The National Oceanic and Atmospheric Administration National Environmental Policy Act Handbook

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Cover Photo: May 5, 2000. Plymouth, Plymouth County, Massachusetts
Pat Kurkul, the Northeast Regional Administrator, passes the herring to volunteers who then place the fish in trucks waiting to transport them past the dams and to their spawning grounds.
http://www.photolib.noaa.gov/habrest/r0006617.htm
Image ID: r0006617
Photo Credit: NOAA Restoration Center, Louise Kane

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ACRONYMS AND ABBREVIATIONS

§§	Sections
AA	Assistant Administrator
ANPR	Advanced Notice of Proposed Rulemaking
APA	Administrative Procedure Act
CE	Categorical Exclusion
CEQ	Council on Environmental Quality
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFR	Code of Federal Regulations
CZMA	Coastal Zone Management Act
DEIS	Draft Environmental Impact Statement
DOC	Department of Commerce
EA	Environmental Assessment
EFH	Essential Fish Habitat
EFP	Experimental or Exempted Fishing Permit
e.g.	for example
EIS	Environmental Impact Statement
EO	Executive Order or Environmental Objections
EPA	Environmental Protection Agency
ESA	Endangered Species Act
etc.	and so on
FEIS	Final Environmental Impact Statement
FMP	Fishery Management Plan
FONSI	Finding of No Significant Impact
FPO	Federal Program Officer
FR	Federal Register
GC	General Counsel
i.e.	that is
MMPA	Marine Mammal Protection Act
MPA	Marine Protected Area
MSA	Magnuson-Stevens Fishery Conservation and Management Act
NAO	NOAA Administrative Order
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NMFS	National Marine Fisheries Service (also known as NOAA Fisheries)
NMSA	National Marine Sanctuaries Act
NMSP	National Marine Sanctuary Program
NOA	Notice of Availability
NOAA	National Oceanic and Atmospheric Administration
NOI	Notice of Intent
NOS	National Ocean Service
OAR	Office of Oceanic and Atmospheric Research
OMB	Office of Management and Budget
OPA	Oil Pollution Act
PPI	Office of Program Planning and Integration
RA	Regional Administrator
RFMC	Regional Fishery Management Council
RFP	Request for Proposals
ROD	Record of Decision
RPM	Responsible Program Manager
US	United States
U.S.C.	United States Code

*Note that the use of "**NOAA NEPA Coordinator**" and "**NEPA Coordinator**" are used interchangeably and refer to the NOAA NEPA Coordinator in the Office of Program Planning and Integration at NOAA Headquarters. The NOAA NEPA Coordinator is not the same as the Regional NEPA Coordinator for NOAA Fisheries. The use of "**Regional NMFS NEPA Coordinator**" refers to the Regional NEPA Coordinator for NOAA Fisheries.*

PURPOSE AND USE OF THIS HANDBOOK

For Whom this Handbook is Intended

This handbook has been prepared by the National Oceanic and Atmospheric Administration (NOAA) National Environmental Policy Act (NEPA) Coordinator in the Office of Program Planning and Integration (PPI) as a tool for use by NOAA staff. It should be useful as well to applicants, contractors, tribal representatives, Regional Fisheries Management Councils, and others who may be involved in the NOAA NEPA process.

What this Handbook Does

This handbook describes NOAA directives, policies, and guidelines for implementing NEPA, Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, and NOAA Administrative Order (NAO) 216-6. This handbook brings these legal requirements together and describes how to apply them to NOAA program areas. The handbook also presents and summarizes other related environmental laws and Executive Orders that should be addressed in a NEPA document. To ensure compliance and understanding of environmental regulations and policies, users should refer to the specific regulation and policy.

This handbook should be used as a guide to assist staff in preparing, reviewing, and processing environmental analyses pursuant to NEPA. This handbook is not binding on NOAA, other Federal agencies or individuals, and it is not intended to circumvent, modify, or replace applicable Federal law or regulations. Although this handbook was written with these various authorities in mind, if a conflict should be found between the handbook and these authorities, the authorities always take precedence. In the event NOAA staff do not follow this handbook when they prepare a NEPA document, it is important for NOAA staff to explain in the document why the agency is deviating from the guidance.

The handbook describes, in practical terms, the steps to prepare, review, and process environmental analyses. This handbook uses, wherever possible, flowcharts and visual representations. The handbook does not describe every detailed step involved in NEPA. Each region or office may also have additional steps specific to them, this information is not described in the handbook. Ensure that all region and office processes are also followed when conducting the NEPA process.

This handbook cannot answer every question. There may be situations in the real world that may not fit “classic” NEPA definitions or situations. Regulatory, social, and political realities can complicate the application of NEPA to unusual situations. This handbook does not attempt to address every possible situation. However, it should be a useful starting point in any situation.

Modifying this Handbook

This handbook is intended to be a living document and will be reviewed periodically and modified to reflect changes in environmental and NOAA regulations and policies. Recommendations for modifications should be directed to the NOAA NEPA Coordinator Staff in PPI.

Please inform the NOAA NEPA Coordinator Staff if there are areas in the handbook that are not clear or not helpful. Revisions can occur any time there is an identified problem with the existing text.

Always ensure the most recent version of this handbook is being used. Check with NOAA NEPA Coordinator Staff in PPI for the most recent version. The following list shows which version is currently in use and which versions are obsolete.

Version and Date	**Status**
Version 2.3, May 2009	Current
Version 2, December 2005	Obsolete
Version 1, March 2005	Obsolete

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Note that throughout this handbook many regulations and references are underlined and in blue font color. These are hyperlinks and when the handbook is viewed on a computer these hyperlinks will direct you to the appropriate website of the regulation or reference.

1.0 INTRODUCTION

During the 1960's the environmental "Green Movement" began. Americans were becoming more aware of their surroundings and the importance of the environment. At this time, the United States Government began to recognize a need to take into consideration the effect Federal actions may have on the environment. As a result, President Nixon signed into law the National Environmental Policy Act (NEPA) on January 1, 1970, 42 U.S.C. §§ 4321-4347.

NEPA establishes a national environmental policy and provides a framework for environmental planning and decisionmaking by Federal agencies. NEPA directs Federal agencies, when planning projects or issuing permits, to conduct environmental reviews to consider the potential impacts on the environment by their proposed actions. The NEPA process consists of a set of fundamental objectives that include interagency coordination and cooperation and public participation in planning and project development decisionmaking. NEPA also established the Council on Environmental Quality (CEQ), which is charged with the administration of NEPA. As stated in the CEQ regulations (40 CFR 1500.1), NEPA is designed to allow for informed decisionmaking by government officials and public participation in the process.

NEPA is not an exercise in producing paperwork; nor is it merely procedural. Its primary goal is to foster better decisionmaking, decisionmaking that takes into account all of the environmental impacts of an action and involves the public in that decisionmaking.

Public involvement is an important part of NEPA. NEPA's success as an environmental disclosure and problem-solving law depends on full disclosure and open discussion. Public disclosure leads to government accountability for the environmental effects of Federal decisions. The NEPA review process is intended to disclose all pertinent facts and possibilities associated with Federal decisions, and to ensure that the public has the opportunity to comment and contribute to those decisions in an environmentally meaningful way.

2.0 THE WHATS, WHENS, AND WHOS OF NEPA

This section explains some of the basic concepts behind the NEPA process and will help NOAA staff determine how to ensure that the underlying purposes and policies of NEPA are addressed for all actions taken by NOAA.

2.1 What is NEPA and What are NOAA's Responsibilities Regarding NEPA?

NEPA is a law that requires Federal agencies to consider environmental impacts during their decisionmaking for major Federal actions. When NOAA takes a major Federal action, the first thing NOAA staff should do is to decide if the action is subject to NEPA environmental review. Refer to Section 2.1.1 of this handbook to assist in this determination.

If the action is subject to NEPA review, then the environmental impacts must be documented at one of three levels of NEPA analysis:

1) By preparing a brief memorandum to the administrative record documenting that the activity qualifies for a **categorical exclusion (CE)**;
2) By preparing a concise **environmental assessment (EA)**, and, if appropriate, a Finding of No Significant Impact (FONSI); or
3) By preparing a detailed **environmental impact statement (EIS)**.

A **CE** applies if the proposed action falls within a category of actions that do not individually or cumulatively have a significant impact on the human environment. Significance is a measure of the intensity and the context of impacts of a major Federal action (NAO 216-6 § 4.01x). CE categories are those that have been found to have no significant impact on the environment, and are documented in procedures adopted by a Federal agency. If an action qualifies for a CE, neither an EA nor an EIS is required.

An **EA** is a concise public document that briefly provides supporting reasons and analyses for determining whether to prepare an EIS or a FONSI. If necessary, it also considers and selects measures for mitigating identified adverse environmental impacts.

An **EIS** is a detailed document assessing the environmental impacts of the proposed action. It includes a description of significant environmental impacts that cannot be avoided if the proposal is implemented, alternatives to the proposed action, the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and irreversible or irretrievable commitments of resources that would be involved if the proposed action is implemented. It also explores and selects mitigation measures to minimize negative environmental effects.

In some circumstances a supplemental or programmatic EA or EIS can be prepared. These types of documents are described in detail in Sections 6.1 and 6.2 of this handbook.

2.1.1 Is the Action Subject to NEPA?

As a Federal agency, NOAA performs many activities in furtherance of its underlying goals and statutory mandates. Some of its activities have a clear-cut and direct impact on the environment, while others may have impacts that are less obvious. The following sections will help NOAA staff determine if a particular action is subject to NEPA review.

NEPA applies to NOAA actions that occur within the United States and its waters as well as those actions in which NOAA is involved that occur outside the United States, or those that may affect resources not subject to the management authority of the United States (NAO 216-6 § 7.01).

2.1.1.1 Major Federal Actions

NEPA requires Federal agencies to examine the impacts of major Federal actions significantly affecting the quality of the human environment in a detailed statement prepared by the responsible Federal official. For CEQ's definition of major Federal action refer to 40 CFR 1508.18. In NAO 216-6 § 4.0m, NOAA defines a major Federal action as:

> 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 4.01x. and 6.01 of NAO 216-6. 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).

Many of NOAA's actions are considered to fall within the definition of a major Federal action and are, therefore, subject to NEPA. This does not mean, however, that a lengthy environmental analysis must be prepared for every action.

2.2 When Should NOAA Staff Initiate the NEPA process?

NOAA programs should initiate the NEPA process as early as possible during the planning stages of an action. This will help ensure decisions related to the action are based on a true understanding of the associated environmental consequences. When NOAA is directly taking an action, generally the first step is to determine the appropriate level of NEPA analysis that will be required for that particular action (refer to Section 2.4 of this handbook for more detail regarding this determination). This determination may

change throughout the planning stages of a project as new information becomes available about the action and the environment in which it is proposed to be conducted. If necessary, a supplemental NEPA review document may need to be prepared depending on when in the process new information becomes available (refer to Section 6.1 for information regarding supplemental NEPA documents).

2.3 What are the Steps of the NEPA Process?

An overview of the general NEPA process is depicted in Figure 1.

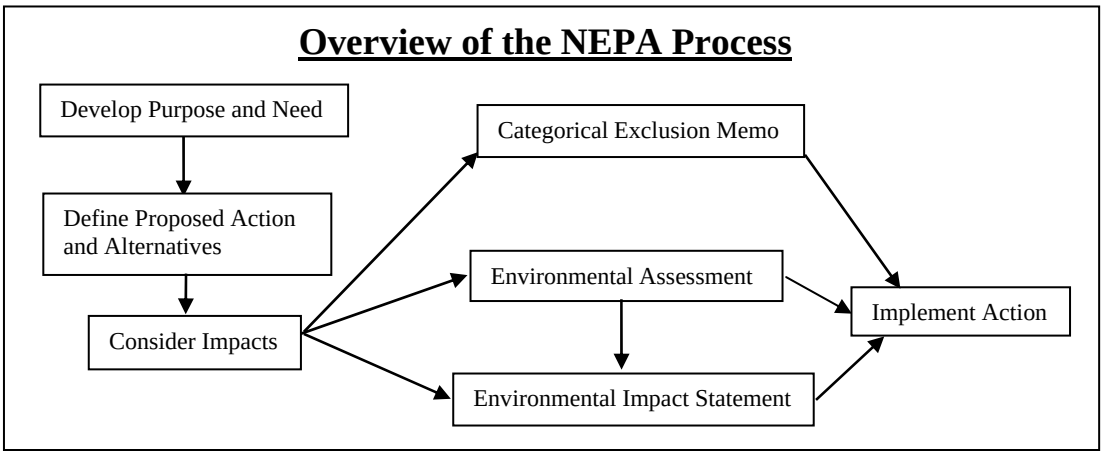

Figure 1. Overview of the NEPA Process.

The general steps of the NEPA process are:

1. Determine and define the purpose and need (why is the action needed?).
2. Define the action that will satisfy that need and identify potential alternatives.
3. Consider the environmental impacts of the action and alternatives.
4. Prepare the appropriate NEPA document: CE, EA, or EIS
5. Implement the proposed action or take no action.

2.4 Determining the Proper NEPA Document

Once a determination is made that the proposed action is subject to NEPA, the next step is to determine the level of documentation required.

Figure 2 and the following descriptions illustrate how NOAA staff should determine which type of NEPA document to prepare for each action.

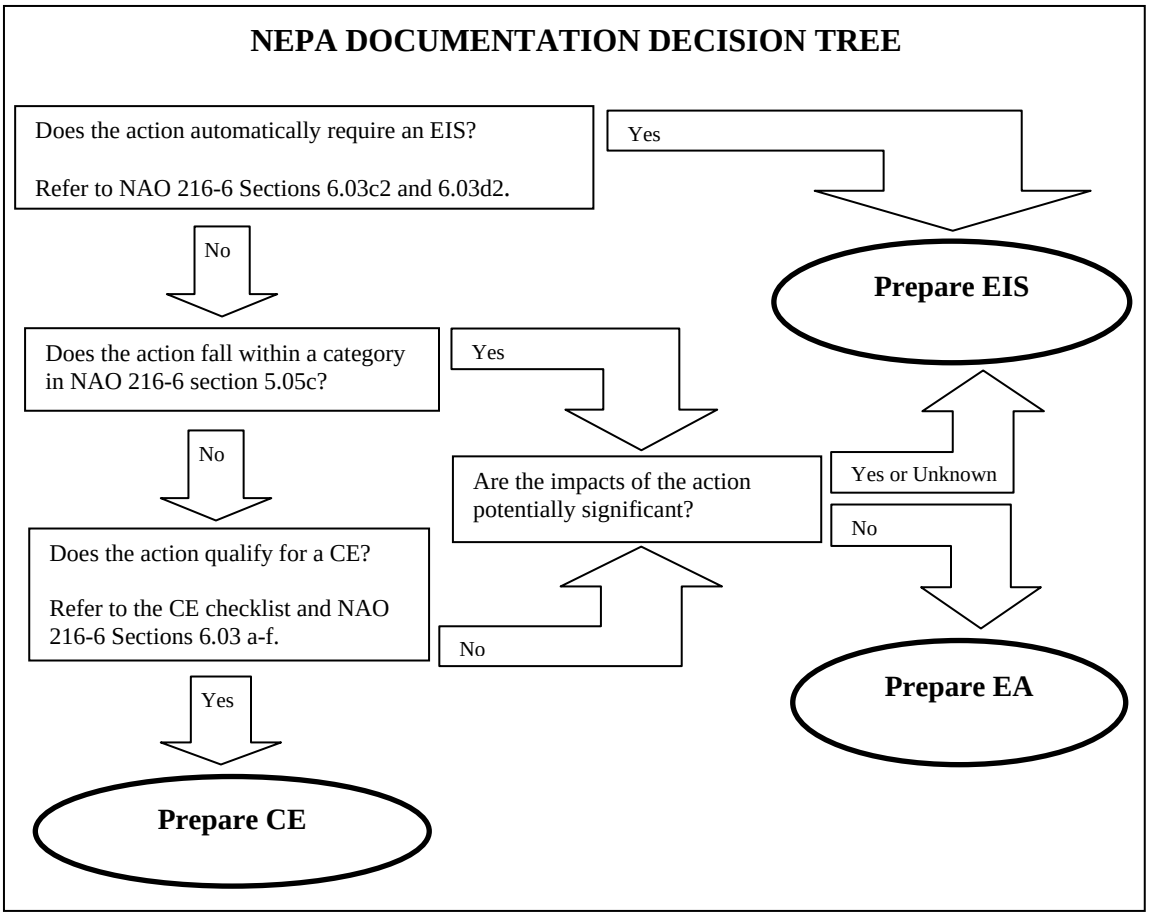

Figure 2. NEPA Documentation Decision Tree.

2.4.1 Determining Significance

Significance is a primary factor in determining the type of NEPA document and process to use for a particular project. NEPA requires an EIS for major Federal actions that significantly affect the quality of the human environment. To determine the appropriate level of documentation necessary to comply with NEPA, it is essential to understand the term "significance" and the process for its determination.

According to the CEQ regulations (40 CFR 1508.27), the determination of a significant impact is a function of both context and intensity.

> Context: The significance of an action must be analyzed in several contexts such as society as a whole, the affected region, the affected interests, and the locality.

Intensity: This refers to the severity of impact. The following should be considered in evaluating intensity:

1. Impacts that 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.
2. The degree to which the proposed action affects public health or safety.
3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.
5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

To determine significance, the severity of the impact must be examined in terms of the type, quality, and sensitivity of the resource involved; the location of the proposed project; the duration of the effect (short- or long-term) and other consideration of context. Significance of the impact will vary with the setting of the proposed action and the surrounding area (including residential, industrial, commercial, and natural sites).

2.5 How Long Will the NEPA Process Take?

The length of time to complete the NEPA process varies depending on many factors, including:

1. The level of NEPA analyses required (CE, EA, or EIS).
2. The complexity, sensitivity, and controversy of the action.

3. The availability of resources to complete the analysis (staff or funding for a contractor).

In general, CEs can be completed in a few days. EAs may take between two weeks to six months or more to complete. EISs preparation varies between ten months and two years. Figure 3 and Figure 4 depict estimated timelines for EAs and EISs, respectively. Each figure shows three different timelines: a minimum timeline, an average timeline, and a lengthy timeline.

2.5.1 Integrating NEPA Timelines with Other Requirements

To the extent possible, NEPA timelines should be integrated with other statutory (or court imposed) timelines under which NOAA operates (such as ESA and MSA). During the initial phases of planning an action, all applicable statutory mandates should be considered and the relevant timelines coordinated when possible. This should be done in a manner so that different statutory processes occur simultaneously, rather than sequentially. For example, CEQ regulations suggest that the draft EIS (DEIS) be released concurrent with a proposed rule published pursuant to the Administrative Procedure Act (40 CFR 1502.5(d)). If the action is the preparation of a management plan, the draft management plan could be released concurrent with the DEIS and proposed rule, thus integrating three applicable statutory requirements. The DEIS and the draft management plan can also be integrated into one document. Planning in this manner reduces the overall time spent completing a project and reduces paperwork by combining several documents into one.

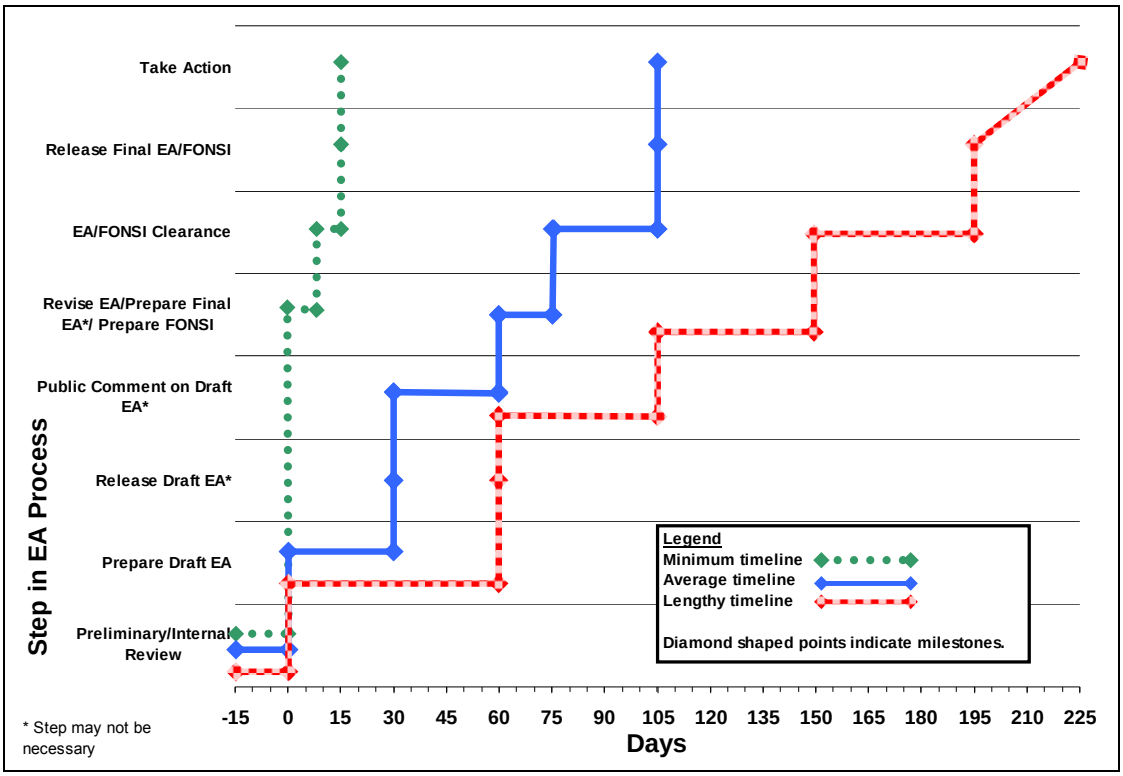

Figure 3. EA Process Timeline.

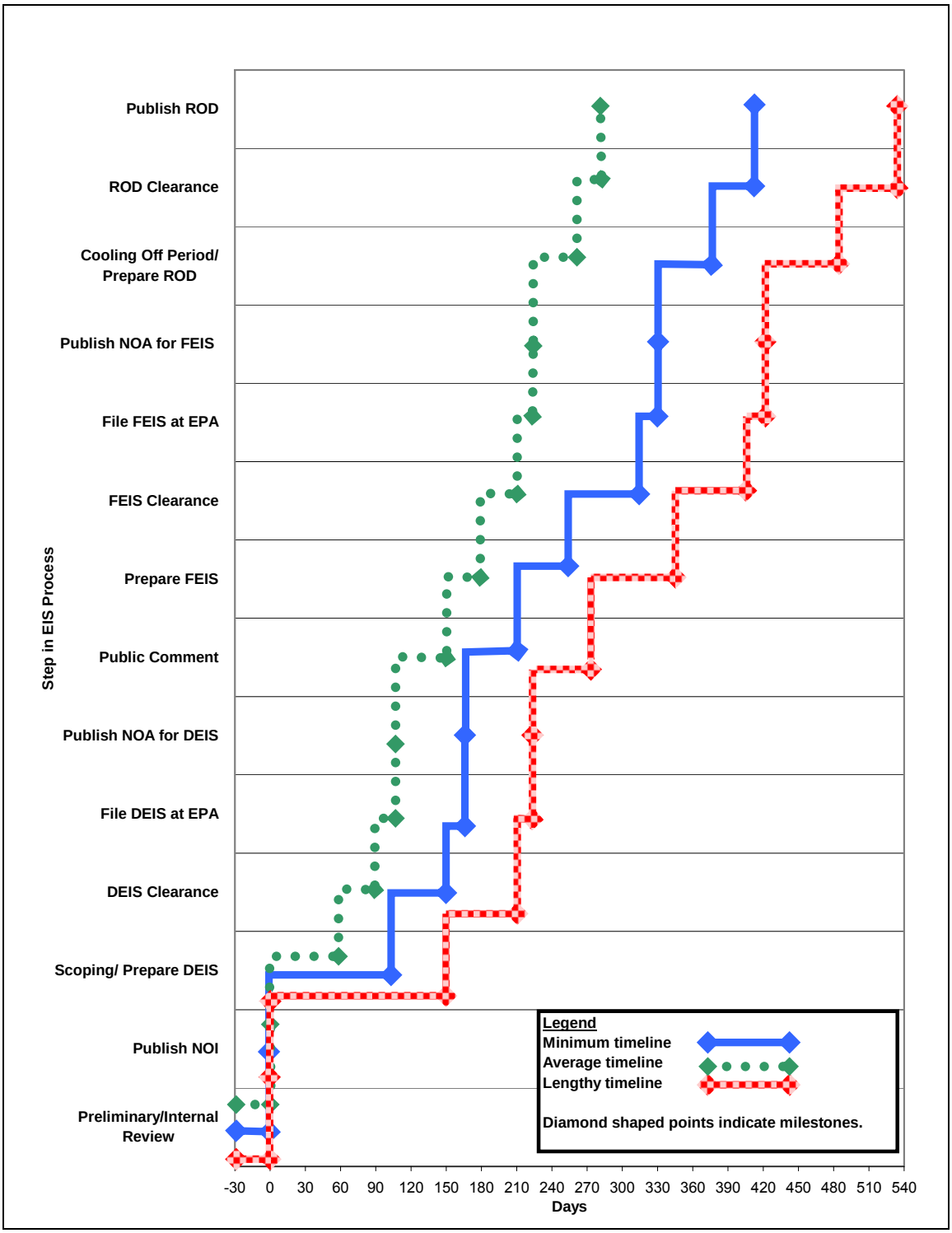

Figure 4. EIS Process Timeline.

2.6 Who is Involved in Preparing NEPA Documents?

Several people and offices, including NOAA staff and/or contractors, may be involved at different levels in the preparation of NEPA documents. Some of these roles are defined in NAO 216-6 § 2.02. Major roles include:

1. ***Proponent:*** the office or program that is proposing the action.

2. ***Project Manager:*** the staff person either preparing or managing the analyses and documentation directly or managing a contractor who is preparing the analyses. In some cases, the project manager may work alone with minimal involvement by others. In other, more complex NEPA analyses, the project manager may lead or facilitate an interdisciplinary team.

3. ***Responsible Program Manager (RPM):*** the person responsible for the content of analyses and to who comments are directed. Within NOAA, the RPM is typically a Regional Administrator (for NOAA Fisheries), a Science Center Director, a Laboratory Director, or a Program Director within a line, staff, or program office. This person is responsible for:
   a) Determining if the proposed action is subject to NEPA.
   b) Determining what level of NEPA analysis to conduct for the proposed action.
   c) Carrying out the NEPA process in accordance with NAO 216-6, CEQ regulations, and other relevant statutes.
   d) Ensuring the legal sufficiency of the analysis through timely coordination with the Office of General Counsel.

4. ***Decisionmaker*:** the NOAA official responsible for making the decision regarding the action for which the analysis is prepared. This person is also responsible for verifying the adequacy of the NEPA documentation. This is generally the Line Office Assistant Administrator (AA) or Staff Office Director who has either direct or delegated statutory authority for making a decision. The decisionmaker is responsible for designating an RPM for each relevant action and coordinating between the RPM and the NOAA NEPA Coordinator.

5. ***NOAA NEPA Coordinator:*** is ultimately responsible for ensuring NEPA compliance within NOAA. The NOAA NEPA Coordinator:
   a) Is responsible for ensuring that the decisionmaker is advised on how to comply with NEPA.
   b) Reviews and provides final clearance for all EAs and EISs.
   c) Signs all transmittal letters for NEPA environmental review documents disseminated for public review.
   d) Develops and recommends national policy, procedures, coordination actions or measures, technical administration, and training necessary to ensure NOAA's compliance with NEPA.

e) Acts as a liaison between NOAA and the CEQ, including consulting with CEQ on emergencies and making pre-decision referrals to CEQ.
f) Acts as a liaison with the Environmental Protection Agency (EPA) on NEPA matters.
g) Provides general guidance on preparation of NEPA documents, including:
   i. approving criteria regarding the appropriate document to be prepared;
   ii. working with line, staff, and program offices and their designated RPMs to establish CEs;
   iii. establishing and/or approving criteria to define "significance;"
   iv. providing consultation, as requested;
   v. coordinating NOAA's comments on EISs prepared by other Federal agencies; and
   vi. monitoring Department of Commerce activities for NEPA compliance.

6. ***Office of Program Planning and Integration:*** is responsible for ensuring NEPA compliance and providing guidance on NEPA. In addition to the NOAA NEPA Coordinator, PPI has other staff trained in NEPA that are responsible for:
   a) Advising NOAA staff on NEPA compliance.
   b) Reviewing EAs and EISs prior to clearance.
   c) Providing general guidance on NEPA documentation.
   d) Providing training on NEPA.
   e) Developing and recommending policies, procedures, coordination actions, and technical administration to ensure NEPA compliance.
   f) Compiling and coordinating NOAA comments on other Federal agency NEPA documents.

Note that each region or office may have additional staff involved in the NEPA review process; refer to the region or office for information on additional roles and responsibilities.

3.0 CATEGORICAL EXCLUSIONS

This section outlines the general process NOAA staff should follow when preparing CEs. Once it has been determined that an action qualifies for a CE, a decision memorandum must be drafted and filed.

A CE applies if the proposed action falls within a list of actions that do not individually or cumulatively have a significant impact on the human environment. CE categories are those that have been found to have no significant effect on the environment, and are documented in procedures adopted by a Federal agency (40 CFR 1507.3). Each Federal agency develops a list of categories of actions specific to their work which do not affect the environment. NOAA's CEs are listed in Test Part 2 in Section 3.1of this chapter.

If an action qualifies for a CE, neither an EA nor an EIS is required. The only NEPA requirement is to document this in the administrative record. This is done by preparing a CE decision memorandum to the record.

3.1 Does the Action Qualify for a CE?

If an action does not require automatic preparation of an EIS (as described in Section 5.1), the RPM must determine if the action is categorically excluded. The proposed action must be evaluated to determine if a prior analysis for the same action concluded that the action will not have significant impacts on the quality of the human environment. NAO 216-6 provides a two-part test for determining if an action qualifies for a CE. If the action does not pass **BOTH** parts of the test, an EA or an EIS must be prepared. If the action passes both parts of the test, it MAY qualify for a CE, if there are no significant impacts.

Test Part 1: *Determine if any of the following exceptions applies to the action.* NAO 216-6 § 5.05c states that the following types of actions **do not** qualify for a CE (even if they would have passed Test Part 2 below):

1. Actions that involve a geographic area with unique characteristics such as historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
2. Actions that are the subject of controversy based on potential environmental consequences.
3. Actions that have uncertain environmental impacts or unique or unknown risks.
4. Actions that establish a precedent or decision in principle about future proposals.
5. Actions that may result in cumulatively significant impacts.
6. Actions that may have any adverse effects upon endangered or threatened species or their habitats. *Note that the issuance of Low Effect Incidental Take Permits under Section 10 of the Endangered Species Act do pass Test Part 1 and a CE is usually appropriate* (NAO 216-6 § 6.03e3d).

If the action falls within any of the above categories, the action does not qualify for a CE and must be analyzed using an EA or an EIS. If the action does not fall within any of the above categories, it passes Test Part 1 and needs to be evaluated using Test Part 2.
Test Part 2: *Determine if there is a category in NAO 216-6 that qualifies.*
If the action passes the first test, the next step is to determine if there is a category in NAO 216-6 that fits the action. There are six groups of NOAA actions addressed separately in NAO 216-6 that may qualify for a CE. Below are the six groups of NOAA actions with an abbreviated description of the activities within these groups that may qualify for a CE. **Refer to the referenced section of NAO 216-6 for the full description of the CE.**

1. Section 6.03a.3. *Management Plans and Management Plan Amendments:*
   - No management plan may receive a CE unless they meet the criteria in NAO 216-6 § 5.05b.
   - Management plan amendments may receive a CE.

2. Section 6.03b.2. *Trustee Restoration Actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Oil Pollution Act (OPA), and the NMSA:*
   - CERCLA, OPA, and NMSA are not entitled to a CE.
   - Restoration actions may receive a CE provided such actions meet all of the following criteria:
     1) Are intended to restore an ecosystem, habitat, biotic community, or population of living resources to a determinable pre-impact condition.
     2) Use for transplant only organisms currently or formerly present at the site or in its immediate vicinity.
     3) Do not require substantial dredging, excavation, or placement of fill.
     4) Do not involve a significant added risk of human or environmental exposure to toxic or hazardous substances.

3. Section 6.03c.3. *Projects and Other NOAA Actions*:
   - Research Programs.
   - Financial and Planning Grants. *Note that 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.*
   - Minor Project Activities.
   - Administrative or Routine Program Functions.
   - Real Estate Actions.
   - 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.*

- Facility Improvement or Addition.
- NEXRAD Radar Coverage.
- 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.*

4. Section 6.03d.4. *Actions Taken Under the Magnuson-Stevens Act:*
   - Ongoing or recurring fisheries actions of a routine administrative nature when the action will not have any impacts not already assessed.
   - Minor technical additions, corrections, or changes to an FMP.

5. Section 6.03e.3. *Actions Taken Under the Endangered Species Act:*
   - Preparation of Recovery Plans.
   - Scientific Research and Enhancement Permits.
   - Critical Habitat Designations. *Note that 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.*
   - "Low Effect" Incidental Take Permits.

6. Section 6.03f.2. *Actions Taken Under the MMPA:*
   - Scientific research, enhancement, photography, and public display permits issued under Section 101(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.
   - Small take incidental harassment authorizations under Section 101(a)(5)(a), tiered from a programmatic environmental review.

> *Note that in cases such as those authorized by Section 109(h) of the MMPA such actions are not exempt from NEPA, nor are they categorically excluded, and alternative measures are necessary. Under these conditions, a programmatic review may be the appropriate means for meeting NEPA requirements.*

If the proposed action falls within one of the categories in Test Part 2, a CE may be applied to that action. If it is determined that the action does qualify for a CE, a memorandum to the administrative record is prepared. Refer to Section 3.2 of this handbook for additional instructions on how to document this eligibility in the administrative record.

Most grant or financial assistance awards will qualify for CEs. *Attachment F: Categorical Exclusion Checklist for Non-Construction NOAA Grants* is a checklist that can be used as a tool to assist RPMs in determining if a particular grant activity will qualify for a CE.

A common misconception about Categorical Exclusions
Often there is a misunderstanding with regard to CEs, misleading people to believe that CEs are exempt from NEPA regulations. A categorical exclusion is not exempt from NEPA; it is a particular type of NEPA analysis applied to an action that NOAA has found, through past environmental analyses, to lack significant environmental impacts, both individually and cumulatively. NOAA actions that are categorically excluded are subject to NEPA and require a CE memorandum to the administrative record, but do not require the preparation of an EA or EIS.

3.2 Contents of a CE Memorandum

The following should be included in a CE memorandum:

1. Brief description of the proposed action.
2. Brief description of the expected direct, indirect, and cumulative impacts of the proposed action noting how they address the criteria in NAO 216-6 § 5.05b and c.
3. Identification of what categorical exclusion in NAO 216-6 meets the proposed action.
4. Explanation of how the proposed action is consistent with the identified categorical exclusion.

CE memoranda should be prepared by the NOAA staff with the most technical knowledge about the proposed action and signed by the person delegated by the AA to sign CE memos (i.e., the RPM, Regional Administrator (RA), Staff Office Director, Program Office Director, or Science Center Director) as a memo to the record. Figure 5 of this handbook shows an example CE memorandum. *Attachment G: Categorical Exclusion Memorandum Template* of this handbook shows a CE Memorandum template for grant actions. The CE memorandum template for grant actions can also be found at https://www.intranet.nepa.noaa.gov/Templates/06T.doc.

MEMORANDUM FOR: The Record

FROM: Billy Causey
Superintendent
NOAA National Marine Sanctuary Program

SUBJECT: Categorical Exclusion for the FKNMS Final Management Plan

This memo is to certify that the Florida Keys National Marine Sanctuary (FKNMS) Final Management Plan is categorically excluded from the need to prepare an environmental assessment pursuant to the National Environmental Policy Act (NEPA). This exemption is detailed in Section 6.03a.3(b) of NOAA Administrative Order (NAO) 216-6 Environmental Review Procedures for Implementing the National Environmental Policy Act which states:

> 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)

Pursuant to both Federal and state requirements, the National Marine Sanctuary Program has completed its review of the management plan for the FKNMS. The FKNMS final revised management plan is the result of NOAA's five-year review of the strategies and activities detailed in the 1997 *FKNMS Final Management Plan and Environmental Impact Statement (FEIS)*. It serves two primary purposes: 1) to disseminate information about the FKNMS and its management strategies, activities, and products for the next five years; and, 2) to update readers on the accomplishments of successfully implemented strategies.

The FKNMS final revised management plan does not include any regulatory or boundary changes, nor does it propose any major new programs. NOAA has determined the final revised management plan does not have a significant impact on the human environment beyond those analyzed in the FEIS for the original management plan for the FKNMS. This action is therefore categorically excluded from the need to prepare an environmental assessment pursuant to the requirements of NEPA in accordance with NAO 216-6.

Figure 5. Example of a CE Memorandum.

3.2.1 CE Memorandum for Federal Financial Assistance Activities

Every CE memo should include the information listed in Section 3.2. However, there are two formats of CE memoranda that may be used for grants: the traditional format and the abbreviated format. The traditional format (refer to Figure **6**) provides more project and environmental impact information and is generally used for research and field projects. The abbreviated format (refer to Figure 7) includes one or two sentences describing the project and impacts and in general may be used for administrative activities.

When determining which format to use consider whether the project is conducted in an office or in the environment. If the activity is conducted in the environment or the

recipients is interacting with any aspect of the environment, use the traditional CE memo. If the activity is conducted in an office and the recipient would not have any interaction with the environment the abbreviated CE memo may be used.

Grant projects involving the following types of actions must use the traditional CE memo:

- Field work/research
- Tagging
- Surveying
- Data collection in the field

Grant projects involving the following types of actions may use the abbreviated CE memo:

- Administrative
- Education
- Interviews
- Data collection or research conducted in an office
- Computer modeling

When preparing a CE memorandum for a grant activity, the RPM makes the CE determination. The CE memo may be prepared by a subject matter expert or a Federal Program Officer (FPO). Each line office has different review and clearance processes for CEs; refer to the line office for these requirements. For example, there are no requirements in NAO 216-6 to have GC review CE memoranda, but several offices require GC to review CE memoranda. The National Marine Fisheries Service (NMFS) requires that CE memoranda prepared for grants be reviewed by the Regional NMFS NEPA Coordinator. Once the reviews are completed, the CE memoranda should be signed by the person delegated by the AA to sign CEs (i.e., RPM, RA, Staff Office Director, Program Office Director, or Science Center Director). There are no clearance requirements for CE memoranda by the NOAA NEPA Coordinator. However, copies of CE memoranda must be transmitted to the NOAA NEPA Coordinator no later than three months after the action has occurred (NAO 216-6 § 5.05d).

MEMORANDUM FOR: The Record

FROM: David Givens
Director
NOAA Office of Coastal Studies

SUBJECT: Categorical Exclusion for Grant No. 123-456-78

NAO 216-6, Environmental Review Procedures, requires all proposed projects to be reviewed with respect to environmental consequences on the human environment. This memorandum addresses the applicability of issuing grant number 123-456-78 to Dr. T. Brown, of the Massachusetts Institute of Technology, to conduct research activities described below.

Description of project-
Grant number 123-456-78 would award Dr. Brown with $200,000 to conduct a project entitled, "The role of competitive interactions between three species of macroalgae in determining the species distribution, density, and abundance in the intertidal zone of Southeastern Massachusetts." The project involves the conduct of the following activities: Transit to study site, Installation of 10 transect lines and temporary markers, Take water samples along transect, Removal of all macroalgae species along the transect, place water and macroalgal samples in temporary storage for transport back to lab, and laboratory analysis (weight, tissue, etc.) on macroalgae and water samples.

Effects of the project-
The environmental effects of Dr. Brown's project will be limited to some limited trampling of intertidal species, removal of approximately 1500 kilograms of macroalgae (total), and some disruption of wildlife (e.g., crabs, birds, fish, etc.) during the placement of the transect lines. All effects will be limited to the 2000 square feet that comprises the study area. All effects will be temporary in nature. Given the growth rate of the macroalgal species being taken, the 1500 kilograms permanently removed will be replaced within 30 days through natural recruitment to the disturbed site. No other disturbances to the intertidal area are planned for the vicinity being studied during this sampling season. Therefore no cumulative effects are anticipated.

Categorical exclusion-
This project would not result in any changes to the human environment. As defined in Sections 5.05 and 6.03c.3(a) of NAO 216-6, this is a research project of limited size or magnitude or with only short term effects on the environment and for which any cumulative effects are negligible. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

Figure 6. Example of a Traditional CE Memorandum for a Grant Activity

MEMORANDUM FOR: The Record

FROM: David Givens
Director
NOAA Office of Coastal Studies

SUBJECT: Categorical Exclusion for Grant No. 987-654-32

NAO 216-6, Environmental Review Procedures, requires all proposed projects to be reviewed with respect to environmental consequences on the human environment. This memorandum addresses the applicability of issuing grant number 987-654-32 to The Consortium for Risk Assessment to conduct the activities described below.

Description of project-
Grant number 987-654-32 would award the Consortium for Risk Assessment with $200,000 to operate and maintain a database for archiving risk assessment data.

Effects of the project-
All work is office based and does not involve significant interaction or impacts to the environment.

Categorical exclusion-
This project would not result in any changes to the human environment. As defined in Sections 5.05 and 6.03c.3(c) of NAO 216-6, the proposed work is administrative in nature and as such it is categorically excluded from the need to prepare an Environmental Assessment.

Figure 7. Example of an Abbreviated CE Memorandum for a Grant Activity

3.3 Clearance Process for CE Memoranda

The clearance process is the set of steps that a document must be sent through in order to become official. It involves review and approval by certain parties. Many NEPA documents must be cleared through several offices before becoming official.

Each region or office has clearance procedures for CE memoranda; refer to the region or office for specific clearance requirements. There is no clearance requirement for CE memoranda by the NOAA NEPA Coordinator. However, copies of all CE memoranda must be transmitted to the NOAA NEPA Coordinator no later than three months after the action has occurred (NAO 216-6 § 5.05d). Many programs collect CE memoranda in a central place and transmit them as a package to the NOAA NEPA Coordinator at the end of each quarter.

4.0 ENVIRONMENTAL ASSESSMENTS

This section outlines the general process NOAA staff should follow when preparing EAs. In some circumstances, NAO 216-6 and this handbook make interpretations of CEQ regulations to provide more clarity to NOAA staff preparing EAs. These interpretations are based on NEPA case law, CEQ's guidance document *NEPA's Forty Most Asked Questions*, other guidance documents provided by CEQ, standard NOAA practice, and declared NOAA policy.

This chapter describes the major steps of the EA processes including:

- Scoping
- Contents
- Style
- Format and organization
- Decision documents
- Review and clearance procedures
- Distribution and circulation

4.1 Are the Impacts of the Proposed Action Potentially Significant?

If the action does not automatically require an EIS (refer to Section 5.1 of this handbook) and does not qualify for a CE (refer to Section 3.1 of this handbook), an EA will need to be prepared to document the potential significance of the impacts and determine if an EIS will be required. If there is the potential for significant impacts the EIS documentation process may begin, bypassing the EA process.

4.1.1 How to Determine if Environmental Impacts will be Significant

The goal of an EA is to determine if the impacts of the proposed action are likely to be significant. The following lists of factors from NAO 216-6 should be considered when making this determination. The first list of criteria is for all NOAA actions. The second list of criteria is specific to fishery management actions.

The following list from NAO 216-6 § 6.01 describes factors that should be considered when determining significance for **all NOAA actions**:

1. Impacts may be both beneficial and adverse; a significant impact may exist even if the Federal agency believes that on balance the impact will be beneficial.
2. Degree to which public health or safety is affected.
3. Unique characteristics of the geographic area.
4. Degree to which impacts on the human environment are likely to be highly controversial.
5. Degree to which impacts are highly uncertain or involve unique or unknown risks.

6. Degree to which the action establishes a precedent for future actions with significant impacts or represents a decision in principle about a future consideration.
7. Individually insignificant but cumulatively significant impacts.
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.
9. Degree to which endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973, are adversely affected.
10. Whether a violation of Federal, state, or local law for environmental protection is threatened.
11. Whether a Federal action may result in the introduction or spread of a non-indigenous species.

The following criteria from NAO 216-6 § 6.02 clarify how significance is determined when assessing **fishery management actions**. The action could be considered significant if one or more of the following criteria apply:

1. The proposed action may be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action.
2. The proposed action may be reasonably expected to jeopardize the sustainability of any non-target species.
3. 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 MSA and identified in FMPs.
4. The proposed action may be reasonably expected to have a substantial adverse impact on public health or safety.
5. The proposed action may be reasonably expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species.
6. 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.
7. 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.).
8. The proposed action may have significant impacts on the quality of the human environment are likely to be highly controversial.

If after considering all relevant criteria listed above, it is determined that the impacts of the proposed action do not have the potential to be significant or there is uncertainty as to the potential significance of the impacts of the proposed action, an EA should be prepared. Then, if it is confirmed that the impacts of the proposed action are not likely to be significant, a FONSI should be prepared. In some cases the significant effects can be reduced to less-than-significant levels through the addition of appropriate mitigation measures. If this occurs, a mitigated FONSI is prepared. (Refer to Section 4.8.2 of this

handbook for more information on mitigated FONSIs.) If it is determined from analysis in the EA that significant impacts may occur, the EIS process should be initiated.

4.2 General Overview of the EA Process

NOAA's EA process is depicted in Figure 8. The length of time between these steps is discussed in Section 2.5 of this handbook. Refer to Section 4.9 of this handbook for more information regarding review and clearance procedures for EAs.

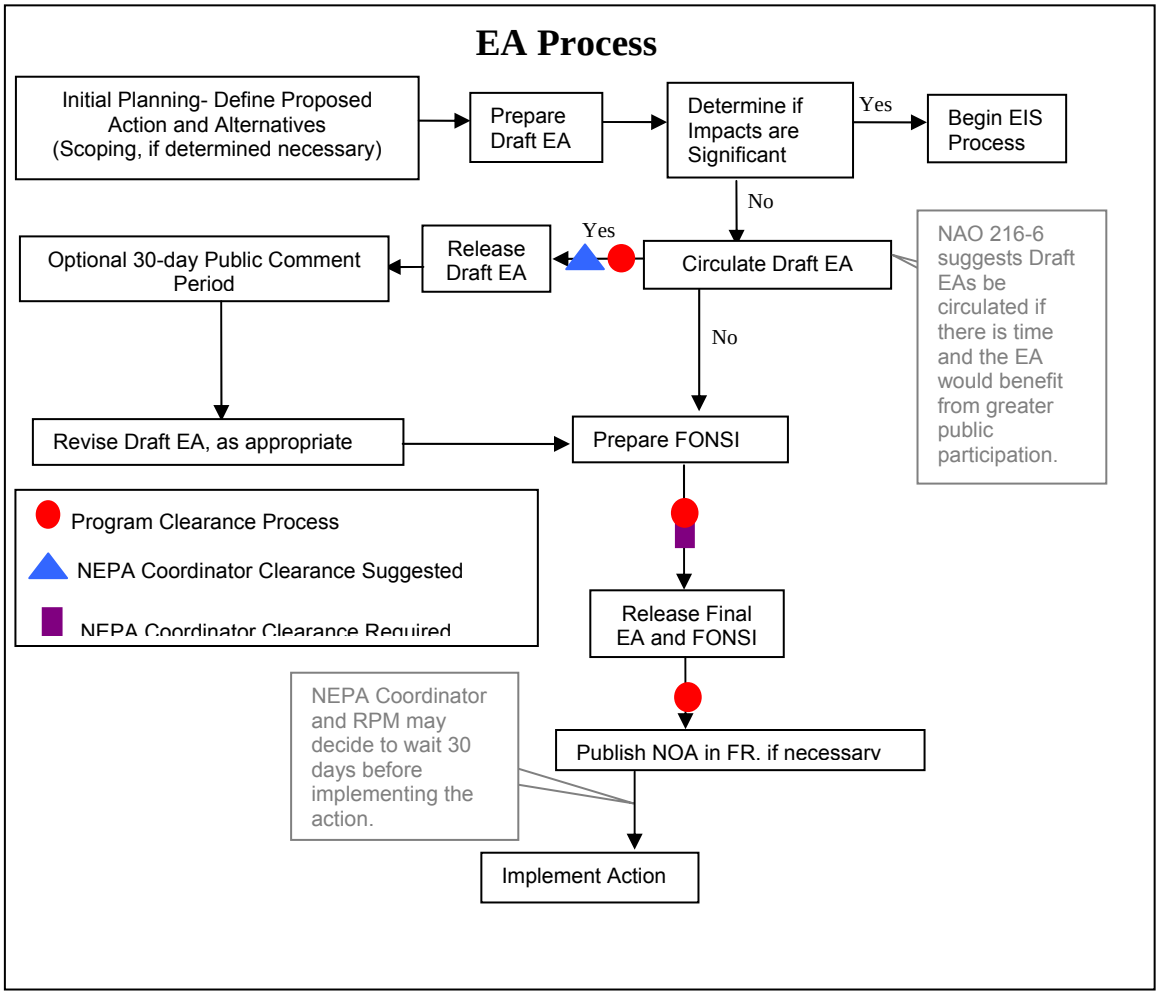

Figure 8. EA Process.

4.3 Scoping

The first step in analyzing a proposed action under NEPA is scoping.

What is Scoping?

NAO 216-6 § 4.01w and CEQ regulations 40 CFR 1501.7 define scoping as: "An early and open process for determining the scope of issues to be addressed and identifying the

significant issues related to a proposed action." The purpose of the scoping process is to determine the scope or range of impacts of the proposed action on the human environment. Scoping also determines some of the issues associated with the action and may be used to develop action alternatives as well.

Scoping is generally more informal for the development of an EA than for an EIS. More information about scoping including formal scoping objectives and processes are described in Section 5.3.

Does Scoping Apply in the Preparation of an EA?
There is no legal requirement to conduct formal scoping for an EA. However, NAO 216-6 and CEQ regulations encourage scoping for actions covered by an EA. Regardless of the type of document being prepared for an action, the objectives listed above help to ensure that all relevant environmental issues are covered.

4.4 Contents of EAs

This section describes the required contents of EAs. Figure 9 shows the contents for EAs.

Contents of EAs
Cover Sheet (optional)
Summary (optional)
Table of Contents
Purpose and Need
Description of Proposed Action and Alternatives
Affected Environment
Environmental Consequences
Mitigation Measures (if applicable)
List of Preparers
Distribution List (if applicable)
Appendices (if applicable)

Figure 9. Contents of EAs.

4.4.1 Cover Sheet

A cover sheet is not a requirement for an EA, but should be included when possible. A cover sheet should be one page and include the following information (40 CFR 1502.11):

1. A list of the responsible agencies including the lead agency and any cooperating agencies.
2. The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the

state(s) and county(ies) (or other jurisdiction if applicable) where the action is located.
3. The name, address, and telephone number of the person at the agency who can supply further information.
4. A designation of the statement as a draft, final, or draft or final supplement.
5. A one paragraph abstract of the statement.

4.4.2 Summary

A summary is not generally required for an EA, but may be appropriate if the action or issues are complex or the document is particularly lengthy. A summary should include the following information as applicable (40 CFR 1502.12):

1. A brief summary of the major conclusions.
2. A description of any areas of controversy (including issues raised by agencies and the public).
3. The issues to be resolved (including the choice among alternatives).

4.4.3 Purpose and Need

Every EA must contain a purpose and need statement. CEQ regulations (40 CFR 1502.13) state, "The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action."

The purpose and need section presents a brief statement explaining why the action is being considered. The purpose and need specifies the underlying purpose and need to which NOAA is responding and sets the overall direction of the environmental analysis process. The Purpose and Need Chapter should answer the question, "Why is NOAA proposing this action?"

The purpose and need serves as an important screening criterion for determining which alternatives are reasonable. All reasonable alternatives examined in detail must meet the defined purpose and need.

Following are guidelines for writing purpose and need statements:

- Ensure the statement of purpose and need is not written too narrowly in an attempt to limit the number of alternatives that need to be considered.
- Write statements of purpose and need in a manner that describes the goal or end result of the action not the manner in which to accomplish the end result.
- Write the purpose and need statement in a short and concise manner that describes the driving force behind NOAA's action.

4.4.4 Description of Proposed Action and Alternatives

Every EA must contain a detailed description of the proposed action and alternatives (NAO 216-6 § 5.03(b)). This chapter answers the question, "How will NOAA

accomplish the goals and objectives set forth in the statement of purpose and need?" This chapter describes the proposed action and alternatives that will fulfill the requirements of the purpose and need statement. The proposed action should be identified to make the readers aware of the action that is being considered. There may be several alternatives available to accomplish the purpose and need, but NOAA will usually select a preferred approach based on environmental, economic, technical, and other considerations. If a draft EA is released for public comment, a preferred alternative can be defined if it is known at the time. In a final EA, the preferred alternative must be identified.

In some cases, the proposed action is the same as the preferred alternative. Usually this occurs in the case of a permitting action where the proposed action is to issue a permit. The preferred alternative would also be to issue the permit and the No Action Alternative would be to not issue the permit. In other cases, the proposed action is a more general goal than any of the alternatives. For instance, in the case of a construction action, the proposed action would be to build a facility. The preferred action may be to build that facility at location X with a square footage of Y. The other alternatives may be to build the facility in other locations and in differing sizes.

This chapter of the EA describes each alternative and identifies the preferred alternative. This chapter should focus on providing objective descriptions of all reasonable alternatives. Each reasonable alternative should be analyzed with equal weight within this section. This chapter may also include short, concise summaries of the impacts, provided in comparative form, but detailed analyses of the impacts of each alternative should be discussed in the "Environmental Consequences" chapter of the NEPA document (refer to Section 4.4.6 of this handbook for information regarding environmental consequences).

Reasonable alternatives are those that may be feasibly carried out based on technical, economic, environmental and other factors, and meet the purpose and need for the proposed action. Pursuant to CEQ regulations (40 CFR 1505.1(e)), the alternatives described in this chapter must include all alternatives under consideration by NOAA. This also includes the No Action Alternative. The No Action Alternative simply means that NOAA will not take any action regarding the proposal. This is included in the analysis of alternatives as a baseline for comparison with the alternatives. (Refer to Section 4.4.4.1 of this handbook for information regarding the No Action Alternative.)

According to CEQ regulations (40 CFR 1502.14), the Proposed Action and Alternatives Chapter should:

1. Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives that were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
2. Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

3. Include reasonable alternatives not within the jurisdiction of the lead agency.
4. Include the No Action Alternative. The No Action Alternative is the most likely future that could be expected to occur in the absence of the project. Where the future is different from existing conditions, the differences should be clearly defined.
5. Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
6. Include appropriate mitigation measures not already included in the proposed action or alternatives.

Refer to the NOAA, December 16, 2002, *Memorandum for Legal Guidance on Determining Related Actions and Developing Reasonable Alternatives for Inclusion in a Single EIS* at https://www.intranet.nepa.noaa.gov/reasonable_alts.pdf for more information on development of alternatives.

Number of Alternatives to Include

The number of alternatives considered reasonable will vary depending on the nature of the purpose and need for the action. The alternatives described in this chapter should be representative of all of those possible actions that can be reasonably expected to satisfy the purpose and need.

It is conceivable, that in some situations, NOAA will only include a description of two alternatives: the proposed action and the No Action Alternative. For example, when the NOAA action is to issue a permit to an individual, NOAA may only have two possible actions: issue the permit or not issue the permit.

In other scenarios, such as fishery management, there may be an infinite number of alternatives to satisfy the purpose and need. This is particularly true when the purpose and need is fairly broad. For example, NOAA may consider an entirely open fishery with no controls, close the fishery entirely, or any combination of partial closures.

NEPA's Forty Most Asked Questions, Question 1b states that for some proposals there may exist a very large or even an infinite number of possible reasonable alternatives. When there are potentially a very large number of alternatives, only a reasonable number, covering the full spectrum of alternatives, must be analyzed and compared in the EIS. This requirement for analyzing all reasonable alternatives also applies for EAs (NAO 216-6 § 5.03(b)). What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.

4.4.4.1 The No Action Alternative

Every EA must include an analysis of the No Action Alternative (NAO 216-6 § 5.03(b)). The No Action Alternative is simple; NOAA will not take any action to meet the purpose

and need for the proposal. In most cases, the No Action Alternative would not further NOAA's stated purpose and need. However, it still must be described and analyzed in the EA in order to provide a baseline for comparison with the proposed action and any alternatives.

In general, the No Action Alternative represents what would happen if a proposed action did not take place. For example, when NOAA is considering the issuance of a permit, the No Action Alternative is the denial of the permit application. The No Action Alternative discussion should provide a brief summary of what would occur if the action is not permitted. In some cases the No Action Alternative may result in other predictable actions. For example, if NOAA takes no action on a permit request to do a research survey within a national marine sanctuary, the proponent may inform NOAA that it would conduct the research survey outside the sanctuary. This description should not, however, be overly speculative about what may occur if NOAA were to take no action.

4.4.4.2 Identification of the Preferred Alternative

Every final EA should identify the preferred alternative (NAO 216-6 § 5.03(b)). If the preferred alternative is known at the time of the draft EA, it should be identified there as well. The preferred alternative is the alternative that NOAA concludes will satisfy the purpose and need for action and will fulfill NOAA's statutory missions and responsibilities. This is the alternative NOAA considers to be optimum given the circumstances surrounding the proposed action. Often, the agency's proposed action is the preferred alternative. The preferred alternative must be identified in every final EIS. If it has been determined, it must also be identified in a draft EIS.

4.4.4.3 Alternatives Considered But Not Further Analyzed

NOAA often considers a number of alternatives for a particular need, at least informally. Some of these alternatives could be considered reasonable while others are unlikely to accomplish NOAA's goals. Alternatives rejected for further analysis include only those that are not required to evaluate alternatives beyond the reasonable range. If alternatives are eliminated from further analysis, the EA should briefly discuss the reasons for their elimination (40 CFR 1502.14(a)). This discussion can be accomplished in a subsection of the Alternatives Chapter called "Alternatives Considered, but Rejected" or "Alternatives Considered, but not Analyzed in Detail."

4.4.5 Affected Environment

All EAs should include a description of the environment in which the proposed action and alternatives are to take place. This description provides a view on the current conditions and serves as a baseline against which to compare impacts of the alternatives. Focus should be on specific resources that are most likely to be impacted. For project-specific analysis, the affected environment typically encompasses the proposed action's site and immediate vicinity. However, the analysis of cumulative impacts may broaden that range.

This chapter is typically divided into subsections that address major categories of resources. For example, many EAs use subsections of biological resources, socioeconomic resources, habitat, cultural resources, and historical resources. Each resource described in the Affected Environment Chapter must also receive a parallel discussion in the Environmental Consequences Chapter.

Other EISs and EAs may be incorporated by reference in order to add information about the affected environment without adding length to the document. Refer to Section 4.5 of this handbook for more information regarding incorporation by reference.

4.4.6 Environmental Consequences

All EAs must describe and analyze the anticipated environmental consequences of the proposed action and alternatives on the resources described in the Affected Environment chapter.

The Environmental Consequences Chapter of an EA focuses on determining if significant impacts are likely to occur or not. If there is potential for significant impacts than an EIS will need to be prepared.

The impacts, or effects, analyzed in this chapter of EAs must include a discussion of impacts that are expected to result from:

1. The conduct of the proposed action itself or any of the alternatives (direct impacts).
2. Activities that are not a part of the proposed action or any of the alternatives but are reasonably foreseeable consequences of NOAA conducting the proposed action or alternatives (indirect impacts).

This chapter must discuss these impacts in each of the following contexts:

1. Viewing the direct and indirect impacts of the proposed action and alternatives as if it were the only activity being conducted (individual impacts).
2. Viewing the direct and indirect impacts in the context of all other activities (human and natural) that are occurring in the affected environment and impacting the resources being affected by the proposed action and alternatives (cumulative impacts).

CEQ regulations 40 CFR 1508.7 define cumulative impacts as:

> The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts

can result from individually minor but collectively significant actions taking place over a period of time.

The process of identifying and analyzing cumulative impacts can be complicated in many situations. For more information on cumulative impacts analysis refer to CEQ's report, *Considering Cumulative Effects Under the National Environmental Policy Act* at http://nepa.gov/nepa/ccenepa/ccenepa.htm.

4.4.7 Comparing Alternatives

Every EA should compare the alternatives. The Environmental Consequences Chapter should compare the impacts of the alternatives and provide a simple mechanism for the reader to compare the alternatives. An Alternatives Comparison Table is a simple way to show the impacts of all of the alternatives. This chapter of an EA can not just have a table; written descriptions of the impacts must be provided. Figure 10 shows a simplified example alternatives comparison table. The table shows the impacts to resources by alternative. The table used in an EA may have more detail and should address all of the resources described and analyzed in the EA.

Example Alternatives Comparison Table

Resource	Alternative I No Action	Alternative II Preferred Alternative	Alternative III
Soils	No impacts.	Same as No Action, except practices would focus on prevention of soil movement into salmonid habitat. Practices should eliminate soil structure impacts.	Same as Preferred Alternative.
Aquatic Habitat	No impacts.	No significant impacts, some minor beneficial impacts.	Same as Preferred Alternative.
Wildlife	No impacts.	Minor beneficial impacts for riparian-dependent wildlife.	No impacts.
Vegetation	No impacts.	Minor beneficial impact of more native vegetation in riparian areas.	Minor impacts, but none at the watershed scale.

Figure 10. Example Alternatives Comparison Table

4.4.8 Mitigation Measures

If any of the alternatives, including the preferred alternative, include mitigation measures those measures should be included with the analysis of each alternative in the Environmental Consequences Chapter. Mitigation measures are measures that avoid, reduce, or minimize the effects of the proposed action and alternatives.

According to CEQ regulations 40 CFR 1508.20 mitigation measures may include the following types of actions:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.
(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
(e) Compensating for the impact by replacing or providing substitute resources or environments.

In addition to the description of the mitigation measures, a table may be used to show the mitigation measures for each alternative.

Sometimes during the preparation of an EA, it becomes apparent that the action may have significant environmental effects. If those impacts can be reduced to less-than-significant levels through the addition of appropriate mitigation measures, the EA may be completed and no EIS needs to be prepared. In this case, a Mitigated FONSI would be prepared. (Refer to Section 4.8.2 for more information on Mitigated FONSIs.) A common example of this type of action is a NOAA permit being issued with handling procedures that, if implemented, will not result in significant environmental impacts.

4.4.9 Lists of Preparers and Agencies Consulted

EAs must include a list of the persons involved or consulted in the preparation of the document (40 CFR 1502.17). This chapter should include any person that was primarily responsible for preparing the document (or portion thereof), preparing any relevant background papers, and providing substantive information. This includes full time NOAA staff, NOAA contractors, consultants paid by NOAA, and persons from other agencies who furnished information. The name, affiliation, and qualifications (expertise, experience, professional discipline) for each involved person should be included.

4.4.10 Distribution List

Since draft EAs are not necessarily distributed and commented on by the public or other parties, a distribution list is not necessary unless the draft was sent out and comments were received.

4.4.11 Appendices

EAs may use appendices, as appropriate. Material attached as an appendix should be referred to or summarized in plain language in the body of the EA for the average non-technical reader. Appendices should include information specific to the EA. Avoid making the appendices a repository for unnecessary information. Appendices should be circulated with the EA or readily available upon request.

4.5 Incorporation by Reference

EAs may incorporate materials by reference. CEQ regulations 40 CFR 1502.21 and NAO 216-6 § 5.09(d) encourage the use of incorporation by reference as a method of shortening documents and reducing unnecessary duplication of information. Information that should be incorporated by reference includes:

1. Material that is not directly related to the proposed action.
2. Other EISs or EAs prepared by NOAA or other agencies.
3. Detailed descriptions of the Affected Environment.
4. Research papers in the general scientific literature.
5. Technical background papers that reviewers with technical training may find useful in evaluating the EA.

Material incorporated by reference does not need to be circulated with an EA. However, the reader must be informed as to where it may be obtained, either through general literature or direct mailing from NOAA. The referenced material should be summarized in plain language in the body of the EA.

4.6 Style

While there is no required format for an EA, there are requirements that the analysis be written in plain language (40 CFR 1502.8), that it be concise, and that it be analytic not encyclopedic (40 CFR 1502.2). It should also be based on scientific accuracy and reflect known information (40 CFR 1502.24). In addition, a document's organization plays a significant role in the overall quality of the document and its effectiveness in conveying the primary message. The following guidelines on style will assist NOAA staff to prepare quality NEPA documents:

- Write EAs precisely and concisely, using plain language. Refer to: http://www.plainlanguage.gov/ for information on plain language.
- Define all abbreviations and acronyms the first time they are used in the document.
- Provide a list of abbreviations and acronyms with definitions at the beginning of the EA.
- Minimize the use of abbreviations and acronyms to the extent practical. In doing so, use only those acronyms that are referred to frequently in the EA or those that are common to the public.
- Define all technical terms that must be used, preferably in a single glossary or definitions chapter.
- Ensure information provided in tables and figures is consistent with information in the text and appendices.
- Use consistent units of measurement throughout the document.
- If scientific notation is used, provide an explanation.

- Ensure that regulatory terms used in the document are consistent with their codified regulatory definitions.
- Use conditional language, such as “would” rather than “will,” in describing the proposed action and alternatives and their potential consequences.
- Make full use of graphics and other visual aids whenever possible to simplify EAs and make them more readable.
- Make appropriate use of appendices.
- Ensure that appendices and documents incorporated by reference are cited.
- Include a discussion of the relationship between the subject EA and related NOAA NEPA documents.
- Avoid copying and pasting identical text from one chapter to another. If, for example, the impacts of one alternative are the same as those of another, note this fact by summarizing. Unless necessary, do not restate the impacts except to highlight any subtle differences.

4.7 Organization

EAs may be organized in several different ways. Some of the more common variations include:

- Addressing the Affected Environment and Environmental Consequences requirements in separate chapters (traditional format).
- Addressing the Affected Environment and Environmental Consequences requirements in a combined chapter.
- Discussing environmental effects on an alternative-by-alternative basis.
- Discussing environmental effects on an affected resource-by-affected resource basis.

All of these approaches (and combinations thereof) are acceptable, but their effectiveness and efficiency are highly dependent on the complexity of the action being taken. The EA developers should carefully consider which of these presentations is most appropriate for a particular EA.

Some guidelines to consider regarding organization of EAs include:

- Be consistent in how the effects on environmental resources are analyzed (choose one organizational scheme).
- Describe the net environmental effects, or residual impacts, in summary form at the beginning or end of the discussion.
- Summarize net effects in tabular form to allow ease of comparison across alternatives.
- Present alternatives and resources in the same order throughout the document.
- Present the No Action Alternative first to establish a baseline against which other alternatives will be compared.

4.8 Decision Documents

One of the overall goals of an EA is to provide decisionmakers and the public with information about the potential for impacts due to NOAA's proposed action before a final decision is made. Once NOAA has completed the process to prepare a final EA, NOAA can make an informed decision on the proposed action. The decision is articulated in a separate decision document. For EAs, this document is called a Finding of No Significant Impact (FONSI).

4.8.1 Finding of No Significant Impact (FONSI)

EAs are concise documents that determine if significant impacts are likely to happen or not. If there is potential for significant impacts, then an EIS will need to be prepared. If the impacts of an action are not expected to be significant, a FONSI is prepared. The FONSI may be attached to the EA but should be readable as a stand-alone document. The FONSI should clearly articulate how the impacts of the proposed action are not significant, and how that conclusion was reached with regard to each of the appropriate significance criteria from NAO 216-6 §§ 6.01 and 6.02. The FONSI should also have the following elements: a heading, the name of the action, a description of the action, a description of the alternatives, a summary of the environmental consequences of the proposed action, and a determination statement. Refer to Figure 11 for an example of a determination statement for a FONSI. The FONSI can incorporate information from the EA by reference.

NOAA Fisheries has issued their own guidance on the preparation of FONSI documents. It is called *Guidelines for the Preparation of a Finding of No Significant Impact*. It can be found at https://www.intranet.nepa.noaa.gov/nmfs_fonsi_guidance.pdf.

DETERMINATION: In view of the information presented in this document and the analysis contained in the supporting Environmental Assessment prepared for [identify action], [and if applicable, other analytical documents relied upon to make the determination], it is hereby determined that the [identify action] will not significantly impact the quality of the human environment as described above and in the supporting Environmental Assessment. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an [EIS or SEIS] for this action is not necessary.

_____	_____
Assistant Administrator (or Responsible Program Manager) for [identify office], NOAA	Date

Figure 11. Example Determination Statement for FONSIs.

4.8.2 Mitigated Finding of No Significant Impact (FONSI)

For some EAs a Mitigated FONSI may be appropriate. If NOAA concludes that the predicted adverse impacts of a project can be avoided, reduced, or minimized sufficiently to allow the project to move forward with minimal effect on the environment, a mitigated FONSI statement can be prepared. NOAA may rely on mitigation measures to make a FONSI only if the measures are imposed by statute or regulation, or are submitted by NOAA or an applicant as part of the original proposed action (NAO 216-6 § 5.03d). This means that NOAA should not rely on the *possibility* of mitigation as an excuse to avoid the requirement for developing an EIS. A mitigated FONSI statement relies on implementation of effective mitigation measures to reduce the impact of the action to less than significant. This foregoes the preparation of an EIS. Whether the proposed action is modified to incorporate mitigation measures (the preferred approach) or the mitigation measures are applied later, in response to impacts, it is critical that the mitigation measures are carried out and that the mitigation has the intended effects.

4.9 Review and Clearance Procedures

Early involvement by the NOAA NEPA Coordinator Staff is essential to a smooth review and clearance process. Review and clearance procedures include review of the EA and FONSI and signing of memos and letters indicating concurrence with the decision.

Clearance from the NOAA NEPA Coordinator in PPI is required for all EAs (for concurrence on the FONSI) prior to implementing the action. The review and clearance process for NEPA documents as it relates to the NOAA NEPA Coordinator is depicted in Figure 12. Section 4.9.1 of this handbook describes the review and clearance process for EAs once PPI receives the documents.

Each region or office will likely have additional clearance steps as well. As each is different, they are not included in this handbook. Consult with the appropriate region or office for information regarding their clearance process. In addition, the region or office should consider early consultation with the Office of General Counsel, particularly for complex, controversial, and high-profile actions. Early legal consultation can help avoid delays in the final clearance process.

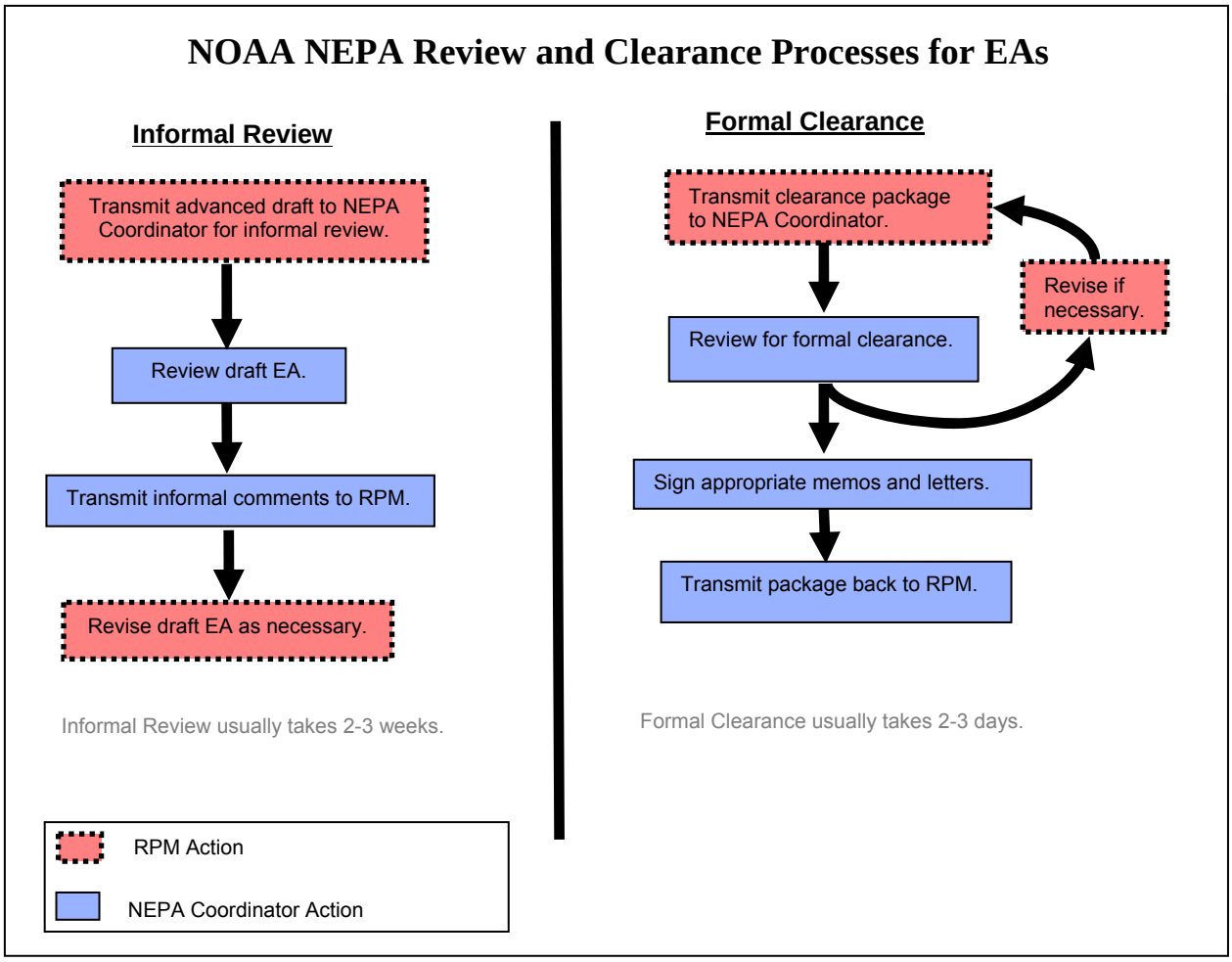

Figure 12. NOAA NEPA Review and Clearance Processes for EAs.

4.9.1 PPI Review and Clearance

Once the final EA has been reviewed and cleared by the RPM/AA an EA package is submitted to PPI for review and clearance. The package should include the following:

- A copy of the EA and signed FONSI.
- A memo from the RPM/AA to the NEPA Coordinator requesting concurrence on the FONSI.
- A "To All Interested Government Agencies and Public Groups" letter from the NEPA Coordinator printed on PPI letterhead. This letter describes the action and the alternatives and designates the Responsible Program Official with contact information. This letter should also state that one copy of comments be submitted to PPI.

Once the EA package is received by PPI, it is reviewed. If complete, the "To All Interested Government Agencies and Public Groups" letter and the memo confirming concurrence or non-concurrence are signed by the NOAA NEPA Coordinator. PPI

retains a copy of the EA, FONSI, and memos, and the package, including the signed memos, is returned.

4.10 Distribution and Circulation

The requirements and guidelines for circulation and distribution of EAs are discussed below.

NAO 216-6 § 5.03e.2 states that in cases where the RPM has adequate time and where the EA would benefit from 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.

EAs do not need to be distributed to other agencies and the public. However, they need to be available upon request. For distribution to other agencies and the public, CD copies are generally acceptable. Hard copies should also be available upon request. Posting EAs on the internet is also acceptable.

4.11 Administrative Record

The administrative record memorializes the proponent's consideration of all relevant and reasonable factors. Overall, the administrative record should demonstrate and document that NOAA examined the proposed action and its reasonable alternatives thoroughly as required by law.

Records management is important for two reasons: first to satisfy legal requirements and second to enable assembly of documents in litigation. The concept of an administrative record comes from the judicial review section of the Administrative Procedure Act (APA).

The administrative record should consist of relevant and significant documents considered by the NOAA decisionmaker when making the decision. If the document is irrelevant or insignificant, it should not be included in the administrative record. The following types of information should be included in an administrative record:

- Documents relied on by the decisionmaker, or incorporated by reference in documents relied on by the decisionmaker, whether or not those documents support the final agency decision.
- Background documents that help explain the context in which the decision was made.
- Comments received during the public review process from other agencies and the public.
- NOAA's responses to comments received during the public review process.
- Summaries of meetings with the public to discuss the proposed action.

5.0 ENVIRONMENTAL IMPACT STATEMENTS

This section outlines the general process NOAA staff should follow when preparing EISs. CEQ regulations provide guidance on the requirements for EISs. In some circumstances, NAO 216-6 and this handbook make interpretations of CEQ regulations to provide more clarity to NOAA staff preparing EISs. These interpretations are based on NEPA case law, CEQ's guidance document *NEPA's Forty Most Asked Questions*, other guidance documents provided by CEQ, standard NOAA practice, and declared NOAA policy.

This chapter describes the major steps of the EIS process including:

- Notice of Intent
- Scoping
- Contents
- Style
- Format and organization
- Decision documents
- Review and clearance procedures
- EPA reviews of EISs
- Distribution and circulation

5.1 Is an EIS Automatically Required?

NAO 216-6 lists types of NOAA actions that automatically require the preparation of an EIS. The following list of actions that require an EIS is compiled from two different parts of NAO 216-6. The first four types of actions apply to **all NOAA actions** and are listed in NAO 216-6 § 6.03c2. The last two types of actions apply **only to fishery management** actions taken under the MSA and are identified in NAO 216-6 § 6.03d2. These actions include:

1. Major new projects or programmatic actions that may significantly affect the quality of the human environment.
2. Actions required by law to be subject to an EIS.
3. Research projects, activities, and programs that:
   a. are conducted in the natural environment on a scale at which substantial air masses are manipulated, substantial amounts of mineral resources are disturbed, substantial volumes of water are moved, or substantial amounts of wildlife habitats are disturbed;
   b. would have a significant impact on the quality of the human environment either directly or indirectly;
   c. is intended to form a major basis for development of future projects that would be considered major actions significantly affecting the environment under NAO 216-6; or

   d. involve the use of highly toxic agents, pathogens, or non-native species in open systems.
4. 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.
5. The development of a new FMP for a previously unregulated species (*Note: this applies only to fishery management actions).*
6. FMP amendments and regulatory actions when the regional Fishery Management Council (RFMC) or NOAA Fisheries determines that significant beneficial or adverse impacts are reasonably expected to occur (*Note: this applies only to fishery management actions).*

The matching of a specific action with the activities listed above is not always straightforward. RPMs will need to use some interpretation of the items in this list and professional judgment to determine if an EIS is required. PPI and the Office of General Counsel are available to assist in making this determination.

5.2 General Overview of the EIS Process

NOAA's EIS process is depicted in Figure 13. The length of time between these steps is discussed in Section 2.5 of this handbook. Refer to Section 5.9 of this handbook for more information regarding review and clearance procedures for EISs.

5.2.1 Required Milestones

There are several required milestones that NOAA staff must be aware of during the EIS process. The most important requirement is that the appropriate NEPA analysis must take place BEFORE a decision on an action is taken. Other critical milestones are as follows:

- A notice of intent (NOI) to prepare an EIS should be published in the *Federal Register* with a minimum public comment period of 30 days before releasing a draft EIS (DEIS) (NAO 216-6 § 5.02d2).
- A notice of availability (NOA) of a DEIS must be published in the *Federal Register*. The DEIS must be made available for review by the public and interested parties for a minimum public comment period of 45 days before releasing a final EIS (FEIS) (40 CFR 1506.10(c)).
- An NOA for an FEIS must be published in the *Federal Register* at least 30 days before issuing a record of decision (ROD) and taking the subject action (this is also known as the "cooling off" period) (40 CFR 1506.10(b)(2)).

The Environmental Protection Agency (EPA) publishes NOAs every Friday. The deadline for filing at EPA is 3:00 pm EST for publication in the *Federal Register* the following Friday. Five bound copies of the DEISs and FEISs are required by EPA headquarters at time of filing.

Additional information regarding filing EISs at EPA headquarters may be found at: http://www.epa.gov/compliance/nepa/submiteis/index.html. An additional three bound copies should be sent to each affected EPA regional offices (NAO 216-6 § 5.04c3). The regional EPA offices are listed at: http://www.epa.gov/compliance/contact/nepa_regional.html.

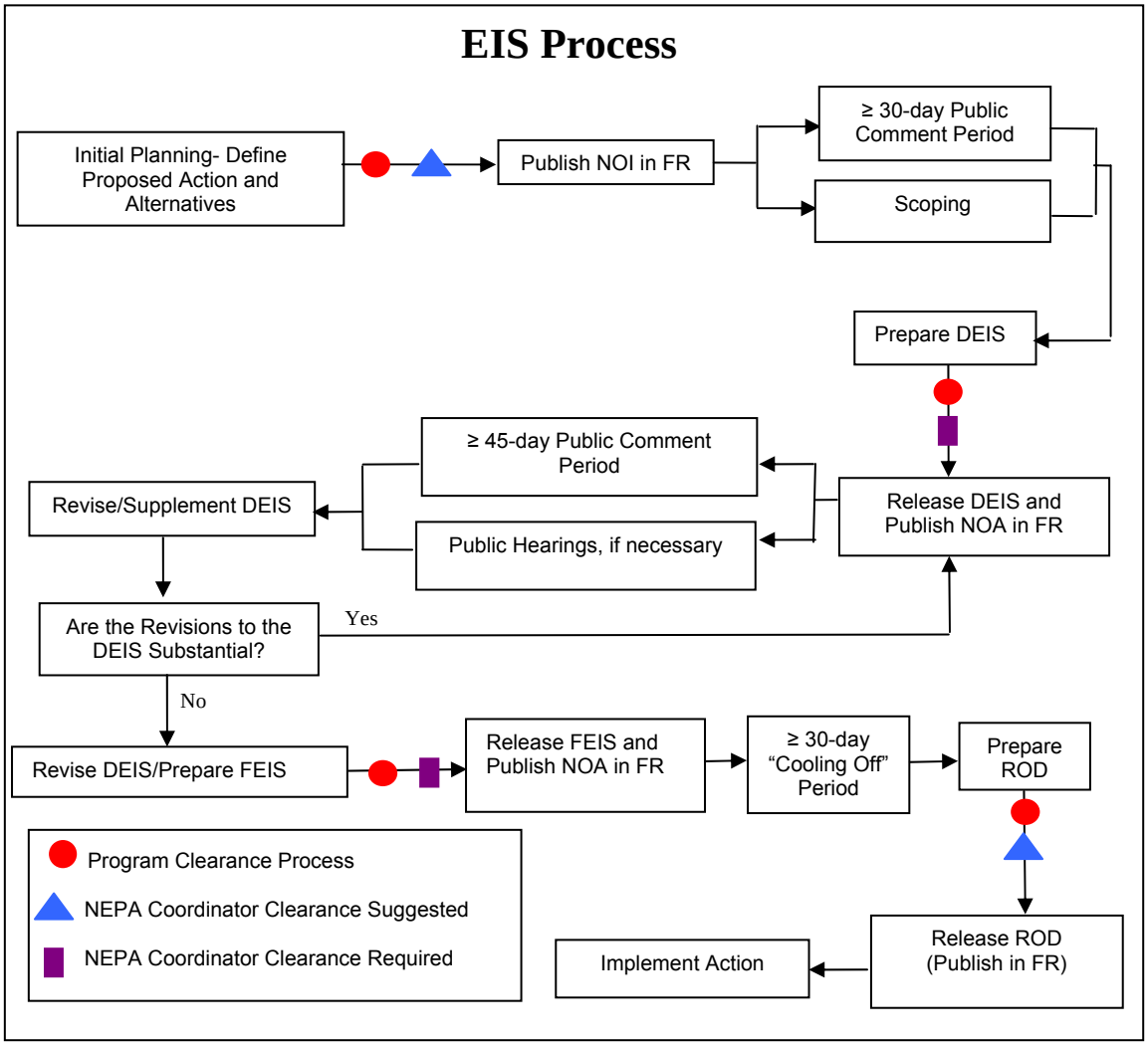

Figure 13. EIS Process.

5.3 Scoping

The first step in analyzing a proposed action under NEPA is scoping.

What is Scoping?

NAO 216-6 § 4.01w and CEQ regulations 40 CFR 1501.7 define scoping as: "An early and open process for determining the scope of issues to be addressed and identifying the significant issues related to a proposed action." The purpose of the scoping process is to determine the scope or range of issues surrounding the proposed action.

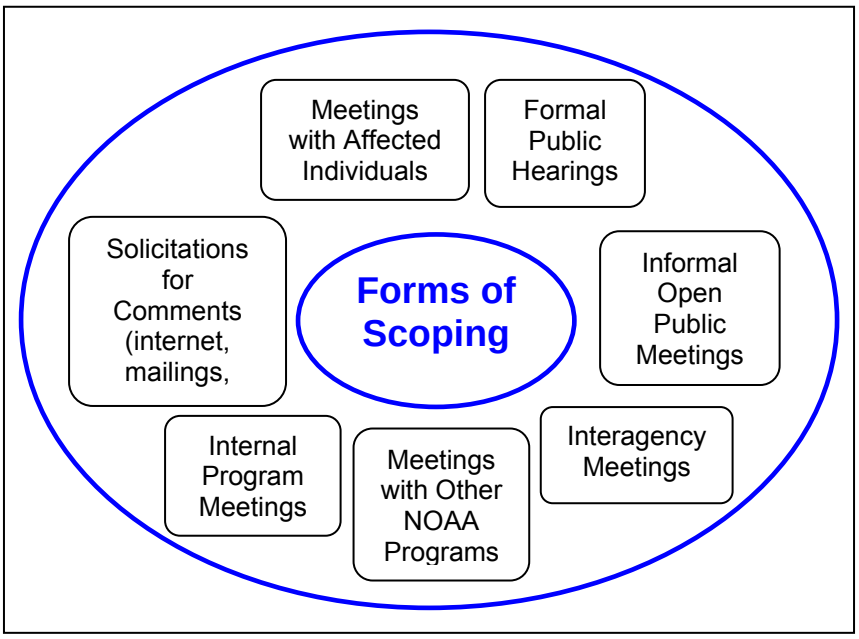

Figure 14. Forms of Scoping

How is Scoping Conducted?

Scoping may be completed using a variety of formats (refer to Figure 14) including:

1. Internal meetings within the particular NOAA program that is taking the action.
2. Meetings within NOAA between different programs with varying expertise (NOAA's Office of Oceanic and Atmospheric Research (OAR) meeting with NOAA Fisheries' Protected Resources to determine the impacts of research on marine mammals or endangered species).
3. Interagency meetings between the NOAA program taking the action and other Federal agencies with jurisdiction and/or expertise (NOAA Fisheries and National Ocean Service (NOS) meeting with the Department of Defense to determine interactions between new Coast Guard vessel guidelines and NOS coastal zone responsibilities, and NOAA Fisheries' habitat and protected resources responsibilities).
4. Formal public hearings where members of the public are invited to attend and provide testimony that will be recorded and entered into the record.
5. Informal public meetings with the public at large or invited individuals to discuss the project.
6. Solicitation of public comments through less direct contact (mass mailings, newspaper ads, internet sites, telephone conversations).

The appropriate form of scoping will vary depending on the action and in many cases may be a combination of several formats. Refer to the CEQ, April 30, 1981, *Memorandum for General Counsels, NEPA liaisons and Participants in Scoping* at http://nepa.gov/nepa/regs/scope/scoping.htm or the 1983 guidance memo from CEQ, *Guidance Regarding NEPA Regulations* at: http://nepa.gov/nepa/regs/1983/1983guid.htm for more information regarding scoping.

When Does Scoping Begin?

Formal scoping officially begins when the NOI is published in the *Federal Register* (refer to Section 5.3.1 of this handbook for details regarding the NOI), but may in practice begin in the early stages of project development. Scoping ensures response to changes in the project and to new or unexpected information that is revealed during the NEPA process. It also ensures that the public is notified about the process and has ample opportunity to participate and comment on the proposed action and alternatives.

What Does Scoping Accomplish?

Scoping is important to the NEPA process and the overall decisionmaking process. The objectives of scoping are to:

1. Determine the range (scope) of issues associated with an action.
2. Determine the relevant players and potential cooperating agencies; including other Federal agencies, state and local government agencies, tribal governments, private and public interest groups, and general constituencies.
3. Develop a strategy to ensure the NEPA analysis is done efficiently (determine approximate length of the document; a timeframe for its completion; and eliminate from detailed study issues which are not significant).
4. Identify significant environmental issues and dismiss issues that are not significant from further review.
5. Ensure there is consensus (where appropriate) as to the project's purpose and need.
6. Consider the possible alternatives for meeting the project's goals.
7. Identify information gaps and other direct, indirect, and cumulative actions potentially affecting the proposed action.
8. Divide drafting responsibilities among cooperating agencies (if applicable).

Are Public Meetings Required as Part of Scoping?

A public meeting is not a requirement in CEQ regulations or NAO 216-6. However, both recommend at least informal scoping meetings. *Note that it is standard practice for NMFS to hold public scoping meetings coordinated with RFMCs for MSA actions.* Actively involving the public is important in seeking information to determine the issues surrounding a proposed action. Involving the public may take many forms and does not have to occur in a formal setting such as a public meeting or hearing. It can take place over the phone, over the Internet, through mailings, and via other less formal means. It can involve the entire public at large or a selected subset that has been identified as

potentially affected by, or particularly interested in the action. The degree of public involvement will vary depending on the nature of the action.

Scoping Reports
Scoping reports are used to summarize and document the major issues and concerns discovered during the scoping process. They can be useful in informing agencies and the public about the impacts involved and considerations necessary in planning the alternatives for a project. Scoping reports can range from simplified summaries to detailed collections of information. An example of a simplified scoping report regarding the EIS for the proposed Mendocino Redwood Company HCP/NCCP can be found at http://swr.nmfs.noaa.gov/ScoperptFeb11-03.pdf. An example of a more detailed scoping report regarding the National Marine Fisheries Service's Environmental Impact Statement for
National Acoustic Guidelines on Marine Mammals can be found at http://www.nmfs.noaa.gov/pr/pdfs/acoustics/scoping_report_eis.pdf.

5.3.1 Notice of Intent (NOI)

The NOI is required by CEQ regulations 40 CFR 1508.22 and notifies the public that an EIS will be prepared and considered. The NOI should be prepared as soon as practicable after the need for an EIS had been determined. NAO 216-6 § 5.02c4 provides explicit direction for what an NOI is to include and other related requirements. The NOI should briefly:

- Describe the proposed action and possible alternatives.
- Provide dates, times and locations of any planned scoping meetings or hearings.
- Provide the RPM's name and contact information.

Refer to NAO 216-6 Exhibit 4 for a format for preparing a Notice of Intent.

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 (NAO 216-6 § 5.02d4).

5.4 Contents of EISs

This section describes the required contents of EISs. Figure 15 lists the required contents for EISs (40 CFR 1502.10).

Required Contents of EISs
Cover Sheet Summary Table of Contents Purpose and Need Description of Proposed Action and Alternatives Affected Environment Environmental Consequences Mitigation Measures (if applicable) List of Preparers Distribution List Index Appendices (if applicable)

Figure 15. Required Contents of EISs.

5.4.1 Cover Sheet

Every EIS must have a one-page cover sheet that includes the following information (40 CFR 1502.11):

1. A list of the responsible agencies including the lead agency and any cooperating agencies.
2. The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the state(s) and county(ies) (or other jurisdiction if applicable) where the action is located.
3. The name, address, and telephone number of the person at the agency who can supply further information.
4. A designation of the statement as a draft, final, or draft or final supplement.
5. A one paragraph abstract of the statement.
6. The date by which comments must be received (computed in cooperation with EPA under 40 CFR 1506.10).

5.4.2 Summary

Every EIS must contain a summary that adequately and accurately summarizes the substantive parts of the EIS. The summary may also be called the executive summary. The summary shall include the following information as applicable (40 CFR 1502.12):

1. A brief summary of the major conclusions.
2. A description of any areas of controversy (including issues raised by agencies and the public).
3. The issues to be resolved (including the choice among alternatives).

According to CEQ regulations this summary will normally not exceed 15 pages (40 CFR 1502.12).

5.4.3 Purpose and Need

Every EIS must contain a purpose and need statement. CEQ regulations 40 CFR 1502.13 state, "The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action."

The purpose and need section presents a brief statement explaining why the action is being considered. The purpose and need specifies the underlying purpose and need to which NOAA is responding and sets the overall direction of the environmental analysis process. The Purpose and Need Chapter should answer the question, "Why is NOAA proposing this action?"

The purpose and need serves as an important screening criterion for determining which alternatives are reasonable. All reasonable alternatives examined in detail must meet the defined purpose and need.

Following are guidelines for writing purpose and need statements:

- Ensure the statement of purpose and need is not written too narrowly in an attempt to limit the number of alternatives that need to be considered.
- Write statements of purpose and need in a manner that describes the goal or end result of the action not the manner in which to accomplish the end result.
- Write the purpose and need statement in a short and concise manner that describes the driving force behind NOAA's action.

5.4.4 Description of Proposed Action and Alternatives

Every EIS must contain a detailed description of the proposed action. An EIS must address all reasonable alternatives. According to CEQ regulations 40 CFR 1502.14, "This section [chapter] is the heart of the environmental impact statement." This chapter answers the question, "How will NOAA accomplish the goals and objectives set forth in the statement of purpose and need?" This chapter describes the proposed action and alternatives that will fulfill the requirements of the purpose and need statement. The proposed action should be identified to make the readers aware of the action that is being considered. There may be several alternatives to accomplish the purpose and need, but NOAA will usually select a preferred approach based on environmental, economic, technical, and other considerations.

In some cases, the proposed action is the same as the preferred alternative. Usually this occurs in the case of a simple action. For example, the proposed action may be to make a simple amendment to a Fishery Management Plan (FMP). The preferred alternative would also be to amend the FMP and the No Action Alternative would be to not amend the FMP. In other cases, the proposed action is a more general goal than any of the alternatives. For instance, in the case of a construction action, the proposed action would

be to build a facility. The preferred action may be to build that facility at location X with a square footage of Y. The other alternatives may be to build the facility in other locations and in differing sizes.

This chapter of the EIS describes each alternative and identifies the preferred alternative. This chapter should focus on providing objective descriptions of all reasonable alternatives. Each reasonable alternative should be analyzed with equal weight within this section. This chapter may also include short, concise summaries of the impacts, provided in comparative form, but detailed analyses of the impacts of each alternative should be discussed in the "Environmental Consequences" Chapter of the NEPA document (refer to Section 5.4.6 of this handbook for information regarding environmental consequences).

Reasonable alternatives are those that may be feasibly carried out based on technical, economic, environmental and other factors, and meet the purpose and need for the proposed action. Pursuant to CEQ regulations 40 CFR 1505.1(e), the alternatives described in this chapter must include all alternatives under consideration by NOAA. This also includes the No Action Alternative (refer to Section 5.4.4.2 of this handbook for information regarding the No Action Alternative).

According to CEQ regulations 40 CFR 1502.14 the Proposed Action and Alternatives Chapter should:

1. Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
2. Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.
3. Include reasonable alternatives not within the jurisdiction of the lead agency.
4. Include the No Action Alternative. The No Action Alternative is the most likely future that could be expected to occur in the absence of the project. Where the future is different from existing conditions, the differences should be clearly defined.
5. Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
6. Include appropriate mitigation measures not already included in the proposed action or alternatives.

Refer to the NOAA, December 16, 2002, *Memorandum for Legal Guidance on Determining Related Actions and Developing Reasonable Alternatives for Inclusion in a*

Single EIS at https://www.intranet.nepa.noaa.gov/reasonable_alts.pdf for more information on development of alternatives.

5.4.4.1 Number of Alternatives to Include

The number of alternatives considered reasonable will vary depending on the nature of the purpose and need for the action. The alternatives described in this chapter should be representative of all of those possible actions that can be reasonably expected to satisfy the purpose and need (40 CFR 1502.14(c)).

It is conceivable, that in some situations, NOAA will only include a description of two alternatives: the proposed action and the No Action Alternative. For example, when the NOAA action is to make a simple amendment to a FMP, NOAA may only have two possible actions: amend the FMP or not amend the FMP.

In other scenarios, such as fishery management, there may be an infinite number of alternatives to satisfy the purpose and need. This is particularly true when the purpose and need is fairly broad. For example, NOAA may consider an entirely open fishery with no controls, close the fishery entirely, or any combination of partial closures.

NEPA's Forty Most Asked Questions, Question 1b states that for some proposals there may exist a very large or even an infinite number of possible reasonable alternatives. When there are potentially a very large number of alternatives, only a reasonable number, covering the full spectrum of alternatives, must be analyzed and compared in the EIS. What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case.

5.4.4.2 The No Action Alternative

Every EIS must include an analysis of the No Action Alternative (40 CFR 1502.14 (d)). The No Action Alternative is simple; NOAA will not take any action to meet the purpose and need for the proposal. In most cases, the No Action Alternative would not further NOAA's stated purpose and need. However, it still must be described in the EIS in order to provide a baseline for comparison with the proposed action and any alternatives.

The No Action Alternative should be accurately described. In general, the No Action Alternative represents what would happen if a proposed action did not take place. When NOAA is considering the amendment of an FMP, the No Action Alternative is not to amend the FMP. The No Action Alternative discussion should provide a brief summary of what would occur if the action is not permitted. In some cases the No Action Alternative may result in other predictable actions. For example, if NOAA takes no action on a permit request to install a submarine cable through a national marine sanctuary, the proponent may inform NOAA that it would install the cable outside the sanctuary. This description should not, however, be overly speculative about what may occur if NOAA were to take no action.

There are two interpretations of the No Action Alternative. The first interpretation may involve updating a management plan where ongoing programs initiated under existing legislations and regulations will continue, even as new plans are developed. In these cases the "no action" is "no change" from current management directions. To develop an alternative based on no management would be ineffective. Therefore, the No Action Alternative may be thought of in terms of continuing the current direction of action until that action is changed. Impacts of alternative management schemes should be compared to those impacts projected for the existing plan. Alternatives would include management plans of greater and lesser intensity (*NEPA's Forty Most Asked Questions, Question 3*).

The second interpretation of "no action" is in instances involving Federal decisions of proposals for projects. "No action" in these cases means the proposed action would not take place. The resulting environmental impacts from taking no action should be compared to the impacts of permitting the proposed action or an alternative action (*NEPA's Forty Most Asked Questions, Question 3*).

5.4.4.3 Identification of the Preferred Alternative

The preferred alternative must be identified in every final EIS. If it has been determined, it must also be identified in a draft EIS. CEQ regulations 40 CFR 1502.14(e) require agencies to identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference. In certain circumstances it may be appropriate or necessary to identify multiple preferred alternatives in the draft document, and select one preferred alternative in the final document. However, this practice is rarely done and not recommended.

The preferred alternative is the alternative that NOAA concludes will satisfy the purpose and need for action and will fulfill NOAA's statutory missions and responsibilities. Considering a wide range of factors including environmental, social, and economic impacts; technical feasibility; and others, this is the alternative NOAA considers to be optimum. The preferred alternative does not have to be the alternative with the least environmental impacts. Often, the agency's proposed action is the preferred alternative.

The purpose of identifying the preferred alternative is to provide information to interested parties commenting on NOAA's environmental document on which alternative NOAA believes would best accomplish its strategic planning objectives.

5.4.4.4 Alternatives Considered But Not Further Analyzed

NOAA often considers a number of alternatives for a particular need, at least informally. Some of these alternatives could be considered reasonable while others are unlikely to accomplish NOAA's goals. Alternatives rejected for further analysis include only those that are not required to evaluate alternatives beyond the reasonable range. If alternatives are eliminated from further analysis, the EIS should briefly discuss the reasons for their elimination (40 CFR 1502.14(a)). This discussion can be accomplished in a subsection of the Alternatives Chapter called "Alternatives Considered, but not Further Analyzed."

During scoping, interested parties may also suggest certain alternatives that are not reasonable. While not reasonable, it may be that these alternatives seem logical to at least some parties. When publishing a draft EIS for public comment, NOAA may find it useful to identify these alternatives and explain why they are not reasonable and how they did not meet the purpose and need for the proposed action. This will allow interested parties providing comments on the draft EIS to focus their attention on alternatives that will meet the purpose and need.

5.4.4.5 Identification of the Environmentally Preferable Alternative

The environmentally preferable alternative must be identified in the Record of Decision (ROD) that is based on the final EIS (40 CFR 1505.2(b)). The environmentally preferable alternative is the alternative that will cause the least damage to the biological and physical environment and usually is the alternative that best protects, preserves, and enhances historic, cultural, and natural resources. A Federal agency is not required to select the environmentally preferable alternative. Refer to *NEPA's Forty Most Asked Questions, Question 6* (http://nepa.gov/nepa/regs/40/1-10.HTM#6) for more information on this subject.

5.4.5 Affected Environment

All EISs must include a description of the environment in which the proposed action and alternatives are to take place (40 CFR 1502.15). This description provides a view on the current conditions and serves as a baseline against which to compare impacts of the alternatives. Focus should be on specific resources that are most likely to be impacted. For project-specific analysis, the affected environment typically encompasses the proposed action's site and immediate vicinity. However, the analysis of cumulative impacts may broaden that range.

This chapter is typically divided into subsections that address major categories of resources. For example, many EISs use subsections of biological resources, socioeconomic resources, habitat, cultural resources, and historical resources. Each resource described in the Affected Environment Chapter must also receive a parallel discussion in the Environmental Consequences Chapter.

Other EISs and EAs may be incorporated by reference to add information about the affected environment without adding length to the document. Refer to Section 5.5 of this handbook for more information regarding incorporation by reference.

5.4.6 Environmental Consequences

All EISs must analyze and describe the anticipated environmental consequences of the proposed action and alternatives on the resources described in the Affected Environment Chapter (40 CFR 1502.16). This chapter forms the scientific and analytical basis for the comparison of the proposed action and alternatives.

The Environmental Consequences Chapter focuses on a detailed analysis and description of the environmental impacts or effects of the proposed action and alternatives. CEQ regulations 40 CFR 1508.8 state that effects include:

- Direct effects, which are caused by the action and occur at the same time and place.
- Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

The terms "effects" and "impacts" as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial. *Note that the term "effects" includes impacts that may be beneficial or detrimental to the resources.*

While similar in content, this chapter is generally more extensive and more detailed in an EIS as compared to an EA. The analysis in an EIS goes beyond that required to determine the potential for significant impacts and provides a more thorough analysis and description of the extent of those effects.

CEQ regulations 40 CFR 1502.16 state the Environmental Consequences Chapter should discuss the following:

- Direct effects and their significance.
- Indirect effects and their significance.
- Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned.
- The environmental effects of alternatives including the proposed action; comparisons will be based on this discussion.
- Energy requirements and conservation potential of various alternatives and mitigation measures.
- Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.
- Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.
- Means to mitigate adverse environmental impacts.

The impacts, or effects, analyzed in this chapter must include a discussion of impacts that are expected to result from:

1. The conduct of the proposed action itself or any of the alternatives (direct impacts).
2. Activities that are not a part of the proposed action or any of the alternatives but are reasonably foreseeable consequences of NOAA conducting the proposed action or alternatives (indirect impacts).

This chapter must discuss these impacts in each of the following contexts:

1. Viewing the direct and indirect impacts of the proposed action and alternatives as if it were the only activity being conducted (individual impacts).
2. Viewing the direct and indirect impacts in the context of all other activities (human and natural) that are occurring in the affected environment and impacting the resources being affected by the proposed action and alternatives (cumulative impacts).

CEQ regulations 40 CFR 1508.7 define cumulative impacts as:

> The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

The process of identifying and analyzing cumulative impacts can be complicated in many situations. For more information on cumulative impacts analysis refer to CEQ's report, *Considering Cumulative Effects Under the National Environmental Policy Act* at http://nepa.gov/nepa/ccenepa/ccenepa.htm.

5.4.7 Comparing Alternatives

Every EIS must compare the impacts of each alternative to one another (40 CFR 1502.14). One of the most important components of any NEPA analysis is the illustration of how the impacts of the alternatives compare to the each other. The Environmental Consequences Chapter should compare the impacts of the alternatives and provide a simple mechanism for the reader to compare the alternatives. An Alternatives Comparison Table is a simple way to show the impacts of all of the alternatives. This chapter can not just have a table; written descriptions of the impacts must also be provided. Figure 16 shows a simplified example alternatives comparison table. The table shows the impacts to resources by alternative. The table used in an EIS may have more detail and should address all of the resources described and analyzed in the EIS.

Example Alternatives Comparison Table			
Resource	**Alternative I No Action**	**Alternative II Preferred Alternative**	**Alternative III**
Soils	Continue with existing practices for erosion control. Impacts could occur from shoulder blading and winter sanding.	Same as No Action, except practices would focus on prevention of soil movement into salmonid habitat. Practices should minimize soil structure impacts.	Same as Preferred Alternative.
Aquatic Habitat	Minor impacts, but none would have substantial impacts at the watershed scale.	No adverse impacts, some incremental beneficial impacts.	Same as Preferred Alternative.
Wildlife	No adverse impacts.	Beneficial impacts for riparian-dependent wildlife.	No adverse impacts.
Vegetation	Minor impacts, but none at the watershed scale.	Beneficial impact of more native vegetation in riparian areas.	Minor impacts, but none at the watershed scale.

Figure 16. Example Alternatives Comparison Table

5.4.8 Mitigation Measures

If any of the alternatives, including the preferred alternative, include mitigation measures those measures should be included with the analysis of each alternative in the Environmental Consequences Chapter (40 CFR 1502.16(h)). Mitigation measures are measures that avoid, reduce, or minimize the effects of the proposed action and alternatives.

According to CEQ regulations 40 CFR 1508.20 mitigation measures may include the following types of actions:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.
(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
(e) Compensating for the impact by replacing or providing substitute resources or environments.

In addition to the description of the mitigation measures, a table may be used to show the mitigation measures for each alternative.

Mitigation measures must also be addressed in the ROD (refer to Section 5.8 of this handbook for more information regarding the ROD). The ROD should state whether all

practicable means to avoid or minimize environmental harm from the selected alternative have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized in the ROD, where applicable, for any mitigation (40 CFR 1505.2(c)).

5.4.9 Lists of Preparers and Agencies Consulted

EISs must include a list of the persons involved or consulted in the preparation of the document (40 CFR 1502.17). This chapter should include any person that was primarily responsible for preparing the document (or portion thereof), preparing any relevant background papers, and providing substantive information. This includes full time NOAA staff, NOAA contractors, consultants paid by NOAA, and persons from other agencies who furnished information. The name, affiliation, and qualifications (expertise, experience, professional discipline) for each involved person should be included.

5.4.10 Distribution List

All EISs must contain a distribution list that includes other agencies, organizations, and individuals who requested the EIS (NAO 216-6 § 5.04b.1.(g)). An asterisk or some other notation should be included for those organizations or individuals who commented on the draft EIS.

5.4.11 Index

All EISs must contain an index (40 CFR 1502.10(j)). The index should include an alphabetical list of key words and their associated page numbers that will allow the reader to find information easily within the EIS. The key word list should focus on the subject matter and not simply repeat a list of the headings within the Table of Contents.

5.4.12 Appendices

EISs may use appendices, as appropriate (NAO 216-6 § 5.04b.1.(i)). Material attached as an appendix should be referred to or summarized in plain language in the body of the EIS for the average non-technical reader. Appendices should include information specific to the EIS. Avoid making the appendices a repository for unnecessary information. Appendices should be circulated with the EIS or readily available upon request.

In an effort to keep EISs analytical rather than encyclopedic, CEQ regulations and guidance suggest consolidating certain discussions into appendices. Refer to questions CEQ regulations 40 CFR 1502.18 and *NEPA's Forty Most Asked Questions, Question 25* (http://nepa.gov/nepa/regs/40/20-29.HTM#25) for more information.

Materials that are prepared specifically for an EIS that are best consolidated into an appendix include the following:

1. Lengthy technical discussions of modeling methodology, baseline studies, or other work used in the body of the EIS.

2. Any material that is likely to be understood only by technically trained individuals.
3. Specific responses to comments received on a DEIS.

5.5 Incorporation by Reference

EISs may incorporate materials by reference. CEQ regulations 40 CFR 1502.21 and NAO 216-6 § 5.09(d) encourage the use of incorporation by reference as a method of shortening documents and reducing unnecessary duplication of information. Information that should be incorporated by reference includes:

1. Material that is not directly related to the proposed action.
2. Other EISs or EAs prepared by NOAA or other agencies.
3. Detailed descriptions of the Affected Environment.
4. Research papers in the general scientific literature.
5. Technical background papers that reviewers with technical training may find useful in evaluating the EIS.

Material incorporated by reference does not need to be circulated with an EIS. However, the reader must be informed as to where it may be obtained, either through general literature or direct mailing from NOAA. The referenced material should be summarized in plain language in the body of the EIS.

5.6 Style

While, there is no required format for an EIS, there are requirements that the analysis be written in plain language (40 CFR 1502.8), that it be concise and that it be analytic not encyclopedic (40 CFR 1502.2). It should also be based on scientific accuracy and reflect unknown information (40 CFR 1502.24). In addition, a document's organization plays a significant role in the overall quality of the document and its effectiveness in conveying the primary message. The following guidelines on style will assist NOAA staff to prepare quality NEPA documents:

- Write EISs precisely and concisely, using plain language. Refer to: http://www.plainlanguage.gov/ for information on plain language.
- Define all abbreviations and acronyms the first time they are used in the document.
- Provide a list of abbreviations and acronyms with definitions at the beginning of the EIS.
- Minimize the use of abbreviations and acronyms to the extent practical. In doing so, use only those acronyms that are referred to frequently in the EIS or those that are common to the public.
- Define all technical terms that must be used, preferably in a single glossary or definitions chapter.
- Ensure information provided in tables and figures is consistent with information in the text and appendices.

- Use consistent units of measurement throughout the document.
- If scientific notation is used, provide an explanation.
- Ensure that regulatory terms used in the document are consistent with their codified regulatory definitions.
- Use conditional language, such as “would” rather than “will,” in describing the proposed action and alternatives and their potential consequences.
- Make full use of graphics and other visual aids whenever possible to simplify EISs and make them more readable.
- Make appropriate use of appendices.
- Ensure that appendices and documents incorporated by reference are cited.
- Include a discussion of the relationship between the subject EIS and related NOAA NEPA documents.
- Avoid copying and pasting identical text from one chapter to another. If, for example, the impacts of one alternative are the same as those of another, note this fact by summarizing. Unless necessary, do not restate the impacts except to highlight any subtle differences.

5.7 Organization

EISs may be organized in several different ways. Some of the more common variations include:

- Addressing the Affected Environment and Environmental Consequences requirements in separate chapters (traditional format).
- Addressing the Affected Environment and Environmental Consequences requirements in a combined chapter.
- Discussing environmental effects on an alternative-by-alternative basis.
- Discussing environmental effects on an affected resource-by-affected resource basis.

All of these approaches (and combinations thereof) are acceptable, but their effectiveness and efficiency are highly dependent on the complexity of the action being taken. The EIS developers should carefully consider which of these presentations is most appropriate for a particular EIS.

Some guidelines to consider regarding organization of EISs include:

- Be consistent in how the effects on environmental resources are analyzed (choose one organizational scheme).
- Describe the net environmental effects, or residual impacts, in summary form at the beginning or end of the discussion.
- Summarize net effects in tabular form to allow ease of comparison across alternatives.
- Present alternatives and resources in the same order throughout the document.
- Present the No Action Alternative first to establish a baseline against which other alternatives will be compared.

5.8 Decision Document: Record of Decision

One of the overall goals of an EIS is to provide decisionmakers and the public with information about the impacts of NOAA's proposed action before a final decision is made. Once NOAA has completed the EIS process and has prepared a final EIS, NOAA can make a decision on the proposed action. The decision is articulated in a separate decision document. For EISs, this is called a Record of Decision (ROD).

After completing the EIS process, the last and one of the most important steps in the NEPA process is to prepare the ROD. The ROD is NOAA's documentation of which alternative will be implemented based on NOAA's review of the EIS. RODs are public documents and must be available to the public upon request. While it is not required that the Notice of Availability of the ROD be published in the *Federal Register*, NOAA must provide appropriate public notice of the availability of the ROD (40 CFR 1506.6). Public notice may be done through newspapers, mailings, or other media form. *Note that for issues of National concern, the Notice of Availability of the ROD must be published in the Federal Register.*

RODs may be integrated with other NOAA decision documents and memoranda, however, if this is done, those decision memoranda must also be available to the public.

According to CEQ regulations 40 CFR 1505.2, the following must be included in all RODs:

1. A clear statement describing the decision (which alternative was selected).
2. A listing and summary of all alternatives considered in reaching the decision, specifying the environmentally preferable alternative or alternatives.
3. If deemed appropriate, a discussion of preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions.
4. An identification and discussion of all factors that led to the decision and how those considerations entered into the decision.
5. A statement as to whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not.
6. For the identified mitigation measures, a summary of the monitoring and enforcement program that will be utilized.

5.9 Review and Clearance Procedures

Early involvement by the NOAA NEPA Coordinator Staff is essential to a smooth review and clearance process. Review and clearance procedures include review of the NEPA document and associated documents and signing of memos and letters indicating approval of the document and final clearance of the EIS.

Clearance from the NOAA NEPA Coordinator in PPI is required for DEISs and FEISs prior to each being transmitted to EPA for filing. The review and clearance process for NEPA documents as it relates to the NOAA NEPA Coordinator is depicted in Figure 17. Section 5.9.1 of this handbook describes the review and clearance process for EISs once PPI receives the documents.

Each region or office will likely have additional clearance steps as well. As each is different, they are not included in this handbook. Consult with the appropriate region or office for information regarding their clearance process. In addition, the region or office should consider early consultation with the GC, particularly for complex, controversial, and high-profile actions. Early legal consultation can help avoid delays in the final clearance process.

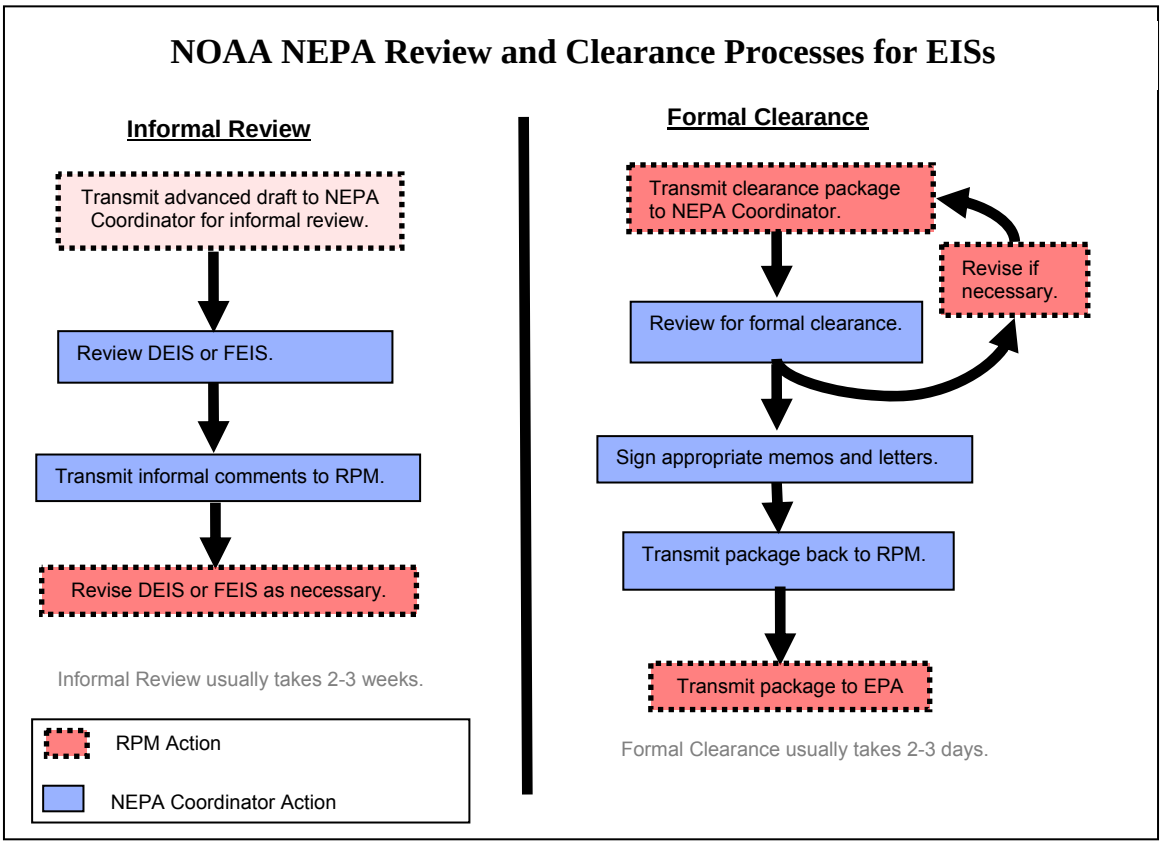

Figure 17. NOAA NEPA Review and Clearance Processes for EISs.

5.9.1 PPI Review and Clearance

This section describes PPI's and NOAA NEPA Coordinator review and clearance processes.

Once the draft or final EIS has been reviewed and cleared by the RPM/AA an EIS package is submitted to PPI for review and clearance. The package should include the following:

- A copy of the EIS. For drafts a printed copy is needed, for finals a CD copy is acceptable.
- A memo from the RPM/AA to the NEPA Coordinator explaining the action and the documents the NEPA Coordinator is signing.
- A letter from the NEPA Coordinator to the EPA printed on PPI letterhead. This letter is addressed to Anne Miller and describes the action and the alternatives and designates the Responsible Program Official with contact information.
- A "Dear Reviewer" letter from the NEPA Coordinator printed on PPI letterhead. This letter describes the action and alternatives; provides the address for comments to be submitted; and the deadline for comments to be received. This letter should also state that one copy of comments be submitted to PPI. NAO 216-6 Exhibit 6 shows the format for an EIS Transmittal Letter to Reviewers.

Once the EIS package is received by PPI, it is reviewed and if complete, signed by the NOAA NEPA Coordinator. PPI retains a copy of the EIS and memos and signed memos are returned.

5.10 EPA Review of EISs

Federal agencies are required to file EISs with the Environmental Protection Agency (EPA) (40 CFR 1506.9). EISs must be filed no earlier than they are transmitted to commenting agencies and made available to the public. NOAA NEPA Coordinator clearance is required prior to filing EISs with EPA.

Five bound copies of the DEISs and FEISs are required by EPA headquarters at time of filing. An additional three bound copies should be sent to each affected EPA region office (NAO 216-6 § 5.04c.3). The regional EPA offices are listed at: http://www.epa.gov/compliance/contact/nepa_regional.html. When filing EISs at EPA, a copy of the "Dear Reviewer" letter should be placed inside each copy of the EIS. The original signed "Anne Miller" letter should be submitted to the EPA with the EISs. For more information regarding filing EISs with EPA, refer to the EPA's website at: http://www.epa.gov/compliance/nepa/submiteis/index.html.

EISs may be mailed or delivered in-person to the EPA at the following addresses:

Deliveries by the US Postal Service:
US Environmental Protection Agency
Office of Federal Activities
EIS Filing Section
Ariel Rios Building (South Oval Lobby)
Mail Code 2252-A
1200 Pennsylvania Avenue NW
Washington, DC 20460

Deliveries in-person or by commercial mail services (Federal Express, UPS):
US Environmental Protection Agency
Office of Federal Activities
EIS Filing Section
Ariel Rios Building (South Oval Lobby), Rm 7220
1200 Pennsylvania Avenue NW
Washington, DC 20460

Once a DEIS is received by the EPA, a Notice of Availability (NOA) is published in the *Federal Register* to announce that EIS is available for public comment. This notice also marks the beginning of the required 45 day comment period. The *Federal Register* NOA will include a deadline for comments on the DEIS.

5.10.1 Review of EISs by the U.S. Environmental Protection Agency

Under Section 309 of the Clean Air Act (42 U.S.C. 7609), EPA is responsible for reviewing and commenting on EISs, and for notifying proponents and lead agencies of any deficiencies.

The intent of Section 309 is to give EPA an independent agency review role otherwise absent under NEPA, and to ensure that Federal agencies preparing documentation under NEPA have the benefit of a review by a Federal agency whose primary mission is the protection of the environment. It also directs EPA to comment in writing and to make its comments available for public review.

Section 309 further directs the EPA Administrator to refer "any such legislation, action, or regulation" to CEQ if it is found to be "unsatisfactory from the standpoint of public health or welfare or environmental quality…." It also provides authority for EPA to independently determine that an action proposed by a Federal agency is a major Federal action that would significantly affect the environment even if the proponent or lead agency has determined otherwise.

EPA's review is primarily concerned with identifying and recommending mitigation measures for the significant environmental effects associated with the proposal. The "adequacy" of the information and analysis contained in the documentation is reviewed as needed to support this objective. The adequacy of a document is based on a wide variety of issues, including impact predictions, mitigation measures to be applied, the selection of alternatives analyzed, and consistency with environmental protection processes.

It is EPA's policy to review and comment in writing on all DEISs officially filed with the agency, to provide a rating of the DEIS, and to meet with the proponent and/or lead agency to resolve significant issues.

The purpose of the rating system for DEISs is to summarize the level of EPA's overall concern with the proposal and to define the associated follow-up that will be conducted with the proponent and/or lead agency. It is an alphanumeric system that rates both the environmental acceptability of the proposed action and the adequacy of the NEPA document. In general, the rating is based on the preferred alternative, if identified; otherwise, individual alternatives are rated. EPA's categories for rating the environmental impact of the action are as follows:

- **LO (Lack of Objections).** The review has not identified any potential environmental impacts requiring substantive changes to the proposal.
- **EC (Environmental Concerns).** The review has identified environmental impacts that should be avoided to fully protect the environment. Corrective measures may require changes to the proposal or application of mitigation measures.
- **EO (Environmental Objections).** The review has identified significant environmental impacts that should be avoided to adequately protect the environment. Corrective measures may require substantial changes to the proposal or consideration of some other project alternative.
- **EU (Environmentally Unsatisfactory).** The review has identified adverse environmental impacts that are of sufficient magnitude that EPA believes the action must not proceed as proposed.

EPA's categories for rating the adequacy of DEISs are as follows:

- **"1" (Adequate).** The DEIS adequately sets forth the environmental impact(s) of the preferred alternative, if identified, and those of the alternatives reasonably available to the project or action.
- **"2" (Insufficient Information).** The DEIS does not contain sufficient information to fully assess environmental impacts that should be avoided to fully protect the environment; or the EPA reviewer has identified new, reasonably available alternatives within the spectrum of alternatives analyzed in the DEIS that could reduce the environmental impacts of the proposal. The identified additional information, data, analyses, or discussion should be included in the FEIS.
- **"3" (Inadequate).** The DEIS does not adequately assess the potentially significant environmental impacts of the proposal; or the EPA reviewer has identified new, reasonably available alternatives outside the spectrum of alternatives analyzed in the DEIS that should be analyzed to reduce the potentially significant environmental impacts. The identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review in a supplemental or revised DEIS.

EPA's rating of a DEIS will consist of one of the category combinations shown in Table 1, which also indicates the level of follow-up that EPA should take based on the level of concern identified in its comment letter. When a follow-up phone call or meeting with

EPA is required, its purpose is (1) to describe the specific EPA concerns and discuss ways to resolve them, (2) to ensure that the EPA review has correctly interpreted the proposal and supporting information, and (3) to discuss any ongoing proponent/lead agency actions that might resolve the EPA concerns. EPA's comment letter itself and the assigned rating are not subject to negotiation and will not be changed on the basis of the phone call or meeting unless errors in EPA's understanding of the issues are discovered.

Table 1. EPA Rating Categories and Requirements for Follow-Up to the DEIS Comment Letter

Rating Categories	Follow-Up Action
LO	None
EC-1, EC-2	Phone Call with Proponent/Lead Agency
EO-1, EO -2	Meeting with Proponent/Lead Agency
EO-3, EU -1, EU-2, EU -3	Meeting with Proponent/Lead Agency

5.11 Distribution and Circulation

The requirements and guidelines for circulation and distribution of EISs are discussed below.

NAO 216-6 § 5.04c.5 requires that no later than the date 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 must be sent to parties who submitted comments on the DEIS, interested parties specifically requesting a copy, and others as determined by the RPM. The EIS and related documents must be made available for public inspection at locations deemed appropriate by the RPM, such as public libraries.

Refer to the NOAA NEPA guidance memo, *Guidance on Distribution of Draft and Final Environmental Impact Statements to Commenting Agencies* at: https://www.intranet.nepa.noaa.gov/distributionguide.pdf for more guidance on distribution and timing.

All documents transmitted to the EPA need to be bound. For distribution to other agencies and the public, CD copies are generally acceptable with hard copies available upon request. It is also acceptable to send a postcard to public parties asking if they want to receive a copy of the document and in what type of media. Posting EISs on the internet, in addition to the mailings, is also acceptable.

On the day that the documents are transmitted to EPA, NOAA staff should mail out the copies of the EIS to agencies and interested parties so that by the time the *Federal Register* notice is released, the document will be in the public's possession. If the mailing doesn't occur until after the *Federal Register* notice appears, reviewers will not have the full 45 days in which to comment.

5.12 Administrative Record

The administrative record memorializes the proponent's consideration of all relevant and reasonable factors. Overall, the administrative record should demonstrate and document that NOAA examined the proposed action and its reasonable alternatives thoroughly as required by law.

Records management is important for two reasons: first to satisfy legal requirements and second to enable assembly of documents in litigation. The concept of an administrative record comes from the judicial review section of the Administrative Procedure Act (APA).

The administrative record should consist of relevant and significant documents considered by the NOAA decisionmaker when making the decision. If the document is irrelevant or insignificant, it should not be included in the administrative record. The following types of information should be included in an administrative record:

- Documents relied on by the decisionmaker, or incorporated by reference in documents relied on by the decisionmaker, whether or not those documents support the final agency decision.
- Background documents that help explain the context in which the decision was made.
- Comments received during the public review process from other agencies and the public.
- NOAA's responses to comments received during the public review process.
- Summaries of meetings with the public to discuss the proposed action.

6.0 OTHER TYPES OF NEPA DOCUMENTATION

There are several types of NEPA documents that are adaptations of or modifications to the basic EAs and EISs. Discussed below are supplemental EAs and EISs, programmatic EAs and EISs, tiering, adoption of another agency's NEPA documents, and applicant-triggered NEPA documents.

6.1 Supplemental EAs and EISs

A Supplemental EA or EIS is prepared to amend an original EA or EIS when a significant change in the action is proposed beyond the scope of environmental review in the original EA or EIS, or when significant new circumstances or information arises that could affect the proposed action and its environmental impacts. Supplemental EISs may also be necessary when significant changes to an action are proposed after an FEIS has been released to the public (NAO 216-6 § 4.01y). A supplement may be prepared for an FEIS or a DEIS.

When a supplemental document is prepared, the original EA or EIS should be incorporated by reference (refer to Section 5.5 of this handbook for more information regarding incorporation by reference). Supplemental documents should be prepared in the same manner as normal documents with a draft and final stage and include an NOI in the *Federal Register*. A scoping process is not required for Supplemental documents, but may be appropriate depending on the reason for the supplement. Generally, supplemental documents will not include information from the original EA or EIS. Supplemental NEPA documents will only include new and/or changed information, incorporating the old information by reference.

6.2 Programmatic NEPA Documents

A programmatic NEPA document analyzes 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 (NAO 216-6 § 5.09a). A programmatic document may also be a comprehensive document that considers the impacts of a number of related actions or projects. A programmatic NEPA document may be an EA or an EIS.

NAO 216-6 and CEQ regulations 40 CFR 1500.4(i) encourage the use of programmatic EAs and EISs to eliminate repetitive discussions of similar issues. This streamlining procedure can have two components; a programmatic document coupled with project-specific documents that are more focused in scope (also known as "tiering"). Specific actions that are within the broad program or under the policy should be analyzed through project-specific environmental review documents. A project-specific EA or EIS tiered from a programmatic document summarizes the issues discussed in the programmatic document with respect to the specific action and incorporates discussion from that environmental review by reference. In a project-specific EA or EIS tiered from a

programmatic document, the principal discussion should concentrate on the issues specific to the subsequent action.

Programmatic EAs and EISs are broad in scope and may address a number of related actions or projects; an entire program; or a broad action. In general, programmatic EAs and EISs are less detailed than project-specific EAs or EISs. The range of alternatives, study area, and impacts also tend to be greater in a programmatic document.

When determining whether to develop a programmatic document, consider the following factors:

- Cost effectiveness
- Amount of time to prepare the document (programmatic documents tend to take longer to prepare than project specific EAs and EISs)
- Long-term applicability
- Applicability to other LOs and programs
- Complexity
- Various reviews and clearances

It is important to note that the completion of a programmatic EA or EIS does not replace the need for project-specific environmental reviews. Programmatic documents merely serve to avoid duplicative statements that may result from completing many individual project-specific environmental reviews. Also, programmatic documents do not necessarily lead to tiered NEPA documents (refer to Section 6.3 of this handbook for information regarding tiering).

Refer to the NOAA, December 11, 2001, guidance memo, *Guidance on Programmatic Environmental Impact Statements* at https://www.intranet.nepa.noaa.gov/progr_GC_guidance.pdf for more information regarding programmatic documents.

6.2.1 Programmatic EAs and EISs for Federal Financial Assistance Activities

Programmatic EAs and EISs may also be used for Federal Financial Assistance (i.e., grants) activities. Many grant programs have consistent or typical project types with predictable impacts and the preparation of a programmatic EA or EIS is an efficient way to comply with NEPA without delaying grant awards. A programmatic EA or EIS may analyze a number of projects in one document. Once the programmatic document is developed a checklist is typically used to determine if an action was evaluated in the programmatic document. If the action was analyzed in the programmatic document there is no need to prepare a project specific EA or EIS. A memo or checklist is used to indicate that the project was reviewed in the programmatic EA or EIS.

Preparing a programmatic document is not appropriate for every grant award. Programmatic documents may be appropriate for the following situations:

- The grant activity is part of a larger program.

- Several grant activities of similar nature are occurring in the same area.
- Similar grant activities are funded year after year and it is predicted that the same types of actions will continue to be funded in future years.

6.3 Tiering of NEPA Documents

NAO 216-6 §§ 4.01z and 5.09c define tiering as 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 EA or EIS with subsequent more focused environmental reviews (such as regional or area-wide program environmental reviews or project-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 EA or EIS to a program, plan, or policy statement or analysis of lesser scope to a project-specific environmental review; or b) from an EA or 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.

Refer to the 1983 guidance memo from CEQ, *Guidance Regarding NEPA Regulations* at: http://nepa.gov/nepa/regs/1983/1983guid.htm for more information regarding tiering.

6.4 Adopting Other Agency NEPA Documents

CEQ regulations 40 CFR 1506.3 and NAO 216-6 § 5.09f encourage NOAA programs to adopt NEPA analyses and documents prepared by other agencies when NOAA's action is related to the other agency's action, and provided the EA or EIS meets NEPA's standards. The benefits to NOAA through adopting another agency's NEPA document include savings of time, money, and paperwork. If NOAA wants to adopt another agency's EA or EIS, NOAA must assess and ensure the legal sufficiency of the initial analysis for its purposes.

Figure 18 outlines the general steps to adopt another Federal agency's NEPA document. These steps and others are included in the NOAA NEPA Coordinator's guidance memo, *Procedures for Adopting National Environmental Policy Act Documents Prepared by Other Federal Agencies* at: https://www.intranet.nepa.noaa.gov/004.pdf.

If NOAA is a cooperating agency and the document is sufficient, preparation of the ROD/FONSI and adoption memo are the only steps needed to adopt another agency's document. However, in the case of an EIS, if NOAA is not a cooperating agency, and the document is sufficient, NOAA must file the adopted document with the EPA as NOAA's FEIS, wait the minimum thirty day "cooling off" period, and then file the ROD and write the adoption memo. By becoming a cooperating agency on a NEPA document which

will sufficiently cover NOAA's action, NOAA can save thirty days of review time in the case of an EIS.

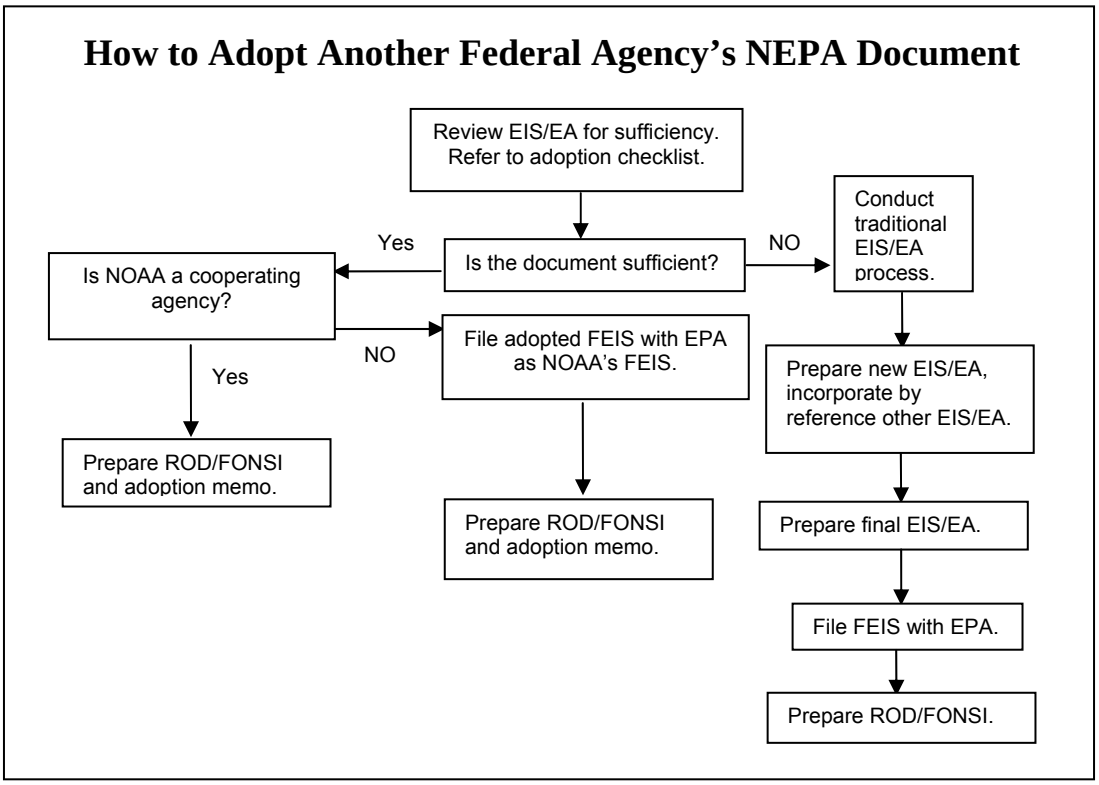

Figure 18. How to Adopt Another Federal Agency's NEPA Document.

More information regarding adoption of NEPA documents can be obtained from the 1983 guidance memo from CEQ, *Guidance Regarding NEPA Regulations* at: http://nepa.gov/nepa/regs/1983/1983guid.htm.

6.5 Applicant-Triggered NEPA Documents

In some circumstances, NOAA actions are triggered by an applicant for a permit, license, or other form of approval. These actions are major Federal actions and are subject to NEPA. The type of NEPA document or level of analysis required will vary depending on the elements of the activity being proposed by the applicant. NAO 216-6 § 4.01b defines applicant as:

> 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.

Note that **Regional Fishery Management Councils are not considered applicants** because of their unique status under Federal law. NOAA takes full responsibility for EAs and EISs submitted by them.

Guidelines to ensure NEPA compliance when the action is triggered by an applicant include:

- NOAA programs should take steps to make sure that applicants are aware of NOAA's NEPA requirements before they apply for a permit, authorization, etc.

- After NOAA receives an application, NOAA should work with the applicant to assess the environmental impacts and determine the level of NEPA analysis (CE, EA, or EIS) that will be required.

- NOAA cannot issue permits until after the appropriate NEPA document has been prepared.

- If NOAA determines that the issuance of a permit, authorization, etc. to an applicant will qualify for a CE, the RPM should prepare a CE memo and include it with the administrative record for the permit or authorization.

- If NOAA determines that an EA and FONSI will be required before it can issue a permit, authorization, etc., NOAA should request the applicant to submit the necessary information for NOAA to prepare the EA. In some cases, NOAA may ask the applicant to prepare the EA.

- The applicant will be required to submit the necessary information for NOAA to determine the level of NEPA analysis and prepare the NEPA document.

- Applicants cannot directly prepare EISs (40 CFR 1506.5(c)).

- The applicant may decide to use a third-party contractor with no vested interests in the project to prepare the EIS for subsequent NOAA approval. The applicant cannot select the **EIS** contractor; NOAA is required to select the contractor (40 CFR 1506.5(c)). Normally, the applicant and NOAA work collaboratively to make this selection, but NOAA remains responsible for the final selection. For **EA** preparation, CEQ regulations do not require that Federal agencies solely select a contractor. (Refer to Section 9.4 of this handbook for more information regarding working with a contractor).

- Regardless of the level of analyses required to take action on a permit, authorization, or other application, NOAA is wholly responsible for the content

and accuracy of the NEPA document and must make its decision based on its independent review of an applicant- or third party- prepared EA or a contractor-prepared EIS.

7.0 OTHER LEGAL REQUIREMENTS

This section provides information about other environmental laws, rules, regulations, and Executive Orders (EOs) that may be relevant to an action subject to NEPA analysis.

CEQ regulations 40 CFR 1500.2 and 40 CFR 1502.25 and NAO 216-6 § 7.0 recommend related environmental laws, rules, regulations, and EOs to be integrated concurrently to the fullest extent possible in EAs and EISs. Brief explanations of how the NEPA process has complied with these legal requirements should be presented in a chapter of the EA or EIS.

This is not to be used as the definitive source for information about these requirements or how to comply with them. This section of the handbook should be used as a general reference source for general information about the requirement; to find suggestions on how to integrate compliance with each into NEPA analyses; and to find out where to get more specific information about the requirement. Additional legal requirements may be applicable to certain projects.

The following Executive Orders and Statutes have websites and additional references to view for more information. In addition, NOAA NEPA Coordinator Staff in PPI are available to answer any questions regarding integration of the Executive Orders and Statutes with the NEPA process.

7.1 Executive Order Requirements

Executive Order 12114 - Environmental Effects Abroad

EO 12114 extends the purpose of NEPA abroad by requiring Federal agencies to consider the environmental effects of major Federal actions outside of the United States.

Executive Order 12866 - Regulatory Planning and Review

EO 12866 requires Federal agencies to consider socioeconomic impacts during rulemaking.

Executive Order 12898 - Environmental Justice

EO 12898 requires Federal agencies to consider the impacts of their actions on minority and low-income populations.

Executive Order 13089 - Coral Reef Protection

EO 13089 requires Federal agencies whose actions may affect US coral reef ecosystems to:

a. Identify their actions that may affect US coral reef ecosystems.
b. Utilize their programs and authorities to protect and enhance the conditions of such ecosystems.

c. To the extent permitted by law, ensure that any actions they authorize, fund, or carry out will not degrade the conditions of such ecosystems.

Executive Order 13112 - Invasive Species

EO 13112 requires Federal 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.

Executive Order 13158 - Marine Protected Areas

EO 13158 requires Federal agencies to identify actions that affect natural or cultural resources that are within a marine protected area (MPA). It further requires Federal agencies, in taking such actions, to avoid harm to the natural and cultural resources that are protected by an MPA.

7.2 Statutory Requirements

Administrative Procedure Act (5 U.S.C. Subchapter II §§551-559)

The Administrative Procedure Act (APA) requires pubic disclosure on Federal rulemaking efforts and other actions that have the effect of rulemaking. This requirement has a stepped process, similar to NEPA, where rules are published first in draft form. After the public has had an opportunity to submit comments on the proposed rule, a final rule is published. The concept of an administrative record comes from the judicial review section of the APA.

Data Quality Act (Public Law 106-554 § 515; H.R. 5658)

The Data Quality Act requires the Director of the Office of Management and Budget to issue guidelines to Federal agencies regarding the assurance of quality, objectivity, utility, and integrity in information (including statistical information) disseminated by Federal agencies.

Coastal Zone Management Act- Federal Consistency (16 U.S.C. 1451-1465)

The Coastal Zone Management Act (CZMA) requires that Federal actions that will have reasonably foreseeable effects on the land or water uses or natural resources of a state's coastal zone must be consistent with Federally approved State Coastal Management Programs. This generally involves conducting consultation with affected State Coastal Management Programs.

Endangered Species Act Section 7 (16 U.S.C. 1531-1544, 87 Stat. 884)

Section 7 of the Endangered Species Act reads as follows:

If NOAA proposes an action that may affect ESA listed species, it must initiate a Section 7 consultation as required by the Endangered Species Act. Staff responsible for ensuring NEPA compliance may be involved in the section 7 consultation. Sections of a NEPA document, such as information on the affected environment, may be used in consultation.

Section 7 consultation must be completed before the FEIS is completed or the FONSI is signed.

Magnuson-Stevens Fishery Conservation and Management Act- Essential Fish Habitat (Public Law 94-265)

Section 305(b)(2) of the amended Magnuson-Stevens Fishery Conservation and Management Act directs each Federal Agency to consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat (EFH) identified under the Magnuson-Stevens Act. Implementing regulations for this requirement are at 50 CFR 600.

National Historic Preservation Act (16 U.S.C. 470)

The National Historic Preservation Act (NHPA) has two major components that affect the responsibilities of Federal agencies. First, under Section 106 of the NHPA, Federal agencies are to consider the effects of their actions on historic resources that are either eligible for listing or are listed on the National Register of Historic Places. Secondly, Section 110 of the NHPA requires Federal agencies that own or control historic resources to consider historic preservation of historic resources as part of their management responsibilities.

National Marine Sanctuaries Act (16 U.S.C. 1431-1445)

Section 304 (d) of the National Marine Sanctuaries Act requires Federal agencies to engage the National Marine Sanctuaries Program (NMSP) in consultation whenever their actions are likely to destroy, cause the loss, or injure any sanctuary resource. Federal agencies are also required to consult on proposed actions that may affect the Gerry E. Studds Stellwagen Bank National Marine Sanctuary.

8.0 COOPERATING AGENCY

This section describes the proper process for including other Federal, state, local agencies, and Indian tribes in the NEPA process for actions in which more than one government entity is involved.

There are often times when NOAA is proposing an action that involves another Federal agency. For example, some restoration projects involve the US Army Corps of Engineers. There are also cases where the action involves a state agency, Indian tribe, or local government. In such cases, RPMs must cooperate with other Federal, state and local agencies, and Indian tribes to the maximum extent practical to reduce duplication in document preparation. CEQ regulations 40 CFR 1501.1(b) emphasize cooperative consultation among agencies before an EA or EIS is prepared, rather than submitting adversarial comments on a completed document. When agencies cooperate, responsibilities are often divided among the partners. In this way, NOAA can reduce the amount of resources it must commit by sharing NEPA responsibilities with other agencies.

For more information regarding cooperating agencies refer to the CEQ, January 30, 2002 memo, *Cooperating Agencies In Implementing The Procedural Requirements Of The National Environmental Policy Act* at: http://nepa.gov/nepa/regs/cooperating/cooperatingagenciesmemorandum.html.

8.1 Definition of Cooperating Agency

A cooperating agency may be any agency other than the lead agency which has discretionary authority over the proposed action, jurisdiction by law, or special expertise with respect to the environmental impacts expected from the proposed action (40 CFR 1508.5).

An agency has discretionary authority if it has the ability to add conditional measures as a part of the proposed action's approval. An agency has jurisdiction by law if it has the power to approve, veto, or finance all or part of the proposed action (40 CFR 1508.15). An agency has special expertise if it has statutory responsibility, agency mission, or related program experience, but not approval authority with regard to the proposed action (40 CFR 1508.26).

8.2 Circumstances that Call for Agency Cooperation

According to CEQ regulations 40 CFR 1501.5(a), there are certain cases in which agencies should cooperate with one another. These cases include instances in which more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

8.3 Lead Agency

Where cooperating agencies are involved in the preparation of an EIS, a "lead agency" must be designated to coordinate efforts. According to CEQ regulations 40 CFR 1501.5(c), the agencies involved jointly decide which will be the lead agency. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

1. Magnitude of agency's involvement.
2. Project approval/disapproval authority.
3. Expertise concerning the action's environmental effects.
4. Duration of agency's involvement.
5. Sequence of agency's involvement.

Federal, state, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an EIS (40 CFR 1501.5(b)).

8.4 Inviting Other Agencies to be Cooperating Agencies

During scoping (refer to Section 5.3 of this handbook for more information regarding scoping), NOAA must make every effort to identify potential cooperating agencies and formally request their participation in the EIS process. Only agencies meeting the definition of cooperating agencies can be invited to cooperate. For many NOAA actions the following agencies may be appropriate as potential cooperating agencies:

- State wildlife management agencies.
- Tribal governments, when the proposed action is on or near a reservation.
- Other Federal resource agencies with expertise in the environmental issues of NOAA's action (Fish and Wildlife Service, Forest Service).
- Agencies from which we need a permit (Army Corps of Engineers, EPA).
- Agencies that may contribute funding or personnel to the action (National Science Foundation).

Entities that cannot participate as cooperating agencies, but can participate in the process through scoping and public commenting include:

- Private companies.
- Individuals.
- Fishery Management Councils.
- Non-governmental organizations.
- Universities and other academic institutions (except when acting through and on behalf of states).

8.5 Accepting Other Agency Offers to Cooperate

If NOAA has jurisdiction by law for an action, NOAA should participate as a cooperating agency. If, however, NOAA determines that its resource limitations preclude any involvement as a cooperating agency, NOAA must reply to the lead agency in writing, providing the reasons for declining the request, and submit a copy of that reply to CEQ. If NOAA has special expertise with respect to any environmental issue that should be addressed in the EIS, it may be a cooperating agency upon request of the lead agency (40 CFR 1501.5 and 40 CFR 1501.6).

If the lead agency has not requested NOAA's participation, NOAA may request a lead agency to designate NOAA as a cooperating agency.

The following should be considered before accepting or declining an offer from a lead agency to cooperate:

- Being a cooperating agency does not mean NOAA agrees with the other agency's position on an action. NOAA's decision may differ from the other agency's decision even based on the same EIS. However, if NOAA adopts the EIS, NOAA must believe the impact analysis within the EIS is adequate.

- If NOAA would have to prepare an EIS for the same or related action, being a co-lead or cooperating agency could allow NOAA to share some of the workload with the lead agency.

- If NOAA's situation changes during an EIS process for which it is a cooperating agency, NOAA may withdraw from the process.

- CEQ encourages agencies to cooperate. If NOAA declines an invitation to be a cooperating agency and it has jurisdiction over the action, NOAA must have good rationale and provide a written explanation to CEQ.

- NOAA can cooperate at different levels of participation. For example, if staff time and resources are limited, NOAA may choose to cooperate by reviewing drafts and providing advice and recommendations. If NOAA needs to be more involved, it may conduct studies to support the EIS preparation or draft certain sections of the document.

- If NOAA is a cooperating agency and the document is sufficient, the ROD/FONSI and adoption memo are the only steps needed to adopt another agency's document. However, in the case of an EIS, if NOAA is not a cooperating agency, but the document is sufficient, NOAA must file the adopted document with the EPA as NOAA's FEIS, wait the minimum thirty days, and then file the ROD and write the adoption memo. By becoming a cooperating

agency on a NEPA document which will sufficiently cover NOAA's action, NOAA can save thirty days of review time in the case of an EIS.

9.0 ADDITIONAL INFORMATION

This section provides additional miscellaneous information that NOAA staff may find helpful while developing NEPA documents.

9.1 Points of Contact for NEPA Questions

If you have questions regarding NEPA you may contact the NOAA NEPA Coordinator or the NOAA NEPA Coordinator Staff at:

Program Planning and Integration
SSMC3 Room 15603
1315 East West Highway
Silver Spring, MD 20910
Phone: 301-713-3318
Fax: 301-713-0585

Contact the appropriate region for points of contact for the Regional NMFS NEPA Coordinators, including the NMFS NEPA Coordinator in NOAA Headquarters.

Line and Program Office of General Counsel representatives and the Office of General Counsel for Environmental Compliance and Safety are also available. Refer to http://www.gc.noaa.gov/offices.html for General Counsel contact information.

9.2 The NOAA NEPA Website

The NOAA NEPA website at https://www.intranet.nepa.noaa.gov provides information about NEPA specific to NOAA.

The website has links to Department of Commerce and NOAA NEPA guidance, including the Department of Commerce Administrative Order 216-6 and NAO 216-6. The website has various tools such as guidance memos. Tools are also available for NOAA Financial Assistance Awards, including the grants CE checklist and the CE memorandum template. NEPA regulations and reference information are also available.

9.3 Common Errors Made During the NEPA Process

The following are some common errors made during the NEPA process:

- Neglecting to publish an NOI before beginning the EIS process.
- Not preparing a ROD.
- Not specifying a clear scope of work for a contractor hired to prepare a NEPA document.
- Trying to force NEPA compliance into a timeframe that is too short.
- Allowing an applicant to select the EIS contractor without NOAA oversight.

- Informing an applicant that it can prepare its own EIS.
- Failing to document the NEPA process in an administrative record.
- Committing NOAA to a particular course of action (through money spent or verbal commitments) before completing the NEPA process.

9.4 Hiring a Contractor to Prepare NOAA's NEPA Documents

NOAA must independently review contractor-prepared NEPA documents and analyses and take full responsibility for their content and accuracy. If NOAA decides to hire a contractor to prepare a NEPA document, consider the following guidelines:

- Consider the experience and expertise of the individuals within a firm that will be assigned to work on NOAA's project.
- Write a scope of work that is as specific as possible and clearly outlines NOAA's requirements and expectations, including tasks the contractor should NOT be expected to accomplish.
- Ensure conflict of interest disclosures are provided.
- Stay involved in the contractor's product as much as possible and provide interim guidance if the contractor is headed in the wrong direction.

If NOAA is accepting a NEPA document from a contractor being paid by an applicant for a permit or grant consider the following:

- CEQ regulations 40 CFR 1506.5(c) require NOAA to choose the contractor.
- Ensure conflict of interest disclosures are signed by each contractor.
- Include contractor original signed statements in the administrative record.
- Ensure that the contractor understands the unique third-party arrangement. Although they are paid by the applicant, effectively the contractor works on behalf of NOAA. As such, NOAA should retain full access to all contractor activities, and all tasks should be approved by NOAA, with the exception of the budget.
- Conduct an internal scoping session prior to initiating public scoping. During this meeting identify roles and responsibilities of the contractor, applicant, and NOAA, and approve the Scope of Work if one was not prepared during the bidding process.
- A third-party may draft a ROD or FONSI, but NOAA is ultimately responsible for these documents.

More information regarding contracting of NEPA document preparation can be obtained from the 1983 guidance memo from CEQ, *Guidance Regarding NEPA Regulations* at: http://nepa.gov/nepa/regs/1983/1983guid.htm.

10.0 REFERENCES

40 CFR 1500-1508, Council on Environmental Quality implementing regulations for NEPA, http://nepa.gov/nepa/regs/ceq/toc_ceq.htm.

42 U.S.C. 4321-4375, The National Environmental Policy Act, http://nepa.gov/nepa/regs/nepa/nepaeqia.htm.

CEQ Guidance Memo, *Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping*, April 30, 1981, http://nepa.gov/nepa/regs/scope/scoping.htm.

CEQ, *Guidance Regarding NEPA Regulations*, 1983, http://nepa.gov/nepa/regs/1983/1983guid.htm

CEQ Report, *Considering Cumulative Effects Under the National Environmental Policy Act*, http://nepa.gov/nepa/ccenepa/ccenepa.htm.

NAO 216-6, http://www.corporateservices.noaa.gov/~ames/NAOs/Chap_216/naos_216_6.html or http://www.nepa.noaa.gov/NAO216_6.pdf.

NEPA's Forty Most Asked Questions, http://nepa.gov/nepa/regs/40/40p3.htm.

NOAA Guidance Memo, *Procedures for Adopting National Environmental Policy Act Documents Prepared by Other Federal Agencies* at: https://www.intranet.nepa.noaa.gov/004.pdf.

NOAA Guidance Memo, *Guidance on Distribution of Draft and Final Environmental Impact Statements to Commenting Agencies*, October 14, 2003, https://www.intranet.nepa.noaa.gov/distributionguide.pdf.

NOAA Guidance Memo, *Legal Guidance on Determining Related Actions and Developing Reasonable Alternatives for Inclusion in a Single EIS*, December 16, 2002, https://www.intranet.nepa.noaa.gov/reasonable_alts.pdf.

11.0 ATTACHMENTS

Attachment A: NOAA's Administrative Order 216-6

Attachment B: Council on Environmental Quality's Regulations for Implementing the Provisions of the National Environmental Policy Act

Attachment C: Format for FONSI Transmittal Memorandum

Attachment D: Format for FONSI Transmittal Letter to Interested Parties

Attachment E: Format for Draft EIS/Final EIS Transmittal to EPA

Attachment F: Categorical Exclusion Checklist for Non-Construction NOAA Grants

Attachment G: Categorical Exclusion Memorandum Template for Grant Actions

ATTACHMENT A: NOAA'S ADMINISTRATIVE ORDER 216-6

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

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Exhibit 7. Format for Draft EIS/Final EIS Transmittal to EPA.
Exhibit 8. Format for FONSI Transmittal Letter to Interested Parties.
Exhibit 9. Format for FONSI Transmittal Memorandum (from appropriate Assistant Administrator, Staff Office or Program Office Director to NEPA Coordinator).

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

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

SECTION 1. PURPOSE.

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

1.02 Subjects Addressed by this Order.

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

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

1.02b.1. NOAA's policy has been, and continues to be, that the scope of its analysis will be to consider the impacts of actions on the marine environment both within and beyond the US 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 US 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 chang3s 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 US 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 US 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 US 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 US 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 US 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

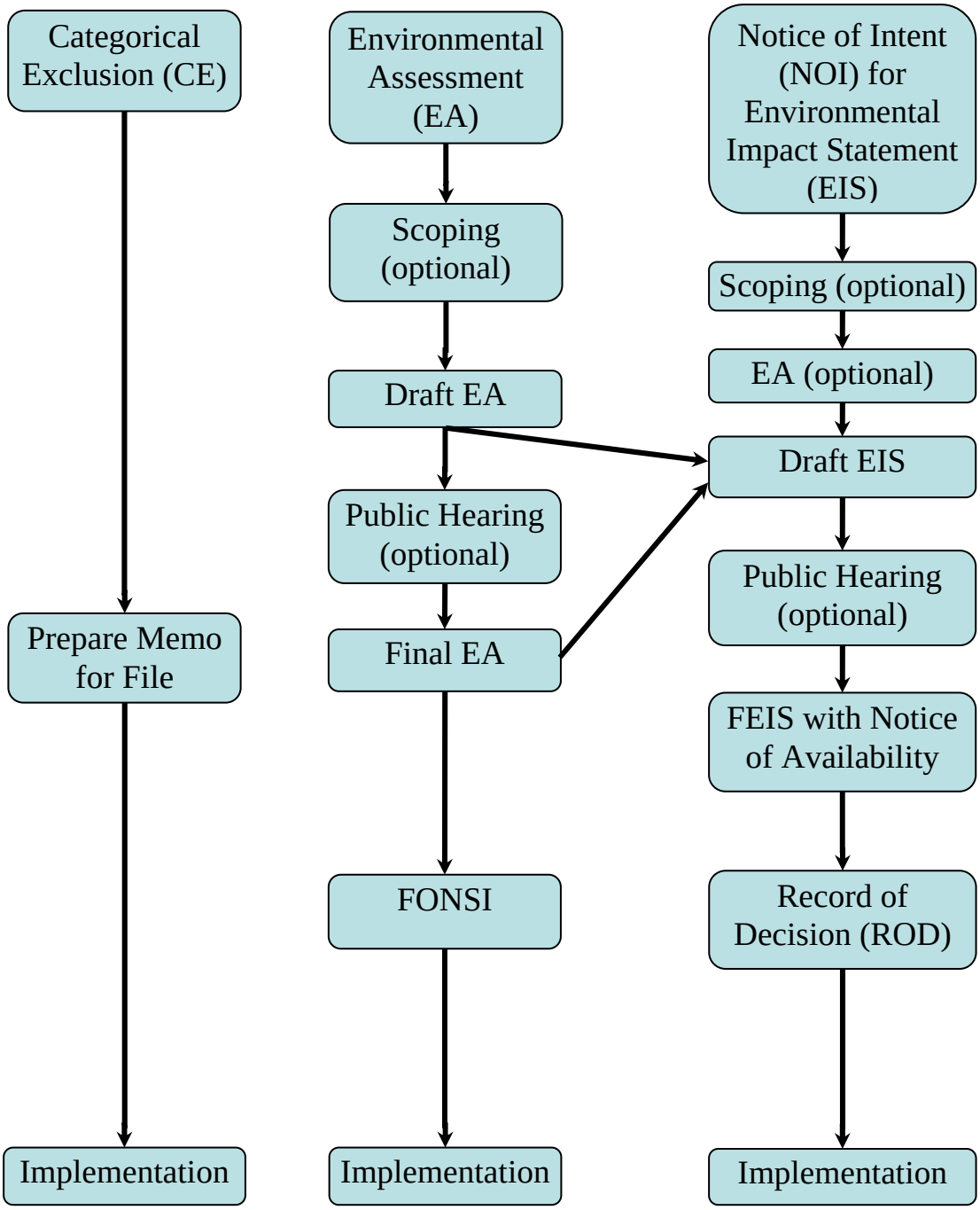

Exhibit 3. NOAA Contacts for Common Actions Subject to NEPA

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 Management (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.

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:

Exhibit 4. (continued)

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 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 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.

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:

Exhibit 5b. (continued)

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.

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 Reviewers

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

ATTACHMENT B: COUNCIL ON ENVIRONMENTAL QUALITY'S REGULATIONS FOR IMPLEMENTING THE PROVISIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

PART 1500--PURPOSE, POLICY, AND MANDATE

Sec.

1500.1 Purpose.
1500.2 Policy.
1500.3 Mandate.
1500.4 Reducing paperwork.
1500.5 Reducing delay.
1500.6 Agency authority.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq*.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and E.O. 11514, Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55990, Nov. 28, 1978, unless otherwise noted.

Sec. 1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork--even excellent paperwork--but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

Sec. 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real

environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

Sec. 1500.3 Mandate.

Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 *et seq*.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq*.) section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

Sec. 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (Sec. 1502.2(c)), by means such as setting appropriate page limits (Secs. 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (Sec. 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (Sec. 1502.2(b)).

(d) Writing environmental impact statements in plain language (Sec. 1502.8).

(e) Following a clear format for environmental impact statements (Sec. 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (Secs. 1502.14 and 1502.15) and reducing emphasis on background material (Sec. 1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (Sec. 1501.7).

(h) Summarizing the environmental impact statement (Sec. 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (Sec. 1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (Secs. 1502.4and 1502.20).

(j) Incorporating by reference (Sec. 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (Sec. 1502.25).

(l) Requiring comments to be as specific as possible (Sec. 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (Sec. 1503.4(c)).

(n) Eliminating duplication with State and local procedures, by providing for joint preparation (Sec. 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (Sec. 1506.3).

(o) Combining environmental documents with other documents (Sec. 1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (Sec. 1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (Sec. 1508.13).

[43 FR 55990, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

Sec. 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Integrating the NEPA process into early planning (Sec. 1501.2).

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (Sec. 1501.6).

(c) Insuring the swift and fair resolution of lead agency disputes (Sec. 1501.5).

(d) Using the scoping process for an early identification of what are and what are not the real issues (Sec. 1501.7).

(e) Establishing appropriate time limits for the environmental impact statement process (Secs. 1501.7(b)(2) and 1501.8).

(f) Preparing environmental impact statements early in the process (Sec. 1502.5).

(g) Integrating NEPA requirements with other environmental review and consultation requirements (Sec. 1502.25).

(h) Eliminating duplication with State and local procedures by providing for joint preparation (Sec. 1506.2) and with other Federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency (Sec. 1506.3).

(i) Combining environmental documents with other documents (Sec. 1506.4).

(j) Using accelerated procedures for proposals for legislation (Sec. 1506.8).

(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (Sec. 1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.

(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (Sec. 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

Sec. 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

PART 1501--NEPA AND AGENCY PLANNING

Sec.

1501.1 Purpose.
1501.2 Apply NEPA early in the process.
1501.3 When to prepare an environmental assessment.
1501.4 Whether to prepare an environmental impact statement.
1501.5 Lead agencies.
1501.6 Cooperating agencies.
1501.7 Scoping.
1501.8 Time limits.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq*.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609, and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55992, Nov. 29, 1978, unless otherwise noted.

Sec. 1501.1 Purpose.

The purposes of this part include:

(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.

(c) Providing for the swift and fair resolution of lead agency disputes.

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

Sec. 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment," as specified by Sec. 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

Sec. 1501.3 When to prepare an environmental assessment.

(a) Agencies shall prepare an environmental assessment (Sec. 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in Sec. 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

Sec. 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in Sec. 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (Sec. 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by Sec. 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (Sec. 1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (Sec. 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in Sec. 1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under Sec. 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to Sec. 1507.3, or

(ii) The nature of the proposed action is one without precedent.

Sec. 1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (Sec. 1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

[43 FR 55992, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

Sec. 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in Sec. 1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b)(3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

Sec. 1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (Sec. 1508.22) in the Federal Register except as provided in Sec. 1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under Sec. 1507.3(c). An agency may give notice in accordance with Sec. 1506.6.

(2) Determine the scope (Sec. 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (Sec. 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in Sec. 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (Sec. 1502.7).

(2) Set time limits (Sec. 1501.8).

(3) Adopt procedures under Sec. 1507.3to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

Sec. 1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by Sec. 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: Provided, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

(1) Consider the following factors in determining time limits:

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

(iv) Degree of public need for the proposed action, including the consequences of delay.

(v) Number of persons and agencies affected.

(vi) Degree to which relevant information is known and if not known the time required for obtaining it.

(vii) Degree to which the action is controversial.

(viii) Other time limits imposed on the agency by law, regulations, or executive order.

(2) Set overall time limits or limits for each constituent part of the NEPA process, which may include:

(i) Decision on whether to prepare an environmental impact statement (if not already decided).

(ii) Determination of the scope of the environmental impact statement.

(iii) Preparation of the draft environmental impact statement.

(iv) Review of any comments on the draft environmental impact statement from the public and agencies.

(v) Preparation of the final environmental impact statement.

(vi) Review of any comments on the final environmental impact statement.

(vii) Decision on the action based in part on the environmental impact statement.

(3) Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a Federal Agency to set time limits.

PART 1502--ENVIRONMENTAL IMPACT STATEMENT

Sec.

1502.1 Purpose.
1502.2 Implementation.
1502.3 Statutory requirements for statements.
1502.4 Major Federal actions requiring the preparation of environmental impact statements.
1502.5 Timing.
1502.6 Interdisciplinary preparation.
1502.7 Page limits.
1502.8 Writing.
1502.9 Draft, final, and supplemental statements.
1502.10 Recommended format.
1502.11 Cover sheet.
1502.12 Summary.
1502.13 Purpose and need.
1502.14 Alternatives including the proposed action.
1502.15 Affected environment.
1502.16 Environmental consequences.
1502.17 List of preparers.
1502.18 Appendix.
1502.19 Circulation of the environmental impact statement.
1502.20 Tiering.
1502.21 Incorporation by reference.
1502.22 Incomplete or unavailable information.
1502.23 Cost-benefit analysis.
1502.24 Methodology and scientific accuracy.
1502.25 Environmental review and consultation requirements.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq*.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55994, Nov. 29, 1978, unless otherwise noted.

Sec. 1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

Sec. 1502.2 Implementation.

To achieve the purposes set forth in Sec. 1502.1 agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (Sec. 1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

Sec. 1502.3 Statutory requirements for statements.

As required by sec. 102(2)(C) of NEPA environmental impact statements (Sec. 1508.11) are to be included in every recommendation or report.

On proposals (Sec. 1508.23).

For legislation and (Sec. 1508.17).

Other major Federal actions (Sec. 1508.18).

Significantly (Sec. 1508.27).

Affecting (Secs. 1508.3, 1508.8).

The quality of the human environment (Sec. 1508.14).

Sec. 1502.4 Major Federal actions requiring the preparation of environmental impact statements.

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (Sec. 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (Sec. 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (Sec. 1501.7), tiering (Sec. 1502.20), and other methods listed in Secs. 1500.4and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

Sec. 1502.5 Timing.

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (Sec. 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made (Secs. 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

Sec. 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an inter- disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (Sec. 1501.7).

Sec. 1502.7 Page limits.

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of Sec. 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

Sec. 1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear

prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

Sec. 1502.9 Draft, final, and supplemental statements.

Except for proposals for legislation as provided in Sec. 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

Sec. 1502.10 Recommended format.

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for action.

(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).

(f) Affected environment.

(g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act).

(h) List of preparers.

(i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.

(j) Index.

(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in Secs. 1502.11 through 1502.18, in any appropriate format.

Sec. 1502.11 Cover sheet.

The cover sheet shall not exceed one page. It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the statement.

(f) The date by which comments must be received (computed in cooperation with EPA under Sec. 1506.10).

The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

Sec. 1502.12 Summary.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

Sec. 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

Sec. 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (Sec. 1502.15) and the Environmental Consequences (Sec. 1502.16), it should present the environmental impacts of the proposal and the alternatives in

comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

Sec. 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

Sec. 1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under Sec. 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in Sec. 1502.14. It shall include discussions of:

(a) Direct effects and their significance (Sec. 1508.8).

(b) Indirect effects and their significance (Sec. 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See Sec. 1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under Sec. 1502.14will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under Sec. 1502.14(f)).

[43 FR 55994, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

Sec. 1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (Secs. 1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

Sec. 1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (Sec. 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

Sec. 1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in Sec. 1502.18(d) and unchanged statements as provided in Sec. 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

Sec. 1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (Sec. 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or

environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Section 1508.28).

Sec. 1502.21 Incorporation by reference.

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

Sec. 1502.22 Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

(1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the Federal Register on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.

[51 FR 15625, Apr. 25, 1986]

Sec. 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those

considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

Sec. 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

Sec. 1502.25 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq*.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq*.), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq*.), and other environmental review laws and executive orders.

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

PART 1503--COMMENTING

Sec.

1503.1 Inviting comments.
1503.2 Duty to comment.
1503.3 Specificity of comments.
1503.4 Response to comments.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq*.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55997, Nov. 29, 1978, unless otherwise noted.

Sec. 1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed.

Office of Management and Budget Circular A-95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used,

by mutual agreement of the lead agency and the clearinghouse, for securing State and local reviews of the draft environmental impact statements.

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under Sec. 1506.10.

Sec. 1503.2 Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in Sec. 1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

Sec. 1503.3 Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

Sec. 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (Sec. 1502.19). The entire document with a new cover sheet shall be filed as the final statement (Sec. 1506.9).

PART 1504--PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Sec.

1504.1 Purpose.
1504.2 Criteria for referral.
1504.3 Procedure for referrals and response.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55998, Nov. 29, 1978, unless otherwise noted.

Sec. 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

Sec. 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

(a) Possible violation of national environmental standards or policies.

(b) Severity.

(c) Geographical scope.

(d) Duration.

(e) Importance as precedents.

(f) Availability of environmentally preferable alternatives.

Sec. 1504.3 Procedure for referrals and response.

(a) A Federal agency making the referral to the Council shall:

(1) Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.

(2) Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.

(3) Identify any essential information that is lacking and request that it be made available at the earliest possible time.

(4) Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) of this section.

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,

(ii) Identify any existing environmental requirements or policies which would be violated by the matter,

(iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,

(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,

(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and

(vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral.

(2) Be supported by evidence.

(3) Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response.

(f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Hold public meetings or hearings to obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f)(2), (3), or (5) of this section.

(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).

[43 FR 55998, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

Attachment B: Council on Environmental Quality's Regulations for Implementing the Provisions of the National Environmental Policy Act

PART 1505--NEPA AND AGENCY DECISIONMAKING

Sec.

1505.1 Agency decisionmaking procedures.
1505.2 Record of decision in cases requiring environmental impact statements.
1505.3 Implementing the decision.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq*.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55999, Nov. 29, 1978, unless otherwise noted.

Sec. 1505.1 Agency decisionmaking procedures.

Agencies shall adopt procedures (Sec. 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

Sec. 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (Sec. 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6(c) and (d), and Part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

Sec. 1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (Sec. 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

PART 1506--OTHER REQUIREMENTS OF NEPA

Sec.

1506.1 Limitations on actions during NEPA process.
1506.2 Elimination of duplication with State and local procedures.
1506.3 Adoption.
1506.4 Combining documents.
1506.5 Agency responsibility.
1506.6 Public involvement.
1506.7 Further guidance.
1506.8 Proposals for legislation.
1506.9 Filing requirements.
1506.10 Timing of agency action.
1506.11 Emergencies.
1506.12 Effective date.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq*.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 56000, Nov. 29, 1978, unless otherwise noted.

Sec. 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in Sec. 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (e.g. long leadtime equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

Sec. 1506.2 Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

Sec. 1506.3 Adoption.

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under Part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

Sec. 1506.4 Combining documents.

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

Sec. 1506.5 Agency responsibility.

(a) Information. If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (Sec. 1502.17). It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

(b) Environmental assessments. If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) Environmental impact statements. Except as provided in Secs. 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under Sec. 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

Sec. 1506.6 Public involvement.

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor. An agency engaged in rulemaking may provide notice by mail to

national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

Sec. 1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

(1) Research activities;

(2) Meetings and conferences related to NEPA; and

(3) Successful and innovative procedures used by agencies to implement NEPA.

Sec. 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (Sec. 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

(1) There need not be a scoping process.

(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute; Provided, That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by Secs. 1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 *et seq*.) and the Wilderness Act (16 U.S.C. 1131 *et seq*.)).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

Sec. 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, DC 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and Sec. 1506.10.

Sec. 1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the Federal Register each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under Sec. 1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement.

An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see Sec. 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

[43 FR 56000, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

Sec. 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

Sec. 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under section 102(2)(D) of the Act or under section 104(h) of the Housing and Community

Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council's guidelines published in the Federal Register of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

PART 1507--AGENCY COMPLIANCE

Sec.
1507.1 Compliance.
1507.2 Agency capability to comply.
1507.3 Agency procedures.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq*.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 56002, Nov. 29, 1978, unless otherwise noted.

Sec. 1507.1 Compliance.

All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by Sec. 1507.3to the requirements of other applicable laws.

Sec. 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of section 102(2)(E) extends to all such proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of section 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

Sec. 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the Federal Register, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the Federal Register for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by Secs. 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (Sec. 1508.4)).

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in Sec. 1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by Sec. 1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

Attachment B: Council on Environmental Quality's Regulations for Implementing the Provisions of the National Environmental Policy Act

PART 1508--TERMINOLOGY AND INDEX

Sec.

1508.1 Terminology.
1508.2 Act.
1508.3 Affecting.
1508.4 Categorical exclusion.
1508.5 Cooperating agency.
1508.6 Council.
1508.7 Cumulative impact.
1508.8 Effects.
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1508.13 Finding of no significant impact.
1508.14 Human environment.
1508.15 Jurisdiction by law.
1508.16 Lead agency.
1508.17 Legislation.
1508.18 Major Federal action.
1508.19 Matter.
1508.20 Mitigation.
1508.21 NEPA process.
1508.22 Notice of intent.
1508.23 Proposal.
1508.24 Referring agency.
1508.25 Scope.
1508.26 Special expertise.
1508.27 Significantly.
1508.28 Tiering.

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq*.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 56003, Nov. 29, 1978, unless otherwise noted.

Sec. 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

Sec. 1508.2 Act.

"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, *et seq*.) which is also referred to as "NEPA."

Sec. 1508.3 Affecting.

"Affecting" means will or may have an effect on.

Sec. 1508.4 Categorical exclusion.

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons

stated in Sec. 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

Sec. 1508.5 Cooperating agency.

"Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in Sec. 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

Sec. 1508.6 Council.

"Council" means the Council on Environmental Quality established by Title II of the Act.

Sec. 1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Sec. 1508.8 Effects.

"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Sec. 1508.9 Environmental assessment.

"Environmental assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

Sec. 1508.10 Environmental document.

"Environmental document" includes the documents specified in Sec. 1508.9 (environmental assessment), Sec. 1508.11 (environmental impact statement), Sec. 1508.13 (finding of no significant impact), and Sec. 1508.22 (notice of intent).

Sec. 1508.11 Environmental impact statement.

"Environmental impact statement" means a detailed written statement as required by section 102(2)(C) of the Act.

Sec. 1508.12 Federal agency.

"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

Sec. 1508.13 Finding of no significant impact.

"Finding of no significant impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (Sec. 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (Sec. 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

Sec. 1508.14 Human environment.

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (Sec. 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

Sec. 1508.15 Jurisdiction by law.

"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

Sec. 1508.16 Lead agency.

"Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

Sec. 1508.17 Legislation.

"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

Sec. 1508.18 Major Federal action.

"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (Sec. 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (Secs. 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 *et seq*., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 *et seq*.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

Sec. 1508.19 Matter.

"Matter" includes for purposes of Part 1504:

(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

Sec. 1508.20 Mitigation.

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

Sec. 1508.21 NEPA process.

"NEPA process" means all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.

Sec. 1508.22 Notice of intent.

"Notice of intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

Sec. 1508.23 Proposal.

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (Sec. 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

Sec. 1508.24 Referring agency.

"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

Sec. 1508.25 Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs. 1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequencies together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include: (1) No action alternative.

(2) Other reasonable courses of actions.

(3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

Sec. 1508.26 Special expertise.

"Special expertise" means statutory responsibility, agency mission, or related program experience.

Sec. 1508.27 Significantly.

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that 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.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Attachment B: Council on Environmental Quality's Regulations for Implementing the Provisions of the National Environmental Policy Act

[43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

Sec. 1508.28 Tiering.

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site- specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

ATTACHMENT C: FORMAT FOR FONSI TRANSMITTAL MEMORANDUM

MEMORANDUM FOR:	Rodney F. Weiher, Ph.D. NOAA NEPA Coordinator
FROM:	[Insert name and title of appropriate Assistant Administrator, Staff Office, or Program Office Director]
SUBJECT:	Finding of No Significant Impact for the Environmental Assessment on [Insert title of the environmental assessment or similar wording that identifies the type of action (e.g., FMP, Amendment, or other action).] - - 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

Attachments

ATTACHMENT D: 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. Also, please send one copy of your comments to my staff at NOAA Program Planning and Integration (PPI), SSMC3, Room 15603, 1315 East-West Highway, Silver Spring, MD 20910.

Sincerely,

Rodney F. Weiher, Ph.D.
NEPA Coordinator

Enclosure

ATTACHMENT E: FORMAT FOR DRAFT EIS/FINAL EIS TRANSMITTAL TO EPA

Ms. Anne Miller
US Environmental Protection Agency
Office of Federal Activities
EIS Filing Section
Ariel Rios Building (South Oval Lobby), Mail Code 2252-A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Ms. Miller:

Enclosed for your consideration are five (verify number with NEPA Coordinator) copies of the [Draft, Draft Supplemental, Final, or Final Supplemental] Environmental Impact Statement for [Insert title of the document]. [If this document is a DSEIS or FSEIS, identify the title of the original EIS.] We request that you make this document available for public comment for [45 for a DEIS/DSEIS, 30 for a FEIS/FSEIS] days (or the appropriate length of time according to the action). (If special arrangements have been made with CEQ or EPA regarding abbreviated review periods, this should be noted as well.) NOAA has sent copies of the [DEIS, DSEIS, FEIS, or FSEIS] to the appropriate EPA Regional Offices.

[ADDITIONAL PARAGRAPH(S) OR INFORMATION AS NECESSARY]

Please identify the Responsible Program Official and appropriate contact information within the Notice of Availability. This Official is [Official's name, title, address, and telephone number.]. This [DEIS, DSEIS, FEIS, or FSEIS] is also available electronically [if applicable] from [Insert website address or URL.].

Concurrent with this transmittal to the Environmental Protection Agency, copies of the [DEIS, DSEIS, FEIS, or FSEIS] are being mailed to other interested Federal agencies and parties. Should you have any questions with this filing, please contact the Responsible Official noted above or NOAA Program Planning and Integration at 301-713-1622.

Sincerely,

Rodney F. Weiher, Ph.D.
NEPA Coordinator

Enclosures

ATTACHMENT F: CATEGORICAL EXCLUSION CHECKLIST FOR NON-CONSTRUCTION NOAA GRANTS

The CE Checklist for Non-Construction NOAA Grants is available at: https://www.intranet.nepa.noaa.gov/CE_Checklist_NonConstr_Grants.pdf.

Categorical Exclusion Checklist for Non-Construction
National Oceanic and Atmospheric Administration Grants

The purpose of this checklist is to assist National Oceanic and Atmospheric Administration's (NOAA) responsible program managers (RPMs) in determining if the grant(s) they are proposing qualifies for categorical exclusion status under NOAA's National Environmental Policy Act (NEPA) guidelines. Normally, NOAA grants qualify for categorical exclusion from NEPA requirements when the environmental effects are minor or negligible. However, as stated in NOAA's guidelines for implementing NEPA (NAO 216-6; http://www.corporateservices.noaa.gov/%7Eames/NAOs/Chap_216/naos_216_6.html) at 5.05.c, under certain conditions, preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required for proposed grants when 1) a grant program is entirely new; 2) under extraordinary circumstances in which normally excluded actions may have a significant environmental impact; or 3) potential impacts associated with the grant are highly controversial. By answering the questions in this checklist, the RPM can determine whether the effects of the grant qualify for categorical exclusion, or require further NEPA documentation in the form of an EA or an EIS. This checklist should be filled out for a grant which is not automatically determined to require an EA or EIS in order to establish compliance with administrative record requirements regarding categorical exclusions (CEs).

1. Identify the NOAA Grant Project and Program:_____
_____.

2. Attach a brief, but specific project description, including: the grant/award recipient, geographical location, and the scope of project(s).

   Does the grant involve any Federal permits, or other Federal agency direct involvement, activity, oversight, or funding? Yes ( ) No ( )

3. Is this an entirely new NOAA grant program? Yes ( ) No ( )

4. Will this NOAA grant establish a precedent or represent a decision in principle about future grant and award actions with potentially significant environmental effects? Yes ( ) No ( )

5. Have a number of similar grant actions been considered? Yes ( ) No ( )

   If yes, although the proposed action's effects may be individually insignificant, will its addition to existing and reasonably foreseeable actions result in cumulatively significant impacts? Yes ( ) No ( )

6. Could this NOAA grant have significant effects on public health or safety? Yes ( ) No ( )

   Will the proposed action:
   - Create high levels of noise for an extended period of time? Yes ( ) No ( )
   - Have long or short term aesthetic effects, e.g., visual effects or effects on scenery? Yes ( ) No ( )
   - Require large amounts of outdoor lighting or create any unusual odors? Yes ( ) No ( )
   - Require large amounts of water or electricity for an extended period or time? Yes ( ) No ( )
   - Have long or short term effects on the transportation infrastructure, or create a significant increase in local traffic? Yes ( ) No ( )

7. Could this NOAA grant have significant adverse impacts on any geographic area(s) with unique characteristics? Areas to consider include coral reefs, marine protected areas, marine sanctuaries, essential fish habitat, historic or cultural resources, park or refuge lands, wild or scenic rivers, wetlands, or ecologically significant or critical areas, including those listed on the National Register of Natural Landmarks, or listed or eligible for listing on the National Register of Historic Places. Yes ( ) No ( )

   Will the proposed action:
   - Degrade or disturb coral reefs? Yes ( ) No ( )
   - Degrade or disturb previously undisturbed areas? Yes ( ) No ( )
   - Affect any areas such as wetlands and flood plains? Yes ( ) No ( )
   - Disturb archaeological or historic resources? Yes ( ) No ( )

8. Could this NOAA grant have highly uncertain and potentially significant environmental effects or involve unique or unknown risks? Yes ( ) No ( )

Will the proposed action:

- Potentially result in the introduction or spread of a non-indigenous species? Yes ( ) No ( )
- Involve aquaculture activities that could result in the introduction or spread of invasive or non-indigenous species? Yes ( ) No ( )
- Significantly impact water resources such as surface or groundwater? Yes ( ) No ( )
- Significantly contribute to water degradation or impairment? Yes ( ) No ( )
- Generate large amounts of hazardous waste or any toxic waste? Yes ( ) No ( )
- Emit dangerous levels of ionizing or non-ionizing radiation? Yes ( ) No ( )
- Result (directly or indirectly) in the generation of large amounts of air pollution? Yes ( ) No ( )

9. Could this NOAA grant have adverse effects on species listed or proposed to be listed as Endangered or Threatened, or have adverse effects on designated critical habitats? Yes ( ) No ( )

10. Will this grant threaten to violate a Federal state, local, or tribal law imposed for the protection of the environment? Yes ( ) No ( )

11. Will this NOAA grant have highly controversial environmental effects (i.e., are the effects likely to be subject to serious scientific dispute)? Yes ( ) No ( )

IF YES WAS CHECKED FOR ANY OF THE ITEMS ABOVE: Please list the item number, provide additional information about anticipated effects, and contact the NEPA Coordinator in PPI (301-713-3318) to discuss alternatives for providing NEPA documentation.

IF NO WAS CHECKED FOR ALL OF THE ITEMS ABOVE: The grant activity may qualify for a Categorical Exclusion (CE). Please review the categories for CEs below and select the applicable category.

Attachment F: Categorical Exclusion Checklist for Non-Construction NOAA Grants

APPLICABLE? YES/NO	CATEGORY	DESCRIPTION
	Research NAO 216-6 6.03.c.3(a)	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.
	Financial and Planning Grants NAO 216-6 6.03.c.3(b)	Financial support services and programs, such as Federal or state loans or grants, (e.g., Saltsonstall-Kennedy grant, a fishery loan or grant disbursement under the Fishermen's Contingency Fund or Fisheries Obligation Guarantee Program), where the environmental effects are minor or negligible, and no environmental consequences are anticipated beyond those already analyzed in establishing such programs, laws or regulations. New financial support services and programs should undergo an environmental analysis at the time of conception to determine if a CE could apply to subsequent actions.
	Minor Project Activities NAO 216-6 6.03.c.3(c)	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 the project's impacts in conjunction with past, present or reasonably foreseeable future actions may result in a significant impact the human environment (40 CFR 1508.7).
	Pre-Proposal Actions 40 CFR 1508.23	Planning actions before a proposal exists do not require NEPA analysis. A "proposal" exists at that stage in the development of an action when a NOAA organization has a goal and begins its decision-making process, including consideration of environmental impacts, toward realization of that goal.
	Administrative or Programmatic Functions NAO 216-6 6.03.c.3(d)	The following NOAA programmatic functions that hold no potential for significant environmental impacts qualify for a CE: • Program planning and budgeting • 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 6.03.b of NAO 216-6 • 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 • Administrative support advisory bodies

	Regulations Implementing Projects or Plans NAO 216-6 6.03.c.3(i)	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.
	Listing Actions Under Sec. 4(a) of ESA NAO 216-6 6.03.e.3	The following actions may be appropriate for CE: • Preparation of recovery plans pursuant to Section 4(f)(1), 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 NAO 216-6 Section 6.03e.2(b) for guidance on NEPA compliance for implementation of recovery actions). • Permits for scientific research or to enhance the propagation or survival of listed species pursuant to Section 10(a)(1)(a) of the ESA (except for permits covered in NAO 6.03e.2(c)). 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. • Critical habitat designations where a designation overlaps with listing protections and is unlikely to have a significant effect on the human environment. CEs will not apply for 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. • "Low effect" incidental take permits under Section 10(a)(1)(B) of ESA that individually or cumulatively have a minor or negligible effect on the species covered in the habitat conservation plan.
	MMPA NAO 216-6 6.03.f.2	In general, scientific research, enhancement, photography, and public display permits issued under Section 101(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 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. Small take incidental harassment authorizations under Section 101(a)(5)(d), tiered from a programmatic environmental review, are categorically excluded from further review. If such an authorization does not tier from a programmatic environmental review, that action may require an EIS, EA, or CE, based on a case-by-case review.

	Restoration Actions NAO 216-6 6.03.b.2 NAO 216-6 6.03.b.3	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 CE (40 CFR 1508.4), provided such actions meet all of the following criteria: • Are intended to restore an ecosystem, habitat, biotic community, or population of living resources to a determinable pre-impact condition; • Use for transplant only organisms currently or formerly present at the site or in its immediate vicinity; • Do not require substantial dredging, excavation, or placement of fill; and • Do not involve a significant added risk of human or environmental exposure to toxic or hazardous substances. Examples of restoration actions likely to meet all of the above criteria include: • On-site, in-kind restoration actions in response to a specific injury (e.g., revegetation of habitats or topographic features such as restoration of seagrass meadows, salt marshes, or wetland areas; restoration of submerged, riparian intertidal or wetland substrates; replacement or restoration of shellfish beds through transplant or restocking; or structural or biological repair or restoration of coral reefs • Actions to restore historic habitat hydrology, where increased risk of flood or adverse fishery impacts are not significant (e.g., restoration, rehabilitation, or repair of fish passageways or spawning areas; restoration of tidal or non-tidal wetland inundation • Actions to enhance the natural recovery processes of living resources or systems affected by anthropogenic impact (e.g., use of exclusion methods such as fencing to protect stream corridors, riparian areas or other sensitive habitat; actions to stabilize dunes, marsh edges, or other mobile shoreline features
	Fisheries Management Plans and Plan Amendments NAO 216-6 6.03.d.4	Fisheries management actions may qualify for a CE pursuant to Section 9.03a.3. of NAO 216-6 if the actions individually and cumulatively do not have the potential to pose significant effect to the quality of the human environment. Actions that may receive a CE include: • 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 fisheries management plan (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 • Minor technical additions, corrections, or changes to an FMP. CE determinations for FMPs and FMP amendments require specific documentation. Refer to NAO 216-6 at 6.03c.3d.4 for further instructions.

ATTACHMENT G: CATEGORICAL EXCLUSION MEMORANDUM TEMPLATE FOR GRANT ACTIONS

The Categorical Exclusion memorandum template is available at: www.intranet.nepa.noaa.gov.

Categorical Exclusion Memorandum Template

MEMORANDUM FOR: The Record

FROM: [Responsible Program Manager]

SUBJECT: Categorical Exclusion for Grant(s) [Title, #]

NAO 216-6, Environmental Review Procedures, requires all proposed projects to be reviewed with respect to environmental consequences on the human environment. This memorandum addresses the applicability of issuing grant(s) [#] to [awardee(s)], of [organization(s)], to conduct the activities described below.

Description of Project(s)
[Identify the project - who, what, when, where. Should be concise paragraph]

Effects of the Project(s)
[Example, for activities in the outdoors environment, note that the project will not have the potential for significant impacts. For research involving data/modeling, note that there is no interaction with the environment. For actions transferring funds (scholarships, fellowships, etc), note that aspect. Should be a concise notation.]

Categorical Exclusion
This project would not result in any changes to the human environment. As defined in Sections 5.05 and [insert appropriate specific categorical exclusion citation; refer to list on page 3 of CE Checklist for Non-Construction Grants for concise list] of NAO 216-6, this is a [research/fellowship/other...] project of limited size or magnitude or with only short term effects on the environment and for which any cumulative effects are negligible. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

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