

# Involving the Public

## Legal Requirements for Public Participation

Public participation is an important and mandatory part of environmental decision making. Involving the public can increase not only the legitimacy of decisions, but also compliance with rules and regulations. For these reasons, it may be beneficial for coastal and marine managers to involve the public more than what is simply required by law.

The following information provides a brief summary of basic legal requirements for public participation at the national and state levels. Coastal and marine managers can use this information as a foundation for designing and conducting a participatory process.

### National Level

#### Administrative Procedures Act (APA)

This act is the principal statute governing public participation in environmental decision making and encompasses the provisions of the Freedom of Information Act, the Privacy Protection Act, and the Government in the Sunshine Act. Federal agency rule making is governed under this act.

To propose a new rule or amend an existing one, an agency must

- 1) Develop a notice of the proposed regulation, including the time, location, and nature of the the agency's process for creating, amending, or repealing a rule, the legal authority under which it is proposed, and a description of the terms and major issues;
- 2) Publish the proposal in the *Federal Register*;
- 3) Allow the public 30 to 60 days to comment; and
- 4) Address the public comments in a final rulemaking published in the *Federal Register*.

For more information about the APA, visit [www4.law.cornell.edu/uscode/5/p1ch5schII.html](http://www4.law.cornell.edu/uscode/5/p1ch5schII.html).

#### National Environmental Policy Act (NEPA)

Under this act, federal agencies are required to prepare a detailed environmental impact statement (EIS) for all proposals that are "major Federal actions significantly affecting the quality of the human environment." If the action requires an EIS, the agency must

- 1) Publish a notice of intent in the *Federal Register* to inform the public that an EIS will be prepared and to formally announce the beginning of the process;
- 2) Distribute a draft EIS;
- 3) Respond to public comments on the draft EIS; and
- 4) Prepare and distribute the final EIS, which contains the agency's responses to comments received, as well as the preferred alternative.

An EIS must include an examination of the environmental impacts of the proposed rule, any unavoidable adverse environmental effects, and an alternative analysis including a "no action" alternative. For more information about NEPA, visit <http://ceq.eh.doe.gov/nepa/regs/nepa/nepaeqia.htm>.

#### National Marine Sanctuaries Act and Magnuson-Stevens Act

Many environmental statutes relevant to the management of marine protected areas (MPAs) contain additional provisions for public participation. For instance, the National Marine Sanctuaries Act requires that within 30 days of issuing a notice of a proposed national marine sanctuary area, an agency must hold at least one public hearing in the coastal areas that will be affected. In addition, the Magnuson-Stevens Act requires the Fisheries Management Councils to provide for public participation in the development or amendment of fishery management plans.



## Coastal Zone Management Act

The major public participation requirements of this act include the following:

- Each state coastal management program must provide opportunities for public participation in all aspects of the program (i.e., public notices, opportunities for comment, nomination procedures, public hearings, technical and financial assistance, and public education).
- Public hearings must be announced at least 30 days in advance, and all relevant agency materials must be made available to the public for review beforehand.

For more information on the *Federal Register*, including a searchable index from 1994 to the present, visit [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html).

For more information on public participation in federal rule making, visit [www.archives.gov/federal\\_register/public\\_participation/public\\_participation.html](http://www.archives.gov/federal_register/public_participation/public_participation.html).

## State Level

States provide for public participation in a variety of ways. All have basic statutes about open meetings and open records. (For more information about state freedom of information statutes, visit [www.missouri.edu/~foiwww/citelist.html](http://www.missouri.edu/~foiwww/citelist.html).) In addition, some states have adopted general public participation statutes modeled after federal statutes such as APA and NEPA. (For more information about states that have environmental planning requirements similar to NEPA, visit <http://ceq.eh.doe.gov/nepa/regs/states/states.cfm>.) Finally, some states provide for public participation in particular situations through individual state statutes. The following are example excerpts from three state public-participation regulations.

### *California Coastal Act of 1976 (California)*

This act declares that “the public has a right to fully participate in decisions affecting coastal planning, conservation, and development; that achievement of sound coastal conservation and development is dependent upon public understanding and support; and that the continuing planning and implementation of programs for coastal conservation and development should include the widest opportunity for public participation.”

### *Aquatic Preserve Act of 1975 (Florida)*

This act requires “public notice and public hearing in the county or counties in which the proposed preserve is to be located” before a resolution formally setting aside such areas can be adopted.

### *Coastal Area Management Act of 1974 (North Carolina)*

“Public notice, opportunity for public comment, and agency review shall be required for all development within the Primary Nursery Areas or Outstanding Resource Waters areas of environmental concern.”

This information was compiled by the MPA Center’s Training and Technical Assistance Institute. For more information, visit the Web site at [www.csc.noaa.gov/cms/cls/mpa\\_training.html](http://www.csc.noaa.gov/cms/cls/mpa_training.html). Or, visit the National MPA Center at [www.mpa.gov](http://www.mpa.gov).

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