

NATIONAL MARINE FISHERIES SERVICE INSTRUCTION 30-102-03
December 27, 2007

Administration and Operations
Regulatory Guidance

Memoranda, Classification, and Determination Guidance for Regulations

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SUMMARY OF REVISIONS:

The revision (1) removes all example documents; (2) provides the web address for the Examples Package, where all current memorandum can be obtained; (3) revises the classification language as approved by General Council for Fisheries; and (4) revises the determination language as approved by General Council for Fisheries.

Signed 
[Approving Authority name]
[Approving Authority title]

DEC 27 2007

Date

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INTRODUCTION

This document is intended to provide the location of current guidance on format and content for all memoranda associated with regulatory packages and classification and determination language. This information is housed in the Examples Package, which is updated as needed. The Determinations and Classification language is infrequently updated and therefore contained in this directive as a reference.

MEMORANDA FOR REGULATORY ACTIONS

The most current version of memoranda format and content can be found at http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm.

EXAMPLES OF DETERMINATIONS LANGUAGE FOR DECISION MEMORANDUM

Determinations for a Proposed Rule

MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT (MAGNUSON-STEVENSON ACT)

Use this language for FMP /amendments and regulatory amendments.

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, I have determined that this proposed rule is consistent with the [indicate FMP FMP amendment, or regulatory amendment], other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

NATIONAL ENVIRONMENTAL POLICY ACT

[An FMP/amendment without implementing regulations still requires a NEPA document.]

Option 1. The Council [or NMFS] prepared a draft [supplemental] environmental impact statement for this FMP [amendment]; a notice of availability was published on _____, at __FR [Briefly summarize impacts.]

Option 2. An EA has been prepared that describes the impact on the human environment that would result from implementation of this action. Based on the EA, RIR, IRFA under the RFA, and review of the NEPA criteria for significant effects (40 CFR Part 1508.27) and NMFS criteria for significance evaluated above (NAO 216-6 Section 6.02), no significant effect on the quality of the human environment is anticipated from this action.

Option 3. This action is categorically excluded from the requirement to prepare an environmental assessment in accordance with NAO 216-6. A memorandum for the file has been

prepared that sets forth the decision to use a categorical exclusion because the rule falls within the scope of alternatives addressed in the environmental assessment prepared for [identify] and implements only minor changes.

COASTAL ZONE MANAGEMENT ACT (CZMA)

Option 1. I have determined that this proposed rule will not affect the coastal zone of any state and have submitted a negative determination pursuant to 15 CFR 930.35 to appropriate state agencies.

Option 2. The Council [or NMFS] determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of [identify states]. This determination was submitted on [date] for review by the responsible state agency(ies) under section 307 of the CZMA.

REGULATORY FLEXIBILITY ACT (RFA)

Option 1. An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA, as part of the regulatory impact review. The IRFA describes the impact this proposed rule, if adopted, would have on small entities. Each of the statutory requirements of section 603 (b) and (c) has been addressed and is summarized [or included] in the Classification section of the attached proposed rule.

Option 2. Certification under the RFA--I recommend that you determine that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Option 3. The proposed FMP/amendment is exempt from the procedures of the RFA because there is no proposed rule associated with this action.

PAPERWORK REDUCTION ACT (PRA)

Option 1. This action does not contain a collection-of-information requirement for purposes of the PRA.

Option 2. This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the PRA. This requirement has been submitted to OMB for approval.

Option 3. This proposed rule contains a collection-of-information requirement that is subject to review and approval by the Office of Management and Budget (OMB) under the PRA. This requirement was approved by OMB under Control Number 0648-xxxx.

ENDANGERED SPECIES ACT (ESA)

Option 1. I have determined that fishing activities pursuant to this rule will not affect

endangered and/or threatened species or critical habitat in any manner not considered in prior consultations on this fishery. [Provide any relevant facts, e.g., action will not result in any change or increase in fishing activity, action is administrative in nature.]

Option 2. An informal consultation under the ESA was concluded for [FMP/amendment] on [date]. As a result of the informal consultation, I have determined that fishing activities conducted under this rule are not likely to adversely affect endangered or threatened species or critical habitat. [Provide any relevant facts, e.g., action will not result in any change or increase in fishing activity, action is administrative in nature.]

Option 3. A formal section 7 consultation under the ESA was initiated for [FMP/amendment]. In a biological opinion dated [date], I have determined that fishing activities conducted under [FMP/amendment] and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

Option 4. A formal section 7 consultation under the ESA was conducted with the U.S. Fish and Wildlife Service (USFWS) on the effects of [FMP/amendment] on the [species]. The biological opinion issued by the USFWS dated [date] states that fishing activities conducted under [FMP/amendment] and its implementing regulations are not likely to jeopardize the continued existence of [species] or result in the destruction or adverse modification of critical habitat.

MARINE MAMMAL PROTECTION ACT (MMPA)

Option 1. I have determined that fishing activities conducted under this rule will have no adverse impact on marine mammals. [Provide any relevant facts, e.g., action will not result in any change or increase in fishing activity, action is administrative in nature.]

Option 2. Adverse impacts resulting from fishing activities proposed in this rule are discussed in the EA [DEIS.]

EXECUTIVE ORDER 12866 (E.O. 12866)

Option 1. Pursuant to the procedures established to implement section 6 of E.O. 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Option 2. Pursuant to the procedures established to implement section 6 of E.O. 12866, the Office of Management and Budget has determined that this proposed rule is significant.

Option 3. This proposed amendment is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.

Option 4. I have initially determined that this action is significant or not significant for the purpose of E.O. 12866 or If known: OMB has determined that action is or is not significant for the purpose of E.O. 12866.

EXECUTIVE ORDER 13132 (E.O. 13132)

Option 1. This proposed rule does not contain policies with federalism implications under E.O. 13132.

Option 2. [If there are substantial federalism concerns.]

The agency has consulted, to the extent practicable, with appropriate state and local officials to address the principles, criteria, and requirements of E.O. 13132.

ESSENTIAL FISH HABITAT (EFH)

Option 1. [No Adverse Impact on EFH.]

The area affected by the proposed action in the [name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units.] [Summarize the basis for this determination either here or in a separate memo.] The proposed action in the context of the fishery as a whole will not have an adverse impact on EFH; therefore, an EFH consultation is not required. [If a separate memo is used, insert the following] The basis for this determination is described in a memorandum dated [insert date.]

Or

This action is administrative [describe.] Therefore, this action will have no adverse impact on any areas identified as EFH for U.S. fisheries.

Option 2. [Abbreviated Consultation.]

The area affected by the proposed action in the [name] fishery has been identified as EFH for [list all of the FMP(s) or managed species, as appropriate, including those in other management units]. The proposed action in the context of the fishery as a whole may have an adverse impact on EFH. Because the potential adverse impact on EFH is not substantial, NMFS conducted an abbreviated EFH consultation pursuant to 50 CFR 600.920(h) and prepared an EFH Assessment that incorporates all of the information required in 50 CFR 600.920(e)(3).

Option 3. [Expanded Consultation.]

The area affected by the proposed action in the [name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units.] The proposed action in the context of the fishery as a whole may have a substantial adverse impact on EFH. As a result, NMFS conducted an expanded EFH consultation pursuant to 50 CFR 600.920(i) and prepared an EFH Assessment that incorporates all of the information required in 50 CFR 600.920(e)(3).

Option 4. [General Concurrence.]

The area affected by the proposed action in the [name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units.] This action falls within the scope of the General Concurrence issued on [date] for [insert type of fishery actions.] As a result, no further EFH consultation is required.

Option 5. [Programmatic Consultation.]

The area affected by the proposed action in the [name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units]. This action falls within the scope of the Programmatic Consultation for the [insert name of the program] conducted on [date.] NMFS has followed the recommendations in the Programmatic Consultation. No further EFH consultation is required.

INFORMATION QUALITY ACT

Pursuant to Section 515 of Public Law 106-554 (IQA), this information product has undergone a pre-dissemination review by [specify Office], completed on [date]. The signed Pre-dissemination Review and Documentation Form is on file in that Office and a copy of the form is included with this package.

OPTIONAL EXECUTIVE ORDERS* (USE IF APPLICABLE.)

*EXECUTIVE ORDER 13089 (E.O. 13089) - CORAL REEF PROTECTION

This proposed rule is consistent with E.O. 13089, which is intended to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment.

*EXECUTIVE ORDER 13175 - Tribal E.O.

This proposed rule was developed after meaningful consultation and collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

*EXECUTIVE ORDER 13186 - Migratory Bird Treaty Act

This action does not conflict with the provisions implemented to protect migratory birds. Vessels participating in [insert in name of fishery/fisheries] rarely interact with migratory birds or their habitat.

Determinations for a Final Rule/FMP Amendment

MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

[Omit from the Determinations attachment for a final rule/FMP/amendment decision because

this determination is made in the CERTIFICATION portion of the decision memorandum.]

NATIONAL ENVIRONMENTAL POLICY ACT

Option 1. The impacts of this action were previously analyzed in [provide name/date of NEPA document.] [Briefly summarize impacts if appropriate.]

[Note: A notice of availability of the final environmental impact statement [or final supplemental environmental impact statement] must be published in the Federal Register in time for the 30-day cooling off period to end prior to the final agency decision on the action (e.g., prior to agency approval/disapproval/partial approval of the FMP/amendment.)

Option 2. A final [supplemental] environmental impact statement for this action was filed with the Environmental Protection Agency. [Briefly summarize impacts if appropriate.] A notice of availability was published on [date, cite.] A Record of Decision for this FMP/amendment is included as part of this action.

Option (2) a. [Note: Include the following phrase after the first sentence of the RECOMMENDATION paragraph.] I recommend that you (1) concur in the approval of Amendment [fill in the name of the amendment] to the [fill in the name of the FMP,] sign the attached Record of Decision, [add this phrase if the rule is being approved at this time, ((3) approve the final rule, (4) sign the attached clearance memorandum to the NOAA General Council, and (5) sign the attached clearance memorandum to the Chief Council for Regulation, Department of Commerce.

Option 3. An environmental assessment was prepared for this action. [Briefly summarize impacts if appropriate.] I have found that there will be no significant impact on the human environment as a result of this action, based on the analysis contained in the environmental assessment and the information provided in the accompanying finding of no significant impact (FONSI).

Option 4. [Use for a final rule decision for which an EA was approved previously for approval of the FMP/amendment.]

Option 5. If the amendment decision and the final rule are on separate approval tracks the ROD should be signed at the time of NMFS decision on the amendment. "On [insert date] a Record of Decision for the FMP/amendment which this final rule implements was signed by ____."

On [insert date] it was determined that [identify FMP/amendment] will not have a significant effect on the human environment.

Option 6. This action is categorically excluded from the requirement to prepare an environmental assessment in accordance with NAO 216-6. A memorandum for the file has been prepared that sets forth the decision to use a categorical exclusion because the rule falls within the scope of alternatives addressed in the environmental assessment prepared for [identify] and

implements only minor changes.

COASTAL ZONE MANAGEMENT ACT (CZMA)

Option 1. I have determined that this final rule will not affect the coastal zone of any state. My negative determination pursuant to 15 OFR 930.35 was sent to appropriate state agencies on [date.]

Option 2. The Council [or NMFS] determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of [identify states. This determination was submitted for review by the responsible state agency(ies) on [date] under section 307 of the CZMA. [Indicate the responses received so far; concur; no response, so consistency is inferred; or do not concur and summarize the issue(s).]

REGULATORY FLEXIBILITY ACT (RFA)

Option 1. A final regulatory flexibility analysis (FRFA) was prepared as part of the regulatory impact review. A summary of the FRFA is contained in the final rule that accompanies this action. Each item in section 604(a)(1)-(5) of the RFA has been addressed in the classification section of the final rule.

Option 2. [use if certified under RFA.] The Chief Council for Regulation, Department of Commerce, certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification [or: NMFS received comments regarding this certification that are summarized in the final rule. These comments did not cause NMFS to change its determination regarding the certification*] As a result, a regulatory flexibility analysis was not prepared.

*Note: If NMFS received comments that affect the determination, explain how the comment impacts the determination.

Option 3. [Use either A for B below for a decision on an FMP/amendment when the decision on the final rule will occur later.]

(A) The Chief Council for Regulation, Department of Commerce, certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action [identify FMP/amendment] will not have a significant economic impact on a substantial number of small entities.

(B) An initial regulatory flexibility analysis was prepared (a final RFA will be completed with submission of the final rule) as part of the regulatory impact review, which describes the impact this [FMP/amendment] would have on small entities.

Option 4. The analytical requirements of the Regulatory Flexibility Act do not apply because

this action contains no implementing regulations.

PAPERWORK REDUCTION ACT (PRA)

Option 1. This action does not contain a collection-of-information requirement for purposes of the PRA.

Option 2. This action contains a collection-of-information requirement subject to the PRA. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number _____.

ENDANGERED SPECIES ACT (ESA)

Option 1. [Use for decision on an FMP/amendment or when decision on final rule will occur later.]

I have determined that fishing activities conducted pursuant to this rule will not affect endangered and/or threatened species or critical habitat in any manner not considered in prior consultations on this fishery.

Option 2. An informal consultation under the ESA was concluded for [FMP/amendment] on [date]. As a result of the informal consultation, I have determined that fishing activities conducted under this rule are not likely to adversely affect endangered or threatened species or critical habitat. [Provide any relevant facts, e.g., action will not result in any change or increase in fishing activity, action is administrative in nature.]

Option 3. A formal section 7 consultation under the Endangered Species Act was initiated for [FMP/amendment]. In a biological opinion dated [date], I have determined that fishing activities conducted under [FMP/amendment] and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

Option 4. A formal section 7 consultation under the Endangered Species Act was conducted with the U.S. Fish & Wildlife Service on the effects of [FMP/amendment] on the [species]. The biological opinion issued by the U.S. Fish & Wildlife Service dated [date] states that fishing activities conducted under [FMP/amendment] and its implementing regulations are not likely to jeopardize the continued existence of [species] or result in the destruction or adverse modification of critical habitat.

MARINE MAMMAL PROTECTION ACT (MMPA)

Option 1. I have determined that fishing activities conducted under this rule will have no adverse impact on marine mammals. [Provide any relevant facts, e.g., action will not result in any change or increase in fishing activity, action is administrative in nature.]

Option 2. Adverse impacts on marine mammals that may result from fishing activities conducted under this rule are discussed in the EA [FEIS.]

Option 3. [Use either A or B below for a decision on an FMP/amendment when the decision on the final rule will occur later.]

(A) I have determined that fishing activities conducted under the [identify FMP/amendment] will have no adverse impact on marine mammals. [Provide any relevant facts, e.g., action will not result in any change or increase in fishing activity, action is administrative in nature, etc.]

(B) Adverse impacts on marine mammals that may result from fishing activities conducted under the [identify FMP/amendment] are discussed in the [provide name of relevant NEPA document.]

ADMINISTRATIVE PROCEDURE ACT (APA)

[If waiving prior notice and comment and/or the 30-day delay in effectiveness (cooling off period), include one of the following.]

Option 1. The Assistant Administrator for Fisheries finds it is (either [impracticable and contrary to the public interest]; [unnecessary and contrary to the public interest]; or [impracticable, unnecessary, and contrary to the public interest]) to provide for prior notice and an opportunity for public comment. [State facts supporting why prior notice and the opportunity for public comment, pursuant to authority set forth at U.S.C. 553(b)(B), would be either [unnecessary], [impracticable], or [contrary to the public interest]]. Similarly, the need to implement these measures in a timely manner to [state reason], constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to {either [waive the 30-day delay in effective date], [establish an effective date less than 30 days after date of publication], or [make the rule effective immediately upon filing with the Office of the Federal Register.]} [Provide facts to support basis for waiver, e.g., need to implement action in timely manner, unavoidable time constraints outside agency control, etc.]

Option 2. (Use of relieving a restriction). Because this rule relieves a restriction by [explain how it relieves a restriction], it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). [Explain what current restriction is, how regulated community is restricted, and what rule would do to relieve the restriction.]

EXECUTIVE ORDER 12866 (E.O. 12866)

Option 1. Pursuant to the procedures established to implement section 6 of E.O. 12866, the Office of Management and Budget has determined that this final rule is not significant.

Option 2. Pursuant to the procedures established to implement section 6 of E.O. 12866, the Office of Management and Budget has determined that this final rule is significant.

Option 3. This amendment is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.

EXECUTIVE ORDER 13132 (E.O. 13132)

Option 1. This action does not contain policies with federalism implications under E.O. 13132.

Option 2. [If there are substantial federalism concerns.]

The agency has consulted, to the extent practicable, with appropriate state and local officials to address the principles, criteria, and requirements of E.O. 13132.

ESSENTIAL FISH HABITAT (EFH)

Option 1. [No Adverse Impact on EFH.]

The area that would be affected by this final action in the [name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units]. [Summarize the basis for this determination either here or in a separate memo.] in the context of the fishery as a whole, this final action will not have an adverse impact on EFH; therefore, an EFH consultation is not required. [If a separate memo is used, insert the following] The basis for this determination is described in a memorandum dated [insert date.] Or

This action is administrative [describe.] Therefore, this action will have no adverse impact on any areas identified as EFH for U.S. fisheries.

Option 2. [Abbreviated Consultation.]

The area affected by the final action in the [name] fishery has been identified as EFH for [list all of the FMP(s) or managed species, as appropriate, including those in other management units]. The action in the context of the fishery as a whole may have an adverse impact on EFH. Because the potential adverse impact on EFH is not substantial, NMFS conducted an abbreviated EFH consultation pursuant to 50 CFR 600.920(h) and prepared an EFH Assessment that incorporates all of the information required in 50 CFR 920(e)(3).

Option 3. [Expanded Consultation.]

The area affected by this final action in the [name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units.] The action in the context of the fishery as a whole may have a substantial adverse impact on EFH. As a result, NMFS conducted an expanded EFH consultation pursuant to 50 CFR 600.920(i) and prepared an EFH Assessment that incorporates all of the information required in 50 CFR 600.920(e)(3).

Option 4. [General Concurrence.]

The area affected by the action in the [name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units.] This action falls within the scope of the General Concurrence issued on [date] for [insert type of fishery actions]. As a result, no further EFH consultation is required.

Option 5. [Programmatic Consultation.]

The area affected by the action in the [name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units]. This action falls within the scope of the Programmatic Consultation for the [insert name of the program] conducted on [date]. NMFS has followed the recommendations in the Programmatic Consultation. No further EFH consultation is required.

INFORMATION QUALITY ACT (IQA)

[If there are no significant changes from the proposed rule, use the following paragraph for the final rule.] However, if the proposed rule has been modified, or if new information has been added to support the rule, e.g., an additional study or report, then a new IQA form should be completed and the Decision Memorandum paragraph should be written to reflect that modification.]

Pursuant to Section 515 of Public Law 106-554, this information product has undergone a pre-dissemination review by [specify Office], completed on [date]. The signed Pre-dissemination Review and Documentation Form is on file in that Office and a copy of the form is included with this package. The final rule is substantially unchanged from the proposed rule and no new information has been developed or presented and considered, therefore, the IQA determination remains the same.

OPTIONAL EXECUTIVE ORDERS* (USE IF APPLICABLE)

*EXECUTIVE ORDER 13175 - TRIBAL E.O.

This proposed rule was developed after meaningful consultation and collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

*EXECUTIVE ORDER 13089 (E.O. 13089) - CORAL REEF PROTECTION

This final rule is consistent with E.O. 13089, which is intended to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment.

*EXECUTIVE ORDER 13186 - Migratory Bird Treaty Act

This action does not conflict with the provisions implemented to protect migratory birds.

Vessels participating in [insert in name of fishery/fisheries] rarely interact with migratory birds or their habitat.

Determinations for a Temporary Rule for an Emergency Action or Interim Measures

MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

[Omit from the Determinations attachment for a Temporary Rule for an Emergency Action or Interim Measures because this determination is made in the CERTIFICATION section of the decision memorandum.]

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Option 1. An environmental assessment was prepared for this action. [Briefly summarize impacts if appropriate.] I have found that there will be no significant impact on the human environment as a result of this action, based on the analysis contained in the environmental assessment and the information provided in the accompanying finding of no significant impact (FONSI).

Option 2. This action is categorically excluded from the requirement to prepare an environmental assessment in accordance with NAO 216-6. A memorandum for the file has been prepared that sets forth the decision to use a categorical exclusion because the rule falls within the scope of alternatives addressed in the environmental assessment or EIS prepared for [identify].

COASTAL ZONE MANAGEMENT ACT (CZMA)

Option 1. I have determined that this emergency/interim rule will not affect the coastal zone of any state. My negative determination pursuant to 15 OFR 930.35 was sent to appropriate state agencies on [date.]

Option 2. The Council [or NMFS] determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of [identify states]. This determination was submitted on [date] for review by the responsible state agency(ies) under section 307 of the CZMA.

REGULATORY FLEXIBILITY ACT (RFA)

This emergency/interim rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

EXECUTIVE ORDER 12866 (E.O. 12866)

Option 1. Pursuant to the procedures established to implement section 6 of E.O. 12866, the

Office of Management and Budget has determined that this emergency/interim rule is not significant.

Option 2. Pursuant to the procedures established to implement section 6 of E.O. 12866, the Office of Management and Budget has determined that this emergency/interim rule is significant.

ADMINISTRATIVE PROCEDURE ACT (APA)

If the AA finds good cause, a temporary rule may be promulgated effective upon publication in the Federal Register. If the requirement to provide for prior notice and comment must be waived and the delayed effectiveness period must be waived, use the following language in the determinations section:

I find it is (either [impracticable and contrary to the public interest]; [unnecessary and contrary to the public interest]; or [impracticable, unnecessary, and contrary to the public interest]) to provide for prior notice and an opportunity for public comment. [State facts supporting why prior notice and the opportunity for public comment, pursuant to authority set forth at U.S.C. 553(b)(B), would be {either [unnecessary], [impracticable], or [contrary to the public interest]}]. Similarly, the need to implement these measures in a timely manner to [state reason], constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to {either [waive the 30-day delay in effective date], [establish an effective date less than 30 days after date of publication], or [make the rule effective immediately upon publication in the Federal Register]. Provide facts to support basis for waiver, e.g., need to implement action in timely manner, unavoidable time constraints outside agency control, etc.]

The APA also provides that the delayed effectiveness provision may be waived if the rule is substantive and relieves a restriction.

Option 2. (Use of relieving a restriction). Because this rule relieves a restriction by [explain how it relieves a restriction], it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). [Explain what current restriction is, how regulated community is restricted, and what rule would do to relieve the restriction.]

EXECUTIVE ORDER 13132 (E.O. 13132)

Option 1. This action does not contain policies with federalism implications under E.O. 13132.

Option 2. [If there are substantial federalism concerns.]

The agency has consulted, to the extent practicable, with appropriate state and local officials to address the principles, criteria, and requirements of E.O. 13132.

PAPERWORK REDUCTION ACT (PRA)

Option 1. This action does not contain a collection-of-information requirement for purposes of

the PRA.

Option 2. [Use for a temporary rule for an emergency action or interim measure when there is a collection-of-information requirement that has been submitted to the Office of Management and Budget.] This temporary rule contains a collection-of-information requirement subject to the PRA. This collection-of-information requirement has been submitted to the Office of Management and Budget.

Option 3. [Use for a temporary rule for an emergency action or interim measure when there is a collection-of-information requirement that has been approved by the Office of Management and Budget.] This temporary rule contains a collection-of-information requirement subject to the PRA. The collection of this information has been approved by the Office of Management and Budget (OMB), OMB Control Number _____.

ENDANGERED SPECIES ACT (ESA)

Option 1. I have determined that fishing activities pursuant to this rule will not affect endangered and/or threatened species or critical habitat in any manner not considered in prior consultations on this fishery. [Provide any relevant facts, e.g., action will not result in any change or increase in fishing activity, action is administrative in nature.]

Option 2. An informal consultation under the Endangered Species Act was concluded for an emergency/interim rule on [date]. As a result of the informal consultation, the Regional Administrator determined that fishing activities conducted under this rule are not likely to adversely affect endangered and/or threatened species or critical habitat. [Provide any relevant facts, e.g., action will not result in any change or increase in fishing activity, action is administrative in nature.]

Option 3. [If a formal section 7 consultation was done, indicate the date and the conclusion of the most recent consultation.] A formal section 7 consultation under the Endangered Species Act was initiated for a temporary rule under [FMP]. In a biological opinion dated [date], the Regional Administrator determined that fishing activities conducted under the emergency/interim are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

Option 4. A formal section 7 consultation under the Endangered Species Act was conducted with the U.S. Fish and Wildlife Service (USFWS) on the effects of this emergency/interim rule under the [FMP/amendment] on the [species]. The biological opinion issued by the USFWS dated [date] states that fishing activities conducted under this [FMP/amendment] and its implementing regulations are not likely to jeopardize the continued existence of [species] or result in the destruction or adverse modification of critical habitat.

MARINE MAMMAL PROTECTION ACT (MMPA)

Option 1. I have determined that fishing activities conducted under this emergency/interim rule

will have no adverse impact on marine mammals. [Provide any relevant facts, e.g., action will not result in any change or increase in fishing activity, action is administrative in nature.]

Option 2. Adverse impacts on marine mammals that may result from fishing activities conducted under this emergency/interim rule are discussed in the EA [FEIS.]

INFORMATION QUALITY ACT

Pursuant to Section 515 of Public Law 106-554, this information product has undergone a pre-dissemination review by [specify Office], completed on [date]. The signed Pre-dissemination Review and Documentation Form is on file in that Office and a copy of the form is included with this package.

ESSENTIAL FISH HABITAT (EFH)

Option 1. [No Adverse Impact on EFH.]

The area that would be affected by this temporary action in the [name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units. Summarize the basis for this determination either here or in a separate memo.] In the context of the fishery as a whole, this temporary action will not have an adverse impact on EFH; therefore, an EFH consultation is not required. [If a separate memo is used, insert the following.] The basis for this determination is described in a memorandum dated [insert date.] Or

This action is administrative [describe]. Therefore, this action will have no adverse impact on any areas identified as EFH for U.S. fisheries.

Option 2. [Abbreviated Consultation.]

The area affected by the temporary action in the [name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units.] The action in the context of the fishery as a whole, this final action may have an adverse impact on EFH. Because the potential adverse impact on EFH is not substantial, NMFS conducted an abbreviated EFH consultation pursuant to 50 CFR 600.920(h) and prepared an EFH Assessment that incorporates all of the information required in 50 CFR 920((e)(3).

Option 3. [Expanded Consultation.]

The area affected by this temporary action in the [name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units.] The action in the context of the fishery as a whole, ay have a substantial adverse impact on EFH. As a result, NMFS conducted an expanded EFH consultation pursuant 50 CFR 600.920(i) and prepared an EFH Assessment that incorporates all of the information required in 50 CFR 600.920(e)(3).

Option 4. [General Concurrence.]

The area affected by the action in the [name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units.] This action falls within the scope of the General Concurrence issued on [date] for [insert type of fishery actions.] As a result, no further EFH consultation is required.

Option 5. [Programmatic Consultation.]

The area affected by the action in the [name] fishery has been identified as EFH for [list all of the FMP(s) or the managed species, as appropriate, including those in other management units.] This action falls within the scope of the Programmatic Consultation for the [insert name of the program] conducted on [date.] NMFS has followed the recommendations in the Programmatic Consultation. No further EFH consultation is required.

OPTIONAL EXECUTIVE ORDERS* (USE IF APPLICABLE)

*EXECUTIVE ORDER 13175 - TRIBAL E.O.

This emergency/interim rule was developed after meaningful consultation and collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

*EXECUTIVE ORDER 13089 (E.O. 13089) - CORAL REEF PROTECTION

This emergency/interim rule is consistent with E.O. 13089, which is intended to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment.

*EXECUTIVE ORDER 13186 - Migratory Bird Treaty Act

This action does not conflict with the provisions implemented to protect migratory birds. Vessels participating in [insert in name of fishery/fisheries] rarely interact with migratory birds or their habitat.

EXAMPLES OF CLASSIFICATION LANGUAGE FOR REGULATORY DOCUMENTS

Proposed Rule Classification Language

1. Use this language for FMP /amendments and regulatory amendments.

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the [indicate FMP, FMP amendment, or regulatory amendment], other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

2. NEPA statement.

A. If an EIS was prepared, briefly summarize the impacts. Insert one of the following:

The Council [or NMFS] prepared a final [supplemental] environmental impact statement for this FMP [amendment]; a notice of availability was published on _____, 20_ (_ FR ___). [Briefly summarize impacts.]

B. If an EA was prepared, no statement is needed, unless there are substantial associated issues. If there are substantial issues, insert the following:

The Council [or NMFS] prepared an environmental assessment for this FMP [amendment] that discusses the impact on the environment as a result of this rule. [Briefly summarize impacts.] A copy of the environmental assessment is available from the Council [or NMFS] (see ADDRESSES).

C. If a categorical exclusion is appropriate, no statement is required.

3. E.O. 12866 statement. This statement reflects OMB's determinations about proposed rules:

A. If the proposed rule is not significant:

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

B. If the proposed rule is significant

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

C. If the proposed rule is not subject to OMB review (example: annual specifications without regulatory text) under E.O. 12866:

This action is exempt from review under E.O. 12866.

4. RFA statement. No statement is required for a proposed rule where notice and comment is not required by law, but is being given voluntarily. For a proposed rule where notice and comment is required by law (e.g., APA, Magnuson-Stevens Act), insert one of the following:

A. When an IRFA is prepared use the following language:

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the

SUMMARY section of the preamble. A summary of the analysis follows [Note: Each of the items described in section 603(b)(1)-(5) of the RFA need to be addressed in the IRFA portion of the classification section, and significant alternatives need to be identified per 603(c).] A copy of this analysis is available from the Council [or NMFS] (see ADDRESSES).

B. For a certification under the RFA – when a determination finding of no significant economic impact on a substantial number of small entities is made begin this section with the following language:

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. [Insert factual basis for the certification using the same language that is in the Certification memo to the Small Business Administration.] [The paragraph or paragraphs should be single-spaced and indented.] At the end of the certification, insert the following sentence:

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

5. PRA statement.

A. [If the proposed rule requires a PRA statement in the classification section because it is proposing new information requirements, and those requirements have not been given PRA clearance by OMB, the following format should be followed:]

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for (name the specific requirement or requirements) is estimated to average (enter minutes or hours per individual response for each requirement) per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to (enter office name) at the ADDRESSES above, and by e-mail to David_Rostker@omb.eop.gov or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Remember to include in the ADDRESSES section of the rule, the sentence “Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to (enter office name) and by e-mail to David_Rostker@omb.eop.gov or fax to (202) 395-7285”.

B. [Use this language if the proposed rule contains information requirements that have received PRA clearance from OMB.]

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number (enter number assigned to your approval; all start with 0648-). Public reporting burden for (name the specific requirement or requirements) is estimated to average (enter minutes or hours per individual response for each requirement) per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Remember to include in the ADDRESSES section of the rule, the sentence “Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to (enter office name) and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285”.

C. A statement is not required if there is no collection of information.

6. CZMA statement. There is no requirement for a statement for a proposed rule; however, determinations must be sent to the affected states.

7. E.O. 13132 statement. There is no requirement for a statement, unless there are substantial federalism implications.

8. ESA statement. There is no requirement for a statement for a proposed rule unless there are significant associated issues. If necessary, insert one of the following:

Option 1. I have determined that fishing activities conducted pursuant to this rule will not affect endangered and/or threatened species or critical habitat under the Endangered Species Act. [Provide any relevant facts, e.g., action will not result in any change or increase in fishing activity, action is administrative in nature.]

Option 2. An informal consultation under the Endangered Species Act was concluded for

[FMP/amendment] on [date]. As a result of the informal consultation, NMFS determined that fishing activities under this rule are not likely to adversely affect endangered or threatened species or their critical habitat. [Provide any relevant facts, e.g., action will not result in any change or increase in fishing activity, action is administrative in nature.]

Option 3. A formal section 7 consultation under the Endangered Species Act was initiated for [FMP/amendment]. In a biological opinion dated [date], NMFS determined that fishing activities conducted under [FMP/amendment] and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat.

Option 4. A formal section 7 consultation under the Endangered Species Act was conducted with the U.S. Fish and Wildlife Service (USFWS) on the effects of [FMP/amendment] on the [species]. The biological opinion issued by the USFWS dated [date] states that fishing activities conducted under [FMP/amendment] and its implementing regulations are not likely to jeopardize the continued existence of [species] or result in the destruction or adverse modification of critical habitat.

9. MMPA statement. There is no requirement for a statement, unless there are significant associated issues. If necessary, insert one of the following:

The Regional Administrator determined that fishing activities conducted under this rule would have no adverse impacts on marine mammals.

Adverse impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the EA [DEIS] (see ADDRESSES).

Note: If the subject marine mammals are threatened or endangered under ESA, see 8. [above].

10. Essential Fish Habitat. Nothing needed.

11. INFORMATION QUALITY ACT statement. There is no requirement for a statement.

OPTIONAL EXECUTIVE ORDERS* (USE IF APPLICABLE.)

12. *EXECUTIVE ORDER 13175 - TRIBAL E.O. 13175

This proposed rule was developed after meaningful consultation and collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

13. *EXECUTIVE ORDER 13089 (E.O. 13089) - CORAL REEF PROTECTION

This proposed rule is consistent with E.O. 13089, which is intended to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment.

14. *EXECUTIVE ORDER 13186 - Migratory Bird Treaty Act

This action does not conflict with the provisions implemented to protect migratory birds. Vessels participating in [insert in name of fishery/fisheries] rarely interact with migratory birds or their habitat.

Final Rule Classification Language

1. Opening paragraph for a rule implementing an FMP [amendment].

“The Administrator, [identify] Region, NMFS, determined that the FMP [amendment] is necessary for the conservation and management of the [identify] fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.”

2. APA Statement. No statement is needed unless there is an APA waiver involved:

[If waiving prior notice and comment and/or the 30-day delay in effectiveness (cooling off period), include one of the following.]

Option 1. (use for good cause waiver of notice and comment). Pursuant to 5 U.S.C.553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be {either: [impracticable and contrary to the public interest]; [unnecessary and contrary to the public interest; or [impracticable, unnecessary, and contrary to the public interest]}. [Provide facts to explain why.]

Option 2. (use if waiving cooling off period). There is good cause under 5 U.S.C. 553(d)(3) to {either: [waive the 30-day delay in effective date], [establish an effective date less than 30 days after date of publication], or [make the rule effective immediately upon filing with the Office of the Federal Register]}. Provide facts to support basis for waiver, e.g., need to implement action in timely manner, unavoidable time constraints outside agency control, etc.]

Option 3. (Use of relieving a restriction). Because this rule relieves a restriction by [explain how it relieves a restriction], it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). [Explain what current t restriction is, how regulated community is restricted, and what rule would do to relieve the restriction.]

3. NEPA statement.

A. If an EIS was prepared, briefly summarize the impacts. Insert the following:

The Council [or NMFS] prepared a final [supplemental] environmental impact statement for this FMP [amendment. The FEIS [supplemental] was filed with the Environmental Protection Agency on [insert date]. A notice of availability was published on _____, 20 _ (_ FR _). In approving the FMP [amendment] on [insert date], NMFS issued a ROD identifying the selected alternative. A copy of the ROD is available from NMFS (see ADDRESSES).

B. If an EA was prepared, no statement is needed unless there are substantial associated issues. If there are substantial issues, insert the following:

The Council [or NMFS] prepared an environmental assessment (EA) for this FMP [amendment] and the AA concluded that there will be no significant impact on the human environment as a result of this rule. [Briefly summarize impacts.] A copy of the EA is available from the Council [or NMFS] (see ADDRESSES).

C. If a categorical exclusion is appropriate, no statement is needed.

4. E.O. 12866 statement. This statement reflects OMB's determination of significance for a final rule, or interim final rule, under the Executive Order.

A. If the final rule is not significant:

This final rule has been determined to be not significant for purposes of Executive Order 12866.

B. If the final rule is significant:

This final rule has been determined to be significant for purposes of Executive Order 12866.

C. If the final rule is exempt from OMB review under Executive Order 12866:

This final rule is exempt from review under Executive Order 12866.

5. RFA statement. The requirement to prepare a regulatory flexibility analysis applies only where notice and comment rulemaking i.e., a proposed rule, is required by statute (e.g., APA, Magnuson-Stevens Act). Insert one of the following statements:

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA, [supplement to the IRFA prepared by NMFS in consultation with the Council—if applicable], a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action.] [Insert summary of the analysis, which must address each of the requirements in 5 U.S.C. 604(a)(1)-(5).] A copy of this analysis is available from the Council [or NMFS] (see ADDRESSES). [Note: For actions that had an IRFA and a FRFA.]

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Final rules for which notice and comment are not required by law (e.g., interim final rule) must include the following statement:

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

A separate paragraph containing language to cover the requirements of a "small entity compliance guide" as required by section 212 of the Small Business Regulatory Enforcement Fairness Act should be included in the FRFA section of the final rule:

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the _____ Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the _____ fishery(ies). The guide and this final rule will be available upon request.

6. PRA statement. For final rules containing information requirements, that have received PRA clearance from OMB, the following language should be used:

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number (enter number assigned to your approval; all start with 0648-). Public reporting burden for (name the specific requirement or requirements) is estimated to average (enter minutes or hours per individual response for each requirement) per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Remember to include in the ADDRESSES section of the rule, the sentence "Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to (enter office name) and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285".

Occasionally a situation arises where an office wants to publish a final rule that either contains an information requirement that OMB has not approved or a requirement that has been altered from what OMB approved. It is possible to do this if the effective date of the information requirement is reserved until OMB approval is received. Specific language is not offered here because of complexities often surrounding each particular case. If you think that you need to take this approach, consult with the NOAA Clearance Officer.

7. Coastal Zone Consistency statement. There is no requirement for a statement for a final rule; however, determinations should have been sent to affected states. If a state agency did not agree with the determination, this issue must be addressed.

The Council (or NMFS) determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the enforceable policies of the approved coastal management programs of [insert names of applicable states with Coastal Zone Management Act (CZMA) programs]. This determination was submitted for review by the responsible state agencies under section 307 of the CZMA. The state agencies [agreed with this determination or disagreed with this determination (explain dispute and resolution)] [Note: if a state agency declined to comment within the statutory time period, consistency is inferred..]

8. E.O. 13132 statement. There is no requirement for a statement unless there are substantial federalism implications.

If so, insert the following in the preamble:

A federalism summary impact statement was prepared [describe the extent of NMFS' prior consultation with state and local officials, a summary of the nature of their concerns, NMFS' position supporting the need to issue this regulation, and a statement of the extent to which the concerns of state and local officials have been met].

9. ESA statement. There is no requirement for a statement, unless there are significant associated issues. If necessary, insert one of the following:

I have determined that fishing activities conducted pursuant to this rule will not affect endangered and/or threatened species or critical habitat under the Endangered Species Act. [Provide any relevant facts, e.g., action will not result in any change or increase in fishing activity, action is administrative in nature.]

An informal consultation under the Endangered Species Act was concluded for [FMP/amendment] on [date]. As a result of the informal consultation, the Regional Administrator determined that fishing activities conducted under this rule are not likely to adversely affect endangered or threatened species or critical habitat. [Provide any relevant facts, e.g., action will not result in any change or increase in fishing activity, action is administrative in nature.]

A formal section 7 consultation under the Endangered Species Act was initiated for [FMP/amendment]. In a biological opinion dated [date], the Regional Administrator determined

that fishing activities conducted under [FMP/amendment] and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species

A formal section 7 consultation under the Endangered Species Act was conducted with the U.S. Fish and Wildlife Service (USFWS) on the effects of [FMP/amendment] on the [species]. The biological opinion issued by the USFWS dated [date] states that fishing activities conducted under [FMP/amendment] and its implementing regulations are not likely to jeopardize the continued existence of [species] or result in the destruction or adverse modification of critical habitat.

10. MMPA statement. There is no requirement for a statement, unless there are significant associated issues. If necessary, insert one of the following:

The Regional Administrator has determined that fishing activities conducted under this rule will have no adverse impact on marine mammals.

Adverse impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the EA (FEIS) (see ADDRESSES).

11. Essential Fish Habitat. Nothing needed.

Note: Any adverse impacts should be discussed in the final EA/EIS. If the subject marine mammals are threatened or endangered under ESA, see 9. (above).

12. INFORMATION QUALITY ACT statement. There is no requirement for a statement.

OPTIONAL EXECUTIVE ORDERS* (USE IF APPLICABLE.)

13. E.O. 13186 statement. There is no requirement for a statement unless the rule impacts migratory birds.

14. E.O. 13175 statement. There is no requirement for a statement unless the rule involves tribal participation in the fishery.

This final rule was developed after meaningful consultation with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

15. E.O. 13089 statement. There is no requirement for a statement unless the rule involves coral reef protection in the western Pacific.

This final rule is consistent with Executive Order 13089, which is intended to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment.

Classification Language for a Temporary Rule for an Emergency Action or Interim Measures

1. Effectiveness. [A temporary rule for an emergency action must not remain in effect for more than 180 days from day of publication except, by agreement of the affected Council, it may be extended for an additional period not to exceed 186 days. Note that the calculation of the date that is 180 days from the date of publication must be done with care to be certain that the OFR does not set an ending date that is greater than 180 days from the date of publication. If 180 days from the date of publication falls on a weekend, the OFR will automatically extend the time period to the following Monday, unless otherwise instructed. To avoid this problem, place in the DATES section Effective [insert date 180 calendar days from the date of publication in the Federal Register].

2. APA statement. If the AA finds "good cause," a temporary rule may be promulgated effective upon publication in the Federal Register. If the requirement to provide for prior notice and comment must be waived and the delayed effectiveness period must be waived, use the following language in the classification section:

Option1. The Assistant Administrator Fisheries, NOAA (AA) finds it is (either [impracticable and contrary to the public interest]; [unnecessary and contrary to the public interest]; or [impracticable, unnecessary, and contrary to the public interest]) to provide for prior notice and an opportunity for public comment. [State facts supporting why prior notice and the opportunity for public comment, pursuant to authority set forth at U.S.C. 553(b)(B), would be {either [unnecessary], [impracticable], or [contrary to the public interest]}. Similarly, the need to implement these measures in a timely manner to [state reason], constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to either [waive the 30-day delay in effective date], [establish an effective date less than 30 days after date of publication], or [make the rule effective immediately upon publication in the Federal Register.] [Provide facts to support basis for waiver, e.g., need to implement action in timely manner, unavoidable time constraints outside agency control, etc.]

The APA also provides that the delayed effectiveness provision may be waived if the rule is substantive and relieves a restriction.

Option 2. (Use of relieving a restriction). Because this rule relieves a restriction by [explain how it relieves a restriction], it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). [Explain what current restriction is, how regulated community is restricted, and what rule would do to relieve the restriction.]

3. CZMA statement. There is no requirement for a statement about coastal zone consistency in a temporary rule; however, determinations must be sent to the affected states.

4. E.O. 13132. There is no requirement for a statement, unless there are substantial federalism concerns.

5. E.O. 12866 statement. A statement of determination of significance for an emergency/interim rule under the Executive Order.

A. If the emergency rule /interim rule is not significant:

This emergency/interim rule has been determined to be not significant for purposes of Executive Order 12866.

B. If the emergency/interim rule is significant:

This emergency/ interim rule has been determined to be significant for purposes of Executive Order 12866.

6. NEPA statement. If an EA was prepared, reference in the classification section is needed only if there is an issue.

7. RFA statement. The following language should be used in the classification section:

This emergency/interim rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

8. PRA statement.

A. For emergency/interim rules containing information requirements, that have received PRA clearance from OMB, the following language should be used:

This emergency/interim rule contains a collection-of-information requirement subject to review and approval by OMB under control number (enter number assigned to your approval; all start with 0648-). Public reporting burden for (name the specific requirement or requirements) is estimated to average (enter minutes or hours per individual response for each requirement) per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.”

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Remember to include in the ADDRESSES section of the rule, the sentence “Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to (enter office name) and by e-mail to DavidRostker@omb.eop.gov, or fax to (202) 395-7285”.

Remember to include in the ADDRESSES section of the rule, the sentence “Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to (enter office name) and by e-

mail to DavidRostker@omb.eop.gov, or fax to (202) 395-7285”.

B. No statement is required if there is no collection of information.

9. ESA statement. There is no requirement for a statement, unless there are significant associated issues. If necessary, insert one of the following in the classification section:

I have determined that fishing activities conducted pursuant to this temporary rule will not affect endangered and/or threatened species or critical habitat under the Endangered Species Act. [Provide any relevant facts, e.g., action will not result in any change or increase in fishing activity, action is administrative in nature.]

An informal consultation under the Endangered Species Act was concluded for a temporary rule under [FMP/amendment] on [date]. As a result of the informal consultation, the Regional Administrator determined that fishing activities conducted under this rule are not likely to adversely affect endangered or threatened species or critical habitat. [Provide any relevant facts, e.g., action will not result in any change or increase in fishing activity, action is administrative in nature.]

[If a formal section 7 consultation was done, indicate the date and the conclusion of the most recent consultation.]

A formal section 7 consultation under the Endangered Species Act was initiated for a temporary rule under [FMP]. In a biological opinion dated [date], the Regional Administrator determined that fishing activities conducted under the temporary rule are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

A formal section 7 consultation under the Endangered Species Act was conducted with the U.S. Fish & Wildlife Service (USFWS) on the effects of this temporary rule under the [FMP/amendment] on the [species]. The biological opinion issued by the USFWS dated [date] states that fishing activities conducted under [FMP/amendment] and its implementing regulations are not likely to jeopardize the continued existence of [species] or result in the destruction or adverse modification of critical habitat.

10. MMPA statement. There is no requirement for a statement, unless there significant issues. If necessary, insert one of the following in the classification section:

The Regional Administrator has determined that fishing activities conducted under this emergency/interim rule will have no adverse impact on marine mammals.

Adverse impacts on marine mammals resulting from fishing activities conducted under this emergency/interim rule are discussed in the EA [FEIS] (see ADDRESSES).

[Note: Any adverse impact should be discussed in the final EA/EIS. If the subject marine mammals are threatened or endangered under ESA, see 9. [above].

11. INFORMATION QUALITY ACT statement. There is no requirement for a statement.

OPTIONAL EXECUTIVE ORDERS* (USE IF APPLICABLE.)

12. E.O. 13186 statement. There is no requirement for a statement unless the emergency/interim rule impacts interactions between pelagic longline vessels and migratory birds.

13. E.O. 13175 statement. There is no requirement for a statement unless the emergency/interim rule involves tribal participation in the fishery.

This emergency/interim rule was developed after meaningful consultation with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

15. E.O. 13089 statement. There is no requirement for a statement unless the emergency/interim rule involves coral reef protection in the western Pacific.

This emergency/interim rule is consistent with Executive Order 13089, which is intended to preserve and protect the biodiversity, health, heritage, and social and economic value of U.S. coral reef ecosystems and the marine environment.

Inseason Regulatory Changes

Classification

1. Opening paragraph.

This action is required by 50 CFR ____ and is exempt from review under Executive Order 12866.

2. APA statement. If waiving prior notice and comment and/or the 30-day delay in effectiveness (delayed effectiveness period), include one of the following:

Option 1. (use for good cause waiver of notice and comment). Pursuant to 5 U.S.C.553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be {either: [impracticable and contrary to the public interest]; [unnecessary and contrary to the public interest; or [impracticable, unnecessary, and contrary to the public interest. [Provide facts to explain why.]

Option 2. (use if waiving delayed effectiveness period).

There is good cause under 5 U.S.C. 553(d)(3) to {either: [waive the 30-day delay in effective date], [establish an effective date less than 30 days after date of publication], or [make the rule effective immediately upon filing with the Office of the Federal Register]. Provide facts to support basis for waiver, e.g., need to implement action in timely manner, unavoidable time constraints outside agency control, etc.]

Option 3. (Use of relieving a restriction).

Because this rule relieves a restriction by [explain how it relieves a restriction], it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). [Explain what current restriction is, how regulated community is restricted, and what rule would do to relieve the restriction.]

3. Other statements. NEPA, RFA, PRA, CZMA, etc., statements are not required, unless there are significant associated issues.

Non-automatic Inseason Regulatory Changes

Classification

1. Opening paragraph. For an “open” framework measure that normally involves consultation with a Council and invites public comment on the action, either prior to or subsequent to the final action.

This action is authorized by 50 CFR and is exempt from review under Executive Order 12866.

Suggested mode of transmission of memoranda and regulations

Issues Advisory

An Issues Advisory is prepared and signed in the Region or headquarters; and faxed or PDF to headquarters. The original Issues Advisory is sent to headquarters via overnight mail.

Decision Memoranda

FMP/Amendments - proposed and final rules

Regulatory amendments - proposed and final rules

Annual specifications - preliminary and initial specifications

Drafts prepared in Region for advance review are mailed, faxed, or e-mailed (Word or Word Perfect), to headquarters. Final memo is prepared and signed in Region; fax or PDF, and overnight mail the original.

Certification of Attorney Review Memorandum

Prepared and signed in Region; include in fax or PDF and overnight mail with Regional Administrator's Decision Memorandum. Include in inseason actions that are sent by fax or PDF and mailed to headquarters.

Regulations and Specifications

Proposed and final rules
Preliminary and initial specifications

Send to headquarters by e-mail (Word or Word Perfect). If a rule contains a request for collection of information under the Paperwork Reduction Act, the estimated burden hours and justification must be submitted with the proposed rule or in advance, if possible. Consult as soon as possible with the PRA Coordinator (F/OM3).

Inseason actions

Send to headquarters by e-mail (Word or Word Perfect) and fax or PDF.

Transmittal of Documents

The rules and information/decision memos for signing by AA (e.g., Assistant Administrator for Fisheries to, Assistant Administrator for Fisheries to Under Secretary for Oceans and Atmosphere) are prepared by the Regional reviewer and sent by e-mail (Word or Word Perfect) to headquarters. The memos will be printed in final on letterhead stationery by headquarters.

Transmittal of Memoranda to SBA Regarding Regulatory Flexibility Act

Certification of non-significance

The memo (i.e., to SBA) is prepared by the Regional reviewer and sent to headquarters by e-mail (Word). The memo will be printed in final on letterhead stationery at headquarters.

Transmittal of an Initial Regulatory Impact Analysis

The memo (i.e., [Name] Office Director to SBA) is drafted by the Regional reviewer and sent to headquarters by e-mail (word). The memo will be printed in final on letterhead stationery at headquarters.

Submitting documents electronically

Scan the following documents into PDF format to submit via email:

Decision memo

Certificate of Attorney Review

Information memo (if applicable)

*In the event that there are no PDF capabilities, facsimiles will be accepted

The scanned signed documents, electronic version of the rule, and all applicable transmittal memos can be submitted electronically by emailing the appropriate headquarters point of contact.

Submitting documents in paper or other hard copy form

Hard copies will be accepted and can be mailed to the appropriate headquarters contact.

Communication on Regulatory Actions

The Assistant Administrator for Fisheries reserves the authority to concur in the Regional Administrator's disapproval or partial approval of an FMP/Amendment. If the Assistant Administrator does not concur, the Regional Administrator's delegated authority may be rescinded for a specific action. To minimize such situations, the Regional Administrator is required to send to HQ an Issues Advisory regarding issues and concerns about a pending action, but without a recommendation of decision. After review by the Office Director, and clearance by the Assistant Administrator, the Region will be notified. The clearance represents authorization for signing and submission of the specific action to HQ. See Guidance section of Examples Package for additional information on Issues Advisories.

The Assistant Administrator will determine when it is appropriate to communicate information on regulatory actions to NOAA officials. The Under Secretary for Oceans and Atmosphere requests that he/she be informed of pending rules, especially of a controversial or major policy nature, prior to DOC clearance.