

DRAFT for Discussion at CCC Meeting

Operational Guidelines decision table. DRAFT 2/11/14

		Option 1: 1997 OG approach	Option 2: 2005 OG approach	Option 3: 2013 NEPA policy directive approach	New Option : Recommendation for new OGs
a	Overview of Approach	The 1997 OG’s take a prescriptive approach, describing roles and responsibilities, identifying five phases of the process, and setting forth event schedules and assignments of tasks for compliance with each OAL in each phase.	The 2005 draft OG’s were outcome-oriented and based on principles of cooperation and shared responsibility with Councils, frontloading of review, and use of the MSA and NEPA processes as a framework for necessary analyses. The 2005 draft identified standards to assess the adequacy of fishery management actions and provided a model process, including checkpoints and feedback loops, that could be followed to ensure effective communication and reconciliation of statutory timelines.	Sets forth the roles and responsibilities of NMFS and Councils under MSA and NEPA. Identified linkage points. Encourages joint ownership and cooperation, but clarifies points at which clear responsibilities vest in one party or the other.	Goal: to build on successes from previous approaches; weave together good tools and guidance without being overly prescriptive; provide one-stop shopping for guidance on integrating all OALs.
b	Pros	Describe a highly specific ideal process	Left specific tasking and working relationships up to region/council pairs. Had QA checkpoints. Short and easy to read. Useful table of requirements, timing, and tools. Promoted frontloading and cooperative teamwork and planning.	Provides a clear, workable, flexible approach to NEPA compliance.	
c	Cons	Too detailed and prescriptive for application in many circumstances	Multiple layers of checkpoints in model process created unmanageable workload and timing constraints.	Might not be adaptable for each OAL, or all OALs together in a single process.	
d	Differences in Options				

DRAFT for Discussion at CCC Meeting

e	Amount of detail	82 pages. Overview of laws. Detailed descriptions of phases and processes. Includes template for integrated analyses/ compliance docs.	23 pages. Describes principles, roles, and standards, and provides a model process for rulemaking with critical feedback points. RA signoff for analysis prior to transmittal. Details of planning left to ROAs.	22 pages. Provides high level review of roles and responsibilities of NMFS and Councils, and ways to infuse NEPA into council process.	Stick to higher level guidance: provide links or references to or descriptions of where details are laid out (NEPA PD, ESA MOU, RPAs) Address terminology, frameworking, emergency rules... Discuss the “phases” on a general level
f	Objectives	Improve quality of FMPs, produce clear understanding of laws, simplifying and speeding the flow of work.	Address unnecessary delays, unpredictable outcomes, and lack of accountability via more standardized practices.	Clarify roles and responsibilities, timing, NEPA documentation control and other issues.	<ul style="list-style-type: none"> •Improve quality of documentation •Produce concise understandable documents •Improve quality and efficiency of management decisions •Avoid unexpected determinations and decisions •Raise likelihood of success in litigation •Simplify and speed the flow of work •Achieve appropriate standardization •Increase transparency
g	Focus	Focus on meeting legal requirements.	Focus on integrated documents and regulatory streamlining.	Focus is on process, roles, and timing and on bringing consistency and NEPA compliance across councils	Focus on clear description of transparent process. <u>Suggested Topics/Table of Contents:</u> <ul style="list-style-type: none"> •Authorities and delegations •Purpose/goals/objectives/philosophy (frontloading transparency, etc.) •High-level process/schedule •Roles and responsibilities (public, councils, NMFS (region, HQ, science center), NOAA GC; link to council-specific ROAs?) •Rulemaking process alternatives (e.g., emergency rulemaking, frameworking, plan amendments, Secretarial amendments, etc.) •Rulemaking phases (council-specific flow charts could document variations in council processes during pre-Secretarial review phases?; could still highlight key decision points here if want to retain that concept) •Applicable laws and policies (link to standards, checklists, schedules and integrated amendment template(s) explaining where in council documents various mandates are addressed; if standardization is an issue, could link to region- or council-specific

DRAFT for Discussion at CCC Meeting

					<p>templates?)</p> <ul style="list-style-type: none"> •Public comment mandates/opportunities (oral, written + how to contact your state and/or industry representative on each council? this section could be redundant but may be good to highlight if a key objective is increased transparency?) •Communication protocol (should we document how we'll communicate with the public during the process?; also could help with managing expectations and increasing transparency) •Terminology/definitions/glossary/acronyms
h	Objective 1. Promoting the Quality of Outcomes and Products				
i	Improve the quality of documentation , including FMPs, regulations, and records	Sample TOC and template provided.	Documentation requirements listed in table.	Provides guidance on purpose and need, and alternatives.	<ol style="list-style-type: none"> 1. Emphasize importance of record: Should include the importance of correct documentation for inclusion in an AR. Proscribe that a record must rationally explain the agency's decisions, include substantive factual information relevant to the full range of issues involved; documents any opposing views or data; record that NMFS followed all required procedures and met required legal standards. 2. Some sort of joint sign off or formalized feedback point, similar to, but less formal than, the Advisory Statements described in 2005 OGS? 3. Emphasis on early planning, collaboration, and frontloading. 4. Retain all the components of Options 1-3 that did this (e.g., link to templates, documentation requirements and existing policies/guidance); also could highlight new plain language mandate/materials
j	Produce documents that are concise and easily	Briefly mentions that documents should be readable, useful, and informative. Suggests self-contained introductory summary.	While this is stated as a principle, no steps or instruction to achieve this.	Includes some guidance on contents and organization of the NEPA document. However,	Similarly to NEPA PD, provide some overall guidance, then cross reference other existing mandates and guidance documents such as the Plain Writing Act of 2010, and EO's 12866, EO 12988,

DRAFT for Discussion at CCC Meeting

	understandable by the public			guidance on document drafting and conciseness exists in other materials.	and 13563. Provide links to any relevant Plain language guidance or checklists (could be covered under suggested topics of Applicable Law and/or Communications) Consider the use of consolidated FMPs that incorporate all amendments in one up-to-date document. And/or identify best practices and examples for providing the public accessible and understandable FMPs.
k	Improve quality and efficiency of management decisions	Event schedule provided.	Listing of standards and feedback points to improve quality.	Early integration of NEPA by councils provides better information for decision making.	Linking and adopting the principles outlined in the NEPA document: Early integration, clear delineation of roles and responsibilities as outlined ROAs. Address planning issues and documentation that is provided at the last minute. Links to council schedules and agenda may be helpful. Also, ROAs can address timing issues with Centers. Retain additional elements of options 1 -3 that are helpful.
l	Avoid unexpected determinations and decisions		Frontloading early coordination through action plans	Frontloading tools listed	No need to recreate the wheel. The most obvious strategy is to “frontload” on issues so that any key players can be identified (States, commissions, Tribal entities) and included as necessary; consistent reviews scheduled throughout the FMP development; emphasis on close communication and avoid assumptions on roles and responsibilities Highlight frontloading under Philosophy, Roles and Responsibilities, etc; if all Councils/Regions are currently using IPTs, FMATs, etc., also could highlight (require?) this approach in description of rulemaking phases/processes Link to the Council Overview summary matrix and to ROAs. Note that these documents will evolve over time.

DRAFT for Discussion at CCC Meeting

m	Raise the likelihood of success in litigation	Legal requirements integrated into example template.	Requires RA advisory statements with determination of legal sufficiency	Clarifies roles, responsibilities, and timing considerations. Identifies procedural nexus	Retain aspects of options 1-3 that have been Helpful. Produce precise administrative records.
n	Objective 2. Promoting Timely, Effective, and Transparent Public Process				
o	Simplify and speed the flow of work	Allows for frameworking measures.	Adds additional review steps. Shifts workload earlier into process in hopes of improving efficiency at the end.	Describes optional approaches for improving efficiencies, such as NEPA Advanced Planning Procedure, Supplemental Information Report and Incorporation by reference	Highlight applicable tools, like frameworking, programmatic NEPA documents, etc. Highlight aspects of RSP that are working and should be continued Identify Best Practices: <ul style="list-style-type: none"> • Consider reorganizing regulations by species. • “Follow-up” documents (S.At.) • “Action Meetings” and follow up monitoring (WPFMC)
p	Achieve appropriate standardization	Provides sample TOC and document template.	Standardizes steps, but not documents. SF is supposed to maintain a website with templates and examples	High level standardization of NEPA compliance	Focus on standardizing higher-level things (e.g., frontloading, inclusion of all disciplines in document development, use of integrated amendments, etc), but allow flexibility in how to do that (differing process flow charts, ROAs, could explain regional variations) Council overview matrix: illustrating that we have some level of general consistency but lots of room for regional variations and for legitimate reasons. Be aware that there are limits to how much standardization we can achieve. Should there be a standardized FMP format?

DRAFT for Discussion at CCC Meeting

q	Increase transparency	Not an objective	Not an objective	Integration of NEPA early in process enhances transparency.	<p>Make it partially a living document on the web that ties together and/or cross links to sites that enhance transparency – such as sf 5 info (e.g., http://www.nmfs.noaa.gov/sfa/management/councilmeetings/meeting_schedule.htm)</p> <p>Link to council meeting schedules; also could link to council membership lists so people can easily identify their state/sector representatives; also maybe the Federal e-rulemaking portal, etc?</p>