.

6.01a. "Major Federal action" includes actions with effects that may be major and which are potentially subject to NOAA's control and responsibility. "Actions" include: new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by NOAA; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals. Refer to 40 CFR 1508.18 for additional guidance.

6.01b. "Significant" requires consideration of both context and intensity. Context means that significance of an action must be analyzed with respect to society as a whole, the affected region and interests, and the locality. Both short- and long-term effects are relevant. Intensity refers to the severity of the impact. The following factors should be considered in evaluating intensity (40 CFR 1508.27):

6.01b.1. impacts may be both beneficial and adverse -- a significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial;

6.01b.2. degree to which public health or safety is affected;

6.01b.3. unique characteristics of the geographic area;

6.01b.4. degree to which effects on the human environment are likely to be highly controversial;

6.01b.5. degree to which effects are highly uncertain or involve unique or unknown risks;

6.01b.6. degree to which the action establishes a precedent for future actions with significant effects or represents a decision in principle about a future consideration;

6.01b.7. individually insignificant but cumulatively significant impacts;

6.01b.8. degree to which the action adversely affects entities listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural, or historic resources;

6.01b.9. degree to which endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973, are adversely affected; and

6.01b.10. whether a violation of Federal, state, or local law for environmental protection is threatened.

6.01b.11. whether a Federal action may result in the introduction or spread of a nonindigenous species.

6.01c. "Affecting" means will or may have an effect (40 CFR 1508.3). "Effects" include direct, indirect, or cumulative effects of an ecological, aesthetic, historic, cultural, economic, social, or health nature (40 CFR 1508.8).

6.01d. "Legislation" refers to a bill or legislative proposal to Congress developed by or with the significant cooperation and support of NOAA, but does not include requests for appropriations (40 CFR 1508.17). The NEPA process for proposals for legislation significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress (40 CFR 1506.8).

6.01e. "Human environment" includes the relationship of people with the natural and physical environment. Each EA, EIS, or SEIS must discuss interrelated economic, social, and natural or physical environmental effects (40 CFR 1508.14).

6.02 Specific Guidance on Significance of Fishery Management Actions. The following specific guidance expands, but does not replace, the general language in Section 6.01 of this Order. When adverse impacts are possible, the following guidelines should aid the RPM in determining the appropriate course of action. If none of these situations may be reasonably expected to occur, the RPM should prepare an EA or determine, in accordance with Section 5.05 of this Order, the applicability of a CE. NEPA document preparers should also consult 50 CFR 600, Subpart D, for guidance on the national standards that serve as principles for approval of all FMPs and amendments. The guidelines follow.

6.02a. The proposed action may be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action.

6.02b. The proposed action may be reasonably expected to jeopardize the sustainability of any non-target species.

6.02c. The proposed action may be reasonably expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs.

6.02d. The proposed action may be reasonably expected to have a substantial adverse impact on public health or safety.

6.02e. The proposed action may be reasonably expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species.

6.02f. The proposed action may be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species.

6.02g. The proposed action may be expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc).

6.02h. If significant social or economic impacts are interrelated with significant natural or physical environmental effects, then an EIS should discuss all of the effects on the human environment.

6.02i. A final factor to be considered in any determination of significance is the degree to which the effects on the quality of the human environment are likely to be highly controversial. Although no action should be deemed to be significant based solely on its controversial nature, this aspect should be used in weighing the decision on the proper type of environmental review needed to ensure full compliance with NEPA. Socio-economic factors related to users of the resource should also be considered in determining controversy and significance.

6.03 Integrating NEPA Into NOAA's Decisionmaking Process. NEPA documents prepared in accordance with this Order must accompany the decision documents in the NOAA decisionmaking process for any major Federal action. The alternatives and proposed action identified in all such documents must correspond. Any NEPA document prepared for a proposal will be part of the administrative record of any decision, rulemaking, or adjudicatory proceedings held on that proposal.

6.03a. NEPA Documents for Management Plans and Management Plan Amendments. NEPA documents for management plans and management plan amendments require an EA or the RPM may decide to proceed directly with an SEIS/EIS. If the RPM has doubt concerning significance, an EA will be used to determine whether a FONSI, SEIS, or an EIS is appropriate. A management plan amendment may also come under a CE (Section 6.03a.3. of this Order). Generally, where an EIS has been completed on a previous management plan or plan amendment and that EIS or SEIS is more than five (5) years old, the RPM should review the EIS to determine if a new EIS or SEIS should be prepared. RPMs may also consider the use of tiering (40 CFR 1502.20) to reduce paperwork in subsequent

environmental analyses. The NEPA Coordinator is available for consultation on these determinations. As a general rule, the NEPA documents should be prepared at the earliest practicable time in conjunction with plan documents so that the environmental review process will run concurrently, and will be integrated into the plan development process.

6.03a.1. Separate NEPA Documents from Management Plans and Plan Amendments. With this approach, the NEPA document (EA or EIS) is prepared as a separate document and is not incorporated into the related management plan/amendment. Cross references between the NEPA document and the management plan/amendment are encouraged to minimize redundancies between texts. However, under this option the NEPA document must be a stand-alone document. The NEPA document must comply fully with the CEQ regulations, including requirements for contents and administrative procedures and provisions of this Order. The plan and the NEPA document may be printed under the same cover.

6.03a.2. Consolidated NEPA Documents, Management Plans and Plan Amendments. NEPA documents may be combined with the contents of related management plans or amendments to yield a single "consolidated" document. These documents must still satisfy the CEQ regulations, but need not be prepared according to the CEQ recommended outline for NEPA documents. The consolidated document must contain a detailed table of contents identifying required sections of the NEPA document. The NEPA Coordinator must clear the NEPA aspects of each consolidated document since the document serves as a NEPA document as well as a management plan or amendment. Similarly, all consolidated documents which include an EIS must be filed at EPA and follow the normal administrative procedures for any EIS, including public review. Comments on a part of a consolidated document that also serves as part of the EIS must be responded to in the FEIS.

6.03a.3. Categorical Exclusions for Management Plans and Plan Amendments.

6.03a.3(a) No management plan may receive a categorical exclusion, i.e., all plans must be accompanied by an EA or EIS. Management plan amendments not requiring an EIS must be accompanied by an EA unless they meet the criteria of a CE (Section 5.05b. of this Order). A CE determination must be made by the RPM on a case-by-case basis on whether the effects of an action that normally falls under one of these categories may have a significant effect on the human environment. In determining whether the effects are significant, certain factors relevant to the proposed activity should be considered. These factors include the degree to which the effects on the quality of the

human environment are: controversial; unique or involve unknown risks; precedential or represent a decision in principle about future consideration; individually insignificant but cumulatively significant; and/or likely to adversely impact species listed under the ESA or their habitats.

6.03a.3(b) Management plan amendments may receive a CE. Examples of CEs for management plan amendments include, but are not limited to, the following:

6.03a.3(b)(1) a management plan amendment may be categorically excluded from further NEPA analysis if the action is an amendment or change to a previously analyzed and approved action and the proposed change has no effect individually or cumulatively on the human environment (these determinations must be accompanied by an individual memo to the record with a copy submitted to the NEPA Coordinator, and a brief statement within a decision memorandum); and

6.03a.3(b)(2) minor technical additions, corrections, or changes to a management plan.

6.03a..4. Special Circumstances. Management plan amendments may address an action that has been fully analyzed by a previous EIS or EA. These actions cannot expand the original action and the alternatives and their impacts must not differ from the previously reviewed action. Under these circumstances, the action does not qualify for a categorical exclusion because the action may have an adverse effect, however duplication of the previous environmental review is not necessary. These actions require only a new FONSI statement based on the existing NEPA document(s).

6.03b. NEPA Documents for Trustee Restoration Actions under CERCLA, OPA, and NMSA. NOAA has the responsibility for planning and implementing restoration under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), the Oil Pollution Act of 1990 (OPA), and the National Marine Sanctuary Act (NMSA). NOAA should integrate restoration planning with the NEPA planning process.

6.03b.1. EAs and EISs for Restoration Actions. Restoration plans require an EA, to determine the significance of the effect on the human environment, unless the RPM decides to proceed directly with an EIS. Restoration Plans that are significant based upon general and specific criteria in Section 6.01 of this Order require an EIS.

6.03b.2. Categorical Exclusions for Restoration Actions. The Damage Assessment and Restoration Program policy states that restoration actions pursuant to CERCLA, OPA, and NMSA constitute major Federal actions that may pose significant impacts on the quality of the human environment, and are not per se entitled to a CE. Restoration actions that do not individually or cumulatively have significant impacts on the human environment (e.g., actions with limited degree, geographic extent, and duration) may be eligible for categorical exclusion (40 CFR 1508.4), provided such actions meet all of the following criteria:

6.03b.2(a) are intended to restore an ecosystem, habitat, biotic community, or population of living resources to a determinable pre-impact condition;

6.03b.2(b) use for transplant only organisms currently or formerly present at the site or in its immediate vicinity;

6.03b.2(c) do not require substantial dredging, excavation, or placement of fill; and

6.03b.2(d) do not involve a significant added risk of human or environmental exposure to toxic or hazardous substances.

6.03b.3. Examples of Restoration Actions Eligible for a CE. Restoration actions likely to meet all of the above criteria and therefore be eligible for CE include the following.

6.03b.3(a) On-site, in-kind restoration actions (actions in response to a specific injury) such as:

6.03b.3(a)(1) revegetation of habitats or topographical features, e.g., planting or restoration of seagrass meadows, mangrove swamps, salt marshes, coastal dunes, streambanks, or other wetland, coastal, or riparian areas;

6.03b.3(a)(2) restoration of submerged, riparian, intertidal, or wetland substrates;

6.03b.3(a)(3) replacement or restoration of shellfish beds through transplant or restocking;

6.03b.3(a)(4) structural or biological repair or restoration of coral reefs; and

6.03b.3(b) Actions to restore historic habitat hydrology, where increased risk of flood or adverse fishery impacts are not significant. Examples of such actions include:

6.03b.3(b)(1) restoration, rehabilitation, or repair of fish passageways or spawning areas; and

6.03b.3(b)(2) restoration of tidal or non-tidal wetland inundation e.g., through enlargement, replacement or repair of existing culverts, or through modification of existing tide gates).

6.03b.3(c) Actions to enhance the natural recovery processes of living resources or systems affected by anthropogenic impacts. Such actions include:

6.03b.3(c)(1) use of exclusion methods (e.g., fencing) to protect stream corridors, riparian areas or other sensitive habitats; and

6.03b.3(c)(2) actions to stabilize dunes, marsh-edges, or other mobile shoreline features (e.g., fencing dunes, use of oyster reefs or geotextiles to stabilize marsh-edges).

6.03b.4. Consolidated Restoration Plans and Environmental Documents. EA or EIS contents may be combined with the contents of related Restoration Plans to yield a single consolidated document. These documents must still satisfy the CEQ regulations and all requirements for contents and administrative procedures, but need not be prepared according to the CEQ recommended outline for EAs and EISs. The consolidated document must contain a detailed table of contents identifying required sections of the EA or EIS. The NEPA Coordinator must clear the NEPA aspects of each consolidated document since the document serves as an EA or EIS as well as a Restoration Plan. Similarly, all consolidated documents must follow the normal administrative procedures for any EA or EIS, including public review.

6.03b.5. Tiering Regional Restoration Plans. NOAA may identify existing NEPA documents for regional restoration plans or other existing restoration projects that may be applicable in the event of an incident. Regional restoration planning may consist of compiling databases that identify existing, planned, or proposed restoration projects that may provide a range of appropriate restoration alternatives for consideration in the context of specific incidents. If a regional restoration plan, existing restoration project, or some component of the plan or project is proposed for use, NOAA may be able to link or tier the necessary NEPA analysis to an existing analysis.

6.03c. NEPA Documents for Projects and Other NOAA Actions. NOAA is involved in certain actions generally categorized as projects, including: funding and budget decisions; grants; loan guarantee

programs; vessel capacity reduction programs; research programs; land acquisition; construction activities; real estate actions; and permits and licenses. The actual type of document to be prepared is based on the significance of the action, as described at Section 6.01 of this Order. Requirements for environmental analysis for these and similar activities are described below.

6.03c.1. Projects and Other Actions That Require an EA but Not Necessarily an EIS.

6.03c.1(a) Projects that may have significant impacts are required to have an EA unless they meet the criteria of a CE or the RPM determines that an EIS will be prepared. Where an EA reveals that significant impacts will or may occur, the RPM must prepare an EIS.

6.03c.1(b) The RPM may prepare either an EA or EIS for the following types of actions, based on the scope and significance of the specific proposed action:

6.03c.1(b)(1) financial assistance awards for land acquisition, construction, or vessel capacity reduction such as those administered under the Magnuson-Stevens Act, where such actions may result in significant impacts;

6.03c.1(b)(2) new financial support services at the time of conception that have not already been analyzed;

6.03c.1(b)(3) acquisition, sale, transfer, construction, or modification of major new facilities budgeted by NOAA, including lease-to-buy projects containing at least 20,000 square feet of occupiable space;

6.03c.1(b)(4) major re-locations of NOAA personnel undertaken for programmatic reasons; and

6.03c.1(b)(5) other actions, including research, that may as individual actions or cumulative actions have significant environmental impacts.

6.03c.2. Projects and Other Actions That Require an EIS. An EIS is required for major Federal projects or actions determined by the RPM to be significant. The RPM may proceed directly to an EIS without preparing an EA. These projects or actions include the following:

6.03c.2(a) major new projects or programmatic actions that may significantly affect the quality of the human environment;

6.03c.2(b) actions required by law to be subject to an EIS, such as an application for any license for ownership, construction, and operation of an Ocean Thermal Energy Conversion facility or for a Deep Seabed Mining license or permit;

6.03c.2(c) research projects, activities, and programs when any of the following may result:

6.03c.2(c)(1) research is to be conducted in the natural environment on a scale at which substantial air masses are manipulated (e.g., extensive cloud-seeding experiments), substantial amounts of mineral resources are disturbed (e.g., experiments to improve ocean sand mining technology), substantial volumes of water are moved (e.g., artificial upwelling studies), or substantial amounts of wildlife habitats are disturbed (e.g., habitat restoration techniques);

6.03c.2(c)(2) either the conduct or the reasonably foreseeable consequences of a research activity would have a significant impact on the quality of the human environment;

6.03c.2(c)(3) research that is intended to form a major basis for development of future projects (e.g., acoustic thermometry experiments) which would be considered major actions significantly affecting the environment under this Order; and/or

6.03c.2(c)(4) research that involves the use of highly toxic agents, pathogens, or non-native species in open systems; and

6.03c.2(d) Federal plans, studies, or reports prepared by NOAA that could determine the nature of future major actions to be undertaken by NOAA or other Federal agencies that would significantly affect the quality of the human environment.

6.03c.3. Categorical Exclusions. The following categories of projects or other actions do not normally have the potential for a significant impact on the quality of the human environment and therefore usually are excluded from the preparation of either an EA or an EIS. In all cases, a determination must be made by the RPM on a case-by-case basis whether the effects of an action that normally falls under one of these categories may have a significant impact on the human environment. In determining whether the impacts are significant, certain factors relevant to the proposed activity should be considered as described in Section 5.05b. of this Order.

6.03c.3(a) Research Programs. Programs or projects of limited size and magnitude or with only short-term effects on the environment and for which any cumulative effects are negligible.

Examples include natural resource inventories and environmental monitoring programs conducted with a variety of gear (satellite and ground-based sensors, fish nets, etc.) in water, air, or land environs. Such projects may be conducted in a wide geographic area without need for an environmental document provided related environmental consequences are limited or short-term.

6.03c.3(b) Financial and Planning Grants. Financial support services, such as a Saltonstall-Kennedy grant, a fishery loan or grant disbursement under the Fishermen's Contingency Fund or Fisheries Obligation Guarantee Program, or a grant under the CZMA where the environmental effects are minor or negligible. New financial support services and programs should undergo an EA or EIS at the time of conception to determine if a CE could apply to subsequent actions.

6.03c.3(c) Minor Project Activities. Projects where the proposal is for a minor amelioration action such as planting dune grass or for minor project changes or minor improvements to an existing site (e.g., fences, roads, picnic facilities, etc.), unless such projects in conjunction with other related actions may result in a cumulative impact (40 CFR 1508.7).

6.03c.3(d) Administrative or Routine Program Functions. The following NOAA programmatic functions that hold no potential for significant environmental impacts qualify for a categorical exclusion: program planning and budgeting including strategic planning and operational planning; mapping, charting, and surveying services; ship support; ship and aircraft operations; fishery financial support services; grants for fishery data collection activities; basic and applied research and research grants, except as provided in Section 6.03b. of this Order; enforcement operations; basic environmental services and monitoring, such as weather observations, communications, analyses, and predictions; environmental satellite services; environmental data and information services; air quality observations and analysis; support of national and international atmospheric and Great Lakes research programs; executive direction; administrative services; and administrative support advisory bodies.

6.03c.3(e) Real Estate Actions. The following NOAA real estate actions with no potential for significant environmental impacts are categorically excluded from preparation of an EA or EIS: repair, or replacement in kind, of equipment and components of NOAA owned facilities; weatherization of NOAA facilities; environmental monitoring; procurement contracts for NEPA documents; architectural and engineering studies and supplies; routine facility maintenance and repair and grounds-keeping

activities; acquisitions of space within an existing previously occupied structure, either by purchase or lease, where no change in the general type of use and minimal change from previous occupancy level is proposed; acquisition of less than 5,000 square feet of occupiable space by means of Federal construction, lease construction, or a new lease for a structure substantially completed prior to solicitation for offers and not previously occupied; lease extensions, renewals, or succeeding leases; relocation of employees into existing Federally-owned or commercially leased office space within the same metropolitan area not involving a substantial number of employees or a substantial increase in the number of motor vehicles at a facility; out-lease or license of government-controlled space, or sublease of government-leased space to a non-Federal tenant when the use will remain substantially the same; various easement acquisitions; acquisition of land which is not in a floodplain or other environmentally sensitive area and does not result in condemnation; and installment of antennas as part of site plan of the property.

6.03c.3(f) Construction Activities. Minor construction conducted in accordance with approved facility master plans and construction projects on the interiors of non-historic NOAA-owned and leased buildings, including safety and fire deficiencies, air quality, interior renovation, expansion or improvement of an existing facility where the gross square footage is not increased by more than 10 percent, and the site size is not increased substantially, and minor repair/replacement of existing piers or floats not exceeding 80 feet in length.

6.03c.3(g) Facility Improvement or Addition. Minor facility improvement or addition where ground disturbance is limited to previously disturbed areas (i.e., previously paved or cleared areas).

6.03c.3(h) NEXRAD Radar Coverage. Change in NEXRAD radar coverage patterns which do not lower the lowest scan elevation and do not result in direct scanning of previously non-scanned terrain by the NEXRAD main beam.

6.03c.3(i) Other Categories of Actions Not Having Significant Environmental Impacts. These actions include: routine operations and routine maintenance, preparation of regulations, Orders, manuals, or other guidance that implement, but do not substantially change these documents, or other guidance; policy directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature, or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be

subject later to the NEPA process, either collectively or case-by-case; activities which are educational, informational, advisory or consultative to other agencies, public and private entities, visitors, individuals or the general public; actions with short term effects, or actions of limited size or magnitude.

6.03d. NEPA Documents for Actions taken under the Magnuson-Stevens Act. To the extent possible documents developed to support FMPs, FMP amendments, regulatory amendments, letters of acknowledgment of scientific research, authorization of educational activities, exempted fishing permits, and other fishery regulatory actions developed under the Magnuson-Stevens Act should be integrated with the required NEPA document to produce one combined document. The provisions of Section 6.02a. are applicable to FMPs and FMP amendments. The National Marine Fisheries Service (NMFS) and the RFMCs should attempt to develop and integrate the NEPA document with FMP public hearing documents at the earliest possible stage to provide the public and decision makers with an assessment of environmental impacts of the proposed actions prior to RFMC decisions. The NEPA analysis and the analysis required under the Magnuson-Stevens Act may be similar, but the scope of the NEPA analysis must include a discussion of the broader impacts of the fishery as a whole on the human environment. Specific guidance on determining significance for fisheries actions and the scope of environmental analyses required under NEPA is provided under Section 6.02 of this Order, and in the 1991 memorandum to the Regional Directors from the NMFS Assistant Administrator (Fox, 1991).

6.03d.1. Fisheries Actions that Require an EA. EAs are the most common NEPA documents prepared for FMP amendments and regulatory actions. If NMFS or the RFMCs cannot make an initial determination that significant impacts are likely to occur from the proposed action or that the action is eligible for a CE, an EA should be prepared which includes sufficient information to determine whether the action is significant under NEPA and an EIS need be prepared, or a FONSI can be concluded. Examples of EAs on past FMP amendments may be obtained from the NEPA Coordinator.

6.03d.2. Fisheries Actions that Require an EIS. When developing a new FMP for a previously unregulated species, the RFMC or NMFS should conduct an EIS on the proposed plan. An EIS must also be prepared for all FMP amendments and regulatory actions when the RFMC or NMFS determines that significant beneficial or adverse impacts are reasonably expected to occur. Consideration of cumulative impacts must also be taken into account when considering whether to prepare an EIS. In particular, the RPM must consider the cumulative impacts of connected management

measures implemented under other FMPs, MMPA actions, or ESA management actions.

6.03d.3. Framework Actions for Fisheries Management Plans. Framework actions must be given the same consideration under NEPA as are FMP amendments. The essence of the framework concept is the adjustment of management measures within the scope and criteria established by the FMP and implementing regulations to provide real time management of fisheries. Framework measures may be “open” measures that provide managers a given set or limit of options to apply to a fishery through a regulatory amendment process, or more traditional “closed” measures such as closures, seasons, or gear restrictions. Closed measures are implemented through in season rulerelated notices. Analysis for FMP amendments and regulatory amendments that establish or implement frameworks should, to the extent possible, assess the full range of impacts resulting from the options allowed under the framework. This will reduce the scope of analysis required for subsequent actions established under the framework. Closed management measures fully analyzed by a framework analysis require no further action.

6.03d.4. Categorical Exclusions for Fisheries Management Actions. Fisheries management actions may qualify for a CE pursuant to Section 9.03a.3. of this Order if the actions individually and cumulatively does not have the potential to pose significant effects to the quality of the human environment. These determinations must be documented by a memorandum to the record which states the specific rationale behind why the action qualified for a categorical exclusion. In determining whether the effects of the fisheries management action are significant, the factors identified in Section 5.05b. of this Order for the appropriateness of a CE relevant to the activity should be considered along with the specific guidance on significance provided in Section 6.02 of this Order. If an action is determined to be CE under Section 5.05b. of this Order, a brief statement so indicating shall be included within an appropriate decision memorandum and submitted to the NEPA Coordinator. Actions that may receive a categorical exclusion may include:

6.03d.4(a) ongoing or recurring fisheries actions of a routine administrative nature when the action will not have any impacts not already assessed or the RPM finds they do not have the potential to pose significant effects to the quality of the human environment such as: reallocations of yield within the scope of a previously published FMP or fishery regulation, combining management units in related FMP, and extension or change of the period of effectiveness of an FMP or regulation; and

6.03d.4(b) minor technical additions, corrections, or changes to an FMP.

6.03e. NEPA Documents For Actions taken under the Endangered Species Act. NOAA has numerous responsibilities under the ESA that include listing species as threatened or endangered, designating critical habitat, preparing recovery plans, monitoring species that have been removed from the endangered species list, issuing scientific and enhancement permits, and issuing incidental take permits.

6.03.e.1. Special Circumstances For ESA Listing Determinations. Determinations that a species is threatened or endangered, determinations that a species should be delisted, and determinations that a species should be reclassified as threatened or endangered, are exempt from NEPA compliance. Pursuant to legislative history accompanying the 1982 amendments to the ESA, and Pacific Legal Foundation v. Andrus, these actions are exempt from NEPA and are not categorically excluded, which implies that NEPA is still applicable to these actions. Actions found to be exempt from NEPA are not the same as actions found to qualify as categorical exclusions, as those actions are subject to environmental impact considerations under NEPA.

6.03e.2. ESA Actions That Require an EA but Not Necessarily an EIS.

6.03e.2(a) Promulgation of special management rules pursuant to Section 4(d) of the ESA requires an EA (see Section 6.03e.3.(a) for guidance on NEPA compliance for preparation of recovery plans). Section 4(d) rules may require an EIS, but that finding will be determined on a case-by-case basis or after an EA is completed on the action.

6.03e.2(b) Implementation of recovery actions, including actions identified in recovery plans require an EA unless covered by Section 6.03e.3.(a) of this Order. Some recovery actions, such as reintroductions or establishment of experimental populations, may require an EIS, but that finding will be determined on a case-by-case basis or after an EA is completed on the action.

6.03e.2(c) Issuance of permits for scientific purposes or to enhance the propagation or survival pursuant to Section 10(a)(1)(A) of the ESA for hatchery activities requires an EA (see Section 6.03e.3.(b) for guidance on NEPA compliance for other permits issued pursuant to this section of the ESA). Modifications to these permits may qualify for a CE, but that finding will be determined on a case-by-case basis or after an EA is completed on the action.

6.03e.2(d) Issuance of incidental take permits pursuant to Section 10(a)(1)(B) of the ESA must be accompanied by an EA unless covered by Section 6.03e.3(d) of this Order and may require an EIS. The cumulative impacts of the total number of permit actions must be considered in determining whether a FONSI is appropriate. NEPA documents prepared for these permits must pay particular attention to the direct, indirect and cumulatively beneficial and adverse impacts to the environment (which includes listed species) from these permits.

6.03e.2(e) Establishment of experimental populations pursuant to Section 10(j) of the ESA requires an EA (see Section 6.03e.3.(a) of this Order for guidance on NEPA compliance for preparation of recovery plans). Establishment of some experimental populations may require an EIS, but that finding will be determined on a case-by-case basis or after an EA is completed on the action.

6.03e.2(f) Promulgation of enforcement and protective regulations pursuant to Section 11(f) of the ESA requires an EA (see Section 6.03e.3.(a) of this Order for guidance on NEPA compliance for preparation of recovery plans).

6.03e.3. Categorical Exclusions for ESA Actions. The following actions may be appropriate for categorical exclusion:

6.03e.3(a) Preparation of Recovery Plans. Preparation of recovery plan pursuant to Section 4(f)(1) of the ESA is categorically excluded because such plans are only advisory documents that provide consultative and technical assistance in recovery planning. However, implementation of specific tasks themselves identified in recovery plans may require an EA or EIS depending on the significance of the action (see Section 6.03e.2.(b) for guidance on NEPA compliance for implementation of recovery actions).

6.03e.3(b) Scientific Research and Enhancement Permits. In general, permits for scientific purposes or to enhance the propagation or survival of listed species issued pursuant to sec. 10(a)(1)(a) of the ESA qualify for a CE (except for permits covered in Section 6.03e.2.(c)). The factors listed in Section 5.05b. of this Order must be considered in all CE determinations on permits. The RPM must also consider the cumulative impact on the listed species from the total amount of permits issued with CEs, and take into account any population shifts with the subject species.

6.03e.3(c) Critical Habitat Designations. The RPM will determine on a case-by-case basis whether NEPA analysis is required for the designation of critical habitat under Section

4(a)(3) of ESA. In general, the designation of critical habitat reinforces the substantive protections resulting from listing. To the extent that a designation overlaps with listing protections, it is unlikely to have a significant affect on the human environment and may qualify as a categorical exclusion under Section 8.05 of this Order. NMFS may decide as a matter of policy or otherwise to prepare an EA for certain critical habitat designations, such as those determined to be highly controversial, even when it is determined that the designation meets the requirements of a categorical exclusion. In the case of critical habitat designations that include habitat outside the current occupied range of a listed species, the potential for economic and/or other impacts over and above those resulting from the listing exists; therefore, in general, a categorical exclusion will not apply.

6.03e.3(d) "Low Effect" Incidental Take Permits. The issuance of "low effect" incidental take permits under Section 10(a)(1)(B) of ESA permits actions that individually or cumulatively, have a minor or negligible effect on the species covered in the habitat conservation plan. A CE is generally appropriate for this type of action.

6.03f. NEPA Documents for Actions Taken under the MMPA. NOAA is involved in a number of actions within their responsibility under the MMPA. These include permits for the taking of marine mammals under sec. 104 of MMPA for purposes of public display, scientific research, survival and recovery, and photography for educational or commercial purposes; permits or authorizations under sec. 101(a)(5)(E) and Section 118 for takings incidental to the course of commercial fishing operations; incidental harassment authorizations for small takes under MMPA sec. 101(a)(5)(A); grants for research; activities conducted under the General Authorization for Scientific Research; and take reduction plans.

6.03f.1. MMPA Actions That Require an EA but Not Necessarily an EIS. Authorization for the intentional lethal take of individually identified pinnipeds under sec. 120 of the MMPA requires an EA. Take reduction plans and other activities to govern the interactions between marine mammals and commercial fishing operations generally require an EA. Permits and authorizations for incidental, but not intentional taking of ESA-listed marine mammals under Section 101(a)(5)(E) or sec. 118 of the MMPA require an EA.

6.03f.2. Categorical Exclusions.

6.03f.2(a) In general, scientific research, enhancement, photography, and public display permits issued under

section101(a)(1) and 104 of the MMPA, and letters of confirmation for activities conducted under the General Authorization for Scientific Research established under Section 104 of the MMPA, qualify for a CE. The factors listed in Section 5.05b. of this Order must be considered in all CE determinations on permits. The RPM must also consider the cumulative impact on the protected species from the total amount of permits issued with CEs, and take into account any population shifts with the subject species. Research activities conducted under the General Authorization for Scientific Research will be reviewed periodically for cumulative impact.

6.03f.2(b) Small take incidental harassment authorizations under Section 101(a)(5)(a), tiered from a programmatic environmental review, are categorically excluded from further review. The small take incidental harassment authorizations are part of an expedited process to take small numbers of marine mammals by harassment without the need to issue specific regulations governing the taking of marine mammals for each and every activity. If an authorization under 101(a)(5)(a) does not tier from a programmatic environmental review, that action may require an EIS, EA, or CE, based on a case-by-case review.

6.03f.2(c) In cases such as those authorized by Section 109(h) of the MMPA (i.e., taking of marine mammals as part of official duties), such actions are not exempt from NEPA, nor are they categorically excluded from environmental review, and alternative measures are necessary. Under these conditions, a programmatic review may be the appropriate means for meeting NEPA requirements.

SECTION 7. INTEGRATING NEPA WITH OTHER ORDERS.

7.01 Integration of E.O. 12114, Environmental Effects Abroad of Major Federal Actions, in the NOAA Decisionmaking Process.

7.01a. Scope. This section applies to NOAA activities, or impacts thereof, which occur outside the United States, or which may affect resources not subject to the management authority of the United States, that are subject to E.O. 12114 and DAO 216-12 other than those activities addressed pursuant to NEPA. Specifically, E.O. 12114 directs agencies to establish environmental impact review procedures in the following categories of actions.

7.01a.1. Major Federal actions significantly affecting the environment of the global commons outside the exclusive jurisdiction of any nation (e.g., the oceans, the atmosphere, the deep seabed, or Antarctica).

7.01a.2. Major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action.

7.01a.3. All other major Federal actions significantly affecting the environment of a foreign nation, including, but not limited to, those that provide to that nation:

7.01a.3(a) a product and/or a principal product, emission, or effluent which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk;

7.01a.3(b) a physical project which is prohibited or strictly regulated by Federal law in the United States to protect the environment against radioactive substances.

7.01a.4. Major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection by the President under the provisions of E.O. 12114, or, in the case of resources protected by international agreement binding on the United States, by the Secretary of State. In this context, the phrase "outside the United States" refers to the area beyond the 200-mile exclusive economic zone and continental shelf of the United States.

7.01b. Special Efforts. Certain activities having environmental impacts outside the United States require special efforts because of their international environmental significance. These include activities which:

7.01b.1. threaten natural or ecological resources of global importance or which threaten the survival of any species;

7.01b.2. may have a significant impact on any historic, cultural, or national heritage or resource of global importance; or

7.01b.3. involve environmental obligations set forth in an international treaty, convention, or agreement to which the United States is a party.

7.01c. Constraints.

7.01c.1. Environmental documents on actions subject to this section should be as complete and detailed as possible under the circumstances. However, in analyzing activities or impacts which occur outside the United States, it may on occasion be necessary

to limit the circulation, timing, review period, or detail of an EA or EIS for one or more of the following reasons:

7.01c.1(a) diplomatic considerations;

7.01c.1(b) National security considerations;

7.01c.1(c) relative unavailability of information;

7.01c.1(d) commercial confidentiality; and

7.01c.1(e) the extent of NOAA's role in the proposed activity.

7.01c.2. When full compliance with this Order is not possible, consideration may be given to the preparation of:

7.01c.2(a) bilateral or multilateral environmental studies, relevant or related to the proposed actions, by the United States and one or more foreign nations, or by an international body or organization in which the United States is a member or participant; and

7.01c.2(b) concise reviews of the environmental issues involved, including EAs, summary environmental analyses, or other appropriate documents.

7.01c.3. RPMs, in consultation with the NEPA Coordinator and the NOAA Office of General Counsel, will decide whether an EA or EIS should be prepared on an action under this section.

7.01d. Consultation. In preparing an environmental document for an activity which may affect another country or which is undertaken in cooperation with another country and will have environmental effects abroad, the RPM should consult with the NEPA Coordinator both in the early stages of document preparation (in order to determine the scope and nature of the environmental issues involved) and in connection with the results and significance of such documents. The NEPA Coordinator and the NOAA Office of General Counsel will consult, as appropriate, with other offices in the DOC, CEQ, and Department of State when the proposed action or its environmental consequences are likely to involve substantial policy considerations. When consulting with foreign officials, every effort must be made to take into account foreign sensitivities and to understand that one of NOAA's objectives in preparing environmental documents in cases involving effects abroad is to provide environmental information to foreign decisionmakers, as well as to responsible NOAA officials. Finally, NOAA's efforts in preparing these environmental documents will be directed, in part, toward

strengthening the ability of other countries to carry out their own analyses of the likely environmental effects of proposed actions.

7.02 Integration of E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, in the NOAA Decisionmaking Process. E.O. 12898 requires agencies to analyze the effects of their actions on low-income and minority populations. The consideration of E.O. 12898 should be specifically included in the NEPA documentation for decisionmaking purposes. Unlike NEPA, the trigger for analysis under E.O. 12898 is not limited to actions that are major or significant and Federal agencies are mandated by E.O. 12898 to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. Thus, when applicable, environmental justice should be addressed in activities that require NEPA analysis, and also in instances where the activity is not considered major or significant, and therefore does not require NEPA analysis beyond a CE determination.

7.02a. Analyzing E.O. 12898 in EA and EIS Documents. When applicable, each NOAA EA and EIS shall include a discussion of the environmental effects of the proposed Federal action including human health, economic and social effects on minority and low-income communities. The analysis may be integrated into the environmental consequences and social/economic sections of the documents or a separate section specifically addressing E.O. 12898 may be included. If the information is integrated into an EA or EIS, the document should identify that the analysis meets the goals and intent of E.O. 12898.

7.02b. Mitigation Measures in NEPA Documents for E.O. 12898. Whenever feasible, mitigation measures outlined or analyzed in an EA, EIS, or record of decision should address significant and adverse environmental effects on minority and low income communities. Beneficial impacts of the project may also be identified.

7.03 Integration of E.O. 13112, Invasive Species, in the NOAA Decisionmaking Process.

E.O. 13112 requires agencies to use authorities to prevent introduction of invasive species, respond to and control invasions in a cost effective and environmentally sound manner, and to provide for restoration of native species and habitat conditions in ecosystems that have been invaded. E.O. 13112 also provides that agencies shall not authorize, fund, or carry out

actions that are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless a determination is made that the benefits of such actions clearly outweigh the potential harm; and that all feasible and prudent measures to minimize the risk of harm will be taken in conjunction with the actions. The consideration of E.O. 13112 should be included in the NEPA documentation for decisionmaking purposes when appropriate. Actions subject to such analysis include, but are not limited to, intentional introduction of organisms into ecosystems outside of their native range, activities which could result in the unintentional introduction of nonindigenous species, and activities that could promote the spread of nonindigenous species that have already been introduced.

7.04 Integration of E.O. 13089, Coral Reef Protection, in NOAA Decisionmaking Process.

E.O. 13089 requires agencies to (a) identify actions that may affect U.S. coral reef ecosystems, (b) utilize their programs and authorities to protect and enhance the conditions of such ecosystems, and (c) ensure that any actions they authorize, fund or carry out will not degrade the conditions of coral reef ecosystems. Agencies whose actions affect U.S. coral reef ecosystems shall provide for implementation of measures needed to research, monitor, manage, and restore affected ecosystems, including but not limited to, measures reducing impacts from pollution, sedimentation and fishing. To the extent not inconsistent with statutory responsibilities and procedures, these measures shall be developed in cooperation with the U.S. Coral Reef Task Force and fishery management councils and in consultation with affected States, territorial, commonwealth, tribal, and local government agencies and non-governmental stakeholders. The consideration of E.O. 13089 should be included in the NEPA documentation for decision making purposes when appropriate. Actions subject to such analysis include, but are not limited to, fishery management plans and/or other actions impacting fisheries or non-fisheries species of coral reef ecosystems, inland and/or coastal development, dredging and/or harbor development, actions impacting coastal water quality, and other activities which could result in the intentional or unintentional degradation of U.S. coral reef ecosystems.

SECTION 8. EFFECT ON OTHER ISSUANCES.

This Order supersedes NAO 216-6, dated August 6, 1991, and NOAA Administrator's Letter No. 17, dated April 3, 1978.

SIGNED,
Under Secretary for Oceans and Atmosphere Administrator

Attachments: Exhibits
Office of Primary Interest:
Office of Policy and Strategic Planning

Exhibit 1. Acronyms

The following acronyms are used in this Order:

AA	Assistant Administrator
APA	Administrative Procedure Act
CE	Categorical Exclusion
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CEQ	Council on Environmental Quality, Executive Office of the President
CFR	Code of Federal Regulations
CZMA	Coastal Zone Management Act
DAO	Department Administrative Order
DEIS	Draft Environmental Impact Statement
DOC	U.S. Department of Commerce
EA	Environmental Assessment
EEZ	U.S. Exclusive Economic Zone
EIS	Environmental Impact Statement
E.O.	Executive Order
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FEIS	Final Environmental Impact Statement
FMP	Fishery Management Plan
FONSI	Finding of No Significant Impact
LEIS	Legislative Environmental Impact Statement
MMPA	Marine Mammal Protection Act
MSFCMA	Magnuson-Stevens Fishery Conservation and Management Act
NAO	NOAA Administrative Order
NEPA	National Environmental Policy Act
NEXRAD	Next Generation Radar
NMSA	National Marine Sanctuaries Act
NOA	Notice of Availability
NOI	Notice of Intent
NOAA	National Oceanic and Atmospheric Administration
OPA	Oil Pollution Act
PO	Program Office
RFMC	Regional Fishery Management Council
ROD	Record of Decision
RPM	Responsible Program Manager
SEIS	Supplemental Environmental Impact Statement
SO	Staff Office
U.S.C.	United States Code

Exhibit 2. The NEPA Process

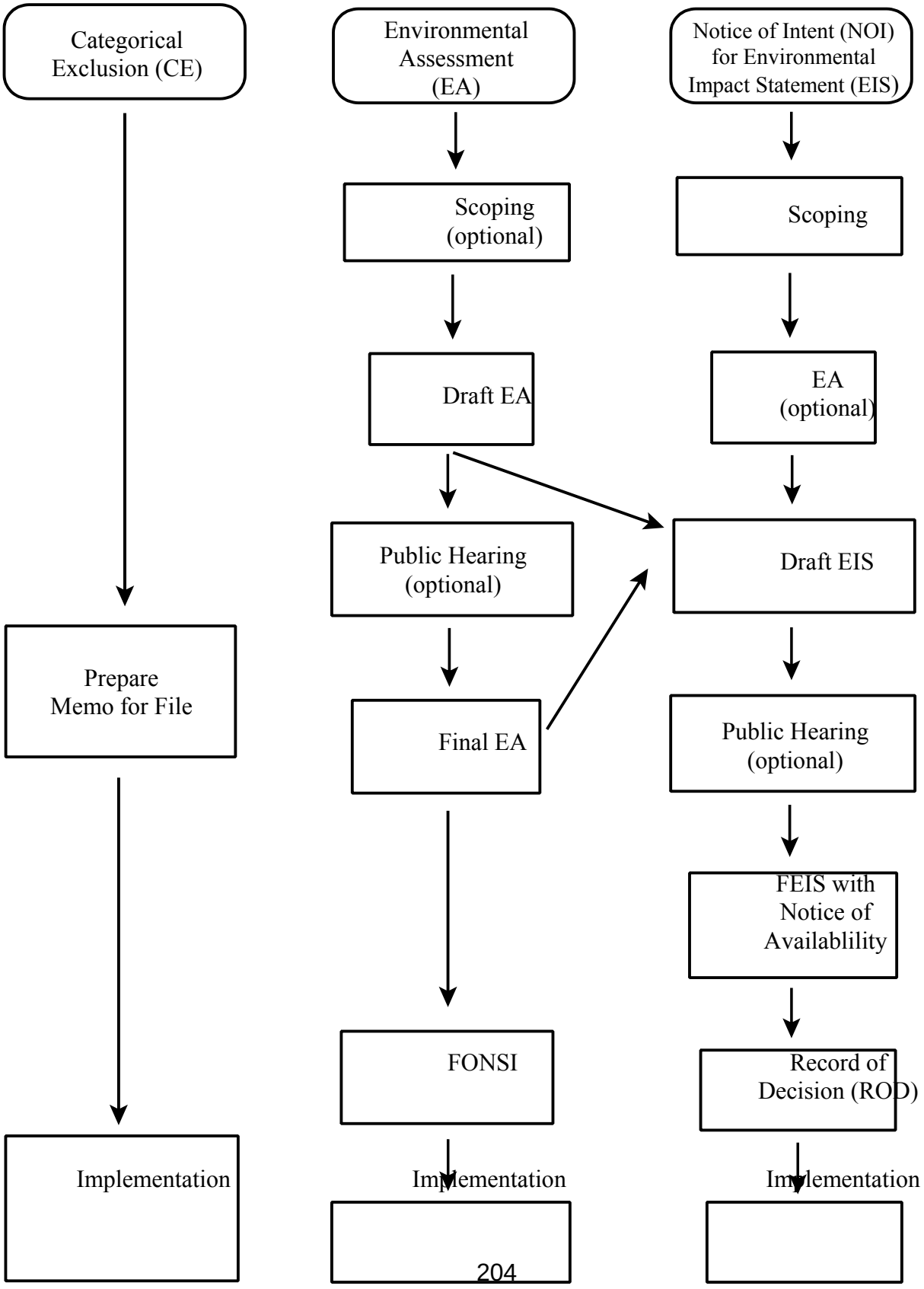

Exhibit 3. NOAA Contacts for Common Actions Subject to NEPA

Program	Application	NOAA Contact
Coastal Zone Management Programs (Sec. 306, CZMA)	Coastal States, Territories and Commonwealths	National Ocean Service, Office of Ocean and Coastal Resources Managment (OCRM)
National Marine Sanctuaries (Title III, (NMSA))	States, private individuals and organizations	National Ocean Service, OCRM
Estuarine Sanctuaries Beach Access Acquisition (Sec. 315, CZMA)	States	National Ocean Service, OCRM
Fishery Management Plans (Sec. 305, MSFCMA)	Regional Fishery Management Councils or NMFS	National Marine Fisheries Service Headquarters
Regulations, Permits and Waivers under the MMPA [Secs. 101(a)(2), 101(a)(3), and MMPA]	Private parties, scientific institutions, and foreign nations	National Marine Fisheries Service, Office of Protected Species and Habitat
Deep Seabed Mining Licenses and Permits (DSM)	Private Industry	National Ocean Service, OCRM
Ocean Thermal Energy Conversion Licenses (OTEC)	Private Industry	National Ocean Service, OCRM

Exhibit 4. Format for Preparing a Notice of Intent

Billing Code: 3510-22-F

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
[I.D. 021596A]

Environmental Impact Statement (EIS) for the Proposed Consolidation of NOAA Facilities in Juneau, AK

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

ACTION: Notice of intent to prepare an EIS; request for comments.

SUMMARY: NOAA announces its intention to prepare an EIS in accordance with the National Environmental Policy Act of 1969 for the proposed consolidation of NOAA/NMFS facilities in Juneau, AK. The University of Alaska may also develop facilities as part of the proposed consolidation.

DATES: Written comments on the intent to prepare an EIS will be accepted on or before March 25, 1996. Scoping meetings are scheduled as follows:

1. March 29, 1996, 1 p.m., Federal Building, Juneau, AK.
2. May 24, 1996, 1 p.m., Federal Building, Juneau, AK.
3. May 24, 1996, 5 p.m., Centennial Hall, Juneau, AK.

ADDRESSES: Written comments on suggested alternatives and potential impacts should be sent to John Gorman, Responsible Program Manager, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668 or to Robb Gries, Contract Office Technical Representative, NOAA, Facilities and Logistics Division, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115.

Scoping meetings will be held as follows:

1. NOAA/NMFS personnel - Friday, March 29, 1996, 4th Floor Conference Room, Federal Building, 709 West 9th Street, Juneau, AK, 1-4 p.m.

Exhibit 4. (continued)

2. NOAA/NMFS personnel - Friday, May 24, 1996, 4th Floor Conference Room, Federal Building, 709 West 9th Street, Juneau, AK, 1-4 p.m.

3. Open to the public - Friday, May 24, 1996, Centennial Hall, 101 Egan Drive, Juneau, AK, 5 p.m.-10 p.m.

SUPPLEMENTARY INFORMATION:

The proposed action would involve consolidation of NOAA/NMFS offices, laboratory, and enforcement facilities in Juneau, AK. NOAA operations are currently in four space assignments in the Federal Building and at an aging, overcrowded Commerce-owned laboratory facility at Auke Bay. The NOAA/NMFS portion of the facility will be about 91,628 net square ft (8,512.5 square meters) in size and constructed on 28 acres (11.3 hectares (ha)) of Commerce-owned property at Auke Cape. The 28 acre (11.3 ha) site is situated on saltwater (Auke Bay) and will require access and utility improvements. Approximately 273 NOAA/NMFS related personnel would be housed in the consolidated facilities. The University of Alaska School of Fisheries and Ocean Sciences is interested in collocating 22,000 net square ft (2,044 square meters) of laboratory, classroom, and office space with NOAA/NMFS at Auke Cape. The University of Alaska space would house about 90 faculty, staff, and students. The EIS will examine three alternative locations for the proposed consolidation and also evaluate the proposed action with and without University of Alaska participation. The no action alternative will also be evaluated. The agency's preferred alternative is to locate on approximately 28 acres (11.3 ha) of agency-owned land at Auke Cape/Indian Point on Auke Bay.

To identify the scope of issues that will be addressed in the EIS and to identify potential impacts on the quality of the human environment, public participation is invited by providing written comments to NMFS and attending the scoping meeting.

Public Information Meetings:

Additional public information meetings and community workshops on the proposed project will be held in Juneau beginning in March. These meetings will be held in various locations and will be advertised in local Juneau newspapers.

Special Accommodations:

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or

Exhibit 4. (continued)

other auxiliary aids should be directed to John Gorman or Robb Gries (see ADDRESSES) at least 5 days prior to the meeting date.

Dated: February 15, 1996

Richard W. Surdi
Acting Director
Office of Fisheries Conservation and Management
National Marine Fisheries Service

Exhibit 5a. Format for Documenting Categorical Exclusion of Several Actions

MEMORANDUM FOR: THE RECORD

FROM: Donna Marino
Construction Staff

SUBJECT: Categorical Exclusion, Oxford Cooperative Laboratory

NAO 216-6, Environmental Review Procedures, requires all proposed projects to be reviewed with respect to environmental consequences on the human environment.

The proposed project is to renovate and expand the existing main structure at the research facility known as The Cooperative Oxford Laboratory, Oxford, Maryland. The scope of the proposed project is:

> Renovation of 10,000 Gross Square Feet (GSF) and construction of a 7,000 GSF expansion to the main structure at the Cooperative Oxford Laboratory. Renovation work will consist of removal and replacement of either partial or whole components of existing mechanical, electrical, and architectural features. Expansion work will consist of construction of a slab foundation, brick super structure, and a wood trussed and asphalt shingled roof, and build out of interior components.

Expansion and renovation involves furnishing materials, tools, equipment, supervision, and incidentals by the Federal Government. In a cost sharing arrangement with the State of Maryland, the state will provide the funds for labor as required. All work will be conducted by state employees or licensed contractors in conformance with applicable conventional engineering and construction practices. Work will be performed on site, in one location at Oxford, Maryland.

This proposed project represents repair, renovation, and expansion activities to an existing Federal facility. Expansion of the facility will occur. Appropriate State and Federal agencies with jurisdictions over waterfront and shore lands have been advised of the proposed project. A copy of the Maryland State Department of Natural Resources May 9, 1995, memorandum of Federal Consistency with the State’s Coastal Zone Management Program, as are required by Section 307 of the Federal Coastal Zone Management Act of 1972, is attached. Also attached is the Maryland State Department of

Exhibit 5a. (continued)

Natural Resources “Stormwater Management and Sediment & Erosion Control Approval/Waiver” dated June16, 1995.

This project would not result in any changes to the human environment. As defined in Sections 5.05 and 6.03a.3b. of NAO 216-6, this is an action of limited size or magnitude. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

Exhibit 5b. Format for Documenting Categorical Exclusion of Several Actions

MEMORANDUM FOR: THE RECORD

FROM: F/SF1 - Rebecca Lent

SUBJECT: Proposed Atlantic Bluefin Tuna Trade Restrictions B Categorical Exclusion Under NEPA

The National Marine Fisheries Service (NMFS), under the authority of the Atlantic Tunas Convention Act (ATCA), is proposing to restrict the import of Atlantic bluefin tuna (ABT) from Panama, Belize, and Honduras. This proposed action would require minor changes to the existing regulations for the ABT fishery.

After reviewing the proposed rule (copy attached) in relation to NOAA 216-6, including the criteria used to determine significance, we have concluded that the proposed action would not have a significant effect, individually or cumulatively, on the human environment. Further, we have determined that the proposed action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with Section 6.03a.3b. of NOAA Administrative Order 216-6. Specifically, this is an “action of limited size or magnitude” that does not result in a significant change in the original environmental action and involves only minor changes to the regulations.

BACKGROUND

In an effort to conserve and manage North Atlantic bluefin tuna, the International Commission for the Conservation of Atlantic Tunas (ICCAT) adopted two recommendations at its 1996 meeting requiring its Contracting Parties to take the appropriate measures to the effect that the import of Atlantic bluefin tuna and its products in any form from Belize, Honduras, and Panama be prohibited.

ICCAT has been concerned about the status of North Atlantic bluefin tuna for many years. The most recent scientific stock assessment shows that mid-year spawning biomass (age 8+) of the western management stock in 1995 was estimated to be 13 percent of the 1975 level (which is considered an appropriate proxy for the spawning stock biomass level corresponding to maximum sustainable yield (MSY). Eastern Atlantic bluefin tuna is estimated to be at 19 percent of the level that would produce MSY.

Exhibit 5b. (continued)

The U.S. Atlantic bluefin tuna fishery is managed under ATCA. Regulation of the fishery is required to implement applicable ICCAT recommendations and ATCA and Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) requirements. Over the years, ICCAT has adopted numerous conservation and management measures aimed at addressing the decline in this resource. These measures have included establishing (1) catch limits and quotas, (2) time and area closures to protect spawning fish, (3) a minimum size to protect juvenile fish, (4) the Bluefin Tuna Statistical Document (BSD) program to track the trade of bluefin tuna, (5) the Bluefin Tuna Action Plan Resolution that establishes a process to identify non-Contracting Parties whose vessels are fishing in a manner that diminishes the effectiveness of ICCAT's bluefin tuna conservation recommendations, and, after giving identified counties an opportunity to rectify the activities of their vessels, can lead to a recommendation of trade measures, (6) measures to enhance Contracting Party compliance with ICCAT's bluefin tuna quotas that can result in quota penalties and, ultimately, trade restrictions. Environmental assessments, resulting in Findings of No Significant Impact, were prepared by NMFS for the actions that resulted in these recommendations. All substantive ABT regulations to date have been evaluated consistent with NEPA. This proposed action does not significantly alter those regulations.

Under the proposed trade restrictions, U.S. dealers would be prohibited from importing ABT products from Belize, Honduras, or Panama. No bluefin tuna were imported from Belize, Honduras, or Panama during 1979-196. It is unlikely that any importers, wholesalers, or freight forwarders have any significant dependence on bluefin tuna imports from these three countries and there are no extraordinary circumstances that would remove this action from consideration as a categorical exclusion.

Following are the most salient factors contributing to our determination that a categorical exclusion is appropriate for this action:

1. The principal effect of the proposed action would be to penalize, through trade restrictions, countries that do not support conservation and management measures recommended for ABT by ICCAT.

Exhibit 5b. (continued)

2. The action would not, in the United States, result in any increase in fishing mortality; change any basic fishing practices (i.e., fishing effort, areas fished, etc.); or pose any significant threat to the human environment.

3. The action is of "limited size"; requires only minor changes to existing regulations; and does not result in "a significant change in the original environmental action." It is intended to help ensure effective implementation of ICCAT conservation recommendations for bluefin tuna.

Attachments

Exhibit 6. Format for EIS Transmittal Letter to Reviewwers

Dear Reviewer:

In accordance with provisions of the National Environmental Policy Act of 1969, we enclose for your review the NOAA/NMFS Consolidated Facility Final Environmental Impact Statement (FEIS).

This FEIS is prepared pursuant to NEPA to assess the environmental impacts associated with NOAA proceeding with development and operation of a consolidated NOAA/NMFS facility. The facility may also contain space for the University of Alaska Fairbanks (UAF) School of Fisheries and Ocean Sciences. The FEIS examines impacts with and without the UAF presence.

Any written comments on the FEIS should be directed to the responsible official identified below by February 23, 1998. A copy of your comments should also go to me in Room 5805, OPSP, U.S. Department of Commerce, Washington, D.C. 20230.

NOAA is not required to respond to comments received as a result of issuance of the FEIS, however comments will be reviewed and considered for their impact on issuance of a record of decision (ROD). The ROD will be printed in the Federal Register some time after February 23, 1998.

Responsible Person:
John Gorman
National Marine Fisheries Service
Alaska Region
P.O. Box 21668
Juneau, Alaska 99802-1668

Telephone number (907) 586-7641
Facsimile (907) 586-7249

Sincerely,

NEPA Coordinator

Enclosure

Exhibit 7. Format for Draft EIS/Final EIS Transmittal to EPA

Director, Office of Federal Activities (A-104)
U.S. Environmental Protection Agency
Ariel Rios Bldg.
South Oval Lobby
1200 Pennsylvania Ave., NW
Washington, D.C. 20044

Dear (INSERT NAME):

Enclosed for your consideration are five (VERIFY NUMBER WITH NEPA COORDINATOR) (APPROPRIATE DOCUMENTS, i.e., DRAFT EIS OR FINAL EIS) on (TITLE OF PROJECT).

ADDITIONAL PARAGRAPH(S) OR INFORMATION AS NECESSARY

If you have any questions about the enclosed statement, contact either the official responsible for this program (NAME and TELEPHONE NUMBER) or me at (202) 482-5181.

Concurrent with this transmittal to EPA, copies of the (DEIS//FEIS) are being mailed to Federal agencies and other interested parties.

Sincerely,

(INSERT NAME)

NEPA Coordinator

Enclosures

Exhibit 8. Format for FONSI Transmittal Letter to Interested Parties

To All Interested Government Agencies and Public Groups:

Under the National Environmental Policy Act, an environmental review has been performed on the following action.

TITLE: (TITLE OF PROJECT)

LOCATION: (INFORMATION AS NECESSARY)

SUMMARY: (INFORMATION AS NECESSARY)

RESPONSIBLE OFFICIAL: (Assistant Administrator, Staff Office or Program Office Director Level with Address and Telephone Number)

The environmental review process led us to conclude that this action will not have a significant effect on the human environment. Therefore, an environmental impact statement will not be prepared. A copy of the finding of no significant impact including the supporting environmental assessment is enclosed for your information. Please submit any written comments to the responsible official named above by (DUE DATE FOR COMMENTS).

Also, please send one copy of your comments to me in Room 6117, Herbert C. Hoover Building, U.S. Department of Commerce, Washington, D.C. 20230.

Sincerely,

(INSERT NAME)

NEPA Coordinator

Enclosure

Exhibit 9. Format for FONSI Transmittal Memorandum (from appropriate Assistant Administrator, Staff Office or Program Office Director to NEPA Coordinator)

MEMORANDUM FOR: (INSERT NAME)
NEPA Coordinator

FROM: (INSERT NAME)

SUBJECT: Finding of No Significant Impact on the Environmental Assessment on (TITLE OF ACTION OR PROJECT)–DECISION MEMORANDUM

Based on the subject environmental assessment, I have determined that no significant environmental impacts will result from the proposed action. I request your concurrence in this determination by signing below. Please return this memorandum for our files.

1. I concur. _____
Date

2. I do not concur. _____
Date

Attachment

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Reviewing Environmental Impact Statements for Fishery Management Plans

Final • September 2005