

Comments from the Western Pacific Fishery Management Council

Western Pacific Regional Fishery Management Council
Comments on MSA revisions to the NEPA process
April 20, 2007

We support the MSA call for the development of new environmental review processes for fishery management actions that will be consistent with the intent of NEPA while reducing duplicative analyses and confusion for the public. Below are responses to the questions asked in NMFS' March 7, 2007 FishNews.

1) In the context of fishery management actions, how should NOAA Fisheries, in consultation with the Councils and CEQ, revise and update agency procedures for compliance with NEPA?

NOAA Fisheries should develop a new environmental review process for use of Magnuson-Stevens Fisheries Conservation and Management Act (MSA) actions. In other words, the existing NOA 216-6 should not apply to MSA actions and new environmental procedures should be developed which are specific to MSA actions. The new environmental review procedures should be developed to reduce the duplicative analyses often contained in environmental impact statements and fishery management plan documents. The new procedures should also meld public review timelines for Council processes, NEPA, MSA, and APA.

2) What opportunities exist to improve efficiencies in the NEPA process that may not have been applied in the past?

Reducing duplicative analyses and melding timelines is the best opportunity to improve efficiency as well as reduce confusion among the regulated community and other members of the public. In addition, the revised approach should allow for simplified analyses of actions with impacts that are beneficial to the human environment. In other words, it does not make sense to require extensive analyses in order to implement catch limits, seasonal closures or other actions that will reduce fishing effort and/or catches. NEPA was primarily designed for actions by developers and others that were likely to have negative externalities – not for actions designed with the explicit objective of restricting activities that may have adverse environmental impacts.

3) How should the Councils and NOAA Fisheries ensure that analysis is conducted on an appropriate scale for various types of fishery management actions? What criteria should be developed and applied to ensure that the level of analysis is commensurate with the scope of the action?

Establishing criteria for a one-size-fits-all environmental review process will avoid having to determine which actions are "significant", however it will likely require extensive analyses for all actions (in order to ensure that larger actions receive adequate analyses). Both approaches have advantages and disadvantages. It is especially important to continue to provide a mechanism for processes similar to "tiering" and "categorical exclusions" as these provide extremely useful methods for avoiding duplicative or unnecessary analyses. This will be especially important for the many actions we take to set or adjust annual quotas, as well as those to revise reporting requirements or to make other administrative changes.

4) Should NOAA Fisheries consider eliminating the distinction between an environmental assessment (EA) and environmental impact statement (EIS), and instead, rely solely on an integrated environmental impact analysis?

Overall we support an integrated environmental impact analysis, however please see our comment above.

5) How should a "reasonable" range of alternatives be defined for purposes of the new procedures?

A reasonable range should include only those alternatives that NMFS can implement and that meet the purpose and need of the action.

6) What opportunities, if any, exist to develop a more effective scoping process? Should scoping occur at Council meetings and should Council meeting agenda notices serve as a traditional Notice of Intent to prepare an environmental analysis? Should the environmental analysis for different types of fishery management actions be developed on a different scale based on the action's duration or effect?

We suggest that scoping requirements can be satisfied at Council meetings as well as other public meeting conducted by the Councils or NMFS.

8) What key features of the current NOAA NEPA process or of CEQ's regulations should be modified in the new procedures?

The requirement to determine significance, and the 45 day public review period that is misaligned with the MSA and PRA.

9) How should emergency actions be treated under the new procedures?

To the extent practicable, environmental analyses should be required for emergency actions to inform decision makers and the public alike. However this should not be allowed to delay the timely implementation of emergency actions.

10) To what extent does the public feel that shorter comment periods (e.g., a minimum of 30 days) could affect your ability to participate effectively in the NEPA process?

We have observed that most people wait until the end of comment periods to submit comments, and thus we believe that a shorter comment period will not significantly reduce the public's ability to provide comments.