NATIONAL MARINE FISHERIES SERVICE POLICY DIRECTIVE 30-131
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Administration and Management

DELEGATION OF AUTHORITIES FOR COMPLETING NEPA DOCUMENTS

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SUMMARY OF REVISIONS: This policy directive supersedes: (1) Policy Directive 30-113 entitled, Delegation of Approval of Exempted Fishing Permits, Related Scientific Research Permits, and Related Financial Assistance, and (2) the NMFS National NEPA Coordinator's memorandum addressed to Office Directors, Regional Administrators, and Science Directors, dated June 21, 2004, and entitled, Delegation of Responsible Program Manager Responsibilities Applicable to the Processing of Grants and Cooperative Agreements.

Introduction: Section 2.02b.1 of NOAA Administrative Order 216-6[1] states that the Assistant Administrator (AA) shall: "designate a Responsible Program Manager (RPM) for each proposed action subject to the NEPA process within their functional area…" Section 2.02b.2 also authorizes the delegation of "signature authority for approving and transmitting relevant materials to the NOAA NEPA Coordinator on behalf of the AA." This document articulates NMFS' policy with regard to the implementation of Section 2.02b of NAO 216-6. A glossary of terms is included in Attachment 1.

Objective: NMFS through this policy directive is delegating the RPM responsibilities to Office Directors (OD), Regional Administrators (RA), and Science Directors (SD) that are applicable to the determination of the necessity for NEPA analysis, the level and type of environmental review, and the documentation and preparation of NMFS categorical exclusion memoranda (CEs), Environmental Assessments (EAs), Findings of No Significant Impact (FONSIs), notices of intent to prepare an EIS, and Environmental Impact Statements (EISs) both draft and final[2].

The OD, RA, and SD delegates may in the case of CEs redelegate[3] RPM authorities to their Deputy OD, RA, or SD, or the Division Chief, Assistant Regional Administrator, or Science Center Division Chief assigned the responsibility for completing the Agency action requiring the

1 NAO 216-6 is entitled Environmental Review Procedures For Implementing The National Environmental Policy Act and is available at: http://www.corporateservices.noaa.gov/~ames/NAOs/Chap_216/naos_216_6.html
2 RPM responsibilities applicable to all facilities and real property matters agency-wide, including construction, leasing and alterations or improvements that require NMFS action and decision are delegated to the NMFS Director of Management and Budget (MB).
3 No redelegation of RPM responsibilities and signature authority is permitted at the EA and EIS levels of NEPA analysis.

NEPA analysis and documentation. This policy also delegates to the RPM, NMFS signature authority for approving and transmitting EA/FONSI packages[4], and draft and final EISs to the NOAA NEPA Coordinator. This clearance and signature responsibility, in the case of EA and EIS level NEPA documentation, may not be delegated to subordinate staff, but may be completed by any NMFS staff acting in the capacity of the RPM. The recipient of the delegation must coordinate directly with the NOAA NEPA Coordinator to obtain the latter's concurrence on all EA/FONSI packages, and EISs.

NMFS' policy with regard to the Record of Decision (ROD), resulting from an EIS that is part of the Agency's final action, is that the document must be signed by the agency official having the NMFS approval authority for that action or any NMFS staff acting in the capacity of that agency official. As part of this delegation of authority this policy establishes related agency review and processing requirements.

The remainder of this policy discusses the process by which the Agency shall produce, review, and approve the three levels of NEPA analysis and documentation, as well as the roles and responsibilities of the RPM, originating office technical staff, the NMFS NEPA Coordinators, and the NOAA Office of General Counsel (OGC)[5].

Initial Determination and Frontloading the NEPA Process

The RPM must ensure that the staff assigned the responsibilities for processing an action requiring NEPA documentation initiate the appropriate NEPA analysis early enough in the Agency's decision making time horizon to: (1) allow for the appropriate review of the NEPA documentation, as outlined below and in NAO 216-6; and (2) maximize the usefulness of the NEPA information within the overall decision making process.

The RPM is required to consult with the technical staff, and the appropriate NMFS NEPA Coordinator and OGC, and make an initial determination as to the level of NEPA analysis (i.e. CE, EA, or EIS) required to support the proposed Agency action in question[6]. This initial determination may be made on a case by case basis or the RPM, advised by staff, and the appropriate NMFS NEPA Coordinator and OGC, may determine the level of analysis and documentation required for a class of Agency actions[7].

If it is initially determined, or if at any time during the processing of the action and/or NEPA documentation, that an EA or EIS level of NEPA analysis and documentation is required the RPM and their staff shall coordinate early to identify and resolve issues with other affected

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4 An Environmental Assessment is prepared to determine if a Finding of No Significant Impact can be reached. The reference to "EA/FONSI packages" herein does not imply that a FONSI will automatically result each and every time an EA is prepared.

5 NOAA's OGC has advised NMFS that its timely and effective review requires that the appropriate OGC staff be involved at the initial stages of determining the level of NEPA analysis (e.g., CE, EA or EIS). Because resource constraints may limit full OGC involvement early in the process, the RPM must consult with the Assistant General Counsel for Fisheries or the appropriate Regional Counsel prior to the development of the NEPA document.

6 MB will also coordinate facilities and real property related actions with NOAA Office of the Chief Administrator (CAO) staff when making an initial determination as to the level of NEPA analysis required.

7 For class based determinations it will be necessary to have a precedent setting case where the determination in that case may be applied to the class as a whole. This precedent setting case "memorializes" the class. A policy memorandum which explains this class based determination should be kept on file with the program office.

offices, the appropriate NMFS NEPA Coordinator and OGC, and the NOAA NEPA Coordinator[8].

To strengthen the Agency's justification for preparing an EIS (or EA that has been identified as potentially controversial through the initial determination process), the originating office's staff shall develop an internal initial scoping document (IISD) or equivalent documentation (e.g., "Action Plan" in SF Operational Guidelines). This IISD or equivalent documentation will contain a definition of the issue to be addressed, discussion of an initial set of options, and an outline of the analyses that the implementing office believes will be necessary to support the EA or EIS. This document will be distributed to the RPM, other affected offices, the appropriate NMFS NEPA Coordinator and OGC, the Agency official having the NMFS approval authority for the proposed action, and the NOAA NEPA Coordinator for review[9]. An "early guidance" meeting (including the RPM, the appropriate NMFS NEPA coordinator and OGC, the NOAA NEPA Coordinator, and representatives from the other affected offices) should then be convened to discuss this initial plan, raise concerns, and suggest alternatives and additional options and analyses.

The procedures for processing each of the possible levels of NEPA analysis and documentation are outlined below.

Categorical Exclusion Memoranda

The originating office's NMFS NEPA Coordinator should review all proposed CEs. Once their review is complete the NMFS NEPA Coordinator must provide a written document, e-mail, or equivalent form of notification to the RPM, technical staff, and the appropriate OGC office acknowledging that their review has been completed. A copy of this document must also be filed in the administrative record for the proposed action.

OGC review of CEs for legal sufficiency is generally not required. However, a review for legal sufficiency is required if it is determined, during the "initial determination process" discussed above, by the appropriate OGC and the RPM that one or more of the following conditions apply: (1) the Agency action, which necessitated the NEPA analysis, and the associated environmental impacts are substantially dissimilar to previous actions reviewed by OGC for legal sufficiency; (2) the Agency action is associated with existing litigation against NMFS; (3) the Agency action is controversial and there exists a foreseeable significant probability that litigation will result; and (4) there are known Congressional interests relating to the Agency action. If legal review of a CE is required, the appropriate OGC shall determine whether the CE is legally sufficient. OGC review should occur subsequent to the reviews of the NMFS NEPA Coordinator and all other NMFS technical staff. If applicable, the appropriate OGC will provide the RPM, technical staff, and the NMFS NEPA Coordinator, a Certificate of Attorney Review, or a suitable alternative legal review memorandum[10], indicating that the action has been found to be legally sufficient.

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8 PPI webform or equivalent should be completed as part of notifying and working with the NOAA NEPA Coordinator. The NOAA NEPA Coordinator would have to approve "equivalent" types of notification which may be regional or national in scope.

9 For facilities and real property related actions the IISD will be distributed for review in accordance with CAO procedures.

10 A Certificate of Attorney Review will be provided when the NEPA document is reviewed in the context of a rulemaking package. A single Certificate of Attorney Review will be prepared for the rulemaking package as a

The RPM is responsible for addressing any unresolved comments among staff on the content of the CE and/or the required level of NEPA documentation. The RPM shall make the final determination with regard to content and documentation, but in so doing, should solicit recommendations from both the appropriate NMFS NEPA Coordinator and OGC[11].

The RPM is required to provide to the AA and the NOAA NEPA Coordinator a quarterly report listing the total number of CEs executed and the number of CEs executed by category during that period of the fiscal year.

Environmental Assessments and Findings of No Significant Impact
The originating office's NMFS NEPA Coordinator[12] must provide, for all proposed EA/FONSI packages, a written review and comment document to the RPM, the technical staff, and the appropriate OGC office. A copy of this document must also be filed in the administrative record for the proposed action. (A sample format for this review and comment document is provided in Attachment 2.)

OGC review of EAs and FONSIs for legal sufficiency is generally required. At the written request of the RPM, a review for legal sufficiency may be waived if it is determined by the appropriate OGC that all of the following conditions are met: (a) the Agency action, which necessitated the NEPA analysis, and the associated environmental impacts are substantially similar to previous actions reviewed by OGC for legal sufficiency; (b) the action is not associated in any way with known existing litigation against NMFS; and (c) the action is not controversial such that litigation over the NEPA analysis is not reasonably foreseeable, and there are no known Congressional interests relating to the particular action. If OGC waives its review of an EA and FONSI it must do so in writing and provide a copy of the document to both the RPM and the appropriate NEPA Coordinator. If, however, legal review of an EA and FONSI is not waived, the appropriate OGC shall determine whether the EA and FONSI are legally sufficient. OGC review of the EA and FONSI should occur subsequent to the reviews of the NMFS NEPA Coordinator and all other NMFS technical staff. If applicable, the appropriate OGC will provide the RPM, technical staff, and the NMFS NEPA Coordinator, a Certificate of Attorney Review, or a suitable alternative legal review memorandum, indicating that the action has been found to be legally sufficient.

The RPM is responsible for addressing any unresolved comments among staff on the content of the EA and FONSI and/or the required level of NEPA documentation. The RPM shall make the

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whole and covers all documents used in that rulemaking. No separate or additional Certificate of Attorney Review specifically covering the NEPA documents is required for a rulemaking. An alternative OGC legal memorandum will be prepared for NEPA documents that are reviewed for legal sufficiency apart from a rulemaking package.
11 OGC must be informed of any changes made to the NEPA document after its review of the material has been completed so that if necessary the document may be reviewed again and a new Certificate of Attorney Review or alternative legal review memorandum may be prepared. This statement holds for the CE, EA/FONSI, and EIS/ROD levels of NEPA documentation.
12 If the absence of a NMFS NEPA Coordinator may delay the release of a final NEPA document to the NOAA NEPA Coordinator, the OD, RA, or SD, or their Deputy OD, RA, or SD may appoint an acting NMFS NEPA Coordinator. That appointment should be limited to either staff reporting to the originating office's NMFS NEPA Coordinator or a NEPA specialist within a program office.

final determination with regard to content and documentation, but in so doing, should solicit recommendations from both the appropriate NMFS NEPA Coordinator and OGC.

All final EA/FONSI clearance packages[13] sent to the NOAA NEPA Coordinator must be accompanied by a clearance and recommendation memorandum from the RPM. (See Attachment 3 for the required formats for the memoranda.) This clearance responsibility may not be delegated to subordinate staff, but may be completed by any NMFS staff acting in the capacity of the appropriate RPM.

The completed EA/FONSI package must accompany the proposed Agency action through existing NMFS review procedures so that agency officials can review and use the EA and FONSI in making the final decision on the proposed Agency action(s).

Environmental Impact Statements
The originating office's NMFS NEPA Coordinator must review and comment on the draft Notice of Intent (NOI) to Prepare an EIS as well as any draft scoping notices prepared separately from a NOI.

The originating office's NMFS NEPA Coordinator must provide, for all proposed draft and final EISs, a written review and comment document to the RPM, technical staff, and the appropriate GC office. A copy of this document must also be filed in the administrative record for the proposed action. (A sample format for this review and comment document is provided in Attachment 2.)

The appropriate OGC shall review and determine whether all draft and final EISs are legally sufficient. The OGC review of the draft or final EIS should occur subsequent to the reviews of the NMFS NEPA Coordinator and all other NMFS technical staff. If applicable, the appropriate OGC will provide the RPM, technical staff, and the NMFS NEPA Coordinator, a Certificate of Attorney Review, or a suitable alternative legal review memorandum, indicating that the action has been found to be legally sufficient.

The RPM is responsible for addressing any unresolved comments among staff on the content of a draft or final EIS. The RPM shall make the final determination with regard to content and documentation, but in so doing, should solicit recommendations from both the appropriate NMFS NEPA Coordinator and OGC.

All draft and final EIS clearance packages being sent to the NOAA NEPA Coordinator must be accompanied by a clearance and recommendation memorandum from the RPM. (See Attachment 4 for the required formats for the memoranda.) This clearance responsibility may not be delegated to subordinate staff, but may be completed by any NMFS staff acting in the capacity of the appropriate RPM.

13 The clearance package for EA/FONSIs must contain a completed OGC NEPA review memorandum or an OGC legal review waiver document.

The draft EIS must accompany the proposed action through existing NMFS review procedures so that agency officials can review and use the draft EIS in making the decision on the proposed Agency action(s).

Records of Decision
It is NMFS policy that the ROD must be a stand-alone document and contain all of the required elements in Section 1505.2 of CEQ's regulations. NMFS shall not take final action (i.e., sign the ROD or implement the action) earlier than the expiration of the thirty day wait period for the Final EIS, unless all or a portion of this thirty day review period is waived after compliance with an applicable provision of the CEQ regulations (Section 1506.10 or 1506.11) for implementing NEPA.

The appropriate OGC shall review and determine whether the ROD is legally sufficient. If applicable, the appropriate OGC will provide the RPM, technical staff, and the NMFS NEPA Coordinator, a Certificate of Attorney Review, or a suitable alternative legal review memorandum, indicating that the action has been found to be legally sufficient.

The final EIS and the draft ROD, which have been cleared (not signed) by the RPM must accompany the proposed final action through existing NMFS review procedures so that agency officials can review and use the EIS and its proposed ROD in making the decision on the proposed final Agency action(s).

The ROD must be signed by the Agency official having the NMFS approval authority for the proposed action[14]. Once the ROD is signed, an announcement of its availability for public review may be made in the Federal Register[15]. This announcement does not establish a review and comment period on the ROD.

Authorities, Responsibilities, and Measuring Effectiveness: This directive establishes the following additional authorities and responsibilities:

- No later than six months from the effective date of this policy directive, each OD, RA, and SD delegated the responsibility of the RPM must develop and implement a Quality Assurance Plan (QAP) that shall:
  (1) establish procedures and protocols for the review and clearance of NEPA documents; (2) be consistent with this policy directive's criteria for QAPs in Attachment 5, and NOAA and CEQ requirements; and (3) be consistent with the QA/QC procedures in place for the relevant Agency actions that require NEPA documentation[16]. These QAPs will be reviewed and approved by the AA before they are implemented.

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14 For example, authority to approve, disapprove or partially approve a Fishery Management Plan has been delegated to each of the Regional Administrators but only with the concurrence of the Assistant Administrator. In this case, the Assistant Administrator should sign the ROD because two approvals are occurring simultaneously – the FMP and the agency's NEPA decision. Conversely, the Director of the Protected Resources Division should sign the ROD if an EIS is prepared for an MMPA incidental harassment authorization. In this case, there is no need to elevate the decision-making process.
15 An equivalent statement announcing the availability of the ROD for public review may be made as part of the Federal Register publication that announces the agency's final action.
16 MB's QAP will also conform to the relevant procedures and protocols established by the CAO Environmental Compliance staff with regard to facilities and real property related issues.

- The RPM or a designated representative on their staff in conjunction with the NMFS National NEPA Coordinator and OGC shall conduct programmatic periodic review and re-evaluation of the NEPA delegation process to determine the effectiveness of the policy and whether changes are warranted. Within one year of the effective date of this policy directive the NMFS National NEPA Coordinator must develop guidelines for conducting this review.
- The AA shall determine, based on the results of the programmatic periodic reviews of the NEPA delegation policy if changes should be made to this policy directive and other NMFS guidance documents.
- The NMFS National NEPA Coordinator will also update and revise this policy directive and other NMFS NEPA guidance documents in response to changes in law and/or policy guidance from CEQ, DOC, and/or NOAA.

References. This policy directive is supported by the following attachments:

Attachment 1 - References and glossary of terms
Attachment 2 - NMFS' NEPA Coordinator's Review and Comment Memorandum
Attachment 3 - Clearance and Recommendation Memorandum for an Environmental Assessment
Attachment 4 - Clearance and Recommendation Memorandum for an Environmental Impact Statement
Attachment 5 - National Subject Matter Criteria for NEPA Regional Quality Assurance Plans

/s/ March 5, 2007

William T. Hogarth, Ph.D. Date
Assistant Administrator
for NOAA Fisheries

Attachment 1

References

NOAA Administrative Order 216-6, *Environmental Review Procedures For Implementing The National Environmental Policy Act, dated June 3, 1999.*

Council on Environmental Quality's *Regulations For Implementing The Procedural Provisions of The National Environmental Policy Act (40 CFR Parts 1500-1508)*

Glossary of Terms

Certificate of Attorney Review – For the purposes of this policy directive, a certificate signed by an attorney from the appropriate NOAA Office of General Counsel (OGC) that both evidences that a pending NMFS categorical exclusion memorandum, EA, FONSI, EIS or ROD has been reviewed by OGC for a determination of legal sufficiency and contains the comments of the reviewing attorney, if any, regarding the NEPA document. The Certificate of Attorney Review will accompany all rulemaking packages (which may contain a NEPA document) prepared by NMFS.

Clearance and Recommendation Memorandum – A memorandum from the head of the originating office to the NOAA NEPA Coordinator that states that the forwarded EA/FONSI package, or EIS has been prepared in accordance with the provisions of the above two references; and recommends that the NOAA NEPA Coordinator provide final clearance by either (a) for an EA, concurring with the EA and its proposed FONSI, or (b) for an EIS, releasing the EIS for transmittal to EPA and the public. See Attachment 3 and 4 respectively for the respective formats of this memorandum.

Legally Sufficient - A NEPA document is legally sufficient if: (a) there is a credible basis to conclude that the agency has prepared the appropriate level of NEPA analysis, and the document addresses all required statutory and regulatory elements; (b) there is a credible basis to conclude that the agency has complied with all applicable procedural requirements; and (c) the agency has articulated a rational explanation for the decision to prepare a CE, FONSI, or ROD.

NEPA Documents – For the purposes of this policy directive and consistent with CEQ Regulations Implementing NEPA, NEPA documents include Categorical Exclusions (CEs); Environmental Assessments (EAs) and their Findings of No Significant Impact (FONSIs); Environmental Impact Statements (EISs) and their Record of Decision (ROD); Notices of Intent to Prepare an EIS; Scoping Notices; and Supplements to any of these documents.

NMFS National NEPA Coordinator – This position coordinates the overall NEPA program and assists with exchange of information among programs, General Counsel, Regional Fishery Management Councils, other NOAA branches, and the Council on Environmental Quality. The NMFS National NEPA Coordinator reports to the Deputy Assistant Administrator for Regulatory Programs. They also serve the equivalent role in HQ as the NMFS NEPA Coordinators do in the field by advising NMFS headquarters staff preparing NEPA documentation throughout the

Offices of Sustainable Fisheries, Protected Resources, Habitat Conservation, Management and Budget, and International Affairs, and/or federal advisory councils, commissions, and boards.

NMFS NEPA Coordinator – The NMFS NEPA Coordinators are established in each Regional Directorate to facilitate coordination and exchange of NEPA information among programs, General Counsel, and Regional Fishery Management Councils. The NMFS NEPA Coordinators advise NMFS staff preparing NEPA documentation throughout their region, center, and Regional Fishery Management Councils. These NMFS staff report to the Deputy Regional Administrator.

NOAA NEPA Coordinator is a designated position responsible for ensuring NEPA compliance for NOAA (NAO 216-6, Section 2.02). The NOAA NEPA Coordinator currently resides in NOAA's Office of Program Planning and Integration. Through assistance of their staff, the NOAA NEPA Coordinator provides review and final clearance for all NEPA environmental review documents (includes EAs and EISs for NMFS and other LOs). The NOAA NEPA Coordinator is also responsible for signing all transmittal letters for NEPA environmental review documents disseminated for public review. Additionally, the NOAA NEPA Coordinator is responsible for developing and recommending national policy, procedures, coordination actions or measures, and training necessary to ensure NOAA's compliance with NEPA. Finally, the NOAA NEPA Coordinator provides liaison between NOAA and the CEQ, as well as EPA on NEPA matters (includes consultations with CEQ on emergencies and making pre-decision referrals, as well as requesting extensions on EIS comment periods through EPA).

Responsible Program Manager – The RPM is defined in Section 2.02c of NAO 216-6 to be "the individual designated by the AA …to carry out specific proposed actions in the NEPA process within an assigned functional area (The functional area for each RPM delegate is defined by their authority over the Agency's action(s) that necessitated the development on the NEPA documentation.). The designated RPM shall: (2.02c.1) determine whether Federal actions undertaken, including those undertaken by Federal, state, local or tribal governments in conjunction with the agency, are assessed in accordance with the NEPA process or are excluded from that process; and (2.02c.2) determine the appropriate type of environmental review needed and submit all NEPA documents and associated letters and memoranda to the … AA … or delegate for transmittal to the NOAA NEPA Coordinator in compliance with this Order and other related authority.

Originating Office NMFS NEPA Coordinator – For NEPA documents initiated by either a science center or a regional office, the Regional Office NMFS NEPA Coordinator is the designated NMFS NEPA Coordinator for purposes of this policy directive. For NEPA documents initiated by headquarters offices, the NMFS National NEPA Coordinator is the designated coordinator.

Attachment 2

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 or Environmental Impact Statement]

I have reviewed the proposed final draft of the subject [environmental assessment and Finding of No Significant Impact, draft environmental impact statement, or final 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 3

Clearance and Recommendation Memorandum for an Environmental Assessment

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 (EA)]

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 4

Clearance and Recommendation Memorandum for an Environmental Impact Statement

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 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 5

National Subject Matter Criteria for NEPA Regional Quality Assurance Plans

The ODs, RAs, and SDs delegated the responsibility of the RPM are required to develop a Quality Assurance Plan (QAP) no latter than six months from the effective date of this policy. This attachment deals specifically with QAP criteria covering the NEPA review process, the development of the NEPA component of the administrative record for the Agency action, and the legal sufficiency of NEPA documentation. The technical aspects of the NEPA analysis are not covered in the criteria below.

Different levels of NEPA analysis and documentation (i.e., CEs, EAs, and EISs) may require different levels of oversight and review. A Regional QAP may define different requirements for these different types of NEPA documents bearing in mind there is a minimum below which the Agency decision may not be supported by the QAP's review procedures. If different levels of quality assurance procedures are adopted for the different levels of NEPA analysis and documentation, a set of characteristics must be defined that will indicate which level of QA is required.

The QAP shall outline the roles and responsibilities of the participants in the NEPA review process.

- The roles and responsibilities should be defined by the position held within the agency, and should identify the technical and NEPA experience and training required to fulfill that role.

The QAP shall develop tracking guidelines for the review of NEPA documentation. The tracking guidelines shall:

- Include an outline of the specific documentation and record keeping requirements that will complete the administrative record and allow agency reviewers and the public to easily follow the steps taken in the development and decision making process that resulted in the CE, FONSI, or ROD.
- Commence with the preparation for, and decisions made, in reference to the "Initial Determination" for the required level of NEPA analysis described in the body of this policy directive.
- Take into consideration the critical nature of documentation requirements in determining the legal sufficiency of the NEPA documents. Therefore, the RPM and NMFS NEPA Coordinator should consult with the appropriate OGC to determine the type of tracking and documentation requirements necessary for the QAP.
- Contain guidelines with regard to the schedule for updating the information on the NEPA projects being tracked, who in the organization should maintain these records, what form should the records take, who should be allowed to edit these records, what type of security should be maintained, and who should be allowed to see the records (i.e., internal deliberative).

The QAP shall outline the interactions between originating office staff, the RPM, and other reviewers necessary to ensure frontloading of the review process, so there are no review-related delays or surprises that need to be corrected at a late date in the timeline of the Agency action.

- The process for engaging other affected offices and parties in the NEPA analysis and review process should be discussed in the QAP.
- Stepwise or staged review processes that allow for review of completed analyses and documentation before the final draft CE, EA, or EIS are reviewed in their totality should be utilized, increasing the interaction of staff and reviews in the document development process.
- The number and types of reviews necessary should be determined within reasonably defined ranges. The timing of these reviews should also be addressed, keeping in mind, that the final NMFS NEPA Coordinator, OGC, and Agency review timing has been defined in this policy document.
- To facilitate further frontloading in the NEPA process, to the extent possible the QAP should outline the materials that are currently available and are going to be developed (e.g., training, checklists, etc.) that will help staff involved in the writing of NEPA documents understand the required technical, procedural, and legal requirements of the document The QAP and these materials should be shared with those staff preparing and reviewing the NEPA documents.

The RPM, with recommendations from the appropriate NMFS NEPA Coordinator and OGC, is responsible for addressing any unresolved comments among staff on the content of NEPA documents. The process by which this resolution is achieved and how the resolution should be documented should be discussed in the QAP.

The minimum process of appointing an acting NMFS NEPA Coordinator has been discussed briefly in footnote 12 of this policy directive, Additional criteria may be developed within the QAP.

The details of a biennial review of the operational effectiveness of the QAP should be developed along with criteria that would trigger changes to the current plan.