

The individual preparing a FONSI should use this guidance in conjunction with NOAA's Administrative Order (NAO) 216-6, "Environmental Review Procedures for Implementing the National Environmental Policy Act" (sections 6.01 and 6.02), and the Council on Environmental Quality (CEQ) significance criteria at 40 C.F.R. ' 1508.27(b).

II. Requirements of a FONSI

A FONSI is a document that is based upon the information and analysis contained in an Environmental Assessment (EA), and summarizes why an action that is otherwise not categorically excluded will not cause significant environmental impacts that would require the preparation of an Environmental Impact Statement (EIS).² If the EA contains information and analysis to conclude that a proposed action will not result in a significant environmental impact, a FONSI is required to be prepared and made available to the public pursuant to the CEQ regulations and NAO 216-6.³

A FONSI must explain why the proposed action will not have a significant impact on the human environment. The finding itself need not be detailed, but must state briefly the reasons for deciding why the action will not result in significant impacts. On the other hand, if the action is determined to be significant, NMFS would be required to prepare an EIS.⁴

Whenever a FONSI and its EA are prepared as stand alone documents, the supporting EA must be attached behind the FONSI. When an EA is incorporated into a broader document, such as a proposed fishery management framework adjustment, the FONSI may be placed within the broader document as appropriate to accommodate that broader document's structure and readability.

The FONSI must identify and address each of the significance criteria contained in the CEQ regulations and NAO 216-6, sections 6.01 and 6.02. (See Attachment 1 for a list of these criteria for fishery management actions and Attachment 2 for a list of these criteria for all other actions). In order to make the finding of no significant impact, the supporting EA must contain information and analysis related to each of the significance criteria. In determining the significance of a proposed action, the analysis should examine the context and intensity of the action and its effects on the environment. Context refers to the geographic area of the affected environment, including the national, regional and local environments and the affected interests. A specific action may affect one or more of these geographic areas and its potential to significantly impact each affected area or identified interest must be addressed in the FONSI. Intensity refers to the magnitude of the impact and most importantly to its severity on the

² See 40 C.F.R. § 1508.13.

³ See 40 C.F.R. § 1501.4(e), § 1506.6 and NAO 216-6, §5.02b.

⁴ NMFS need not prepare an EIS if significant impacts resulting from the action can be avoided through implementation of mitigation measures.

resource or the area(s) in question.⁵ The relevant analyses contained in the supporting EA should be summarized and incorporated in the FONSI, as appropriate. Furthermore, conclusory statements, i.e., statements lacking support or reasoning, must be avoided when preparing a FONSI. Examples of conclusory statements include:

- “The proposed action is limited in scope and is expected to result in negligible mortality of target species”;
- “The proposed action is not expected to allow substantial damage to the ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Act because the project is limited in scope and the amount of time that fishing gear would be in contact with the bottom is minimal”;
- “The proposed action is not expected to have an adverse impact on endangered or threatened species, marine mammals, or critical habitat of these species”

Instead, responses to FONSI criteria must be as specific as possible and include a quantitative or qualitative discussion of likely impacts. Two response examples follow for the significance criteria that addresses impacts to the sustainability of any target species and the third example addresses the significance criteria for impacts to protected species:

- “The proposed action is not expected to jeopardize the sustainability of any target species affected by the action. Although the proposed action would result in a slight increase in fishing effort due to exemptions from DAS requirements, the additional mortality resulting from this additional effort would be controlled through trip limits. The entire study would only result in an increase in effort of 36 sea days, which would result in 18,000 pounds of additional cod and 156,000 pounds of additional haddock (if the daily trip limit is not waived) being landed. The study would also result in a temporary increase in mortality of sub-legal individuals, due to the use of a codend cover. Based on previous composite mesh studies, the expected ratio of sub-legal to legal fish is 4:1. However, the overall impact on target resources is expected to be minimal due to the limited scope and duration of the experiment”;
- “As more fully discussed in section 5.1 that describes biological impacts, the emergency action is not expected to jeopardize the sustainability of any target species that may be affected by the action. In fact, the action is intended to protect the sustainability of all groundfish stocks managed under the FMP in the interim period provided to the Council and the agency while Amendment 13 is being developed. The proposed action to extend the time period of the WGOM Area Closure will provide interim protection for a portion of the GOM cod resource that could be expected to be fished at a high level of fishing effort in the absence of any other measures to control that effort. That area, as well as additional seasonal closures represent time/areas with high cod landings and will contribute to a reduction in groundfish and non-groundfish mortality. Expanding temporally the Cashes Ledge Area Closure will provide additional protection for GOM cod and other stocks in the offshore areas. The mesh changes in this action should have positive biological benefits for several groundfish stocks. Effort reductions will also reduce fishing mortality. This action will protect the long-term productive capability of the GOM cod stock, as well as afford protection for several other stocks of fish”;
- “The proposed action would add fixed fishing gear to the waters of NLMA1. Marine mammals and sea turtles have been known to become entangled in fixed fishing gear, sometimes causing

⁵ See 40 C.F.R. § 1508.27.

serious injury or death. NLMA1 provides migratory habitat for several endangered species of whales, most notably the critically endangered western North Atlantic right whale. Regulatory measures are in place to prevent any incidental takes of right whales in an effort to prevent their extinction . . . [t]he amount of additional gear proposed to be added to NLMA1 as a result of the Jonah crab experimental fishery is quite small in comparison to what is currently being fished for lobster (i.e., less than 1% of existing fixed gear in the State of Maine) . . . [t]he MEDMR is fully aware of the risks of additional fixed gear (and lines) to marine mammals and sea turtles, and will therefore ensure compliance with the most stringent gear regulations. The gear restrictions set forth in this EA are intended to minimize entanglement risks to marine mammals and sea turtles. All exempted gear must be fished in compliance with present gear modification requirements for the Maine lobster fishery as specified in the Federal regulations for the American lobster fishery (68 FR 14902, March 27, 2003), and in accordance with the approved modifications to the ALWTRP (67 FR 59471, September 23, 2002). The MEDMR will also require compliance with all forthcoming regulatory measures and ALWTRP recommendations.

The August 13, 2002, biological opinion . . . recommended that experimental participants use neutrally buoyant line on traps that are fished in excess of their normal allocation (i.e., the 200 traps over and above the 800 traps allocated), from June through October. A maximum of 100 participants, at 200 traps each above their normal allocation (20,000 traps total), would mean an additional 2,000 vertical lines in the NLMA1, as indicated by the number of trap tags issued to lobster vessels in Maine. The RPA is expected to minimize the risk of Jonah crab gear for ESA-listed right whales during those times when western North Atlantic right whales are most likely to be present. In addition, the RPA should also help to minimize the risk of entanglement of other ESA-listed species in Jonah crab trap gear.

Finally, NMFS may cross-reference applicable sections of the EA in its FONSI only if those sections contain relevant information and analysis.

This guidance is intended to assist NMFS in employing a consistent approach to the development of a FONSI. The office that prepares the EA is responsible for developing the narrative portion of the FONSI, consistent with the uniform framework described herein. In addition, each office should strive to include enough information in the FONSI so a decisionmaker is able to articulate a rational justification for the conclusion of no significant impacts to the environment. In order to ensure the EA contains the necessary information to support a FONSI determination, a copy of the FONSI criteria questions should be provided to the individual preparing the EA early in the development of the analytical document. This approach will enable NMFS to meet its NEPA requirements and will help ensure that reviewing courts are well-positioned to conclude that NMFS has taken the requisite a “hard look” at the environmental impacts of its proposed action.

Attached to these Guidelines are two templates that must be used when preparing a FONSI. Attachment 1 is specific for fishery management actions, including fisheries research requiring NOAA financial assistance. Attachment 2 must be used for all other NMFS actions, including protected species and habitat research requiring NOAA financial assistance. Each template contains the relevant significance criteria pursuant to NOAA’s NAO 216-6 guidance and CEQ’s

regulations.⁶ NMFS must address each significance criterion and provide a brief explanation of whether the proposed action is likely to result in a significant impact on the environment.

Attachment 1

Finding of No Significant Impact for [Identify action] [for use with fishery management actions and fisheries research requiring NOAA financial assistance]

National Marine Fisheries Service

National Oceanic and Atmospheric Administration Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations at 40 C.F.R. '1508.27 state that the significance of an action should be analyzed both in terms of “context” and “intensity.” Each criterion listed below is relevant in making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ’s context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?

Response:

2) Can the proposed action reasonably be expected to jeopardize the sustainability of any non-target species?

Response:

3) Can the proposed action reasonably be 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?

Response:

4) Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?

Response:

⁶ Although NAO 216-6 refers to A “substantial impacts,” this is understood to mean “significant impacts on the environment.”

5) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?

Response:

6) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response:

7) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response:

8) Are the effects on the quality of the human environment likely to be highly controversial?

Response:

9) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?

Response:

10) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response:

11) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response:

12) Is the proposed action likely to 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?

Response:

13) Can the proposed action reasonably be expected to result in the introduction or spread of a nonindigenous species?

Response:

14) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

Response:

15) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response:

16) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response:

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 for Fisheries, NOAA
[or Responsible Program Manager, [identify Office]]

Date

Attachment 2

Finding of No Significant Impact for [Identify action] [for use with all AOther@ Actions]

National Marine Fisheries Service

National Oceanic and Atmospheric Administration Administrative Order 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations at 40 C.F.R. '1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ=s context and intensity criteria. These include:

1) Can the proposed action reasonably be 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?

Response:

2) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response:

3) Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?

Response:

4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

Response:

5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response:

6) Are the effects on the quality of the human environment likely to be highly controversial?

Response:

7) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?

Response:

8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response:

9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response:

10) Is the proposed action likely to 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?

Response:

11) Can the proposed action reasonably be expected to result in the introduction or spread of a nonindigenous species?

Response:

12) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

Response:

13) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response:

14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response:

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 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 for Fisheries, NOAA
[or Responsible Program Manager, [identify Office]]

Date