

***NATIONAL MARINE FISHERIES SERVICE INSTRUCTION 30-131-01
SEPTEMBER 12, 2007***

Administration and Management
Delegation of Authorities for Completing NEPA Documents, NMFSPD 30-131

Procedures for the Review and Clearance of Fishery Management NEPA Documents

NOTICE: This publication is available at: <http://www.nmfs.noaa.gov/directives/>.

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Certified by: F/SF (A. Risenhoover)

SUMMARY OF REVISIONS: This procedural directive supersedes portions of the National Marine Fisheries Service Instruction 01-101-03, Revised Operational Guidelines, Section E, Phase IV, effective May 1, 1997, as it contains guidance on the number of NEPA document copies required for submission to Headquarters and the process for obtaining the clearance and concurrence of the NOAA NEPA Coordinator and the Assistant Administrator for Fisheries, as applicable.

Signed /s/ Emily Menashes for _____ 8/29/07 _____
[Alan Risenhoover] Date
[Director, Office of Sustainable Fisheries]

Procedures for the Review and Clearance of Fishery Management NEPA Documents

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Introduction

This document is intended to provide guidance to Office of Sustainable Fisheries (OSF) staff now assuming National Environmental Policy Act (NEPA) roles and responsibilities that were previously performed by the Assistant Administrator for Fisheries (AA) and staff of the OSF Clearance Unit as a result of the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) Policy Directive 30-131, Delegations of Authority for Completing NEPA Documents (NMFSPD 30-131), effective March 5, 2007. This procedural directive integrates NMFSPD 30-131, into existing procedures for submission, review, and clearance and/or concurrence for NEPA documentation associated with regulatory actions. In addition, it also provides new and updated guidance on the filing of Environmental Impact Statements (EISs) to the Environmental Protection Agency (EPA) and distribution of EIS documents to the public and therefore, supersedes those portions of NMFS Instruction 01-101-03, Revised Operational Guidelines, Section E, Phase IV, effective May 1, 1997, related to these issues.

It is not intended to supersede Regional or Office internal guidance and procedures currently in effect for the clearance of NEPA documentation not related to Policy Directive 30-131. Nor does it supersede the Council on Environmental Quality (CEQ), NEPA, and NOAA's Administrative Order (NAO) Series 216-6, and NMFSPD 30-131. This document does not serve as NMFSPD 30-131's Quality Assurance Plan (QAP); portions of the procedures in this document rather serve as specific guidelines for applicable QAP sections.

I. Categorical Exclusion (CE) Procedures¹

A. Review and Final Determination

1. Responsible Program Manager² (RPM) follows QAP.
2. RPM provides proposed CE to the appropriate NMFS NEPA Coordinator³ for review and comment. (Attachment B.1)
3. Appropriate NMFS NEPA Coordinator provides written acknowledgement (written document, e-mail, or equivalent form of notification for documentation in the Administrative Record) to the RPM and technical staff.
4. NOAA General Counsel (NOAA-GC)⁴ review of CEs for legal sufficiency is not typically required. However, NOAA GC and RPM may determine that review for legal sufficiency of the CE is needed when the action is either:
 - a. Substantially dissimilar to previous actions reviewed by NOAA GC;
 - b. Associated with existing litigation against NMFS;
 - c. Controversial and significant probability that litigation will result; and/or
 - d. Related to known Congressional interests.
5. If CE requires legal review and CE is with a rulemaking package, NOAA GC provides RPM, technical staff, and appropriate NMFS NEPA Coordinator with a Certificate of Attorney Review (Attachment B.2) indicating whether the action has been determined to be legally sufficient.
 - a. One Certification of Attorney Review is prepared for the entire rulemaking package.
 - b. If CE requires NOAA GC review and CE is apart from a rulemaking package, an alternative review memorandum shall be used to certify that NOAA GC has reviewed the NEPA document.
6. RPM⁵ makes final determination on content and documentation and signs CE.
7. RPM includes results of CE determination in any applicable rulemaking package.
8. CE documentation is kept for the Administrative Record.

¹ See Attachment A.1 for flowchart of CE procedure

² The position of the Responsible Program Manager remains unchanged from how it is defined in Section 2.02c of NAO 216-6. (See also NMFSPD 30-131, Attachment 1)

³ “Appropriate NMFS NEPA Coordinator” refers to the Regional Office NMFS NEPA Coordinator who advises staff and reviews NEPA documentation prepared by Regional, Science Center, and Fishery Management Council staff; and the Headquarters NMFS NEPA Coordinator who performs these functions for NEPA documents prepared by Headquarters.

⁴ “NOAA GC” is either the Deputy Assistant General Counsel for Sustainable Fisheries or designee who reviews and clears NEPA documents prepared by Headquarters; or the Regional Attorney or designee who reviews and clears NEPA documents prepared in the Region, Science Center, and Fishery Management Councils.

⁵ The RPM may redelegate RPM authorities for CEs to the Deputy Office Director, Deputy Regional Administrator and/or Assistant Regional Administrator assigned the responsibility for completing the agency action.

II. Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) Procedures⁶

A. Review Process for draft EA and draft FONSI:

1. RPM follows QAP.
2. RPM provides draft EA and draft FONSI to appropriate NMFS NEPA Coordinator, who completes the NMFS' NEPA Coordinator's Review and Comment Memorandum (Attachment C.1), and provides copies to the RPM, technical staff, and applicable NOAA GC.
 - a. NOAA GC should have an opportunity to review the draft EA and draft FONSI and proposed regulatory action, if any. NOAA GC prepares a Certification of Attorney Review for the entire rulemaking package.
 - b. At the written request of the RPM, NOAA GC may determine that a waiver of NEPA review is appropriate. If so, NOAA GC prepares a written waiver of NEPA review for legal sufficiency. All criteria identified below must be met for such a waiver:
 - i. Regulatory action and associated impacts are substantially similar to previous actions reviewed by NOAA GC;
 - ii. Action is not associated with known existing litigation against NMFS;
 - iii. Action is not controversial and litigation over NEPA analysis is not reasonably foreseeable; and
 - iv. There are no known Congressional interests.
3. RPM provides a copy of the draft EA and draft FONSI to the NOAA NEPA Coordinator's staff⁷ for review via email to ppi.nepa@noaa.gov.
 - a. Submission to the NOAA NEPA Coordinator occurs concurrently with submission of associated proposed regulatory action to the Clearance Unit⁸. However, a draft FONSI is not a required part of the NEPA documentation accompanying the proposed regulatory action.
4. NOAA NEPA Coordinator provides comments to RPM within ten working days of receipt and RPM addresses NOAA NEPA Coordinator's comments.

B. Final EA and final FONSI Review:

1. RPM prepares final EA and final FONSI⁹.
2. RPM provides NOAA GC with final EA and final FONSI for review.

⁶ See Attachment A.2 for flowchart of EA/FONSI procedure.

⁷ NOAA NEPA Coordinator's staff refers to the Office of Program Planning and Integration.

⁸ If EA only has a final rulemaking stage, the RPM should work with the NOAA NEPA Coordinator's staff to determine an appropriate time for draft EA and draft FONSI review.

⁹ Final EA/Final FONSI preparation occurs following review and consideration of public and/or other comments following the end of the proposed rulemaking comment period.

3. Subsequent to the RPM addressing NOAA GC comments, NOAA GC prepares:
 - a. Certification of Attorney Review for the entire rulemaking package;
 - i. Appropriate NMFS NEPA Coordinator is provided a copy (Attachment C.2).
 - b. At the written request of the RPM, and if appropriate, a written waiver of NEPA review for legal sufficiency. See Section II.A.2.b for criteria for waiver.
4. The RPM¹⁰ signs the final FONSI, and the Clearance and Recommendation Memorandum (Attachment C.3).

C. Submission to and Clearance by NOAA NEPA Coordinator

1. RPM assembles NEPA Final EA Clearance Package consisting of the following documentation, including appropriate contact information (email, fax, and mailing address) to be used for returning documents:
 - a. Final EA;
 - b. FONSI signed by the RPM;
 - c. Certification of Attorney Review or Waiver Document (Attachment C.2);
 - d. Clearance and Recommendation Memorandum addressed to NOAA NEPA Coordinator and signed by RPM (Attachment C.3); and
 - e. FONSI/EA Cover Letter to Interested Parties for Final EA (Attachment C.4).
2. RPM sends NEPA Final EA Clearance Package to the NOAA NEPA Coordinator.
 - a. The package may be submitted by either or a combination of the following methods as determined through consultation with the NOAA NEPA Coordinator’s staff:
 - i. Email to ppi.nepa@noaa.gov. Signed documents should be scanned and saved as Adobe files. Copy nmfs.clearance@noaa.gov on submission.
 - ii. Fax signed documents to (301) 713-0585 if equipment to scan documents into Adobe files is not available.
 - iii. Mail to the following address.

NOAA
 Office of Program Planning and Integration (PPI)
 SSMC3, Room 15743
 1315 East-West Highway
 Silver Spring, Maryland 20910
 Telephone: (301) 713-1622

b. NMFS staff should work directly with NOAA NEPA Coordinator’s staff to determine the most expeditious manner for obtaining review comments and clearance and/or concurrence by the NOAA NEPA Coordinator, especially when submitting packages with critical time constraints.

¹⁰ The RPM may not redelegate signature authority to subordinate staff. Signature responsibility may only be fulfilled by NMFS staff acting in the capacity of the RPM.

- c. NMFS staff should identify significant deadlines, i.e., statutory, decision, or implementation dates, etc., associated with the EA.
 - d. RPM sends the final rulemaking package to the Clearance Unit concurrently with submission to the NOAA NEPA Coordinator.
3. NOAA NEPA Coordinator reviews and provides clearance and/or concurrence of the NEPA Final EA Package to the RPM and the NMFS NEPA Coordinator within three working days of receipt and provides the completed NEPA Final EA Clearance package to the Clearance Unit for inclusion in the rulemaking package via email or hard copy.
 4. Upon receipt of the cleared NEPA EA Clearance Package, the Clearance Unit officially receives the final regulatory action and begins processing the action under NMFS/NOAA clearance procedures.

III. Draft, Final, & Supplemental Environmental Impact Statements (EIS) Procedures

A. Review Process¹¹:

1. RPM follows QAP.
2. RPM provides EIS to the appropriate NMFS NEPA Coordinator for review, who completes the NMFS' NEPA Coordinator's Review and Comment Memorandum (Attachment D.1. for Draft EIS or E.1. for Final EIS) and provides copies to the RPM, technical staff, and NOAA GC.
3. RPM provides a copy of the draft document (either Draft EIS or Final EIS) to the NOAA NEPA Coordinator's staff for review via email to ppi.nepa@noaa.gov.
 - a. NMFS staff should work directly with NOAA NEPA Coordinator's staff to determine the most expeditious manner for obtaining review comments by the NOAA NEPA Coordinator, especially when processing actions with critical time constraints.
 - b. Identify significant deadlines, i.e., statutory, decision, or implementation dates, etc., associated with the document¹².
 - c. NOAA NEPA Coordinator review may occur either prior to or concurrently with NOAA GC review (Step 5), but not before review of appropriate NMFS NEPA Coordinator and regional technical staff.
4. NOAA NEPA Coordinator provides comments to RPM within ten working days of receipt and RPM addresses NOAA NEPA Coordinator's comments.
5. RPM provides copy of draft document to NOAA GC.

¹¹ See Attachment A.3 for flowchart of EIS procedures.

¹² If action has associated critical dates, RPM prepares a timeline to calculate the end of the comment- period for the Draft and Final EIS documents and when the earliest date that the ROD and decision documentation for the action should be signed. See a discussion of integrating timelines contained in the NOAA National Environmental Protection Act Handbook at http://www.nepa.noaa.gov/NEPA_HANDBOOK.pdf. For information on statutory decision dates under MSA, see <http://www.nmfs.noaa.gov/sfa/magact/>.

- a. If NOAA GC provides comments on the EIS, RPM addresses the comments and informs appropriate NMFS and NOAA NEPA Coordinators of any substantive changes.
- 6. Subsequent to the RPM addressing any comments received as a result of NOAA NEPA Coordinator and NOAA GC reviews, NOAA GC provides Certificate of Attorney Review to RPM, technical staff, and appropriate NMFS NEPA Coordinator (Attachment D.2. for Draft EIS or E.2. for Final EIS).

B. Submission to and Clearance by NOAA NEPA Coordinator

- 1. RPM assembles NEPA EIS Package consisting of the following documentation:
 - a. EIS;
 - b. Certification of Attorney Review or Waiver Document (Attachment D.2 for Draft EIS or E.2 for Final EIS);
 - c. Clearance and Recommendation Memorandum addressed to NOAA NEPA Coordinator and signed by RPM (Attachment D.3 for Draft EIS or E.3. for Final EIS);
 - d. “Dear Reviewer” Cover Letter, including date when comment period ends¹³ (Attachment D.4 for Draft EIS or E.4 for Final EIS) and;
 - e. Letter Requesting EIS Filing and Notification of Public Availability from NOAA NEPA Coordinator to EPA (Attachment D.5 Draft EIS or E.5 Final EIS).
- 2. RPM sends NEPA EIS Package to the NOAA NEPA Coordinator for review and concurrence.
 - a. The package may be submitted by either or a combination of the following methods as determined through consultation with NOAA NEPA Coordinator’s staff:
 - i. Email to ppi.nepa@noaa.gov. Signed documents should be scanned and saved as Adobe files. Copy nmfs.clearance@noaa.gov on submission of Final EISs.
 - ii. Fax signed documents to (301) 713-0585 if equipment to scan documents into Adobe files is not available.
 - iii. Mail to the following address.

NOAA
 Office of Program Planning and Integration (PPI)
 SSMC3, Room 15743
 1315 East-West Highway
 Silver Spring, Maryland 20910
 Telephone: (301) 713-1622

- b. Submission to the NOAA NEPA Coordinator occurs concurrently with submission of associated proposed regulatory action to the Clearance Unit.

¹³ The RPM should be able to determine the date the Notice of Availability (NOA) will be published in the Federal Register and count the days to the end of the comment period. The deadline for filing at EPA is 3:00 pm Friday for publication in the Federal Register the following Friday. For DEISs, a minimum 45-day comment period begins the day following NOA publication in the Federal Register and for a FEIS the 30-day cooling-off or wait period begins the day following NOA publication. If the end of the comment period falls on a weekend or a Federal holiday, the comment period is extended to the next Federal work day.

3. NOAA NEPA Coordinator reviews and provides clearance and/or concurrence of the formal EIS documentation within five working days of receipt and returns signed “Dear Reviewer” Cover Letter, and Letter Requesting EIS Filing and Notification of Public Availability from the NOAA NEPA Coordinator to EPA to RPM by fax and mail.

C. Distribution of Cleared EIS

1. RPM ensures that each copy of the EIS is accompanied by a signed “Dear Reviewer” Cover Letter, and completes distribution according to distribution guidelines¹⁴. RPM is encouraged to coordinate with his/her respective fishery management council(s) to ensure that complete and non-redundant distribution occurs.
 - a. RPM adds the following parties to his/her distribution list¹⁵:
 - i. Willie R. Taylor
Office of Environmental Affairs
Department of Interior
1849 "C" Street, N.W.
Washington, D.C. 20520
(1 hardcopy & 11 CDs)
 - ii. U.S. Coast Guard District Office¹⁶
(1 CD)
 - iii. William Gibbons-Fly
Director, Office of Marine Conservation
Department of State
2201 "C" Street, N.W.
Washington, D.C. 20520
(1 CD)
 - iv. Timothy J. Ragan, Ph.D.
Acting Executive Director
Marine Mammal Commission
4340 East-West Highway
Bethesda, MD 20814
(1 CD)
 - v. Angela Somma
F/PR3; Endangered Species Division
Angela.Somma@noaa.gov
(Send documents electronically and/or inform of website location)
 - vi. Dale Jones
F/EN; Enforcement Division
Dale.Jones@noaa.gov

¹⁴See [NEPA Handbook](http://www.nepa.noaa.gov/NEPA_HANDBOOK.pdf), Section 5.4.10 (http://www.nepa.noaa.gov/NEPA_HANDBOOK.pdf) and NAO 216-6, Section 5.04c.5 “Public Distribution” (http://www.nepa.noaa.gov/NAO216_6_TOC.pdf).

¹⁵ Because the Office of Sustainable Fisheries’ Clearance Unit is no longer involved in the review process, distribution formerly delegated to the Office is transferred to the RPM.

¹⁶See <http://www.uscg.mil/top/units/>

(Send documents electronically and/or inform of website location)

- vii. Galen Tromble
F/SF3; Domestic Fisheries Division
Galen.Tromble@noaa.gov

(Send documents electronically and/or inform of website location)

- b. Distribution should be completed no later than the day the EIS files at EPA

D. Filing with Environmental Protection Agency (EPA) - *Routine Filing of EISs*¹⁷: This process applies to all EIS-related actions that have no immediate critical deadlines.

- 1. RPM mails by U.S. Postal Service or express mail¹⁸,
 - a. Five bound copies of the EIS document with copy of “Dear Reviewer” Cover Letter included; and
 - b. Original or copy of Letter Requesting EIS Filing and Notification of Public Availability from the NOAA NEPA Coordinator to EPA, to one of the following addresses:

For Deliveries by the U.S. Postal Service mail (Return Receipt)

US Environmental Protection Agency
Office of Federal Activities
EIS Filing Section
Mail Code 2252-A, Room 7220
Ariel Rios Building (South Oval Lobby)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

For Deliveries in-person or by Express Mail (Federal Express, UPS)

US Environmental Protection Agency
Office of Federal Activities
EIS Filing Section
Mail Code 2252-A, Rm 7220
Ariel Rios Building (South Oval Lobby)
1200 Pennsylvania Avenue, NW
Washington, DC 20004

E. Filing with Environmental Protection Agency (EPA) - *Filing EISs in Extenuating Circumstances*: This process applies only to actions with immediate critical deadlines. Consult with the Clearance Unit to coordinate this handling procedure. In addition to following the procedures outlined in parts A-C of this section, the following steps shall be taken:

¹⁷ See also EPA’s NEPA website for more filing information:
(<http://www.epa.gov/compliance/resources/policies/nepa/fileguide.html>)

¹⁸ FedEx or UPS packages are delivered directly to the EIS filing room, whereas U.S. Postal Service packages are not directly delivered to the filing room. EPA considers a package received as soon as it is delivered to the filing room, therefore the RPM can know when a package is received through online FedEx and UPS tracking services. If RPM is still not sure on timely filing, contact Pearl Young at 202-564-1399 or Dawn Roberts at 202-564-7146 for additional confirmation of filing.

1. RPM provides the Clearance Unit with the EIS in the following forms concurrently with submission of NEPA EIS Package to NOAA NEPA Coordinator:
 - 5 bound copies for delivery to EPA
 - 1 printed copy (This does not need to be bound.)
 - 1 CD-ROM
2. NOAA NEPA Coordinator's staff provides the Clearance Unit with a copy of the signed Letter Requesting Filing and Notification of Public Availability from the NOAA NEPA Coordinator to EPA and a copy of the "Dear Reviewer" Cover Letter, in addition their transmission of copies and originals to the region following clearance/concurrence of the EIS.
3. RPM completes EIS distribution and faxes or emails to the Clearance Unit a signed copy of the "Affidavit Confirming Distribution of an EIS Prior to Filing EIS at EPA for Notice of Availability." (Attachment F)
4. Clearance Unit inserts a copy of the "Dear Reviewer" Cover Letter in each EIS copy prior to filing at EPA.
5. Upon receipt of the Affidavit from the RPM, Clearance Unit hand-delivers the EIS to EPA including:
 - a. Five bound EIS documents,
 - b. Affidavit Confirming Distribution,
 - c. "Dear Reviewer" Cover Letter, and
 - d. Letter Requesting Filing and Notification of Public Availability from the NOAA NEPA Coordinator to EPA.
6. Clearance Unit notifies RPM of EPA filing via email.

F. Record of Decision

1. RPM prepares a stand-alone ROD document for the signature of the AA in accordance with Section 1505.2 of CEQ's regulations.
2. RPM prepares package that includes:
 - a. Decision and related clearance and information memoranda for the action;
 - b. Certification of Attorney Review for entire rulemaking action including the ROD;
 - c. Copy of the FEIS document and unsigned ROD prepared for signature of AA; and
 - d. Other documents and analyses as indicated in the applicable Checklist document for this action¹⁹.
3. RPM submits the package for the action to the Clearance Unit.
4. AA signs all decision documentation, including the ROD, concurrently²⁰. Clearance Unit

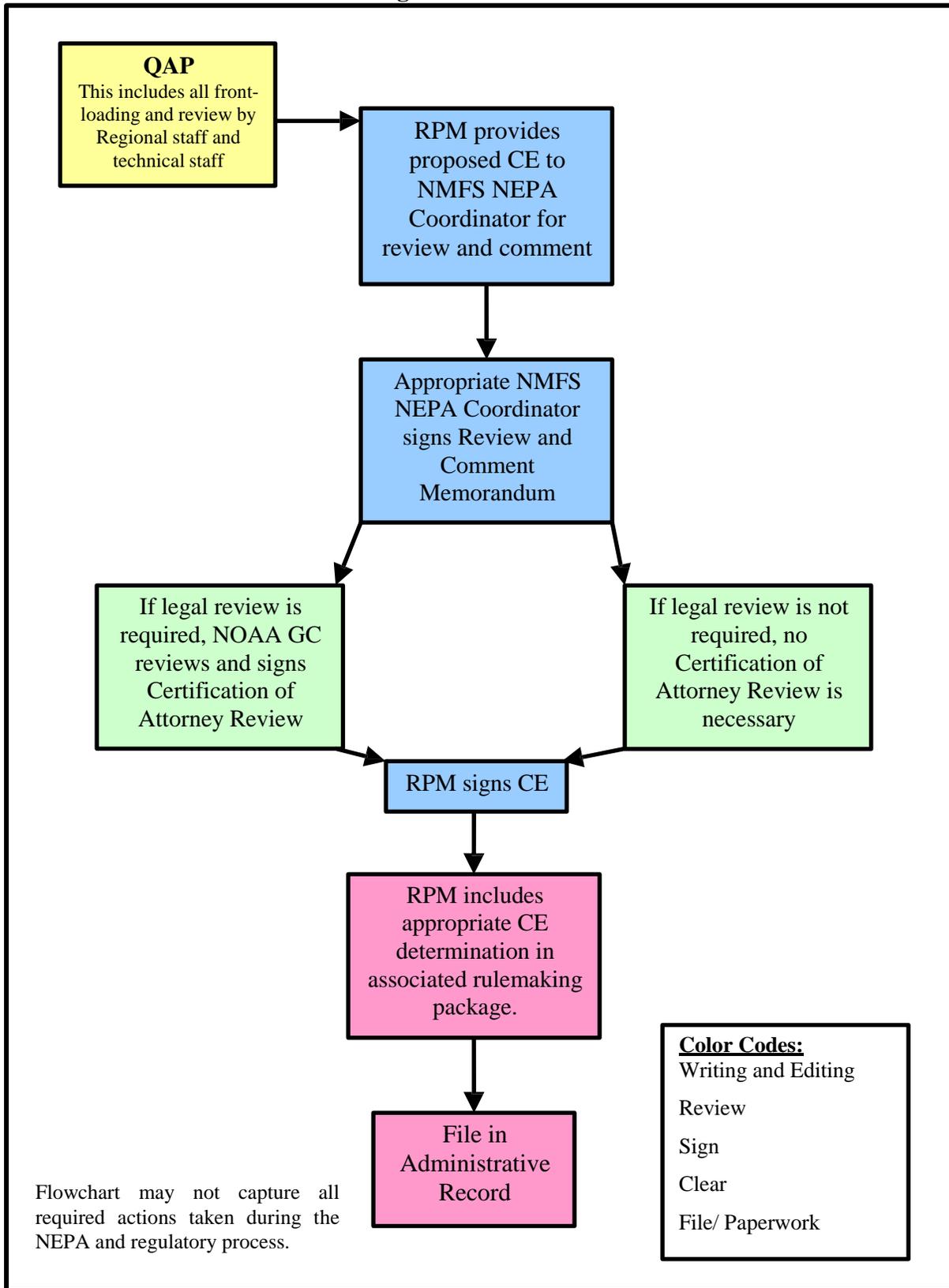
¹⁹ See http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm.

informs the RPM when the decision documentation has been signed by the AA.

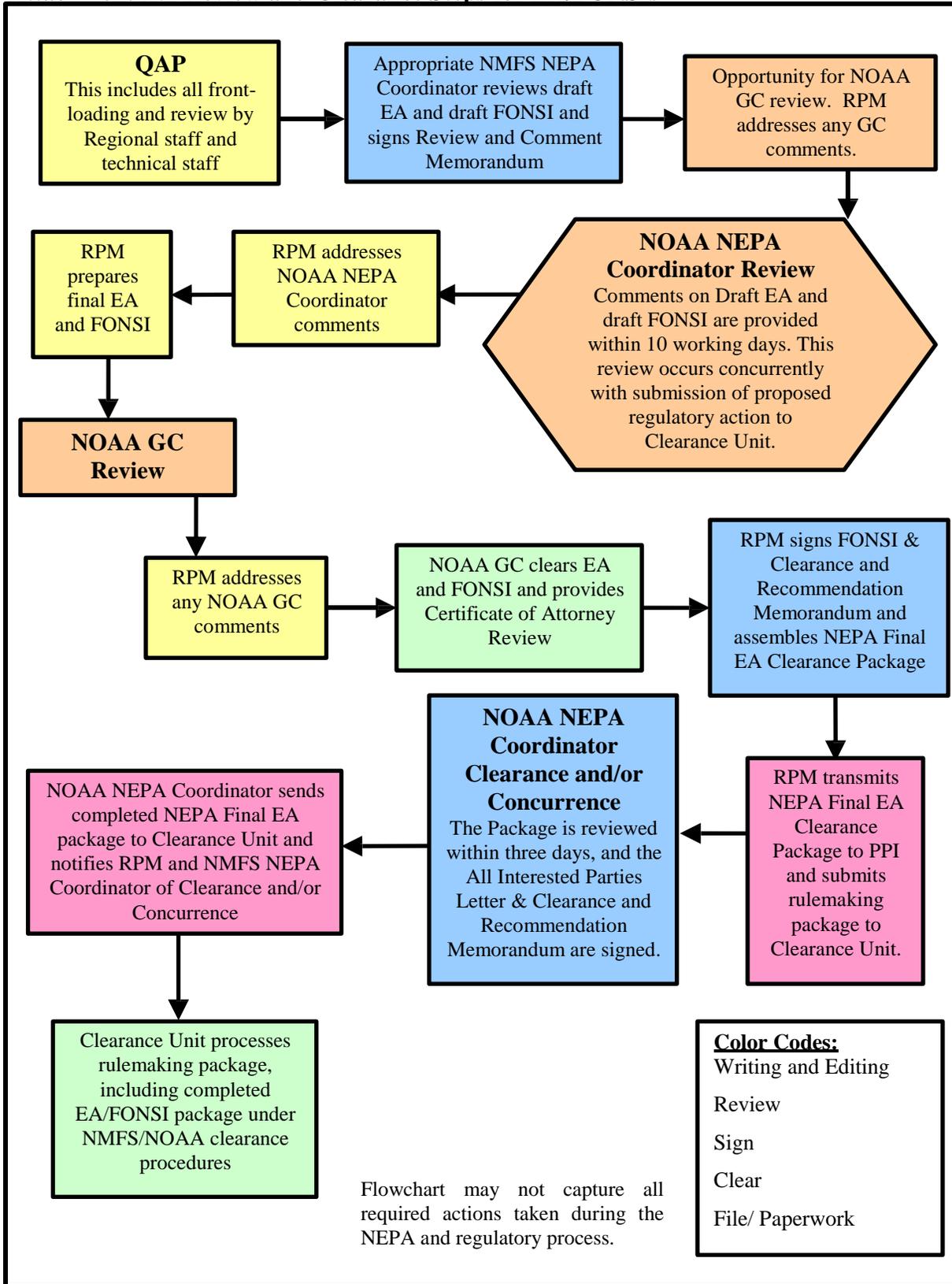
- a. If a final rule is prepared separate from the ROD, the NEPA determination section of the final rule decision memo would provide the date on which the AA signed the ROD.
 - b. If this action contains implementing regulations, Clearance Unit continues to process action through the NMFS/NOAA clearance process for rules. The announcement of the availability of the ROD occurs in the final rule document.
 - c. If the ROD is associated with an FMP/Plan Amendment that does not contain implementing regulations, the announcement of the availability of the ROD occurs in the Federal Register notification of NMFS' decision on the action.
5. Clearance Unit returns all original signed documents to the RPM for filing in the administrative record for the action.

²⁰ AA does not take final action (i.e., sign the ROD or the decision memorandum for the action) earlier than the expiration of the FEIS 30-day cooling off period. To remain on NEPA and MSA timelines, final action on the ROD should occur approximately 30 days into the comment period for the Notice of Availability of an associated FMP amendment.

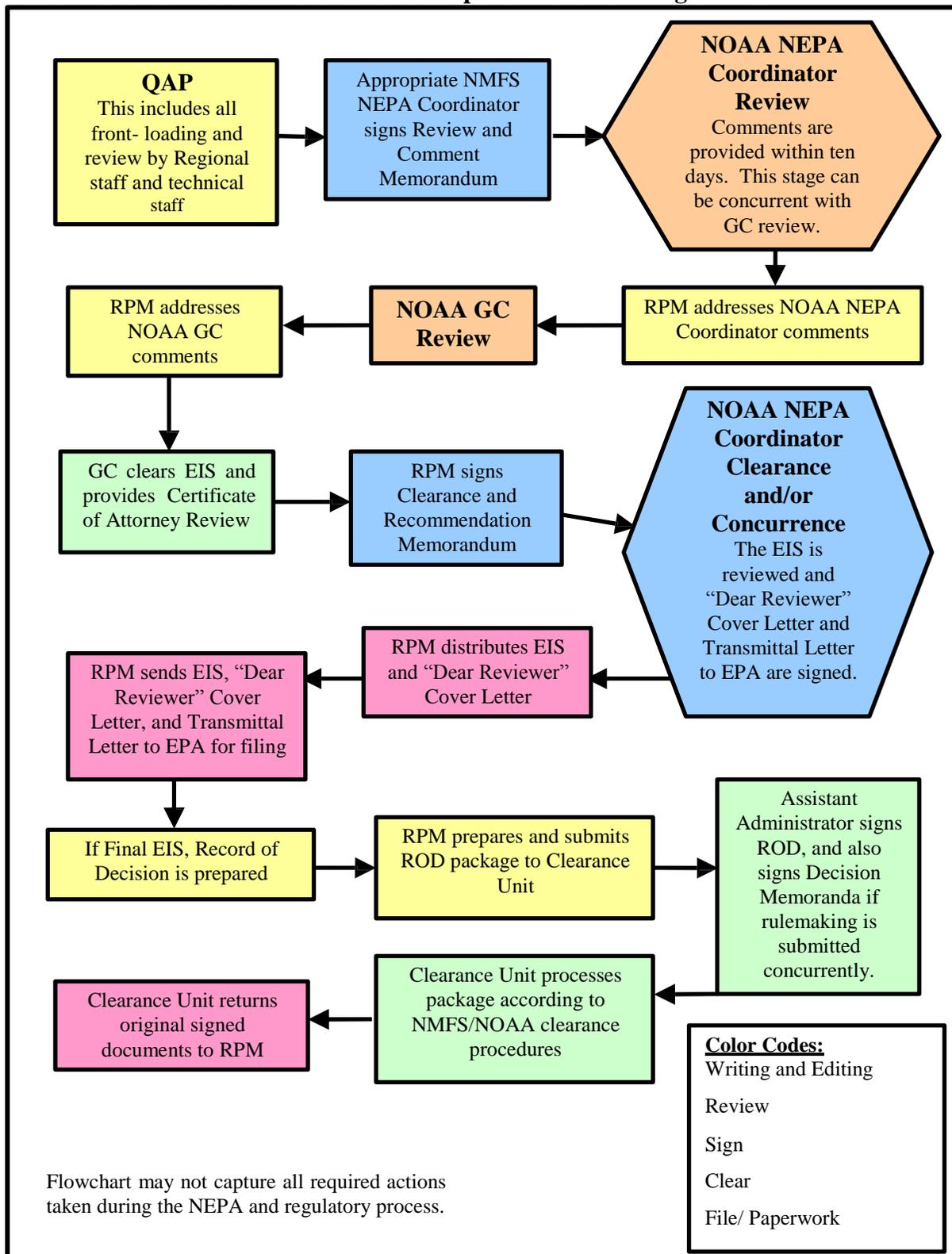
Attachment A.1 Procedures for Categorical Exclusions



Attachment A.2 Review and Clearance Steps for EA/FONSI



Attachment A.3 Review and Clearance Steps for Routine Filing of EISs



Attachment B.1.

This memo is available in Section 25A of the Examples Page (http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm), and in the Templates and Examples section of the NOAA NEPA webpage (<https://www.intranet.nepa.gov/templates.html>).

**Categorical Exclusion
Memorandum for the Record**

MEMORANDUM FOR: The Record

FROM: **[Name of Responsible Program Manager (e.g., RA, OD, etc.)]**

SUBJECT: **Categorical Exclusion for [identify FMP Amendment or other action]**

NAO 216-6, Environmental Review Procedures, requires all proposed actions to be reviewed with respect to environmental consequences on the human environment. This memorandum summarizes the determination that a **[Insert subject of the Categorical Exclusion]** qualifies to be categorically excluded from further NEPA review.

Description of the Action(s)

This proposed action is **[Insert a concise description of the proposed action(s).]**

Effects of the Action(s)

[Insert information regarding the lack of effects of the proposed action(s). This should be a concise paragraph.]

Categorical Exclusion

This action would not result in any changes to the human environment. As defined in Sections 505 and **[Insert appropriate specific categorical exclusion citation - refer to NAO 216-6 for the list of categories.]** of NAO 216-6, the proposed work is **[Insert appropriate language to describe the specific categorical exclusion]** exclusion and for which any cumulative effects are negligible. As such, it is categorically excluded from the need to prepare an Environmental Assessment.

Attachment B.2.

This memo is available in Section 25A of the Examples Page

(http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm).

ATTORNEY-CLIENT PRIVILEGED - DO NOT RELEASE - FOIA EXEMPT

CERTIFICATION OF ATTORNEY REVIEW

MEMORANDUM FOR: [Regional Administrator]

FROM: Regional Attorney]

SUBJECT:

This action is legally sufficient and raises no significant legal issue(s) other than those addressed in any attached legal memorandum. I have consulted with the regional enforcement attorney on this matter.

Additional Comments:

Legal Memorandum Attached: [] yes [] no

A Taking Implication Assessment Prepared: [] yes [] no
(if prepared, see attachment)

No TIA was prepared: [] No effect on private property.

[] Exclusion because...[or
Categorically excluded under
DOC Takings Guidelines,
paragraph III.C.2.c.iv.]

[] Generic TIA.

[] Magnuson-Stevens Act Final
Rule.

Attorney-Advisor Date

Regional Attorney Date

[or Deputy Assistant General Counsel for Sustainable Fisheries (for actions that originate in headquarters] cc: GCF, NOAA-GC, Applicable NMFS NEPA Coordinator

Attachment C.1.

This sample format memo is available in NMFSPD 30-131, Attachment 2 (<http://reefshark.nmfs.noaa.gov/f/pds/publicsite/documents/policies/30-131.pdf>) and on Section 25B of the Examples Page (http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm).

**Environmental Assessment
NMFS' NEPA Coordinator's Review and Comment Memorandum**

MEMORANDUM FOR: [Name of Responsible Program Manager]
[Title]

FROM: [Name of NMFS NEPA Coordinator]
[Title]

SUBJECT: [Complete title of Environmental Assessment]

I have reviewed the proposed final draft of the subject [environmental assessment and Finding of No Significant Impact, dated [Insert date]]. My comments on this document have been provided to the head of the program office processing this document for approval and are attached here for your information.

cc: [insert appropriate Office of General Counsel]

Attachment C.2.

*This memo is available in Section 25B of the Examples Page
(http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm).*

ATTORNEY-CLIENT PRIVILEGED - DO NOT RELEASE - FOIA EXEMPT

CERTIFICATION OF ATTORNEY REVIEW

MEMORANDUM FOR: [Regional Administrator]

FROM: Regional Attorney]

SUBJECT:

This action is legally sufficient and raises no significant legal issue(s) other than those addressed in any attached legal memorandum. I have consulted with the regional enforcement attorney on this matter.

Additional Comments:

Legal Memorandum Attached: [] yes [] no

A Taking Implication Assessment Prepared: [] yes [] no
(if prepared, see attachment)

No TIA was prepared: [] No effect on private property.

[] Exclusion because...[or
Categorically excluded under
DOC Takings Guidelines,
paragraph III.C.2.c.iv.]

[] Generic TIA.

[] Magnuson-Stevens Act Final
Rule.

Attorney-Advisor Date

Regional Attorney Date

[or Deputy Assistant General Counsel for Sustainable Fisheries (for actions that originate in headquarters] cc: GCF, NOAA-GC, Applicable NMFS NEPA Coordinator

Attachment C.3.

This memo is available in NMFSPD 30-131, Attachment 3 (<http://reefshark.nmfs.noaa.gov/f/pds/publicsite/documents/policies/30-131.pdf>), the Templates and Examples section of the NOAA NEPA webpage (<https://www.intranet.nepa.gov/templates.html>), and on Section 25B of the Examples Page(http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm).

**Environmental Assessment
Clearance and Recommendation Memorandum**

MEMORANDUM FOR: [Name of NOAA NEPA Coordinator]
NOAA NEPA Coordinator

FROM: [Name of Responsible Program Manager]
[Responsible Program Manager’s Title]

SUBJECT: [Complete title of the Environmental Assessment]

The attached subject environmental assessment (EA) and Finding of No Significant Impact (FONSI) are forwarded for your review. The EA and FONSI have been prepared in accordance with the provisions of: (1) NOAA Administrative Order 216-6, Environmental Review Procedures For Implementing The National Environmental Policy Act; and (2) the Council on Environmental Quality’s Regulations For Implementing The Procedural Provisions of The National Environmental Policy Act (40 CFR Parts 1500-1508).

Based on the environmental impact analysis within the attached EA, I have determined that no significant environmental impacts will result from the proposed action. I therefore have approved the FONSI for this proposed action. I request your concurrence with the EA and its FONSI. I also recommend, subject to a request from the public, that you release the documents for public review.

1. I concur. _____
NOAA NEPA Coordinator Date

2. I do not concur. _____
NOAA NEPA Coordinator Date

Attachment C.4.

Note: This memo is available in Section 25B of the Examples Page

(http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm), and in the Templates and Examples section of the NOAA NEPA webpage (<https://www.intranet.nepa.gov/templates.html>).

FONSI/EA Cover Letter to Interested Parties

Note: Print letter on NOAA's PPI letterhead. Copies available from PPI, 301-713-3318 or provide document electronically to NOAA NEPA Coordinator.

To All Interested Government Agencies and Public Groups:

Under the National Environmental Policy Act, an environmental review has been performed on the following action.

TITLE: [Insert the title of the environmental assessment (must match title on NEPA document)]

LOCATION: [Identify the project location; for example, exclusive economic zone off the east coast.]

SUMMARY: [Describe the project and lack of significant impacts in a short paragraph]

RESPONSIBLE

OFFICIAL: [Name]

[Title]

National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA)

[Mailing address]

[Phone number]

The environmental review process led us to conclude that this action will not have a significant impact on the environment. Therefore, an environmental impact statement was not prepared. A copy of the finding of no significant impact (FONSI), including the environmental assessment, is enclosed for your information.

Although NOAA is not soliciting comments on this completed EA/FONSI we will consider any comments submitted that would assist us in preparing future NEPA documents. Please submit any written comments to the Responsible Official named above.

Sincerely,

Rodney F. Weiher, Ph. D.
NEPA Coordinator

Enclosure

Attachment D.1

This sample format memo is available in NMFSPD 30-131, Attachment 2 (<http://reefshark.nmfs.noaa.gov/f/pds/publicsite/documents/policies/30-131.pdf>), and in Section 25C of the Examples Page (http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm).

**Draft Environmental Impact Statement
NMFS' NEPA Coordinator's Review and Comment Memorandum**

MEMORANDUM FOR: [Name of Responsible Program Manager]
[Title]

FROM: [Name of NMFS NEPA Coordinator]
[Title]

SUBJECT: [Complete title of Draft Environmental Impact Statement]

I have reviewed the proposed final draft of the subject [environmental impact statement dated [Insert date]]. My comments on this document have been provided to the head of the program office processing this document for approval and are attached here for your information.

cc: [insert appropriate Office of General Counsel]

Attachment D.2

*This memo is available in Section 25C of the Examples Page
(http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm).*

ATTORNEY-CLIENT PRIVILEGED - DO NOT RELEASE - FOIA EXEMPT

CERTIFICATION OF ATTORNEY REVIEW

MEMORANDUM FOR: [Regional Administrator]

FROM: Regional Attorney]

SUBJECT:

This action is legally sufficient and raises no significant legal issue(s) other than those addressed in any attached legal memorandum. I have consulted with the regional enforcement attorney on this matter.

Additional Comments:

Legal Memorandum Attached: [] yes [] no

A Taking Implication Assessment Prepared: [] yes [] no
(if prepared, see attachment)

No TIA was prepared: [] No effect on private property.

[] Exclusion because...[or
Categorically excluded under
DOC Takings Guidelines,
paragraph III.C.2.c.iv.]

[] Generic TIA.

[] Magnuson-Stevens Act [Action
Type]

Attorney-Advisor Date

Regional Attorney Date

[or Deputy Assistant General Counsel for Sustainable Fisheries (for actions that originate in headquarters] cc: GCF, NOAA-GC, Applicable NMFS NEPA Coordinator

Attachment D.3

This memo is available in NMFSPD 30-131, Attachment 4 (<http://reefshark.nmfs.noaa.gov/f/pds/publicsite/documents/policies/30-131.pdf>), the Templates and Examples section of the NOAA NEPA webpage (<https://www.intranet.nepa.gov/templates.html>), and in Section 25C of the Examples Page (http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm).

**Draft Environmental Impact Statement
Clearance and Recommendation Memorandum**

MEMORANDUM FOR: [Name of NOAA NEPA Coordinator]
NOAA NEPA Coordinator

FROM: [Name of Responsible Program Manager]
[Responsible Program Manager’s Title]

SUBJECT: [Complete title of the Draft Environmental Impact Statement (EIS)]

The subject environmental impact statement (EIS) is forwarded for your review. This EIS has been prepared in accordance with the provisions of: (1) NOAA Administrative Order 216-6, Environmental Review Procedures For Implementing The National Environmental Policy Act; and (2) the Council on Environmental Quality’s Regulations For Implementing The Procedural Provisions of The National Environmental Policy Act (40 CFR Parts 1500-1508).

I request your concurrence with this EIS. I also recommend that the EIS be filed with the Environmental Protection Agency (EPA) and released to the public for review and comment.

If you concur, please sign both the attached letter that transmits five copies of the EIS to EPA as well as the attached Dear Reviewer cover letter for the EIS.

1. I concur. _____
NOAA NEPA Coordinator Date

2. I do not concur. _____
NOAA NEPA Coordinator Date

Attachment D.4.

This memo is available in Section 25C of the Examples Page (http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm), and is available in the Templates and Examples section of the NOAA NEPA webpage (<https://www.intranet.nepa.gov/templates.html>).

**Draft Environmental Impact Statement
“Dear Reviewer” Cover Letter**

- Notes:
1. Print this letter on NOAA’s PPI letterhead or provide the document electronically.
 2. This letter is generally a single page but may be longer as necessary.
 3. Calculate end of 45-comment period. Contact NOAA NEPA Coordinator for assistance.

Dear Reviewer:

In accordance with provisions of the National Environmental Policy Act (NEPA), we enclose for your review the Draft **[or Draft Supplemental]** Environmental Impact Statement **[(DEIS) or (DSEIS)]** for **[Insert title of the document (must match title on NEPA document)]**.

This DEIS **[or DSEIS]** is prepared pursuant to NEPA to assess the environmental impacts associated with NOAA proceeding with **[Insert description of the proposed action]**.

Additional copies of the DEIS **[or DSEIS]** may be obtained from the Responsible Program Official identified below. The document is also accessible electronically **[if applicable]** through the **[Insert name of entity posting document to its website (e.g., “NMFS Region=s website”)]** at **[Insert website address or URL]**.

Written comments should be submitted through mail, facsimile (fax), or email to the Responsible Program Official identified below. Written comments submitted during the agency’s 45-day **[Insert the length of the comment period if different from 45 days]** public comment period must be received by **[insert date]**. When submitting fax or email comments include the following document identifier in the comment subject line: **[Insert chosen text for identifying the document]**.

Responsible Program Official: **[Insert NMFS Contact (OD, RA or ARA)]**

Title
Regional Office or Line Office
National Oceanic and Atmospheric Administration
Address
City, State, ZIP Code
Telephone Number
Facsimile Number
Commenting Email Address]

Sincerely,

Rodney F. Weiher, Ph.D.
NOAA NEPA Coordinator

Enclosure

Attachment D.5

This memo is available in Section 25C of the Examples Page

(http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm), and in the Templates and Examples section of the NOAA NEPA webpage (<https://www.intranet.nepa.gov/templates.html>).

Letter Requesting DEIS or DSEIS Filing and Notification of Public Availability from the NOAA NEPA Coordinator to EPA

Note: Print this letter on NOAA's PPI letterhead or provide NOAA NEPA Coordinator with electronic document.

Ms. Anne Miller
U.S. Environmental Protection Agency
Office of Federal Activities
EIS Filing Section
Ariel Rios Building (South Oval Lobby), Mail Code 2252-A
1200 Pennsylvania Avenue, NW
Washington DC 20460

Dear Ms. Miller:

Enclosed for your consideration are five copies of the Draft [**or Draft Supplemental**] Environmental Impact Statement (DEIS) [**or (DSEIS)**] for [**Insert title of the document (must match title on NEPA document)**]. [**If this document is a DSEIS, identify the title of the original EIS**]. We request that you make this document available for public comment for 45 [**or more if desired, for a DEIS/DSEIS**] days. [**If special arrangements have been made, through PPI, with CEQ or EPA regarding abbreviated comment periods, this should be noted as well.**] NOAA has sent copies of the DEIS [**or DSEIS**] to the appropriate EPA Regional Offices.

[Provide additional background information about action as appropriate.]

Please identify the Responsible Program Official and appropriate contact information within the Notice of Availability. The Official is identified below. This DEIS [**or DSEIS**] is also available electronically [**if applicable**] from [**Insert website address or URL**].

Concurrent with this transmittal to the Environmental Protection Agency, copies of the DEIS [**or DSEIS**] are being mailed to Federal agencies and other interested parties. Should you have any questions about this filing, please contact the Responsible Program Official identified below or NOAA Program Planning and Integration at 301-713-1632.

Responsible Program Official: [**Insert NMFS Contact (OD, RA or ARA)**]

Title
Regional Office or Line Office
National Oceanic and Atmospheric Administration
Address

City, State, ZIP Code
Telephone Number
Facsimile Number
Commenting Email Address]

Sincerely,

Rodney F. Weiher, Ph.D.
NOAA NEPA Coordinator

Enclosures

Attachment E.1

This sample format memo is available in NMFSPD 30-131, Attachment 2 (<http://reefshark.nmfs.noaa.gov/f/pds/publicsite/documents/policies/30-131.pdf>).

**Final Environmental Impact Statement
NMFS' NEPA Coordinator's Review and Comment Memorandum**

MEMORANDUM FOR: [Name of Responsible Program Manager]
[Title]

FROM: [Name of NMFS NEPA Coordinator]
[Title]

SUBJECT: [Complete title of Final Environmental Impact Statement]

I have reviewed the proposed final draft of the subject [environmental impact statement dated [Insert date]]. My comments on this document have been provided to the head of the program office processing this document for approval and are attached here for your information.

cc: [insert appropriate Office of General Counsel]

Attachment E.2

This memo is available in Section 25D of the Examples Page

(http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm).

ATTORNEY-CLIENT PRIVILEGED - DO NOT RELEASE - FOIA EXEMPT

CERTIFICATION OF ATTORNEY REVIEW

MEMORANDUM FOR: [Regional Administrator]

FROM: Regional Attorney]

SUBJECT:

This action is legally sufficient and raises no significant legal issue(s) other than those addressed in any attached legal memorandum. I have consulted with the regional enforcement attorney on this matter.

Additional Comments:

Legal Memorandum Attached: [] yes [] no

A Taking Implication Assessment Prepared: [] yes [] no
(if prepared, see attachment)

No TIA was prepared: [] No effect on private property.

[] Exclusion because...[or
Categorically excluded under
DOC Takings Guidelines,
paragraph III.C.2.c.iv.]

[] Generic TIA.

[] Magnuson-Stevens Act [Action Type]

Attorney-Advisor Date

Regional Attorney Date

[or Deputy Assistant General Counsel for Sustainable Fisheries (for actions that originate in headquarters] cc: GCF, Applicable NEPA Coordinator

Attachment E.3

This memo is also available in NMFSPD 30-131, Attachment 4

(<http://reefshark.nmfs.noaa.gov/f/pds/publicsite/documents/policies/30-131.pdf>), the Templates and Examples section of the NOAA NEPA webpage (<https://www.intranet.nepa.gov/templates.html>), and in Section 25D of the Examples Page (http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm).

**Final Environmental Impact Statement
Clearance and Recommendation Memorandum**

MEMORANDUM FOR: [Name of NOAA NEPA Coordinator]

NOAA NEPA Coordinator

FROM: [Name of Responsible Program Manager]

[Responsible Program Manager's Title]

SUBJECT: [Complete title of the Final Environmental Impact Statement (EIS)]

The subject environmental impact statement (EIS) is forwarded for your review. This EIS has been prepared in accordance with the provisions of: (1) NOAA Administrative Order 216-6, Environmental Review Procedures For Implementing The National Environmental Policy Act; and (2) the Council on Environmental Quality's Regulations For Implementing The Procedural Provisions of The National Environmental Policy Act (40 CFR Parts 1500-1508).

I request your concurrence with this EIS. I also recommend that the EIS be filed with the Environmental Protection Agency (EPA) and released to the public for review and comment.

If you concur, please sign both the attached letter that transmits five copies of the EIS to EPA as well as the attached Dear Reviewer cover letter for the EIS.

1. I concur. _____.
NOAA NEPA Coordinator Date

2. I do not concur. _____.
NOAA NEPA Coordinator Date

Attachment E.4

This memo is available in Section 25D on the Examples Page

(http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm), and is available in the Templates and Examples section of the NOAA NEPA webpage (<https://www.intranet.nepa.gov/templates.html>).

**Final Environmental Impact Statement
“Dear Reviewer” Cover Letter**

- Notes:
1. Clearance Unit will print this letter on NOAA’s Office PPI letterhead.
 2. This letter is generally a single page but may be longer as necessary.
 3. Calculate end of 30 day comment period. Contact NOAA NEPA Coordinator for assistance.

Dear Reviewer:

In accordance with provisions of the National Environmental Policy Act (NEPA), we enclose for your review the Final **[or Final Supplemental]** Environmental Impact Statement (FEIS) **[or (FSEIS)]** for **[Insert title of the document (must match title on NEPA document)]**.

This FEIS **[or FSEIS]** is prepared pursuant to NEPA to assess the environmental impacts associated with NOAA proceeding with **[Insert description of the proposed action]**.

Additional copies of the FEIS **[or FSEIS]** may be obtained from the Responsible Program Official identified below. The document is also accessible electronically **[if applicable]** through the **[Insert name of the entity posting the document to its website (e.g., “NMFS Region=s website”)]** at **[Insert website address or URL]**.

NOAA is not required to respond to comments received during the agency’s 30 day **[Insert length of comment period if longer than 30 days]** as a result of the issuance of the FEIS. However, comments received by **[date inserted by Clearance Unit per Note 3 above]** will be reviewed and considered for their impact on issuance of a record of decision (ROD). Please send comments to the responsible official identified below. The ROD will be made available publicly following final agency action on or after **[date inserted by the Clearance Unit per Note 3 above]**.

Responsible Program Official: **[Insert NMFS Contact (OD, RA or ARA)]**
Title
Regional Office
National Oceanic and Atmospheric Administration
Address
City, State, ZIP Code
Telephone Number
Facsimile Number
Commenting Email Address]

Sincerely,

Rodney F. Weiher, Ph.D.
NOAA NEPA Coordinator

Enclosure

Attachment E.5

This memo is available in Section 25D on the Examples Page

(http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm), and in the Templates and Examples section of the NOAA NEPA webpage (<https://www.intranet.nepa.gov/templates.html>).

**Final Environmental Impact Statement
Letter Requesting FEIS or FSEIS Filing and Notification of Public
Availability from the NOAA NEPA Coordinator to EPA**

Notes: 1. Clearance Unit will print this letter on NOAA's PPI letterhead.

Ms. Anne Miller
U.S. Environmental Protection Agency
Office of Federal Activities
EIS Filing Section
Ariel Rios Building (South Oval Lobby), Mail Code 2252-A
1200 Pennsylvania Avenue, NW
Washington DC 20460

Dear Ms. Miller:

Enclosed for your consideration are five copies of the Final [**or Final Supplemental**] Environmental Impact Statement (FEIS) [**or (FSEIS)**] for [**Insert title of the document (must match title on NEPA document)**]. [**If this document is a FSEIS, identify the title of the original EIS.**] We request that you make this document available for public comment for 30 [**or more if desired, for a FEIS/FSEIS**] days. [**If special arrangements have been made, through PPI, with CEQ or EPA regarding abbreviated comment periods, this should be noted as well.**] NOAA has sent copies of the FEIS [**or FSEIS**] to the appropriate EPA Regional Offices.

[Provide additional background information about the action as appropriate.]

Please identify the Responsible Program Official and appropriate contact information within the Notice of Availability. The Official is identified below. This FEIS [**or FSEIS**] is also available electronically [**if applicable**] from [**Insert website address or URL**].

Concurrent with this transmittal to the Environmental Protection Agency, copies of the FEIS [**or FSEIS**] are being mailed to Federal agencies and other interested parties. Should you have any questions with this filing, please contact the Responsible Program Official identified below or NOAA Program Planning and Integration at 301-713-1632.

Responsible Program Official: [**Insert NMFS Contact (OD, RA or ARA)**]
Title
Regional Office or Line Office
National Oceanic and Atmospheric Administration
Address
City, State, ZIP Code
Telephone Number
Facsimile Number
Commenting Email Address]

Sincerely,

Rodney F. Weiher, Ph.D.
NOAA NEPA Coordinator

Enclosures

This memo is available in the Template and Examples section of the NOAA NEPA webpage (<https://www.intranet.nepa.noaa.gov/templates.html>).

**AFFIDAVIT CONFIRMING DISTRIBUTION OF AN ENVIRONMENTAL
IMPACT STATEMENT (EIS) PRIOR TO FILING EIS AT EPA FOR
NOTICE OF AVAILABILITY**

Note: 1. *Print this letter on NOAA's PPI letterhead or provide the document electronically.*
2. *To be signed by a NOAA Official when a NOAA Contractor is filing an EIS in person.*

The **[Insert Program Office and Line Office]** of the National Oceanic and Atmospheric Administration (Department of Commerce) has prepared the **[Insert Draft or Final] [Insert Supplemental, if necessary]** Environmental Impact Statement on **[Insert title of the EIS]**.

The above document is being hand carried to the US Environmental Protection Agency for official filing purposes by a NOAA Contractor under the direction of the undersigned. The undersigned verifies that complete distribution to all Agencies/Persons has been made simultaneously with this filing.

**[Must be at least Division Chief Level or
Designee]**

Signature of NOAA Official

Name of NOAA Official

Title of NOAA Official

Phone Number of NOAA Official

(G:\fcm-j\Clearance Unit\NEPA\Draft Procedures and Comments\NMFS NEPA Directive 08-27-2007)

Updated 08-27-2007