

The following comments were submitted by the
State of Alaska

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

April 20, 2007

Dr. William T. Hogarth
Assistant Administrator for Fisheries
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

RE: Magnuson-Stevens Fishery Conservation and Management Reauthorization Act
Environmental Review Procedures

Dear Dr. Hogarth:

The Alaska Department of Fish and Game (ADF&G) supports the process dictated in Section 107 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA). With input from the Regional Fishery Management Councils (RFMCs) and the public, the resulting sole environmental impact assessment procedure for fishery management actions should benefit the resource, and the fishery-dependent stakeholders, by providing for a more efficient, timely, and consistent analytic process with which to inform fisheries management and policymaking while maintaining the intent of the National Environmental Policy Act (NEPA). The existing redundant, and sometimes conflicting, processes under the Magnuson-Stevens and National Environmental Policy Acts do not always allow RFMCs to provide responsive fisheries management when timely action is often precisely what sustainable resource management requires.

The ADF&G supports the following structure for RFMC-developed plans:

The RFMC process will be the sole vehicle for conducting scoping.

The RFMC shall complete a scoping process to identify the range of reasonable alternatives to accomplish its management objective(s) and to identify the issues which should be examined in order to evaluate the merits of those alternatives. In completing the scoping process, the RFMC shall solicit public comment.

The RFMC will identify the reasonable range of alternatives for consideration.

After completing the scoping process, the RFMC shall identify a range of reasonable alternatives to accomplish the RFMC's objectives. The RFMC shall explain its reasons for selecting those alternatives and for rejecting any other alternatives identified in the scoping process.

A thorough analysis consistent with the scope of the action will be conducted.

After selecting the range of reasonable alternatives, the RFMC shall evaluate the ecological, social, economic, health, aesthetic and cultural effects of each alternative on the environment, including the no-action alternative. The RFMC shall also evaluate the cumulative impact on the environment of each such alternative. In developing the required analyses, the RFMC shall solicit public comment regarding the effects of each alternative.

The RFMC will select the preferred alternative.

After completing the evaluation provided for above, the RFMC shall review the analysis and select its preferred alternative, or combination of alternatives, to accomplish the RFMC's objective. The RFMC shall explain the purpose of, and need for, the action and the reasons for selecting its preferred alternative. The RFMC shall solicit public comment on the analysis and the alternatives, including the preferred alternative.

The RFMC will complete the NEPA documentation and submit its recommendation(s) when it determines that the requirements of the MSA and these new procedures have been met.

After considering the analysis and public comments, the RFMC shall select a preferred alternative for recommendation to the Secretary for approval pursuant to the MSA. The RFMC shall then prepare the NEPA documents required pursuant to 40 C.F.R. Part 1500 and submit those documents to the Secretary once the RFMC determines that the MSA and NEPA documentation is complete.

The Secretary shall review the Fishery Management Plan (FMP) and NEPA documents to determine if the requirements of MSA and NEPA have been satisfied. If not, the Secretary shall disapprove the FMP or FMP amendment.

Though the process above addresses some of the issues NOAA's ten questions seeks input on, ADF&G will respond to them specifically:

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

A new Administrative Order and new CEQ regulations, if necessary, should be developed that recognize the processes in place under the MSA that are applicable to development of fishery management actions and consistent with NEPA. The current process is largely redundant, overly burdensome, and does not provide for responsive and timely fisheries management.

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

The current regulatory, analytical, and review processes applied to fisheries actions under MSA exceed the actual provisions of NEPA. Development of a revised procedure that more accurately reflects actual NEPA requirements and recognizes the existing MSA provisions and processes can improve fisheries management in an effective and timely manner.

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

The level of analysis will vary depending upon the nature of the action, as well as the information available. Currently, the level of analysis is reviewed by the Scientific and Statistical Committee, Advisory Panel, the public, and the RFMCs who then expands or focuses the analysis to achieve adequate consideration of the issues. This is how analyses are currently conducted (whether labeled as an Environmental Assessment (EA) or an Environmental Impact Statement (EIS)). This approach would not necessarily change under a revised procedure. Caution should be exercised in attempting to create differential criteria, or categories of actions, as these can be subjective and the amount and type of available analytical information can vary greatly.

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

No. The current EA/EIS designations rely on known procedures and legal precedents. Some management actions are fairly routine (such as annual adjustments to harvest levels based upon established and accepted processes, procedures, and formulaic calculations), while others are more complex, requiring additional review and scrutiny.

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

One of the problems with the current application of NEPA is the effect of requiring RFMCs to consider unreasonable, unrealistic, and often manufactured alternatives merely for the sake of having a specific number of alternatives. A reasonable range of reasonable alternatives that fulfill the objective of the proposed action should be the primary goal. The RFMCs have the knowledge and expertise to determine a reasonable range of alternatives, depending on the problem being addressed, and are granted that authority under the MSA. The associated public process further assures that a reasonable range of alternatives will be adopted. In certain circumstances, only one alternative to the status quo may be appropriate. In most circumstances, the 'No Action' alternative, as required by CEQ regulations, should be defined as the status quo situation (for example, No Action for determination of annual catch limits would be the status quo situation, rather than no fishing at all).

(6) What opportunities exist to develop a more effective scoping process? Should scoping occur at Council meetings and should Council meeting agenda notices serve as a traditional Notice of Intent to prepare an environmental analysis?

The process under MSA provides for ample public notice and scoping. In the North Pacific, scoping does—and should—frequently occur through NPFMC meetings and agenda notices. This is a good example of where NEPA provisions are redundant to the RFMC process under MSA.

(7) Should the environmental analysis for different types of fishery management actions be developed on a different scale based on the action's duration or effect?

Please see responses to questions 3 and 4 above.

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

Please see the structure identified above. NOAA's implementing procedures and the Council on Environmental Quality's (CEQ's) regulations should be amended to specifically provide that the RFMC process will be the sole process for scoping, for a reasonable range of alternatives identification, for preferred alternative identification, and within which the NEPA analysis is completed. The Secretary reserves the final authority for determining NEPA compliance.

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

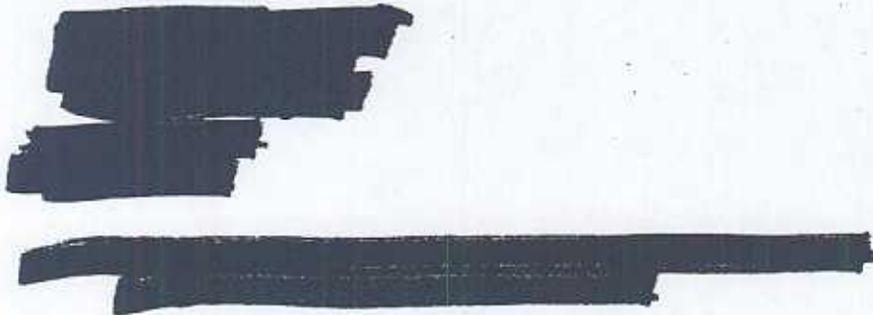
Emergency actions should be promulgated under the existing MSA process for such actions, while incorporating appropriate environmental analysis within that framework, cognizant of time-sensitivity.

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

A 30 day comment period is likely adequate and consistent with a more timely, responsive process.

We appreciate this opportunity to comment and look forward to working with NMFS and CEQ to implement this important process reform.

Sincerely,

The signature and contact information are redacted with black bars. There are three distinct redacted areas: a large block for the name, a smaller block for a title or affiliation, and a long horizontal block for a phone number or email address.