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

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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

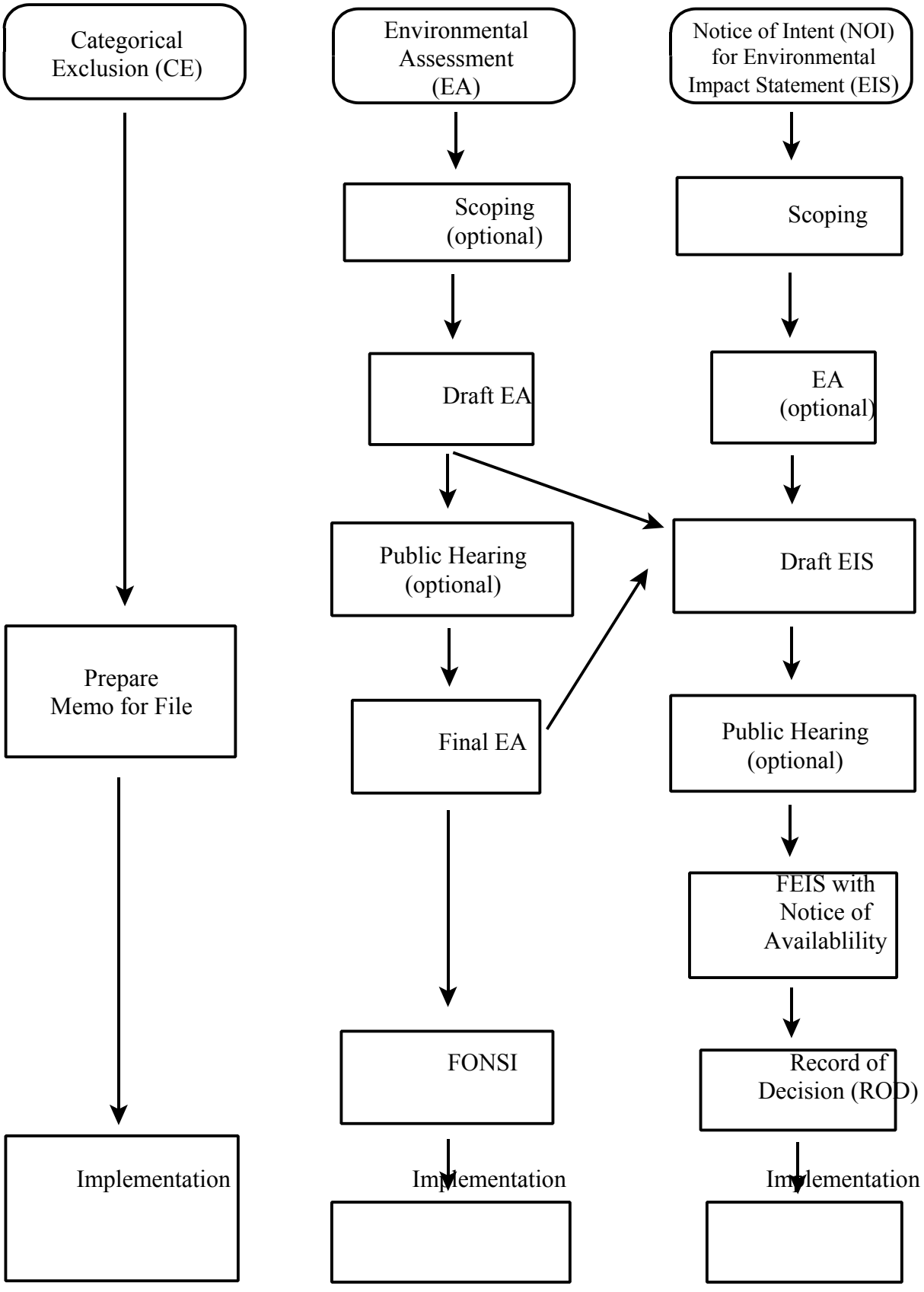

Exhibit 3. NOAA Contacts for Common Actions Subject to NEPA

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