OPERATIONAL GUIDELINES

FISHERY MANAGEMENT PLAN PROCESS

National Marine Fisheries Service
Silver Spring, Maryland 20910

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A. INTRODUCTION.

This document is NOAA's "Operational Guidelines for the Fishery Management Plan Process," originally issued in September 1979 and revised in 1983, 1988, 1992, and again in 1997 to include procedures necessary under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). It brings together the efforts of many individuals and governmental entities over the years to assist in the development, review, and implementation of fishery management plans (FMPs). These efforts reflect passage of Pub. L. 97-453, Pub. L. 99-659, Pub. L. 101-627, and, in 1996, Pub. L. 104-297, which amended the Magnuson-Stevens Act to alter the process substantially. These actions have added impetus to improving the quality of FMPs, to producing a clearer understanding of the laws affecting the FMP process, and to simplifying and speeding the flow of work directed to the final implementation of an FMP.

In addition, legislative and administrative actions taken to improve public decision making, increase informed public participation, and reduce regulatory burdens continue to affect the quality, timeliness, and documentation of FMPs significantly. Accordingly, the requirements of the following have been integrated into the Operational Guidelines: Administrative Procedure Act, National Environmental Policy Act, Regulatory Flexibility Act, Paperwork Reduction Act, and Executive Orders 12612, 12630, and 12866. Guidelines have been issued, based on the national standards of the Magnuson-Stevens Act, to assist in the preparation, review, and implementation of FMPs (50 FR part 600, subpart D). Other statutes related to natural resource management also influence the FMP process to varying degrees: Coastal Zone Management Act, Endangered Species Act, and Marine Mammal Protection Act. Each Act or E.O. has been implemented separately by other agency guidelines or regulations; policies relevant to the FMP process have been included in this document.

In describing the more formal aspects of the process, there is no intention to preclude the continuation of successful informal relationships among Regional Fishery Management Council (Council), Region, Center, and Headquarters staffs of NMFS. Such cooperation is essential for the effective and efficient operation of a rapid review and implementation procedure. While the Magnuson-Stevens Act places certain time requirements on the review and implementation of FMPs/amendments once they have been submitted for Secretarial review, and the guidelines suggest timeframes for agency advance review of draft package, there is no limitation placed upon the time that might be needed for the careful preparation of FMPs, their amendments, and

all related documents. Time is available for dedicated and thorough work at the draft stage, and is absolutely necessary for a successful review and implementation process.

Modifications and refinements of these guidelines will be forthcoming as circumstances and experience indicate the need.

NAMES, ABBREVIATIONS, AND ACRONYMS.

Entities

A	Under Secretary for Oceans and Atmosphere, NOAA
AS	Assistant Secretary for Oceans and Atmosphere, NOAA
AGC/L&R	Assistant General Counsel for Legislation and Regulation, DOC
Center	One of five Fishery Science Centers research centers, NMFS, which report to the Regional Administrators, which oversee the operations of approximately 25 laboratories throughout the United States
CEQ	Council on Environmental Quality
Council	Regional Fishery Management Council
DOC	Department of Commerce
DOI	Department of the Interior
DOS	Department of State
EPA	Environmental Protection Agency
F	Assistant Administrator for Fisheries, NOAA
F/SF	Office of Sustainable Fisheries
F/SF1	Highly Migratory Species Management Division, F/SF
F/SF3	Domestic Fisheries Division, F/SF
F/SF4	International Fisheries Division, F/SF
F/SF5	Regulatory Services Division, F/SF
F/HC	Office of Habitat Conservation
F/OM	Office of Operations, Management, and Information
F/PR	Office of Protected Resources
F/ST	Office of Science and Technology
F/ST1	Fisheries Statistics and Economics Division, F/ST
FWS	Fish and Wildlife Service, DOI
GC	General Counsel, NOAA
GCF	Assistant General Counsel for Fisheries, NOAA
GCRA	Regional Attorney, NOAA
HQ	Headquarters Office, NMFS, Silver Spring, Maryland
N/ORM3	Office of Ocean and Coastal Resource Management, NOS
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NOS	National Ocean Service, NOAA
OA1x1	Information Resources Management, NOAA
OFR	Office of the Federal Register
OIRA	Office of Information and Regulatory Affairs, OMB
OMB	Office of Management and Budget
OMO	Office of Management and Organization, DOC
PSP	Office of Policy and Strategic Planning, NEPA Coordinator, NOAA

RA	Regional Administrator, NMFS
Region	One of five regional offices, NMFS, which report to the Deputy Assistant Administrator for Fisheries, responsible for administering the management and development of marine resources in the United States
Secretary	Secretary of Commerce, DOC
SBA	Small Business Administration
USCG	U.S. Coast Guard

Documents

CE	Categorical Exclusion, NEPA
EA	Environmental Assessment, NEPA
EIS	Environmental Impact Statement, NEPA; DEIS is draft document, FEIS is final document, SEIS is supplemental document
E.O.	Executive Order
FRFA	Final Regulatory Flexibility Analysis, RFA
FMP	Fishery Management Plan; DFMP is draft document
FONSI	Finding of No Significant Impact, NEPA
FR	Federal Register; the publication for Federal regulations
IRFA	Initial Regulatory Flexibility Analysis, RFA
NAO 216-6	Environmental Review Procedures
NOI	Notice of Intent to prepare an EIS, NEPA
RIA	Regulatory Impact Analysis (E.O. 12866)
RIR	Regulatory Impact Review; DRIR is draft document
SF 83-I	Standard form for PRA submission of request for approval of collection of information

Fishery management terms

ABC	Acceptable biological catch
DAH	Domestic annual harvest
DAP	Domestic annual processing
EEZ	Exclusive Economic Zone
FMU	Fishery management unit
JVP	Joint venture processing
MSY	Maximum sustainable yield
OY	Optimum yield
TAC	Total allowable catch
TALFF	Total allowable level of foreign fishing

Legislation

APA	Administrative Procedure Act
CZMA	Coastal Zone Management Act
ESA	Endangered Species Act
MSFCMA	Magnuson-Stevens Fishery Conservation and Management Act

	(Magnuson-Stevens Act)
MMPA	Marine Mammal Protection Act
NEPA	National Environmental Policy Act
PRA	Paperwork Reduction Act
RFA	Regulatory Flexibility Act

OVERVIEW.

How to Use the Guidelines

Organization

The FMP process is described in five phases: Phase I--Planning; Phase II--Preparation of Draft Documents; Phase III--Public Review and Council Adoption; Phase IV--Final FMP/Amendment Review and Approval; Proposed Regulations and Final Rulemaking; and Phase V--Continuing and Contingency Fishery Management, which includes various actions related to the framework concept, types of amendments to regulations, the use of the emergency provisions of the Magnuson-Stevens Act, and Secretarial FMP/amendments. Each phase is introduced by a brief rationale, description of the actions involved or supplemental information, followed by an event schedule of these actions, if appropriate. Actions are numbered sequentially for reference purposes; however, some actions may occur simultaneously. The Appendices include supplemental material on the requirements of other applicable laws (including NAO 216-6) and NMFS policy guidelines. Other material will be added to future revisions as it becomes available.

Word Usage

Briefing memo--means a memo to F/NOAA/DOC, usually prepared by F/SF3, to provide information at an early stage regarding the public issues in an FMP/amendment or emergency action.

Comment memo--usually means a memo from F/SF to the RA providing F/SF3 comments on significant concerns and technical and editorial suggestions regarding a document (FMP or memo) submitted by a Council or Region. The comment memo may provide the basis for a dissent memo if disagreements remain unresolved at a later stage.

Critical, substantive, and other--used in Phase III to describe types of issues that are examined by reviewers at the informal review stage. Critical issues are those that affect approvability such as--inadequate record, conformance with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. Substantive issues are those that affect the quality of the document--accuracy of facts, adequacy of analysis, precision of language, consistency of argument or facts, and justification for conclusions. Other issues include editorial and technical considerations that affect the quality of the document.

Decision memo--means a memo requesting that the addressee do what the memo recommends or specifies.

Dissent memo--means a memo from F/SF3 or GCF to F/SF, or from F/SF to F, that states disagreement (with reasons therefore) with the RA's recommended decision; it may be based on an earlier comment memo,

and must reflect significant policy or legal differences that should be called to the attention of F/SF or F.

F/SF--F/SF advises F on fishery management matters; may represent NMFS before NOAA, DOC, OMB, and other agencies; and acts on inseason actions and permits (e.g., experimental fishing). F/SF provides FMP/amendments, regulations, and other actions associated with Atlantic highly migratory species (F/SF1).

F/SF3--the Domestic Fisheries Division of the Office of Sustainable Fisheries. F/SF3 has the primary HQ responsibility for reviewing and processing FMPs and management actions under the Magnuson-Stevens Act.

F/SF4--the International Fisheries Division of the Office of Sustainable Fisheries. F/SF4 coordinates NMFS' activities relating to: the review of foreign developments having an impact on living marine resources, other than those assigned to F/PR; the development of policy in reaction to such developments; and the implementation of that policy, including questions of access by foreign fishing interests to U.S. waters, access by U.S. fishing interests to foreign jurisdictions, and the licensing of U.S. vessels fishing on the high seas.

F/SF5--the Regulatory Services Division of the Office of Sustainable Fisheries. F/SF5 has the primary HQ responsibility for editing and processing regulations for submission to the OFR, processing requests for collection of information under the PRA, and providing administrative services for the Councils.

Framework--refers to framework measures in an FMP (defined in Phase V).

Information memorandum--means a memo providing information to the addressee.

Issues letter--means a letter prepared by the RA for a Council at the Phase III stage, describing the critical and substantive issues; used in draft as the basis for Region/F/SF3/GCRA/GCF conference call or meeting, and in final as the summary of agency position on the draft package.

Letter to Government Agencies and Public Groups--refers to the letter accompanying the draft EIS or final EIS/EA, signed by PSP and addressed to the reviewers, indicating the appropriate NMFS responsible official, address, and deadlines for public comment.

Metric measurements--Section 5164(c) of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418) makes the metric system of measurement the preferred system of weights and measures for U.S. trade and commerce and requires each agency of the Federal Government

to use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that such use is impractical or likely to cause significant inefficiencies or loss of markets to U.S. firms. The metric conversion policy for Federal agencies (15 CFR part 19) was updated on January 2, 1991 (56 FR 160), and strongly encourages metrification. E.O. 12770, July 25, 1991, declares a national policy to implement the metric system as the preferred system of weights and measures for the United States. In accordance with this policy, NOAA prepared a Metric Transition Plan, September 1992, that describes activities to replace the English system of measurements with the metric system. NMFS requires that all regulations or regulatory amendments issued include, at a minimum, the metric equivalent for any English measurement.

Record of decision--means a concise statement required by CEQ to verify compliance with NEPA; may be a determination made in a decision memo, but cannot be signed until 30 days after the FEIS is available to bhe public.

Transmittal--for documents beginning Secretarial review implies transmittal from the RA and receipt in HQ on the same day. In such cases, transmission of the documents by electronic mail, fax, or other high-speed means is necessary.

Schedule--meeting statutory review, approval, and implementation deadlines is dependent upon the many government entities involved in the process responding in the spirit of cooperation within the time described. Should delays occur, F/SF has the responsibility for making the necessary short-notice decisions regarding how best to proceed in compliance with the statutory schedule, after consulting with the RA and GCF, as necessary.

Role of F/SF3

The role of F/SF3 varies according to the stage of the process. It conducts reviews, in parallel with the Region, of advance, draft, and final FMPs/amendments, concentrating on national and approvability issues; coordinates reviews within DOC/NOAA/NMFS and with Washington, D.C., reviewers (e.g., USCG, DOS, Marine Mammal Commission); and provides guidance to, and works with, the Councils, Regions, and other NMFS and NOAA offices to improve existing national policies and procedures for review and implementation of FMPs and amendments. F/SF3 provides staff advice to the Regions and F/SF on the approvability of FMPs and other documents. F/SF3 reviews, distributes, and recommends decisions on regulations and associated regulatory documents (e.g., DRIRs, IRFAs, etc.); provides information on management actions to NOAA Offices of Public Affairs and Congressional Affairs; and coordinates the comments of NOAA, DOC, and other agencies with the Regions. F/SF3 maintains part of the administrative record system, and provides information to F/SF5 for the semiannual regulatory agenda.

Role of F/SF5

F/SF5 provides editing, formatting, and processing services for NMFS regulations; submits regulations to the OFR for publication; provides filing and publication data to reviewers; coordinates the submission of regulatory information for the semiannual regulatory agenda; and provides administrative services for Councils.

Role of NMFS Regions and Centers

RAs have been delegated the authority to approve, disapprove, or partially approve FMPs and amendments with the concurrence of F; the authority to approve regulations and associated analytical documents (e.g., NEPA, RFA) is retained by F and higher NOAA/DOC level officials, who must make certain nondelegated, rule-related determinations. RA approval normally requires GCRA and Center concurrence of appropriate legal and scientific elements. However, if substantive disagreement on these matters cannot be resolved, GCRA or the Center may attach a documented dissent, rather than create a delay.

The Regions review FMPs/amendments to determine consistency with the Magnuson-Stevens Act and other applicable laws. The Regions are the principal NMFS contacts with the Councils, and may provide guidance and assistance to the Councils in preparing FMPs, regulations, or other documents. The Regions also have the responsibility for preparing all decision documents (e.g., decision memos, transmittals associated with regulatory action); for ensuring that the Councils are aware of the requirements for the submission package and satisfactory regulatory and environmental analyses (i.e., RIR, IRFA, EA/EIS); and for certifying that all documents are adequate before approving any FMP or amendment. The Region is responsible for the preparation of any supporting

statement for collection of information under PRA, but consults with the appropriate Center as necessary. The Center certifies definitions of overfishing required under 50 CFR part 600.310. Regions and Centers maintain part of the rulemaking record.

Role of GC

The role of GC (GCF, GCEL, and GCRA) is to provide legal comments to the RA and the Councils; RA approval normally includes clearance by GCRA, as noted above. GCF works with HQ staff during the review process, reviews, and clears FMPs, amendments, regulations, and related documents. Although GCF is available for consultation during the review process and reviews all documents, it is expected that GCRA will have satisfactorily resolved legal issues through early consultation with GCF before Secretarial review begins. GCF may send comments directly to GC and AGC/L&R.

Other Applicable Laws

The following sections briefly describe the purpose of the various statutes and E.O.s and how they affect the FMP process. The list provides some insights into the complex and sometimes competing goals and schedules of the system. More detailed sections (referenced below) as to how each specifically affects the FMPs, amendments, and regulations--and what to do about it--appear later in this document.

a. APA. Sections 551-553 of the APA establish procedural requirements applicable to informal rulemaking by Federal agencies. The purpose is to ensure public access to the Federal rulemaking process, and to give the public notice and an opportunity to comment before the agency promulgates a final rule.

Effect on FMP process: The APA requires public comment on most actions, but does not specify the length of the comment period; a 30-day delay in effectiveness date is required for most final rules. Exceptions are provided for waiving, for good cause, the public comment period and/or delayed effectiveness period. The Magnuson-Stevens Act provides for a public comment period for proposed regulations of 15 to 60 days. NMFS policy is that a 45-day comment period is standard for proposed rules that would implement an FMP/amendment and a 30-day comment period is standard for proposed rules for regulatory amendments.

b. CZMA. The principal objective of the CZMA is to encourage and assist states in developing coastal management programs, to coordinate state activities, and to safeguard regional and national interests in the coastal zone. Section 307(c) of the CZMA requires that any Federal activity affecting the land or water uses or natural resources of a state's coastal zone be consistent with that state's approved coastal management program, to the maximum extent practicable.

Effect on FMP process: Requires a determination that an

FMP/amendment or regulating action has no effect on the land or water uses or natural resources of the coastal zone, or is consistent to the maximum extent practicable with an affected state's approved coastal management program. The consistency determination must be provided to state agencies at least 90 days prior to final approval of the Federal action, unless NMFS and the state agency agree to an alternative notification schedule (See Appendix 2.a.)

c. E.O. 12866. This E.O. applies to the issuance of new rules and the review of existing rules. While a variety of regulatory policy considerations are covered, the benefits and costs of regulatory actions are a prominent concern. The E.O. requires that OMB review proposed regulatory programs that are considered to be "significant." A significant rule is one that is likely (1) to have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) to materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; and (4) to raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Order.

Effect on FMP process: Requires that an early determination be made as to the significance of each regulatory action, which must be concurred in by OMB, and requires that each significant regulatory action be reviewed by OMB. The Regulatory Impact Review addresses many of the items in the regulatory philosophy and principles in this Order. (See Appendix 2.d.)

d. ESA. The ESA provides for the protection and conservation of endangered and threatened species of fish, wildlife, and plants. The program is administered jointly by DOI (terrestrial and freshwater species) and DOC (most marine species).

Effect on FMP process: NMFS (and FWS, if applicable) should provide a list of endangered and threatened species, critical habitat(s), and species proposed for listing to Councils so that Councils can assess whether fisheries, as they are managed under FMPs, may affect listed species or critical habitat and in some cases, species or habitat proposed for listing or for designation. NMFS should assist in assessing the impacts (if any) on protected species and critical habitat. Councils will include an impact assessment in draft FMPs and amendments or in the EA/EIS, that may serve as the biological assessment for consultation. If NMFS determines, based on the

impact assessment or other documentation, that the fishery may affect listed species or critical habitat, NMFS (or FWS) will determine whether formal consultation under the ESA is necessary. (See Phase II, Section 5.7.; Appendix 2.b.) Measures to minimize adverse impacts should be included in FMPs or amendments.

e. MMPA. The MMPA establishes a moratorium on the taking and importing of marine mammals and marine mammal products, with certain exceptions. Responsibility is divided between DOC (whales, porpoises, seals, and sea lions) and DOI (other marine mammals) to authorize takings under limited circumstances, including incidental takings during commercial fishing.

Effect on FMP process: If the fishery affects marine mammal population(s), the potential impacts must be analyzed in the EA/EIS. Councils may also be requested to consider actions to mitigate adverse impacts. (See Phase II, Section 5.8.)

f. NEPA. The NEPA requires that the effects of major Federal activities on the human environment be assessed. Federal activities include not only approval of FMPs, but also issuing permits and licenses. Activities conducted by private individuals that Federal agencies authorize are de facto Federal activities. NEPA's basic purpose is to insure that Federal officials weigh and give appropriate consideration to environmental values in policy formulation, decision making, and administrative actions, and that the public is provided adequate opportunity to review and comment on the major Federal actions. NEPA requires preparation of an EIS for major Federal actions that significantly affect the quality of the human environment and documents that finding for public consideration and comment before a decision. An EA is prepared for an action that will not significantly affect the human environment.

Effect on FMP process: If a draft EIS must be prepared, the notice of availability of a final EIS must be published 30 days before an Agency decision is made on the FMP/amendment; or, if an EA is prepared, a finding of no significant impact (FONSI) must be made at the time of the Agency decision. NEPA and Magnuson-Stevens Act requirements for schedule, format, and public participation are compatible and they enable one activity or document to fulfill both obligations. (See Appendix 2.e.--NAO 216-6, and Phase II, Section 5.2.)

g. PRA. The PRA requires agencies to consider and minimize recordkeeping and reporting burdens when collecting information from the public.

Effect on FMP process: If the FMP/amendment requires any form of information collection, proposed rules must be accompanied by a request for OMB approval to collect information (83-I) and such a request must be cleared by NOAA and DOC before the proposed rule can be published. Final rules implementing

information collection requirements must be accompanied by one of the following: (1) A revised 83-I and supporting statement (if OMB filed comments on the information collection at the proposed rule stage); (2) the insertion of the OMB control number in the appropriate section of the final rule text and secondary instructions to add the control number to 15 CFR part 902, if appropriate (if provided by OMB during the proposed rule stage); (3) a complete 83-I package, if OMB took neither of the above discretionary actions during the proposed rule stage; or (4) if OMB approval is not received, the final rule is published without the OMB number and, when approval is received, an FR document is published to make the information collection effective. (See Appendices 2.c and 2.f, and Phase II, Section 5.5.)

h. RFA. The RFA requires agencies to consider the economic impact of their rulemakings on small entities, including small businesses. For each proposed rule that is subject to the notice-and-comment provisions of the APA or other law, an agency must prepare an initial regulatory flexibility analysis (IRFA), unless the agency can certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Effect on FMP process: Like E.O. 12866, the RFA requires an analysis of costs, benefits, and effective alternatives. RFA also requires an agency to minimize the impact of its rule on small entities. It does this through the requirement to prepare a Regulatory Flexibility Analysis for rules that will or may have a significant economic impact on a substantial number of small entities. The IRFA is reviewed by SBA during the comment period on the proposed rule. If the rule has no significant effect on a substantial number of small entities, AGC/L&R must so certify to SBA and no IRFA is prepared. (See Appendix 2.d; Phase II, Section 5.4; and Phase IV, Section IV-2.)

i. E.O. 12612. The E.O. on federalism, which became effective on October 26, 1987, establishes nine fundamental federalism principles to which Executive agencies must adhere in formulating and implementing policies having federalism implications. The E.O. also lists a series of federalism policymaking criteria to which agencies must adhere (to the extent permitted by law) when formulating and implementing policies that have federalism implications. It also directs agencies to construe narrowly Federal statutes preempting state law or authorizing preemption of state law by Federal regulation, and to restrict preemption of state law to the minimum level necessary. Proposed policies having sufficient federalism implications must be accompanied by a "Federalism Assessment" certifying agency compliance with the requirements

of the E.O.

Effect on FMP process: Because state officials are voting members of Councils, most FMPs/amendments have state support and their implementing regulations would not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment. Generally, a federalism assessment is necessary if a state official opposes an action because of federalism concerns. The document is prepared by the RA, in consultation with the Council, and submitted by F to DOC for certification of compliance. Any principal state official opposed to adoption of an FMP/amendment may file a dissenting report explaining the nature of the state's objection and its relation to the policies of the E.O.

j. E.O. 12630. The E.O. on Government Actions and Interference With Constitutionally Protected Property Rights, which became effective March 18, 1988, requires that each Federal agency prepare a Takings Implication Assessment for any of its administrative, regulatory, and legislative policies and actions that affect, or may affect, the use of any real or personal property.

Effect on FMP process: Management measures limiting fishing seasons, areas, quotas, fish size limits, and bag limits do not appear to have any taking implications and thus no takings implication assessment is required to be prepared. (See Department of Commerce Guidelines for the Evaluation and Risk Avoidance of Unanticipated Takings, May 1990.) There is the potential for takings if a fishing gear is prohibited, because fishermen who desire to leave a fishery might be unable to sell their investment, or if a fisherman is prohibited by Federal action from exercising property rights granted by a state. Clearance of a regulatory action must include a takings statement and, if appropriate, a Takings Implication Assessment prepared by GCRA.

Overview of Responsibilities Under Certain Other Applicable Laws

Paperwork Reduction Act

Phase I

- As part of the scoping process, information needs should be examined.
- Preliminary estimates of burden hours should be made for the Information Collection Budget.

Phase II

- Council develops a draft PRA supporting statement for any proposed new or revised recordkeeping/reporting requirements, with Regional assistance, as needed.
- Region solicits comments on the draft recordkeeping/reporting

requirements from Center and F/SF5.

- Council submits revised recordkeeping/reporting requirements for informal agency review as part of the draft FMP/amendment package.

Phase III

- Region, F/SF3, and F/SF5 review draft recordkeeping/reporting requirements, including estimates of burden hours and costs, for critical/substantive issues and adequacy (when the preferred alternative includes a request for a new collection of information).
- Region distributes draft recordkeeping/reporting requirements for review to appropriate field offices; F/SF3 distributes them to HQ reviewers and appropriate agencies; F/SF5 determines whether NOAA/DOC review is warranted and, if so, transmits the draft to OA1x1 for NOAA/DOC comments.
- F/SF3 receives, analyzes, transmits comments to the Region, which prepares a draft issues letter to the Council (includes PRA issues, if any).
- Region writes/sends the final issues letter to the Council.
- Council revises recordkeeping/reporting requirements, per NMFS and public comments, adopts and submits the 83-I and supporting statement as part of the final FMP/amendment package for Secretarial review. Early submission of the request to collect information is strongly recommended.

Phase IV

- Council submits the FMP/amendment package to the RA, with the transmittal date determined by the RA.
- Begin the Magnuson-Stevens Act Secretarial review period. If not already submitted, RA sends the SF83-I and supporting statement to F/SF5. F/SF5 distributes the SF83-I and supporting statements to reviewers and appropriate agencies, including F/SF3.
- F/SF5 prepares the transmittal for F signature; sends SF83-I, supporting statement, and proposed rule to OA1x1 (NOAA) for formal review; and notifies F/SF3.
- NOAA completes its review and sends the paperwork package to OMO (DOC).
- F/SF5 checks the consistency of any revisions to the SF83-I and supporting statement, and sends the package to OA1x1.
- DOC completes its review of the SF83-I, sends it to OMB, and issues a docket number to F/SF3 to publish the proposed rule.
- F signs the proposed rule, which is published for a 45-day comment period for a rule that would implement an FMP/amendment.
- At the end of the public comment period on the proposed rule, a decision meeting (conference call) may be held to resolve any approvability issues (including SF83-I), if necessary. Region modifies the SF83-I, if necessary.
- If information collection requirements change per public comment, the RA includes the revised 83-I with the decision package, so noting in the accompanying decision memo.
- F/SF5 notifies F/SF3 of OMB approval or disapproval of the PRA request (OMB has 30 days to approve/disapprove).
- OMB approves and issues a control number, disapproves, or provides

comments on the SF83-I to DOC. If necessary, the Council, with Region and F/SF5 assistance, revises the SF83-I.

- If OMB provided comments, DOC completes its review of the revised SF83-I, and sends it to OMB.
- RA approves the FMP/amendment; F concurs.
- Final rule is filed with the OFR. If the SF83-I was approved by OMB, the final rule will contain the approved information collection requirements and the OMB control number. If not yet approved, the information collection measures will not be effective until OMB approval is obtained and the OMB control numbers are published in the FR. A currently valid OMB control number must be displayed on all collections of information. If disapproved, the information collection measures must be withdrawn by notification in the FR.

National Environmental Policy Act

Phase I

- Council initiates the scoping process to determine the scope and significance of ecological, economic, and social issues to be addressed, including consideration of ESA issues.
- Council holds scoping meeting(s) that may be in conjunction with scheduled meetings of the Council or its advisory groups.
- Council decides whether an (S)EIS or EA should be prepared, if sufficient information is available to make this determination. If an EIS is to be prepared, the Council prepares a notice of intent, which F/SF3 processes for FR publication.
- Council begins preparation of the appropriate environmental document in consultation with the RA (including ESA issues).

Phase II

- Council prepares the draft environmental document, incorporating relevant public comments received during scoping process, which discusses the effect of the fishery on the human environment of the preferred and other reasonable alternatives.
- Council submits the D(S)EIS/EA for informal agency review, including ESA issues, as part of the draft package.

Phase III

- Region, F/SF3, and GCRA/GCF review the NEPA document for CEQ and NAO 216-6 compliance.
- DEIS must be acceptable for filing before full review of the rest of draft package begins.
- F/SF3 prepares transmittal letters for filing (including a letter to All Interested Governmental Agencies and Public Groups), obtains PSP clearance, and files the DEIS with EPA.
- EPA publishes a Notice of Availability of DEIS in the FR; 45-day public comment period begins.
- Council distributes the DEIS (with letter to All Interested Governmental Agencies and Public Groups) to the public.
- If hearings on the DEIS are held, notice of scheduled hearings is

published in the FR; hearings may be in conjunction with scheduled meetings of the Council.

- Region and F/SF3 review the D(S)EIS or EA for critical and substantive issues; F/SF advises the Region of NMFS HQ position.
- Region prepares a draft issues letter to the Council (includes ESA issues).
- Region writes/sends the final issues letter to the Council.
- Council prepares the NEPA document to reflect FMP/amendment changes and NMFS and public comments.
- Council adopts the (S)EIS) or EA and submits it to the RA for review under NEPA. If it is changed substantially, a (S)EIS may need to be placed available for public comment as a D(S)EIS for a 45-day comment period.

Phase IV

- Council submits the FMP/amendment package to RA, transmittal date determined by RA.
- Begin Magnuson-Stevens Act Secretarial review period.
- If an EA is included, the Region and F/SF3 distribute the EA to reviewers and appropriate agencies, including PSP.
- If there is an (S)EIS, the final (S)EIS must be filed with EPA to ensure that the Notice of the F(S)EIS is published in the FR 30 days prior to the decision on the action. Consultation by the RA, F/SF, and GCF/GCRA must occur prior to this date to determine the adequacy of the final (S)EIS.
- F/SF3 prepares the necessary transmittal letters for filing and distribution, obtains NOAA clearance, and files the (S)EIS with EPA. Council/Region make the F(S)EIS and PSP letter available.
- After the end of the public comment period on the FMP/amendment, a decision meeting (conference call) is held, if necessary, to resolve any approvability issues, including NEPA. Region considers NMFS comments on the EA. RA begins preparation of the draft decision memo, including the preliminary determination of NEPA compliance.
- If Region and HQ disagreements on NEPA compliance are unresolved, F/SF3 and/or GCF may write a dissent memo; F/SF confers with the RA and F/SF3 to resolve any remaining differences.
- RA verifies and makes the preliminary determination of NEPA compliance, when applicable, and makes a recommendation in the decision memo accompanying the final action package.
- RA approves/disapproves/partially approves the FMP/amendment and transmits it to F.
- F signs the FONSI, when applicable, and transmits it to PSP for clearance. When PSP approves and returns the FONSI, F/SF3 provides it to the RA, or returns it to the applicable Council, for distribution to the public, upon request.

<u>E.O. 12866, E.O. 12612, E.O. 12630, and RFA</u>

Phase I

- As part of the scoping process, regulatory analysis requirements

are examined and preliminary estimates may be made of costs and benefits.

Phase II

- Council develops a draft RIR, and an IRFA if the preferred alternative is likely to have a significant economic impact on a substantial number of small entities.
- Council submits the DRIR/IRFA for informal agency review as part of the draft FMP/amendment package.

Phase III

- Region, F/SF3, and GCRA/GCF review the DRIR/IRFA for critical and substantive issues and adequacy.
- Region distributes the DRIR/IRFA for review to appropriate field offices; F/SF3 distributes to HQ reviewers and appropriate agencies.
- F/SF3 receives, analyzes, and transmits comments to the Region, which prepares a draft issues letter to Council (includes DRIR/IRFA issues).
- F/SF advises the Region of NMFS HQ position.
- Region writes/sends the final issues letter to the Council.
- Council revises the DRIR/IRFA, as appropriate and adopts and submits it for formal Secretarial review as part of the final FMP/amendment package.
- An E.O. 12866 listing document, stating the initial determination of significance under the E.O., must be drafted by the Region and forwarded to GCF (copied to F/SF3) for review and forwarding to DOC for consideration by OIRA.

Phase IV

- Council submits the FMP/amendment package to the RA, with the transmittal date determined by the RA.
- Begin Magnuson-Stevens Act Secretarial review period.
- Region and F/SF3 distribute to reviewers and appropriate agencies: the DRIR/IRFA, including sending the IRFA to SBA by F/SF, if regulations would or may have a significant economic impact on a substantial number of small entities; draft federalism assessment, if there are significant federalism implications; and consideration of takings implications, if applicable.
- F transmits the "no significant impact" certification memo to AGC/L&R (DOC to SBA), if applicable.
- RA receives and considers NMFS/NOAA/DOC/SBA comments on the DRIR/IRFA (if not certified significant under RFA).
- End Magnuson-Stevens Act public comment period on the FMP/amendment; decision meeting (conference call), if necessary, is held to resolve any approvability issues (including DRIR/IRFA). Region/Council begins preparation of the FRFA.
- RA certifies adequacy of the RIR/FRFA and makes determinations reflected in the determinations section of the decision memo accompanying the final action package. RA transmits the federalism assessment and Takings Implication Assessment, if applicable.
- F/SF confers with RA, GCF, and F/SF3, if necessary, to resolve

differences.

- RA approves/disapproves/partially approves the FMP/amendment and transmits it to F for concurrence.
- For nonsignificant actions, AGC/L&R sends a certification to SBA, if it was not previously sent. For a significant action, F/SF sends the FRFA to SBA, if not previously sent.

Endangered Species Act

Phase I

- As part of the scoping process, consider and make a preliminary assessment of possible effects on endangered and threatened species and critical habitat. It is recommended that this include species and habitat proposed for listing and designation, although this is required only where the action is likely to jeopardize species or adversely modify proposed critical habitat.

Phase II

- In the appropriate NEPA document, preferably, or in a separate document, include an analysis of possible effects on endangered and threatened species and critical habitat. For preferred and other alternatives, conclude whether or not the alternative would be likely to adversely affect such species or habitat. If no endangered or threatened species or critical habitat may be affected, document this in the EA/EIS.

Phase III

- Region, F/SF3, GCRA/GCF, and F/PR review documents for ESA issues.
- If endangered or threatened species or critical habitat may be affected, NMFS will determine whether a formal consultation is necessary, and if so, will initiate consultation and, as appropriate, request formal consultation with FWS.
- If formal consultations are not required, the RA will provide for the record an informal consultation concurrence letter.
- If formal consultations are required, the RA will initiate consultation with NMFS and request formal consultation with FWS, if appropriate.
- Council adopts FMP/amendment documenting ESA determinations and incorporating measures identified in the biological opinion and incidental take statement.

Phase IV

- Council submits the FMP/amendment to the RA; the transmittal date is determined by RA.
- Begin Magnuson-Stevens Act Secretarial review period.
- Region and F/SF3 distribute documents (including ESA consultations), to reviewers and appropriate agencies (e.g., F/PR, Marine Mammal Commission).

- Public comment period begins on the FMP/amendment and proposed rule.
- Decision meeting (conference call) is held, if necessary, to resolve any approvability issues, including ESA.
- RA approves/disapproves/partially approves the FMP/amendment and transmits to F for concurrence.
- F concurs in RA's decision on the FMP/amendment.

B. PHASE I: PLANNING

Background

This phase comprises the actions required prior to the preparation of an FMP or amendment. It involves (1) preliminary identification of the fishery management unit (FMU), (2) conduct of the scoping process, (3) determination of which NEPA document will be prepared, and (4) initiation of actions having schedules independent of those established under the Magnuson-Stevens Act. Although required by different individual statutory or administrative mandates, each of these actions is closely interconnected, sharing the common purpose of gaining agreement on objectives and an early overview and understanding of what is involved in achieving them. Integrating the several identified required actions as fully as possible is desirable, and is the most efficient approach to accomplishing the steps in this phase.

Identifying an FMU

Section 302(h) of the Magnuson-Stevens Act provides that a Council is not required to prepare an FMP for every fishery-- only for "each fishery under its authority that requires conservation and management." Identification of an FMU may be assisted by reference to the guidelines for national standard 3 (50 CFR 600.320), which provide a definition of management unit, its relationship to the management objectives of the FMP, and some perspectives around which an FMU may be organized. In addition, national standard 7 requires that management measures, where practicable, minimize costs and avoid unnecessary duplication. GC has interpreted national standard 7 to apply to the whole FMP, as well as to individual management measures; thus the national standard 7 guidelines (50 CFR 600.340) suggesting criteria for determining whether a fishery needs management also relate to defining the FMU.

Scoping

Scoping, under NEPA, is "an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action"
(40 CFR l501.7). NEPA scoping is similar to early public notice requirements of the Magnuson-Stevens Act. The information resulting from scoping may be used in determining the need for an EIS, but is most often used after an initial decision is made to prepare an EIS. As part of the scoping process, regulatory analysis and information collection requirements are examined, and preliminary estimates may be

made of the costs and benefits of regulations. Consideration of potential impacts relating to the ESA, CZMA, and MMPA and social impacts of the FMP also begin. ESA considerations should be addressed to the extent that potential significant impacts, which trigger an EIS, can be identified. (See Overview, Phase IV, and Appendices 2.a., 2.b., and 2.g.) Scoping and public involvement may be satisfied by many mechanisms, including planning meetings, public hearings, and solicitations for comments on discussion papers and other versions of decision and background documents. Scoping should begin with FR publication of a notice of intent (NOI) to prepare an EIS, whether or not the final decision to prepare an EIS has been made; notice of intent means "intent," and not "obligation." (HQ will publish the NOI and its retraction, if a decision is made not to prepare an EIS.) Scoping should inform interested parties of the proposed action and alternatives and serve as a way to receive early public reaction and solicit additional information and alternatives. Written and verbal comments must be accepted after publication of the NOI and be considered in the environmental analysis process. Further guidance on scoping is given in NAO 216-6 (Appendix 2.e.).

Determining which NEPA document will be prepared and the scope of the NEPA analysis

A Council may determine that a proposed FMP/amendment will have significant impacts on the human environment, and may proceed directly with preparation of the EIS required by NEPA.
Significant impacts may be beneficial or adverse. Alternatively, the Council (or RA) may prepare an EA as a means of determining whether significant issues/environmental impacts are likely to result from a proposed action. If the action is determined by F not to be significant, the EA and resulting FONSI would be the final environmental documents required by NEPA. NAO 216-6 provides specific guidance for making this determination for FMPs and amendments (the Responsible Program Manager, who has primary responsibility to ensure preparation of environmental documents, is F). An EIS or SEIS must be prepared if the proposed action may be reasonably expected to (1) jeopardize the productive capability of the target resource species or any related stocks that may be affected by the action, (2) allow substantial damage to the ocean and coastal habitats, (3) have a substantial adverse impact on public health or safety, (4) affect an endangered or threatened species or a marine mammal population adversely, or (5) result in cumulative effects that could have a substantial adverse effect on the target resource species or any related stocks that may be affected by the action.

The scope of NEPA analysis should include the broad impacts of the fishery as a whole, as managed under the proposed action. Have the impacts of the fishery on the human environment been previously analyzed? If not, can the EIS be supplemented, or is a new EIS needed? (Note: If there is no new information on the physical environment from that discussed in a previous EIS, it is not necessary to repeat the information already presented in the earlier EIS; however, any indirect economic and social effects of the proposed action must be considered.)

NAO 216-6 provides for a third type of NEPA determination, called a categorical exclusion (CE), for use under limited circumstances. A CE is used for a category of actions that experience has indicated do not have individual or cumulative significant effects. No new FMP may receive a CE. Amendments to an FMP that are within the scope of alternatives addressed in a previous EA or EIS do not require preparation of an additional environmental document, if the analysis in the initial document is determined to be valid and complete. If a CE is determined to be appropriate, a memorandum should be prepared for the files with a copy to NOAA and F/SF3. Examples of the use of a CE are (1) an extension of the effective time of an FMP when the extension would not change the consequences addressed at the time of its original implementation, and (2) minor technical additions or changes to existing FMPs.

Initiating necessary corollary actions

In order to fulfill the Magnuson-Stevens Act requirements within the compressed review schedule, it is necessary to initiate or consider some of the provisions of the CZMA, ESA, PRA, MMPA, and E.O. 12866 at the first possible opportunity, usually at the scoping meeting. Failure to integrate and complete the various analyses early in the process could result in actions being returned to a Council for more comprehensive analyses. (More information about these requirements may be found in Appendices 2.a., 2.b., and 2.f., and Section 5.0.)

Federal agencies are required under section 102(2)(D) of NEPA to cooperate with state agencies, which have state-wide jurisdiction, to reduce duplication and avoid delays that may occur due to conflicting Federal and state requirements. Many states have adopted environmental regulations, usually requiring public hearings and comment periods similar to Federal requirements. Examples of cooperative activities are joint planning, joint environmental research, joint public hearings, and joint environmental assessments.

Event Schedule

I-1. Council identifies a fishery that requires conservation and management or needs a change in existing management.

I-2. Council conducts scoping, which is a process to determine the scope of the issues to be addressed. The Council prepares a NOI to prepare a draft EIS or (S)EIS and transmits the NOI to F/SF3 for publication in the FR. Scoping meeting(s) may be held in conjunction with a regularly scheduled Council meeting(s), provided the public has been given adequate notice in accordance with CEQ's NEPA regulations and NAO 216-6. Council determines whether management or management changes are warranted, and preliminarily identifies the FMU.

I-3. Council works with the Region on issues (e.g., possible effect on ESA, MMPA, PRA, CZMA, cooperation with state agencies), identifies problems, and attempts to resolve differences, if any. A preliminary determination under the ESA is necessary.

I-4. Council determines the appropriate environmental document.

a. If the Council decides that the FMP/amendment could be a major Federal action, which will significantly affect the human environment, it initiates preparation of a report on the need for the action, alternatives, the affected environment, environmental consequences of the proposed action, and other reasonable alternatives.

b. If the Council decides that an EIS is not required, it prepares a draft EA or other necessary environmental documents. If sufficient evidence is obtained during preparation of the EA that the proposed action will have a significant environmental effect, an EIS or (S)EIS is required.

PHASE II: PREPARATION OF DRAFT DOCUMENTS

Background

This phase involves the preparation of the draft FMP or amendment, the draft NEPA documents (including appropriate ESA analysis), DRIR, IRFA (if needed), estimate of burden hours for reporting requirements, and draft proposed regulations. The responsibility for preparation of these documents, except for ESA consultations and biological opinions, lies primarily with the Councils, with assistance from NMFS, as requested and available.

The amount of time taken by Councils to prepare the documents is discretionary, but once submitted for public and informal agency review (Phase III) and formal Secretarial review (Phase IV), fixed schedules come into play (as dictated by other applicable laws, hearing and public comment schedules, and the Magnuson-Stevens Act requirements). No event schedule for Phase II is provided; the timing and procedures for this phase are individual to the Councils and the fisheries under consideration. Close cooperation between the Councils and NMFS during Phases II and III is essential to reduce the risk of disapproval or partial approval during Phase IV.

A central theme common to E.O. 12866, RFA, PRA, and NEPA is the requirement to analyze the direct and indirect effects of regulations, to demonstrate that regulations will result in net benefits to society, and to explain that a chosen regulatory measure is superior to other alternatives. Likewise, a foundation for FMP decision making is an analysis of the alternative fishery management measures that have been proposed to meet the FMP objectives. The FMP is expected to set forth and analyze the short- and long-term effects of the preferred actions upon the total relevant human environment--political, ecological, economic, and social. In addition, since fishery management includes

consideration of all aspects of the productivity of a fishery--the productivity of stocks, as well as control of the harvest--Councils should examine and address relevant habitat requirements to determine the best course of action and make appropriate recommendations. A Council's choice of a particular OY should be based on an analysis of these considerations, and must be carefully defined and documented.

It follows that checklists, such as those for the contents of FMPs and any accompanying documents under other applicable laws, are necessary and useful as organizers of information and as reminders of the universe that must be considered--but checklists are only the beginning. The information called for is being gathered as the basis for examining the effects of the various alternative management measures and determining the preferred actions that are consistent with the national standards of the Magnuson-Stevens Act.

Detailed guidance for the preparation phase may be found as follows:

- Magnuson-Stevens Act Provisions--50 CFR part 600.

- PRA (including determination of need for OMB approval of state-collected data)--Appendix 2.f.

- RIR--E.O. 12866-- Appendix 2.c.; RFA--Appendix 2.d.

- NEPA--NAO 216-6--Appendix 2.e.

- ESA--Interagency Cooperation--Endangered Species Act, 50 CFR part 402, Appendix 2.b.

- CZMA consistency--Appendix 2.a.

- NMFS Habitat Conservation Policy and general guidance for its implementation--Appendix 1.

- Framework measures--Phase V.

- Guidance for Social Impact Assessment--Appendix 2.g.

- Guidance for drafting regulations and notices--OFR Document Drafting Handbook (January 1997 Revision).

- Preparation of Federal Register Documents--F/SF5

Format of Fishery Management Plans

The Magnuson-Stevens Act requires that FMPs be consistent with the national standards and other applicable laws, several of which require analysis of alternatives. The contents of an FMP may be arranged in either of two broad forms. The first considers only the management system selected by a Council for the fishery in the body of the FMP and provides the analyses that justify that selection (EISs, RIRs, etc.) in separate or attached documentation. The second form integrates the analyses into the FMP.

While either route is acceptable, the second approach may prove preferable for several reasons. Good management and the specific demands of NEPA, RFA, and E.O. 12866 all require a comparison of the alternatives considered to justify that the course taken by a Council was rationally based, and a series of parallel analyses is clearly duplicative. An integrated format can provide all pertinent information and analyses to the Council prior to its identification of a preferred course of action and reduces the duplication of information. Also, it can bring together in one relatively short part of the FMP the whole basis for a Council's action. In a few pages, the public can find problems and objectives identified, alternatives identified and described, advantages and disadvantages of each alternative management regime discussed, and the logic of the Council's choice among the alternatives presented. Those who wish to examine further or question the validity of the conclusions may then turn to the supporting technical analysis in a separate section of the FMP.

The checklist set forth below can, by appropriate rearrangement, be used in either approaches described below. The list includes the analyses required under other applicable laws--to facilitate identifying the common and distinctive elements of each--and is intended as an overview of all the elements required by law or common sense practice for a logical, understandable, and legally defensible FMP. The Council has flexibility in deciding which format best suits its purpose; there are no format requirements--location of the material is discretionary.

The following points may be helpful:

o Each document type (FMP, RIR, IRFA, EIS or EA, etc.) will be reviewed by NMFS/NOAA for compliance with appropriate content requirements. The format used should identify where these requirements are met, since not all reviewers will necessarily examine the same documents (see the Operational Guidelines Overview Checklist of responsibilities under other applicable laws--Section C(5.O)). The various analysis sections of the draft and final package should be clearly identified through a detailed table of contents, cross referencing, and/or by physical or visual separation. Repetition of

material should be avoided whenever possible.

o NAO 216-6 provides guidance on the relationship between the FMP and the EIS, including format issues. Any consolidated FMP and EIS must be filed with EPA and distributed by the Council according to its reviewers list as for a separate EIS. EPA requires that identified source or supplemental documents supporting the EIS (but not references listed in the bibliography) be filed and made available to the public with the EIS. NAO 216-6 requires that environmental documents accompany other decision documents in the NMFS decision process.

o The FMP documents should be structured to be readable, useful, and informative to reviewers and the affected public. For example, the introductory summary could be self-contained enough to be separable and useful for other purposes--such as background handouts to the media or segments of the interested public who might find the complete FMP more than is needed.

o The format chosen should illustrate what conclusions and recommendations are based upon, and how they are related to supporting technical analyses. It might be effective, as suggested above, to present a comprehensive summary of the objectives, problems to be solved, impacts of alternative management solutions, and justification for measures proposed. Depending on the scope of the individual fishery problems being addressed, much of the required data and descriptive material upon which any analyses or conclusions are based could be presented in full in the supporting material at the end of the FMP, but abstracted for the main body. Criteria for placement could include such questions as whether the information has significant impact on the management regime or is more contextual in nature.

o For the above reasons, some subject headings in the Table of Contents appear more than once to allow for maximum flexibility in organizing an FMP. Section 4.0, Supporting Material, is designed to list the legal supporting documentation (along with any separate source material.) Councils may wish to place this material either in full within the FMP, or in an appendix from which the information may be abstracted or cross-referenced in the FMP. Likewise, the full ecological, economic, and social analyses are listed separately, although their conclusions, rationale, and net benefits summaries are listed in an appropriate order within the core FMP.

EXAMPLE

Table of Contents

0.0 Foreword.
- 0.1 Required provisions (section 303(a) of the Magnuson-Stevens Act).
- 0.2 Discretionary provisions (section 303(b) of the Magnuson-Stevens Act).

1.0 Introductory material.
- 1.1 Cover sheet.
- 1.2 Summary.
- 1.3 Table of contents.
- 1.4 Introduction.

2.0 Fishery management program.
- 2.1 Problems for resolution.
- 2.2 Management objectives.
- 2.3 Management unit.
- 2.4 Habitat preservation, protection, and restoration. 2.5 Management alternatives.
- 2.6 Development of fishery resources.
- 2.7 Summary of beneficial and adverse impacts of each potential management option.
- 2.8 Measures recommended to attain management objectives.
  - 2.8.1 Specification of OY.
  - 2.8.2 Preferred management measures.
  - 2.8.3 Reporting and recordkeeping requirements.
- 2.9 Rationale and net benefit discussion.
- 2.10 Relationship of the recommended measures to existing applicable laws and policies.
  - 2.10.1 Fishery management plans.
  - 2.10.2 Treaties or international agreements.
  - 2.10.3 Federal law and policies.
  - 2.10.4 State, local, and other applicable laws and policies.
- 2.11 Council review and monitoring of the FMP.

3.0 Analysis of the beneficial and adverse impacts of potential management options.
- 3.1 Ecological.
- 3.2 Economic.
- 3.3 Social.

4.0 Supporting material.

4.1 Description of the stock(s) comprising the management unit.
- 4.1.1 Species or group of species and their distribution.
- 4.1.2 Abundance and present condition.
- 4.1.3 Definition of overfishing.
- 4.1.4 Ecological relationships.
- 4.1.5 Estimate of MSY.
- 4.1.6 Probable future condition.

4.2 Description of habitat of the stock(s) comprising the management unit.
- 4.2.1 Habitat condition.
- 4.2.2 Habitat threats.
- 4.2.3 Habitat information needs.
- 4.2.4 Habitat conservation programs.
- 4.2.5 Habitat recommendations.

4.3 Description of fishing activities affecting the stock(s) comprising the management unit.
- 4.3.1 History of exploitation.
- 4.3.2 Domestic activities.
- 4.3.3 Foreign fishing activities.
- 4.3.4 Interactions between domestic and foreign participants in the fishery.

4.4 Description of economic characteristics.
- 4.4.1 Harvesting sector.
- 4.4.2 Domestic and joint venture processing.
- 4.4.3 International trade.
- 4.4.4 Foreign fishing.
- 4.4.5 Business and markets.

4.5 Description of the socioeconomic aspects of the commercial and recreational domestic fishing industries and communities.
- 4.5.1 Employment opportunities and unemployment rates.
- 4.5.2 Economic dependence of communities on commercial or recreational fishing and related activities.
- 4.5.3 Distribution of income within the fishing communities.
- 4.5.4 Fishing industry and market capacity, and resource use trends.
- 4.5.5 Labor force characteristics.

4.6 Description of social and cultural framework of domestic commercial and recreational fishermen and their communities.
- 4.6.1 Ethnic character, family structure, and community organization.
- 4.6.2 Demographic characteristics of the fishery.
- 4.6.3 Organizations associated with the fishery.

4.7 Safety considerations.
- 4.7.1 Fishery access and weather-related vessel safety.
- 4.7.2 USCG evaluation.
- 4.7.3 Flexibility.
- 4.7.4 Procedures.
- 4.7.5 Other safety issues.

4.8 Existing fishery management jurisdictions, law, and policies.
- 4.8.1 Management institutions.
- 4.8.2 Treaties or international agreements.
- 4.8.3 Federal laws, regulations, and policies.
- 4.8.4 State laws, regulations, and policies.
- 4.8.5 Local and other applicable laws, regulations, and policies.

5.0 Other applicable laws.
- 5.1 Environmental Assessment (EA).
- 5.2 Environmental Impact Statement (EIS).
- 5.3 Draft RIR.
- 5.4 Initial RFA.
- 5.5 Paperwork Reduction Act (PRA).
- 5.6 Coastal Zone Management (CZM).
- 5.7 Endangered Species Act (ESA).
- 5.8 Marine Mammal Protection Act (MMPA).
- 5.9 Proposed regulations.

6.0 References.
- 6.1 Bibliography.
- 6.2 Sources of data and methodology.
- 6.3 List of public meetings and summary of proceedings.

Contents of Fishery Management Plans

This section offers, as the agency view of an orderly process, a basic reference checklist--one that does not prescribe, in and of itself, legal or regulatory requirements, except as provided for in the Magnuson-Stevens Act and other applicable laws. It includes, as an aid to making decisions, descriptions of the essential elements to be considered in preparing any FMP or amendment.

Relevant legal and policy documents are referenced and appended.

Sections 303(a) and (b) of the Magnuson-Stevens Act are presented in checklist form below as a Foreword, with relevant legal citations and annotations. The Foreword section is for use as a legal reference only; it presents the language of primary authorization for the guidance in Phase II.

0.0 Foreword.0.0 Foreword.

0.1 Required provisions (section 303(a) of the Magnuson-Stevens Act).0.1 Required provisions (section 303(a) of the Magnuson-Stevens Act).

0.1.1 Conservation and management measures, applicable to U.S. and foreign vessels that are necessary and appropriate to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery, consistent with the national standards, other provisions of the Magnuson-Stevens Act, regulations implementing recommendations by international organizations in which the United States participates (including, but not limited to, closed areas, quotas, and size limits), and any other applicable laws.

0.1.2 Description of the fishery, including, but not limited to, the number of vessels, type and quantity of fishing gear used, species of fish and their location.

0.1.3 Costs likely to be incurred in management of the fishery.

0.1.4 Actual and potential revenues from the fishery.

0.1.5 Any recreational interest in the fishery.

0.1.6 Nature and extent of foreign fishing.

0.1.7 Indian treaty fishing rights, if any.

0.1.8 Assessment and specification of the present and

probable future condition of the fishery.

0.1.9 Assessment and specification of the MSY from the fishery.

0.1.10 Assessment and specification of the OY from the fishery.

0.1.11 Summary of information used in making OY and MSY specifications, including the social, economic, and ecological considerations used for these assessments and specifications.

0.1.12 Assessment and specification of the annual capacity and estimated extent to which U.S. fishing vessels will harvest the OY.

0.1.13 Assessment and specification of the portion of OY that U.S. vessels will not harvest annually, and that can be made available for foreign fishing.

0.1.14 Assessment and specification of the capacity and extent to which U.S. processors will annually process that portion of OY harvested by U.S. vessels.

0.1.15 Specification of pertinent data to be collected by or submitted to the Secretary, with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, type and quantity of fishing gear used, catch by species (number and weight), areas and time of fishing, number of hauls, estimated processing capacity of U.S. processors, and actual processing capacity used by U.S. processors.

0.1.16 Consideration and provisions for temporary adjustments, after consultation with the USCG and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting, because of weather or other ocean conditions affecting the safe conduct of the fishery, except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery.

0.1.17 Discription and identification of essential fish habitat for the fishery based upon the guidelines established under section 305(b)(1)(A) of the Magnuson-Stevens Act. The FMP must minimize, to the extent practicable, adverse effects on such habitat caused by fishing and identify other actions to encourage the conservation and enhancement of the fishery.

0.1.18 Assessment and specification of the nature and extent of scientific data needed for effective implementation of the FMP.

0.1.19 A fishery impact statement that assesses, specifies, and describes the likely effects, if any, of the conservation and management measures on (A) participants in the fisheries and fishing communities affected by the FMP; and (B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants.

0.1.20 Objective and measurable criteria for identifying when the fishery to which the FMP applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery). In the case of a fishery that has been determined to be approaching an overfished condition or is overfished, the FMP must contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery.

0.1.21 Standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, including conservation and management measures that, to the extent practicable and in the following priority, (A) minimize bycatch and (B) minimize the mortality of bycatch that cannot be avoided.

0.1.22 Assessment of the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish. Include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish.

0.1.23 A description of the commercial, recreational, and charter fishing sectors that participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors.

0.1.24 To the extent that rebuilding plans or other conservation and management measures that reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.

0.2 <u>Discretionary provisions (section 303(b) of the Magnuson-Stevens Act)</u>.0.2 Discretionary provisions (section 303(b) of the Magnuson-Stevens Act).

0.2.1 An FMP may require a permit to be obtained from, and fees to be paid to, the Secretary with respect to: Any fishing vessel of the United States fishing, or wishing to fish, in the EEZ [or special areas], or for anadromous species or continental shelf fishery resources beyond such zone [or areas]; the operator of any such vessel;

or any U.S. fish processor who first receives fish that are subject to the FMP.

The "processor who first receives fish" means the first person who receives or intends to receive fish subject to the FMP for processing on a vessel or on land. The amount of fees charged domestic fishermen is to be established by NMFS. NMFS may enter into a cooperative agreement with the states concerned under which the states administer the permit system, and the agreement may provide that all or part of the fees collected under the system will accrue to the states. The level of fees charged must not exceed the administrative costs incurred in issuing the permits and are calculated according to Chapter 9 (April 23, 1990) of the NOAA Finance Handbook (NAO 203-102). (See section 304(d) of the Magnuson-Stevens Act, which sets forth provisions governing establishment of fees.).

0.2.2 An FMP may designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear.

0.2.3 An FMP may establish specified limitations that are necessary and appropriate for the conservation and management of the fishery, on the (A) catch of fish (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factors); (B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and state safety and quality requirements; and (C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204 of the Magnuson-Stevens Act.

0.2.4 An FMP may prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices that may be required to facilitate enforcement of the provisions of the Magnuson-Stevens Act.

0.2.5 An FMP may incorporate (consistent with the national standards, other provisions of the Magnuson-Stevens Act, and any other applicable laws) the relevant fishery conservation and management measures of the coastal states (or local government or other entity) nearest to the fishery.

0.2.6 An FMP may establish a system for limiting access to the fishery in order to achieve OY, if, in developing such a system, the Council and the Secretary take into account:

(A) Present participation in the fishery;
(B) Historical fishing practices in, and dependence on, the fishery;

(C) Economics of the fishery;
(D) Capability of fishing vessels used in the fishery to engage in other fisheries or other pursuits;
(E) Cultural and social framework relevant to the fishery and any affected fishing communities; and
(F) Any other relevant considerations, such as existing state conservation and management measures.

Any system of limited access must be for the purpose of conservation and management, and economic allocation may not be its sole purpose. (See 50 CFR 600.325(c)(3), national standard 4--Allocations, and ' 600.330(c), national standard 5--Efficiency, which set forth guidelines on the establishment of limited access systems.).

0.2.7 An FMP may require fish processors who first receive fish that are subject to the FMP to submit data (other than economic data) that are necessary for conservation and management.

"Economic data" means financial information representing costs and returns to the processing firm.

0.2.8 An FMP may require that one or more observers be carried on board a U.S. vessel engaged in fishing for species that are subject to the FMP, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for quartering an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.

An FMP mandating observers must justify the requirement and identify expected costs and benefits. A Council that requires observers may prepare, in consultation with NMFS, an Observer Plan that specifies the basis for determining the adequacy and safety of vessel facilities, whether the safe operation of a vessel would be jeopardized, and qualifications of an observer.

0.2.9 An FMP may assess and specify the effect that its conservation and management measures will have on the stocks of naturally spawning anadromous fish in the region.

0.2.10 An FMP may include, consistent with other provisions of the Magnuson-Stevens Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch.

0.2.11 An FMP may reserve a portion of the allowable biological catch of the fishery for use in scientific research.

0.2.12 An FMP may prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

1.0 Introductory material.1.0 Introductory material.

1.1 Cover sheet.1.1 Cover sheet. Provide a cover sheet for the purpose of ready identification of the FMP, the subject fishery, its geographic location, the responsible Council(s), and date of Council(s) approval. Add other appropriate information such as whether the FMP is jointly prepared, combined with an EIS or RIR or IRFA, whether the version is draft or final, date of the document, etc.

1.2 Summary.1.2 Summary. Give a concise summary covering the essence of the following: Problems addressed; management objectives; areas of controversy; management unit; management institutions and their jurisdictions; management measures; alternatives; description of ecological, economic, and social impacts; feasibility for implementation; specifications--range of MSY, OY, DAH, TALFF, DAP, and JVP, and whatever other matters are judged relevant to the objectives and their effects.

1.3 Table of contents.1.3 Table of contents. List all major headings and subtopics, cross-indexing where necessary. Indicate sections in which specific requirements of NEPA, E.O. 12866, and RFA are met, if the document is integrated with analyses under these or other applicable laws.

1.4 Introduction.1.4 Introduction. Briefly describe the management unit and its basis (see guidelines for national standard 3, 50 CFR 600.320(d)), and the overall management objectives. Briefly describe the jurisdictional context, including, if relevant, reference to the history of management. Describe, in general terms, the source and quality of scientific information used. Include a list of preparers, as appropriate.

2.0 Fishery management program.2.0 Fishery management program.

2.1 Problems for resolution.2.1 Problems for resolution. Describe and substantiate the nature of the problems that require resolution through management, for example: Problems in the habitat, harvest, or

productivity of the resource; overfishing and rebuilding of the resource; conflicts among user groups; or regulatory failures, such as compliance, safety, or enforcement weaknesses. Information needed includes a brief history of the problem, its extent in relation to others, constraints against past solutions, and damages or costs incurred by the group affected. An estimate of the dollar magnitude of the problem is necessary.

2.2 Management objectives.2.2 Management objectives. Specify the objectives to be attained. The objectives should relate to the problems identified and should provide a basis through which the various alternatives can be compared to determine their effectiveness. (See 50 CFR 600.305(b), national standard guidelines, General.)

2.3 Management unit.2.3 Management unit. Describe the management unit. The choice of a management unit depends on the focus of the FMP's objectives, and may be organized around geographic, economic, technical, social, or ecological perspectives. (See 50 CFR 600.320(d), national standard guidelines for standard 3.)

2.4 Habitat preservation, protection, and restoration.2.4 Habitat preservation, protection, and restoration. An FMP may include measures designed to control harmful fishing practices to protect specific fish habitat using the best readily available information. An FMP may describe and identify essential fish habitat, adverse impacts on that habitat, and actions to ensure the conservation and enhancement of that habitat. An FMP may also address and comment on activities of any Federal or state agency that may affect essential fishery habitat. Explicit actions may be recommended to preserve, enhance, protect, and restore habitat identified as necessary to support the normal life functions of the stock(s) and their food base. Appropriate authorities-- state, Federal, or international--should be informed by the Councils of the findings and the recommendations. (See sections 303(a)(7) and 305(b) of the Magnuson-Stevens Act.)

2.5 Management alternatives.2.5 Management alternatives. Identify and describe the most feasible alternatives that could reasonably be expected to resolve the stated problems. In addition, the list must include the "no action" alternative as a baseline for comparative purposes. If the status quo is a measure with a specific termination date, the "no action" alternative must account for the termination of the measure and the effect on management of the fishery without that measure. There is no particular required number of alternatives; however, alternative actions should be formulated and considered on the basis of completeness, effectiveness, efficiency, and viability. If this section will be incorporated as the alternatives analyzed in the appropriate NEPA document, the requirements of 40 CFR 1502.14 must be satisfied.

2.6 Development of fishery resources.2.6 Development of fishery resources. An FMP may identify other fishery resources associated with the stock(s) that are underutilized or not utilized by U.S. fishermen and, if
appropriate, may include a description of development goals for these fisheries in the area(s) covered by the FMP. Such information may be useful in encouraging the development of such fisheries. (See section 2(b)(6) of the Magnuson-Stevens Act.)

2.7 Summary of beneficial and adverse impacts of each potential management option.2.7 Summary of beneficial and adverse impacts of each potential management option. Summarize the advantages and disadvantages of each alternative. (See section 3.0 for a discussion of the analysis of the beneficial and adverse impacts of potential management options.)

2.8 Measures recommended to attain management objectives.2.8 Measures recommended to attain management objectives.

2.8.1 Specification of OY.2.8.1 Specification of OY. Each FMP must assess and specify the OY determined to be the amount of fish, with respect to the yield from the fishery, that will provide the greatest overall benefit to the Nation (see section 3(28) of the Magnuson-Stevens Act). Comprehensive guidance on assessing and specifying OY is found in the national standard guidelines for standard 1 (50 CFR 600.301). It includes discussion of MSY, all the factors to be considered in determining OY, with examples, and specific suggestions for the analysis. The discussion under section 3.0 of this document may also be helpful.

2.8.2 Specification of preferred management measures.2.8.2 Specification of preferred management measures. Describe the management measures chosen to attain the objectives of the FMP.

2.8.3 Reporting and recordkeeping requirements. Specification and sources of pertinent fishery data to be submitted to NMFS.

2.8.3.1 General. The FMP must specify pertinent data that the Council recommends to be submitted to NMFS by participants in the fishery. Specifications of data may take into account the effort necessary to collect such data. Effort can be minimized through careful selection and standardization of data elements, the periodicity of collection, recordkeeping, and reporting. An explanation of why the data are needed should be included. Regulations with regard to the confidentiality of these statistics are set forth in 50 CFR 600 subpart E. Guidance with regard to information collection from states, contractors, or other agencies may be found in Appendix 2.f of this document.

2.8.3.2 Domestic and foreign fishermen. The data specified may include, but are not limited to, information as to type and quantity of gear, catch by species in numbers of fish or weight, fishing effort, fishing areas, time of fishing, number of hauls, and other data considered pertinent.

2.8.3.3 Processors. An FMP may specify the data that must be submitted by fish buyers, processors, etc., who purchase, transport, and process the catch of the stock(s).

2.9 Rationale and net benefit discussion.2.9 Rationale and net benefit discussion. Compare the alternatives for management of a national fishery resource according to net benefits and other considerations. Discuss the rationale for the preferred alternative and present the sum of the benefits expected if the preferred alternative is implemented. Show how monetized benefits and costs, distributional impacts, and nonquantifiable considerations for each alternative influenced the decision. The section should describe whether the alternative chosen maximizes net benefits and involves the least net cost to society in ecological, economic, and social terms. If the preferred alternative does not maximize net benefits, an explanation for its selection should be presented. This section should also summarize whether the proposed action would impose any significant impacts on small entities or communities, and whether adverse impacts have been reduced to a minimum. (See 50 CFR 600.340, national standard guidelines for standard 7; and Section 1, Statement of Regulatory Philosophy and Principles, E.O. 12866.)

2.10 Relationship of the recommended measures to existing applicable laws and policies.2.10 Relationship of the recommended measures to existing applicable laws and policies.

2.10.1 Fishery management plans.2.10.1 Fishery management plans. Identify and discuss the relationship of the recommended measures for the fishery to other approved FMPs for other fisheries prepared by a Council, the Secretary, or other governmental entity.

2.10.2 Treaties or international agreements.2.10.2 Treaties or international agreements. Identify and discuss the relationship of the recommended measures for the fishery to any treaties with foreign nations or international fishery agreements that affect the stock(s) or fishing thereon.

2.10.3 Federal law and policies.2.10.3 Federal law and policies. Identify and discuss existing applicable Federal laws and policies, including ESA and MMPA, that affect implementation of the recommended measures and provision of specified fishery data.

2.10.4 State, local, and other applicable laws and policies.2.10.4 State, local, and other applicable laws and policies. Identify and discuss existing applicable laws and policies that affect implementation of the recommended measures and provision of specified fishery data. A recommended measure may not abrogate any Indian treaty fishing rights embodied in treaties, case law, or other agreements. (See 50 CFR 600.320, guidelines for national standard 3.)

2.11 Council review and monitoring of the FMP.2.11 Council review and monitoring of the FMP. Discuss generally the procedures the Council and its advisory groups will use to review and revise the FMP. Data in the Stock Assessment and Fishery Evaluation (SAFE) document(s) is to be reviewed on an annual basis and updated, as necessary. Monitoring is particularly critical for fisheries identified as approaching, or rebuilding from, overfishing; and for FMPs with framework measures, which allow flexibility through periodic adjustments. (See 50 CFR 600.315, national standard 2; and Operational Guidelines, Phase V.)

3.0 Analysis of the beneficial and adverse impacts of potential management options.3.0 Analysis of the beneficial and adverse impacts of potential management options. The analysis of impacts should begin as early as the scoping process, and should consider the ecological, economic, and social consequences of the fishery as a whole, as managed under all the alternative management measures. Each of these areas may have varying levels of importance, depending on the action contemplated. The structure for economic or social analysis of regulatory impacts consists of estimating the benefits and costs--in monetary or qualitative terms--of each regulatory alternative. The cost-benefit analysis should show the costs associated with each regulatory proposal against the benefits derived from the action. At a minimum, the analysis should describe the advantages and disadvantages of each of the alternatives, defining a baseline against which the incremental benefits and costs of alternate action can be compared. The "no action" alternative should be discussed. The alternatives chosen should treat the causes of the problem and relate to the objectives of the FMP. They should focus on gaining maximum effectiveness at minimum costs, not on a predetermined regulatory approach. (See 50 CFR 600.340, guidelines for national standard 7.) If circumstances allow, the same time series for data bases should be used to analyze each alternative. (If this section will be incorporated as the environmental impacts analyzed in the appropriate NEPA document, the requirements of 40 CFR 1502.16 (CEQ Regulations) must be satisfied.) An amendment to an FMP also is required to assess the impacts of management on the fishery generally, as well as the impacts of the specific amendment alternatives.

3.1 Ecological.3.1 Ecological. Evaluate the ecological effects of the fishery, under the proposed management measures, on the fish or

shellfish stocks and their habitat comprising the management unit, and effects on species that are associated in the ecosystem or that are dependent on the same habitat, including, specifically, marine mammals and endangered and threatened species. The evaluation should focus on the effects of fishing (as allowed under the management measures) on present and future abundance, short- and long-term biological productivity, distribution of the affected resources, spawning success, population structure and stability, and species diversity. Effects of fishing operations on the environment should be examined. Attention should also be given to the vulnerability of incidental or unregulated species in mixed species fisheries, predator-prey or competitive interactions, and dependence of marine mammals and birds or endangered/threatened species on the regulated species. If different fishing patterns are permitted (as described in 50 CFR 600.310(c)(3)), the analysis must assess the risk of the species reaching an "overfished," "threatened," or "endangered" status. (See NAO 216-6, guidelines under NEPA; ESA and MMPA; Operational Guidelines; and 50 CFR 600.310, guidelines for national standard 1.)

3.2 Economic.3.2 Economic. Evaluate the economic effects of the management measures on each user group by considering changes, relative to the status quo, for factors such as prices, production, revenue, profit, employment, occupational health and safety, balance of trade, productivity, distribution of gains and losses, and competition. This evaluation should include an analysis of the economic dependence of fishermen on recreational and commercial fishing and of employees in the processing sector or support industries, changes in the economic value of recreational fishing, an analysis of potential changes in the sources and distribution of income on those in the fishing community, effects on private property rights and reasonable investment-backed decisions, and the varying degree of impacts on individuals or entities according to the relative size of the operation. Attention should be given to the effect on the competitive position of small entities, on their cash flow and liquidity, and their ability to remain in the market.

3.3 Social.3.3 Social. Evaluate the principal social effects of the management measures on each user group by considering changes, relative to the status quo, for employment in, or enjoyment of, the fishery. Within this context, consider alternative employment opportunities and practices in the fishery or related industries, and the current unemployment rates in the geographical area; consider the impact on seasonal employment in fishing and fish processing relative to other non-fishery employment opportunities and to established fishing patterns for other fisheries. Identify any impacts on Native American or subsistence fisheries. Consider whether the management measures are likely to result in any significant changes in the conduct or practices of fishing that would affect vessel and crew safety or result in community dislocation or changes in patterns of social and

cultural activity in the fisheries. Identify the changes management measures might cause in fishing methods, and consider the social impact of these changes and the likelihood of their acceptance by fishermen, and thus enforceability. If significant social impacts on communities or segments of the commercial or recreational fisheries are identified, the social costs of unemployment, effects on health, and community viability should be evaluated. (See Appendix 2.g.)

4.0 Supporting material. Actual location of descriptive information in an FMP is discretionary, and should be based on the scope of the fishery problem being addressed and whether the information has a specific relationship to the management programs under study. The following section includes a detailed list of information that may not necessarily be available at a given time for a given fishery. It is designed to provide assistance in identifying data gaps and to make it possible to reduce extraneous contextual material in the core FMP by allowing for abstracting and cross-indexing of information relevant to particular analyses or discussions. Together with any separate source document or required analyses under the law, it should provide the legal documentation necessary to support the management rationale. Subject headings will duplicate previous sections, depending on how the FMP is organized.

4.1 Description of the stock(s) comprising the management unit.4.1 Description of the stock(s) comprising the management unit.

4.1.1 Species or group of species and their distribution.4.1.1 Species or group of species and their distribution. Provide a biological description and the geographical distribution of the major and incidental species or group of species comprising the management unit as identified by the Council.

4.1.2 Abundance and present condition.4.1.2 Abundance and present condition. Assess and specify the present abundance and biological condition of the stock(s).

4.1.3 Definition of overfishing. Overfishing definitions must be based on the best scientific information available, and be defined in a way to enable the Council and NMFS to monitor and evaluate the condition of the stock or stock complex relative to the definition. The Center that supports the FMP must certify the definition of overfishing. (See 50 CFR 600.310(b)(4), guidelines for national standard 1.)

4.1.4 Ecological relationships.4.1.4 Ecological relationships. Describe the relationship of the stock(s) to other species, including food chain and predator-prey relationships, and dependance upon essential fish habitat.

4.1.5 Estimate of MSY.4.1.5 Estimate of MSY. Specify the

MSY of the stock(s) based upon the best scientific information available. Summarize the information used in making the specification.

Because MSY is a long-term average, specification of MSY is not required for each amendment; however, new scientific information would require consideration of the rationale for the current specification of MSY.

4.1.6 Probable future condition.4.1.6 Probable future condition. Specify the probable future condition of the stock(s) and essential fish habitat, if present conditions and trends continue.

4.2 Description of habitat of the stock(s) comprising the management unit.4.2 Description of habitat of the stock(s) comprising the management unit. This section supports, and must be consistent with, the Habitat Conservation Policy and Implementation Strategy 3. (See Operational Guidelines, Appendix 1.)

4.2.1 Habitat condition.4.2.1 Habitat condition.

4.2.1.1 Identify and describe the habitats and habitat requirements of stock(s) comprising the management unit. Note essential habitat of particular concern due to life cycle requirements, such as spawning grounds, nurseries, or migratory routes.

4.2.1.2 Describe the relationship of habitat quality to the ability to harvest and market the species.

4.2.2 Habitat threats.4.2.2 Habitat threats. Identify essential fish habitat and other habitat areas that are threatened with alteration, degradation, or destruction, and the causes and the potential effects on the fishery.

4.2.3 Habitat information needs.4.2.3 Habitat information needs. Specify information needed, highlighting data gaps, to establish a baseline for proper evaluation of the effects of habitat modification on the species and associated fisheries.

4.2.4 Habitat conservation programs.4.2.4 Habitat conservation programs. Describe existing government programs and authorities, and private sector entities, concerned with protecting, conserving, restoring, and enhancing the habitat of the stock(s).

4.2.5 Habitat recommendations.4.2.5 Habitat recommendations. Describe Council actions and recommendations regarding the preservation, protection, and restoration or enhancement of essential fish habitat.

Specific measures controlling fishing under the FMP that affect habitat

should be prepared and discussed in terms of how they contribute to attaining FMP objectives and the economic and social costs and benefits to the affected industries.

FMPs must identify activities that have potential adverse effects on essential fish habitat quantity and quality. Broad categories of non-fishing related activities may include, but are not limited to: Dredging, fill, excavation, mining, impoundment, discharge, water diversions, thermal additions, runoff, placement of contaminated material, introduction of exotic species, and the conversion of aquatic habitat that may eliminate, diminish, or disrupt the functions of essential fish habitat. If known, an FMP should describe the essential fish habitat most likely to be affected by these activities. The coordination and consultation requirements of sections 305(b)(1)(d) and 305(b)(2-4) of the Magnuson-Stevens Act provide that: Federal agencies must consult with the Secretary on all actions, or proposed actions, authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat; and the Secretary and the Councils provide recommendations to conserve essential fish habitat to Federal or state agencies. Conservation recommendations are measures recommended by the Councils or NMFS to a Federal or state agency to conserve essential fish habitat.
(See Appendix 1, NMFS Habitat Conservation Policy, guidelines for essential fish habitat.)

4.3 Description of fishing activities affecting the stock(s) comprising the management unit.4.3 Description of fishing activities affecting the stock(s) comprising the management unit.

4.3.1 History of exploitation.4.3.1 History of exploitation. Summarize the historical fishing practices, both foreign and domestic. Identify past user groups, vessel and gear types and quantities, and fishing areas.

4.3.2 Domestic activities.4.3.2 Domestic activities. Describe current domestic fishing activities involving the management unit, including commercial, recreational, subsistence, and Treaty Indian fishing, and, where applicable:

- Participating user groups;
- Vessels and fishing gear;
- Employment in recreational and commercial sectors;
- Fishing and landing areas used throughout the range of the stock;
- Conflicts among domestic fishermen involving competition for fishing areas, gear damage, etc.;
- Amount of landings/catches;
- Assessment and specification of the U.S. harvesting capacity;

o Assessment and specification of the portion of OY that operators of U.S. vessels will not harvest annually, and that can be made available for foreign fishing (detailed tables may be included in the Appendix of the FMP); and
o Assessment and specification of the capacity and extent to which U.S. processors will annually process that portion of OY harvested by operators of U.S. vessels. (See 50 CFR 600.310(h)(2)(iii) for discussion of JVP.)

4.3.3 Foreign fishing activities.4.3.3 Foreign fishing activities. Describe current foreign fishing activities, including, where applicable:

o Participating nations;
o Vessels, harvesting and support, and fishing gear;
o Fishing areas; and
o An enumeration of catches and value as distributed among the stock(s) comprising the management unit.

4.3.4 Interactions between domestic and foreign participants in the fishery.4.3.4 Interactions between domestic and foreign participants in the fishery. Describe the interactions between domestic and foreign fishermen using the stock(s), including gear or other conflicts. Identify any problems caused by foreign fishermen taking as incidental catch a target species of a domestic fishery. Describe any existing or potential joint ventures.

4.4 Description of economic characteristics.4.4 Description of economic characteristics.

4.4.1 Harvesting sector.4.4.1 Harvesting sector. Describe the catch and value for both the commercial and recreational sectors, citing the method of valuation. For the commercial fleet, describe existing and required investment, revenues, costs, measurements of effort, measurement of efficiency and measurement of productivity. For recreational fishing, describe the direct fishing activity, sales of support industries (fishermen expenditures), capital expenditures, and non-market value estimates (willingness to pay/economic surplus).

4.4.2 Domestic and joint venture processing sector. Describe the processed products and their value. Specify the capacity of the domestic processing sector, the costs and earnings of different size firms, productivity of those firms, and existing and required investment.

4.4.3 International trade.4.4.3 International trade. Describe domestic imports and exports, and trade among foreign nations where applicable. Describe and discuss existing and proposed

international business arrangements, tariffs, quotas, and other trade barriers that affect market access and fair trade.

4.4.4 Foreign fishing.4.4.4 Foreign fishing. Describe world catch by country. Where appropriate, describe fleet capacities, cost and earning, and the relationship of catches in U.S. waters to catches off other countries.

4.4.5 Business and markets.4.4.5 Business and markets. Describe market sales by species; prices at the exvessel, wholesale, and retail levels; and the seasonality and elasticity of prices. Describe the number of markets and extent of sales for recreational fishing activities.

4.5 Description of the socioeconomic aspects of the commercial and recreational domestic fishing industries and communities.4.5 Description of the socioeconomic aspects of the commercial and recreational domestic fishing industries and communities. These aspects are part of both the economic and social analyses; the data bases are shared, and impacts can be described in both economic and social terms.

4.5.1 Employment opportunities and unemployment rates.4.5.1 Employment opportunities and unemployment rates. Identify and describe, to the extent that information is available, the changes management measures will produce in employment opportunities and practices within the fishery's harvesting, processing, and service sectors; on employment in other fisheries; and in non-fishery related work in the communities involved in the fishery, including seasonal employment.

4.5.2 Economic dependence of communities on commercial or recreational fishing and related activities.4.5.2 Economic dependence of communities on commercial or recreational fishing and related activities. Describe the economic dependence of fishermen and others on commercial and/or marine recreational fishing and related activities, and identify impacts of proposed management measures.

4.5.3 Distribution of income within the fishing communities.4.5.3 Distribution of income within the fishing communities. Identify direct and indirect changes the management measures will cause in the sources and distribution of income within fishing communities using the resource.

4.5.4 Fishing industry and market capacity, and resource use trends.4.5.4 Fishing industry and market capacity, and resource use trends. Identify changes the management measures will cause on infrastructure capacity and resource use, and upon communities.

4.5.5 Labor force characteristics.4.5.5 Labor force characteristics. Identify any changes the management measures will cause in labor force characteristics in fishing communities and regions.

4.6 Description of social and cultural framework of domestic commercial and recreational fishermen and their communities.4.6 Description of social and cultural framework of domestic commercial and recreational fishermen and their communities.

4.6.1 Ethnic character, family structure, and community organization. Describe to the extent such information is available.4.6.1 Ethnic character, family structure, and community organization. Describe to the extent such information is available.

4.6.1.1 Identify the size, number, and the characteristic fishing activities of members of ethnic cultures and sub-cultures, including Native Americans and participants in subsistence fishing, and the importance of these activities to cultural traditions.

4.6.1.2 Describe the involvement of small businesses, family-units, and communities in harvesting and processing the resource, their relative dependence upon these activities as a source of employment and income, and the relationship of family and kinship groups to past fishing and processing practices.

4.6.1.3 Describe the social and cultural importance of the resource to fishing communities, historical patterns of community participation in the fishery, traditional community patterns of resource allocation and management, and the impact of resource seasonality upon community life.

4.6.2 Demographic characteristics of the fishery.4.6.2 Demographic characteristics of the fishery. Describe the demographic characteristics of fishermen, fish processors, and service sector employees, insofar as they are relevant to understanding social and cultural aspects of the harvesting and use of the resource.

4.6.3 Organizations associated with the fishery.4.6.3 Organizations associated with the fishery.

4.6.3.1 Fishing cooperatives and associations. Identify the fishing cooperatives, associations, or other organized groups (recreational or commercial) involved in the fishery. Describe their activities and effect on the fishery.

4.6.3.2 Labor organizations. Describe the working conditions in the fishery. Identify labor organizations involved in

the harvesting and processing sectors, and describe their activities.

4.7 Safety considerations. 4.7 Safety considerations. Consideration of management adjustments for fishery access for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the operational safety of the vessels.

4.7.1 Fishery access and weather-related vessel safety.4.7.1 Fishery access and weatherrelated vessel safety. Identify any fishery conditions or management measures or regulations that may result in the loss of harvesting opportunity because of the crew and vessel safety effects of adverse weather or ocean conditions. Consider any concerns raised by the USCG and persons using the fishery related to proposed or existing management measures that directly or indirectly pose a hazard to crew or vessel safety under adverse weather or ocean conditions. Particular consideration should be given to fisheries regulated by season, in-season time or area closures or other restrictions, or trip tonnage or frequency limits. Such measures particularly may affect, or have the potential to affect, the operation of fishing vessels and safety risks taken by vessel operators under adverse weather or ocean conditions.

4.7.1.1 If vessel safety is not identified as a relevant or significant issue in the fishery or in the proposed preferred and alternative management measures, so indicate. If safety issues are raised or identified, describe how and to what extent the FMP/amendment measures have been revised to accommodate such safety concerns, and if not, why not.

4.7.1.2 Describe any procedures for consideration of or making management adjustments (either annually, seasonally, or in-season) on behalf of those persons precluded from a fair or equitable harvesting opportunity by the management regulations or fishery circumstances, including procedures for obtaining the views of fishery users and for consultation with the USCG.

4.7.2 USCG evaluation.4.7.2 USCG evaluation. Provide, either within or attached to the FMP, the USCG evaluation of vessel safety issues, whether pertinent to fishery access and weather-related vessel safety or to other significant and relevant safety issues in the fishery. The primary contact for such an evaluation is the USCG representative on the Council; however, the USCG District Commander may comment to NMFS in response to an FMP/amendment.

4.7.3 Flexibility.4.7.3 Flexibility. Provide flexibility to adjust such measures for safety concerns to the degree possible (e.g., add weather and ocean conditions as factors to consider in

framework measures when making in-season adjustments).

4.7.4 Procedures.4.7.4 Procedures. Describe any procedure (e.g., use of advisory sub-panel) proposed to monitor, evaluate, and report on effect of management measures on vessel or crew safety, particularly under adverse weather or ocean conditions.

4.7.5 Other safety issues.4.7.5 Other safety issues. All significant and relevant safety issues raised by the fishery users, other public, or the USCG should be discussed and addressed in the FMP (amendment). While dealing with all safety issues is broader than the specific requirements of section 303(a) and (b) of the Magnuson-Stevens Act, as a matter of administrative law, significant, relevant safety issues that are raised must be addressed in the administrative record. The need for a consideration of safety issues broader than those concerning fishery access and weather-related vessel safety will depend upon the fishery circumstances and the nature of proposed management measures. Where significant safety concerns are identified or raised, the social and economic implications will need evaluation (see sections 3.2 and 3.3).

4.8 Existing fishery management jurisdictions, law, and policies.4.8 Existing fishery management jurisdictions, law, and policies.

4.8.1 Management institutions.4.8.1 Management institutions. Identify and describe the institutions that have fishery management authority over the stock(s) throughout its range.

4.8.2 Treaties or international agreements.4.8.2 Treaties or international agreements. Identify and describe applicable treaties with foreign nations or international fishery agreements that affect the management unit, either directly by control of fishing or indirectly by control of fishing for a related stock (e.g., a predator or prey of the subject stock(s)).

4.8.3 Federal laws, regulations, and policies.4.8.3 Federal laws, regulations, and policies. Identify and describe the impact of any applicable Federal laws, regulations, and policies upon the management unit or fishing thereon (e.g., E.O. 12866 and 12612).

4.8.4 State laws, regulations, and policies.4.8.4 State laws, regulations, and policies. Identify and describe the impact of any applicable state laws, regulations, and policies upon the management unit or fishing thereon.

4.8.5 Local and other applicable laws, regulations, and policies.4.8.5 Local and other applicable laws, regulations, and policies. Identify and describe the impact of any local and other

applicable laws, regulations, and policies upon the management unit or fishing thereon. This includes, where applicable, Indian Treaty fishing rights embodied in treaties, case law, or other agreements.

5.0 Other applicable laws.5.0 Other applicable laws. Absence of a required FMP element, or failure to meet the procedural or analytical requirements of the Magnuson-Stevens Act or other applicable laws will result in disapproval. Thus, to be ready for formal Secretarial review, the package must contain the elements listed below, as applicable. In addition, proposed regulations not conforming to the OFR Document Drafting Handbook will be delayed in processing and, if not corrected, will not be filed by the OFR.

5.1 Environmental Assessment (EA).5.1 Environmental Assessment (EA). An EA is an environmental document usually prepared by the Council (although it may be prepared by the RA) that presents a brief analysis of the environmental impacts of the fishery as proposed in the FMP/ amendment and its alternatives. (See Overview Checklist, p. A-13.) The discussion must include the impacts of the fishery, the preferred alternative and other alternatives on the environment generally, and on protected species specifically (Memorandum, William W. Fox, Jr., April 22, 1991). It must include sufficient information or evidence and analysis to determine whether (1) the action is significant under NEPA and an EIS is required; or (2) a FONSI can be made. An EA must contain the following elements:

5.1.1 Discussion of the need for the FMP, amendment, or regulations.

5.1.2 Discussion of the proposed action and reasonable alternatives (including no action) and their environmental impacts in response to the needs identified above. The scope of environmental analysis should provide the basis for determining whether the action is significant. Accordingly, the EA must (1) address the factors listed in NAO 216-6, section 6.10c. for assessing the context and intensity of environmental impacts, and (2) consider whether the proposed action meets any of the five criteria for "significance" established for FMPs and amendments in section 6.11. The five criteria consider whether the proposed action may be reasonably expected to (1) jeopardize the long-term productivity of any stocks, (2) allow substantial damage to the ocean and coastal habitats, (3) have a substantial adverse impact on public health or safety, (4) affect adversely an endangered species or a marine mammal population, or (5) result in cumulative adverse effects that could have a substantial effect on target resources or related stocks. An EA will evaluate the impacts of fishing on the environment generally, the impacts of the alternatives, and on protected species specifically.

5.1.3 List of agencies (e.g., local, state, Federal) and

persons consulted in formulating the proposed action, considering alternatives, and preparing the EA.

5.1.4 Flood plains, wetlands, trails, and rivers. Where relevant, assess whether the action significantly and adversely affects flood plains or wetlands (see section 6.04d. of NAO 216-6) and trails and rivers listed, or eligible for listing on the National Trails and Nationwide Inventory of Rivers (Presidential Directive, August 2, 1979).

5.1.5 Finding of no significant impact (FONSI). A FONSI declares, after consideration of comments received during a public comment period, if one is provided, that an action will not significantly affect the human environment and does not require preparation of an EIS. The FONSI should provide for the signature of the Assistant Administrator. (The FONSI language, signature line, and space for date of signing should be included in the FMP/amendment, when an EA is included with that document.)

5.2 Environmental Impact Statement (EIS).5.2 Environmental Impact Statement (EIS). An EIS, or supplemental(S) EIS should be prepared according to CEQ's NEPA regulations (40 CFR 1502.10 - 1502.18) and NAO 216-6, which indicate required contents and provide guidance on format. A draft EIS or supplemental (S) EIS must identify and analyze the preferred alternative, as well as the other reasonable alternatives (40 CFR 1502.14). (See Overview Checklist, p. A-13.) The EIS elements that must be present in an FEIS are those required for filing with EPA.

"Significant" means a measure of the intensity and the context of beneficial or adverse effects of a major Federal action on, or the importance of that action to, the human environment. Significant is a function of the short-term, long-term, and the cumulative impacts of the action on that environment. (See NAO 216-6, Appendix 2.e.)

"Effects" include (1) direct effects, which are caused by the proposed action at the same time and place; and (2) indirect effects, which are caused by the proposed action, and can reasonably be expected to occur later in time or further removed in distance. (Reference 40 CFR 1508.7.)

"Human environment" is interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. This means that economic or social effects are not intended, by themselves, to require preparation of an EIS. When an EIS is prepared and economic or social effects are interrelated, then the EIS should discuss all of the effects. (Reference 40 CFR 1508.14.)

5.2.1 Cover sheet, which includes: (1) Responsible agency and cooperating agencies; (2) title of the proposed action and location

of the action; and (3) designation of the statement as a draft, final, or draft/final supplement.

5.2.2 Summary of the EIS that includes: (1) Major conclusions, (2) controversial areas, and (3) issues for resolution (including choice among alternatives).

5.2.3 Statement of purpose and need to which the agency is responding. Why is the FMP/amendment needed?

5.2.4 Examination/evaluation of all reasonable alternatives, including "no action", identification of the preferred alternative; a comparison and ranking of the alternatives from an environmental perspective; and identification of the proposed action.

5.2.5 Affected environment. Description of environment of area(s) affected by alternatives is necessary to understand the significance of an action in the context of the unique characteristics of the geographic area.

5.2.6 Environmental consequences. Discussion and analysis of:

- o Environmental impacts of alternatives, including proposed action;
- o Unavoidable adverse effects;
- o Short-term use of environment related to long-term productivity;
- o Irreversible or irretrievable commitment of resources (refer to 40 CFR 1502.16 of the CEQ regulations for required discussion subjects; see section 5.8 below for required MMPA information);
- o Impacts of fishing on the environment generally, and on endangered and protected species and critical habitat specifically under MMPA and ESA (Memorandum, William W. Fox, Jr., April 22, 1991) and;
- o The basis of the specific direct and indirect impacts of the alternatives.

5.2.7 Mitigation measures.

5.2.8 List of preparers. Names and qualifications of persons primarily responsible for preparing the EIS.

5.2.9 EIS copies. List of agencies, organizations, and persons to whom copies of the EIS are sent.

5.2.10 Response to comments. A final EIS or SEIS include comments received during the public comment period of the draft, and a response to those comments.

5.3 Draft RIR.5.3 Draft RIR. The draft RIR must provide a sufficient basis for the determinations of significance under E.O. 12866 and the RFA. An initial regulatory flexibility analysis under the RFA may be combined with the draft RIR. These guidelines do not contain item-by-item instructions describing what should be contained in an RIR or RFA; rather a checklist of general areas of concern is provided as an aid to the preparers in evaluating the completeness of an analysis of alternative regulatory actions. (See Appendix 2.c.)

5.3.1 Statement of problem. Describe and substantiate its nature. Is there sufficient information to understand what the problems are that need to be solved? Are the objectives discussed?

5.3.2 Analysis of impacts of each alternative. Are the economic and social consequences of the regulatory or policy change analyzed, including the "no action" alternative (i.e., economic and social consequences of continuing the status quo without the alternative measures)? Is there sufficient information to determine whether the rule is a significant action (see section 3(f) of E.O. 12866)? Is there sufficient information to determine whether the benefits justify the costs?

- o Benefits. Is there an analysis of incremental benefits (quantifiable and unquantifiable)? Does it indicate who will receive the benefits and when?
- o Costs. Is there an analysis of incremental costs (quantifiable and unquantifiable), including social impacts and economic and compliance costs? Does it indicate who will incur the costs and when? Is there an adequate discussion of the impacts on private property rights?
- o Net benefits. Is there enough information to determine whether the benefits justify the costs for each alternative and to select the approach that achieves the objective in the most cost effective manner, and if not, why not?

5.3.3 Rationale for Council choice of proposed regulatory action. Does the document present the reasons for selecting the preferred alternative, including how monetized benefits/costs, distributional effects, and unquantifiable considerations influenced the decision? Where there are potentially important differences

between those who stand to lose and those who stand to gain, does the document identify these groups and indicate the nature of differential effects? If the preferred alternative does not achieve the objective in the most cost-effective manner, the reasons should be presented. (Include this section only if the RIR is a separate document, otherwise the material is contained in Section 2.9.)

5.4 Regulatory Flexibility Analysis.5.4 Regulatory Flexibility Analysis. An initial regulatory flexibility analysis (IRFA) must be prepared unless the agency can certify that the proposed rule, if adopted, would not likely have a significant economic impact on a substantial number of small entities. The IRFA may be combined with the draft RIR.

5.4.1 Statement of problem. Describe and substantiate its nature. Is there sufficient information to understand what it is that needs to be solved?

5.4.2 Alternative approaches. Is the "no action" alternative included?

5.4.3 Analysis of impacts of each alternative. Are the economic consequences of the regulatory or policy change analyzed, including benefits and costs? Information required in the IRFA is the following (in addition to that contained in the DRIR):

- Description and estimate of the number of small entities and total number of entities in a particular affected sector, and total number of small entities affected; and
- Analysis of economic impact on small entities, including direct and indirect compliance costs, burden of completing paperwork or recordkeeping requirements, effect on the competitive position of small entities, effect on the small entity's cash flow and liquidity, and ability of small entities to remain in the market.

5.4.4 Rationale for Council choosing the proposed regulatory action. Does the document present the reasons for selecting the preferred alternative and a discussion of how the selected alternative minimizes the economic burden on small entities? (Include this section only if the IRFA is a separate document, otherwise the material is contained in section 2.9.)

5.4.5 Final Regulatory Flexibility Analysis (FRFA). Each FRFA must contain the following:

- A succinct statement of the need for, and objectives

of the rule.

- o A summary of significant issues raised by the public comments in response to the IFRA, the agency's response to those comments, and a statement of any changes made to the rule as a result of the comments.
- o A description and estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.
- o A description of the reporting, recordkeeping, or other compliance requirements of the rule; and
- o A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of factual, policy, and legal reasons for selecting the alterative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency, which affect the impact on small entities, was rejected.

5.5 Paperwork Reduction Act (PRA).5.5 Paperwork Reduction Act (PRA). When the Agency intends to collect information from 10 or more persons or through a rule of general application, an 83-I form is required, requesting OMB review under the PRA. The form and instructions are available from the individual in the Region who is responsible for preparing the information collection budget, or from F/SF5. Parts 1 and 3 of the form must be filled out if there is an information collection or recordkeeping requirement in the FMP/amendment. The instructions for the 83-I provide detailed guidance on how to do this, and how to prepare the supporting statement that must accompany the 83-I. Additional helpful information and guidance is included in Appendix 2.f. To fulfill PRA requirements, the package must include the following:

- o An 83-I;
- o A supporting statement prepared in accordance with the format described in the instructions, containing all information specified; and
- o A copy of the proposed regulations.

5.6 Coastal Zone Management (CZM) consistency.5.6 Coastal Zone Management (CZM) consistency. Prior to submission of a final FMP/amendment for Secretarial review, the Council or RA must send a copy of the FMP/amendment and a consistency determination to the state coastal management agency in every state with a Federally approved coastal management program whose coastal zone is affected by the FMP/amendment. If the Council or RA determines the activity will affect the land or water uses or natural resources of a state's coastal

zone, the State agency must be notified, briefly setting forth the reasons for the Council's (or RA's) determination that the action will be consistent to the maximum extent practicable with the state program. (See Appendix 2.a. for further guidance.) The statement should:

- o Be based upon an evaluation of the relevant provisions of the approved state program and a detailed description of the coastal zone effects of the FMP/amendment;
- o Explain how the FMP/amendment was determined by the Council or RA to be consistent to the maximum extent practicable;
- o Address known issues of controversy; and
- o Request that the state agency inform the Council or RA of its agreement or disagreement.

5.7 Endangered Species Act (ESA). Section 7(a)(1) of the ESA requires Federal agencies to use their authorities to conserve endangered and threatened species. "Conservation" is broadly defined under the ESA. Section 7(a)(2) of the ESA requires Federal agencies to insure that any action authorized, funded, or carried out by such agencies is not likely to jeopardize or result in the destruction or adverse modification of critical habitat. The regulations implementing section 7(a)(2) at 50 CFR part 402, provide that each agency must consult on any action that "may affect" endangered or threatened species or designated critical habitat. In the FMP/amendment and related documents, the Councils, in coordination with NMFS, must assess the potential impacts of the action5.7 Endangered Species Act (ESA). Section 7(a)(1) of the ESA requires Federal agencies to use their authorities to conserve endangered and threatened species. Conservation is broadly defined under the ESA. Section 7(a)(2) of the ESA requires Federal agencies to insure that any action authorized, funded, or carried out by such agencies is not likely to jeopardize or result in the destruction or adverse modification of critical habitat. The regulations implementing section 7(a)(2) at 50 CFR par ! on endangered and threatened species and critical habitat. However, NMFS is the Federal agency with which consultation must occur. Fishing conducted under the FMP/amendment must be considered for its effects, rather than just the effects of specific management measures (Memorandum, William W. Fox, Jr., October 18, 1990). Councils may contact staff in NMFS Regions and Centers for information on possible effects of proposed FMP/amendments. Any required consultation with NMFS should be completed during Phase III, but must be completed prior to submission of the FMP/amendment for Secretarial review (Phase IV). Also see 50 CFR part 402 (Appendix 2.b.).

5.7.1 Conference. A Federal agency shall initiate a conference with NMFS consisting of informal discussions on any action regarding the continued existence of species proposed for listing or

that would result in the destruction or adverse modification of proposed critical habitat. The conference is designed to assist the Federal agency and any applicant in identifying and resolving potential conflicts at an early stage in the planning process. The conclusions reached during the

conference and any recommendations shall be documented by NMFS and provided to the Federal agency and any applicant. See also 50 CFR 402.10 (Appendix 2.b).

5.7.2 No consultation required. If NMFS determines that the action (FMP and associated fishing) "will not affect" endangered or threatened species or critical habitat, then consultation is <u>not</u> required. This determination should be documented in the FMP and related documents.

5.7.3 Informal consultation. If the action (FMP and associated fishing) "may affect" endangered or threatened species or critical habitat, consultation is required. Typically, consultation begins with informal consultation by NMFS with NMFS' or FWS' regional office, as appropriate depending on the endangered or threatened species involved. If the informal consultation concludes that the action "is not likely to adversely affect" endangered and threatened species or critical habitat, the consultation requirements are satisfied and formal consultation is not required. The appropriate RA is authorized to sign informal consultations. The conclusion of an informal consultation should be documented in the FMP and related documents.

5.7.4 Formal consultation. If NMFS determines that the action (fishing as it is expected to occur under the FMP and its amendment) "is likely to adversely affect" endangered or threatened species or critical habitat, then formal consultation is required. Formal consultation may be requested on actions that "may affect" endangered or threatened species and critical habitat. Formal consultation will be initiated and conducted by NMFS (or between NMFS and FWS, if any species under FWS jurisdiction are involved), and the resulting biological opinion will be issued to NMFS as the "action agency" under the ESA. NMFS is the action agency because it is responsible for implementing fishery management regulations to carry out approved FMPs or amendments. Councils may be invited to participate in the compilation, review, and analysis of data used in the consultation. The impact analysis presented in the Council's FMP or amendment, or its EA/EIS, will provide a basis for assessing the impacts on endangered and threatened species and critical habitat. However, the determination of whether the action (i.e., the fishery) "is likely to jeopardize the continued existence of" endangered or threatened species or to result in the destruction or modification of critical habitat is the responsibility of NMFS (or FWS). If

appropriate, an incidental take statement will also be issued, which may include reasonable and prudent measures, as well as terms and conditions, that are required to minimize or mitigate take of endangered and threatened species. Formal NMFS biological opinions are signed by the Director of F/PR, except for those delegated to the RAs of the Northwest and Southwest Regions. The appropriate RA will advise the Council of actions that should or must be taken relative to the fishery management program to be in compliance with the biological opinion. The biological opinion is part of the administrative record for the ultimate management decisions for the fishery.

5.8 Marine Mammal Protection Act (MMPA). The 1994 Amendments to the MMPA replaced the incidental take provisions of the 1988 Amendments. Section 101(a)(5)(E) established permitting requirements for vessels taking endangered and threatened marine mammals incidental to fishing operations. The general taking of marine mammals incidental to fishing operations, other than in the Eastern Tropical Pacific yellowfin tuna fishery, is covered under section 118, which replaced section 114. Section 118 requires fishermen to reduce incidental mortality to insignificant levels approaching zero within 7 years. This section also utilizes a three-category method of listing fisheries, based on their levels of take.

5.8.1 Authorization Program. Regulations governing the marine mammal authorization program are contained in 50 CFR part 229, which exempts most fisheries from the MMPA's moratorium on the taking of marine mammals, provided that certain conditions are met. Fisheries have been placed in one of three categories based on whether there is a frequent (category I), occasional (category II), or remote likelihood or no known (category III) incidental take of marine mammals. Category I and II vessel owners must annually obtain an Authorization Certificate and regularly compile and report to NMFS their fishing effort and interactions with marine mammals. Category I and II fishermen must carry observers when requested to do so by NMFS. Category I, II, and III vessel owners must report any injury or lethal take of a marine mammal. Authorization Certificates or emergency regulations may include additional requirements. The FMP should summarize the appropriate MMPA incidental take requirements.

5.8.2 Council Responsibilities. The 1988 and 1994 Amendments to the MMPA place a greater burden on Councils to consider the impacts on marine mammals in managing fisheries. Council representatives are members of Take Reduction Teams required by the 1994 MMPA Amendments. The teams are directed to formulate Take Reduction Plans for strategic marine mammal stocks and other marine mammals having high incidental take rates. Take Reduction Plans may recommend restricting commercial fisheries by time, area, fishing technique, and/or gear. Councils may be requested to recommend action to mitigate adverse impacts on marine mammals and will be consulted as

part of the Take Reduction Plan process. The FMP package should include a discussion of the Take Reduction Plan requirements and what measures could be taken under the Magnuson-Stevens Act to avoid or mitigate adverse impacts of the fishery on marine mammals.

5.9 Proposed regulations.5.9 Proposed regulations. The OFR's Document Drafting Handbook gives detailed guidance on format and content requirements of all Federal regulations. Proposed regulations not conforming to the OFR Handbook will not be filed. Proposed regulations must contain a preamble, signature line, and regulatory text. Regulations must be typed double-spaced and be separable from other documents in order to be acceptable to the OFR for publication. The regulations must coincide or fall within the scope of the FMP management measures. A proposed rule for an FMP/amendment must be reviewed by GCRA before submission to HQ, unless an alternative legal review is provided. The preamble must include:

- o A summary of the action proposed that answers the questions: What the action does, why is it needed, and what its intended effect is;
- o All dates relevant to public knowledge of the proceeding, such as comment deadlines, public hearing dates, etc.;
- o Relevant addresses for requesting documents or submitting comments, etc.;
- o Person to contact for more information;
- o Supplementary background information and discussion of major issues;
- o Classification sections under E.O. 12866, RFA, PRA, and other applicable laws; and
- o List of index subjects, required by OFR.

6.0 References.6.0 References.

6.1 Bibliography.6.1 Bibliography. List the scientific references cited in the FMP in a bibliography.

6.2 Sources of data and methodology.6.2 Sources of data and methodology. Identify the sources of data presented in summary form in the FMP. To the extent appropriate, discuss the quality of the data. Detailed data, tables, analyses, and methodology may be included.

6.3 List of public meetings and summary of proceedings.6.3 List of public meetings and summary of proceedings. List the public meetings held in the preparation of the FMP, with each meeting identified by location, date, number of the public attending, and a

summary of comments received. List any other appropriate public record information (e.g., FR citations).

D. PHASE III: PUBLIC REVIEW AND COUNCIL ADOPTION

Background

This phase involves the review of the draft FMP and other related documents (draft NEPA documents, draft RIR, IRFA, including ESA analysis) by the public and NOAA/NMFS, the transformation of the draft FMP to a final FMP, and the adoption of the FMP by the Council. Councils must identify the preferred alternative to address the identified problems (see Sections 5.1 and 5.2).

Public hearings, as required under the Magnuson-Stevens Act, are conducted during this phase. A regularly scheduled Council meeting may be used to schedule public hearings. NMFS participates as necessary under NEPA and RFA, as requested by the Council. Councils must conduct public hearings at appropriate times and locations so as to allow interested persons to be heard during FMP preparation. The number of hearings will vary from fishery to fishery, depending on the level of public interest and the issues considered.

Because the management measures as expressed in the regulations represent the essence of an FMP's intended effect, early familiarity with these regulations will avoid misunderstandings by the public and by government reviewers. Councils are particularly urged to work with the RA and GCRA to have draft proposed regulations for each significant alternative available to the public and to submit them for NMFS informal review at the earliest possible time.

Once NMFS has determined that all necessary components of the draft FMP package have been completed by the Council, NMFS will begin its informal advance review of all draft documents. If a DEIS is required, NMFS will determine whether the DEIS is adequate for filing. If the DEIS is determined to be inadequate, it will be returned to the Council by the RA, identifying the deficiencies and suggesting modifications. If an EA will satisfy NEPA requirements, the draft EA will be reviewed and commented on by NMFS as part of the draft FMP/amendment package.

Once the Notice of Availability of the DEIS is published by EPA, NMFS will provide the Council with comments (by letter from the RA, including critical and substantive issues) by the 60th day after the start of the public review period for the DEIS. If the action does not involve filing of an EIS and subsequent public review, NMFS will

provide comments by the 60th day after the draft FMP/amendment package is distributed to Regional and HQ reviewers. For those FMPs/amendments that involve complex issues comprising establishment of new policy, drafting legal opinions, or resolving substantive internal differences of opinion, comments may occasionally be delayed beyond the 60th day. However, 60 days for NMFS review and comment is a reasonable maximum time period to accomplish all the actions involved, and is an investment of time that should help to avoid substantive difficulties once the formal review period has begun. However, a Council has the option of requesting NMFS consultation and/or advance review of its draft FMP/amendment and associated documents prior to public hearings.

Event Schedule

III-1. Council submits draft package to Region and F/SF3. Package should include the following elements, some of which may be combined:

a. D(S)EIS/EA (50 copies);
b. Draft FMP/amendment (50 copies);
c. Draft RIR, including IRFA if applicable (20 copies);
d. Draft discussion and supporting statement for new or revised recordkeeping/reporting requirements (6 copies);
e. Draft proposed regulations, including preamble (6 copies); and
f. Source documents, if any (4 copies).

III-2. Region, GCRA/GCF, and F/SF3 begin review of draft package for critical and substantive issues, including ESA, and adequacy of supporting analytic documents. F/SF3 coordinates review with HQ, NOAA, and other agencies, as appropriate. F/SF provides a consolidated Office comment to RA; individual reviewer's comments are provided to the Region as available. If the DEIS is acceptable, F/SF3 prepares necessary transmittal letters (including letter to agencies and public groups), obtains OP/SP final clearance, and files the DEIS with EPA. F/SF3 provides the Council with filing, publication, and comment period information and the original signed letter. The Council distributes the DEIS (with the letter to agencies and public groups) concurrent with EPA filing. EPA publishes the Notice of Availability of the DEIS in the FR. The Council schedules public hearings and, through F/SF, publishes the Notice of Hearings in the FR.

III-3. Region prepares draft issues letter from the RA to the Council, and sends a copy to F/SF3 for review.

III-4. Region calls joint issues meeting with F/SF, GCRA, and GCF (in person or by conference call), if necessary, using the draft issues letter as a focus, and attempt to resolve differences, if any. If

significant differences are not resolved, F/SF3 prepares a comment memo to the Region. F/SF3 informally transmits any technical comments to the Region.

III-5. Region revises draft issues letter to the Council, based on (a) the issues meeting, (b) any F/SF comment memo, and (c) technical comments. Region transmits the revised draft issues letter to F/SF for concurrence.

III-6. F/SF3 reviews the revised issues letter. If F/SF concurs, it notifies the Region. If F/SF does not concur, F/SF3 prepares a dissent memo (F/SF3 to F/SF), and transmits it, with the draft issues letter, to F/SF for resolution of differences. F/SF reviews the documents; confers with RA, GCF, and F/SF3, as necessary, advises of HQ position on issues, and informs the RA.

III-7. Region prepares the final issues letter to the Council, with a copy to F/SF and F/SF3. The target date for Council to receive the issues letter is 60 days after publication of the DEIS Notice of Availability, or, if there is no EIS, 60 days after the starting date of HQ and Regional review of the draft package.

III-8. If endangered or threatened species or critical habitat may be affected, NMFS consults with itself and/or FWS, depending on the species involved. The Council receives an informal consultation letter or biological opinion from NMFS and/or FWS.

III-9. Council revises FMP/amendment, NEPA document, and regulations, as appropriate, adopts by Council vote, and submits them for formal Secretarial review. If the Council's revision to the preferred alternative identified for public hearings is substantive, and may or will differ in context or intensity from the alternatives that were analyzed and subjected to public comment, a revised DEIS or DSEIS, with the required comment period, may be necessary (see Background above). Another vote by the Council would then be necessary. The Council is encouraged to submit the draft proposed rule to the RA for an informal review prior to submission of the FMP/amendment package for formal Secretarial review. The Council advises state(s) with approved coastal management programs whether the proposed management activity will affect any land or water use or natural resource of the coastal zone. Copies of the letter(s) to the state(s) and responses, if any, will be included in the submission of documents to the RA for Phase IV.

E. PHASE IV: FINAL FMP/AMENDMENT REVIEW AND APPROVAL; PROPOSED REGULATIONS AND FINAL RULEMAKING

Background

This phase involves Secretarial review of the FMP/amendment, supporting documentation, publication of proposed regulations, and issuance of the final rule. The authority for these actions has been delegated from the Secretary of Commerce to the Assistant Administrator of Fisheries (NMFS). This phase encompasses the review, approval, and publication schedule mandated by the Magnuson-Stevens Act within which are several controlling deadlines for specific actions (sections 303(c)(1), 304(a) and (b)). The most critical of these deadlines are:
(1) The "transmittal" date, which establishes the benchmark for all other dates, which is determined by the RA when all of the necessary documentation is determined to be complete;
(2) publication of a notice of availability within 5 days of the transmittal date, which initiates a 60-day public comment period on the FMP/amendment; (3) the publication of the proposed regulations in the Federal Register after evaluation by NMFS for consistency with the FMP/amendment, the Magnuson-Stevens Act, and other applicable laws (which has no statutory deadline);
(4) conclusion of the public comment on the proposed rule, which will generally be 45 days, but may range from 15-60 days;
(5) conclusion of the 60-day public comment period on the FMP/amendment; (6) the decision by NMFS, on behalf of the Secretary, within 30 days of the end of the comment period on the FMP/amendment, when the Council is notified of the approval, disapproval, or partial approval of the FMP/amendment by the RA, with the concurrence of F; and (7) the publication of the final rule in the Federal Register within 30 days of the end of the comment period on the proposed rule. This time-critical schedule demands innovation and flexibility on the part of planners and reviewers. A successful Secretarial review depends on the careful planning, analysis, and communication that preceded it. Communication between the RA and HQ must occur, when necessary, to clarify or discuss issues, and resolve differences; it is anticipated that communications between the Regional and HQ staffs will regularly occur for each FMP/amendment processed.

Although the schedule created for each FMP/amendment sets dates on which action is required or expected, it is necessary that preparation of documents (decision memoranda, response to comments, etc.) begin prior to the times indicated to avoid late submissions and to facilitate efficient processing of regulatory actions. The following is a listing of the major events that affect the schedule of activities.

1. Transmittal Date - The Magnuson-Stevens Act specifies a benchmark date, the "transmittal" date, from which all other dates will be calculated. This date is determined by the RA when all of the required documents have been received and adjudged to be adequate to

begin review. Consultation among Regional and HQ fishery management and legal staffs is strongly encouraged prior to the declaration of the transmittal date, such that there is general agreement on the completeness and adequacy of the Council's FMP/amendment to make the statutory evaluation and determinations under the Magnuson-Stevens Act and other applicable laws. Once the transmittal date has been determined by the RA, Secretarial review begins and required documents must be provided to HQ immediately (i.e., on the transmittal date).

2. Review of FMPs/Amendments and Regulations:

a. Review of FMPs/Amendments - Section 304(a) of the Magnuson-Stevens Act specifies that, upon submission by a Council, NMFS must:

(1) Immediately commence a review of the FMP/amendment to determine whether it is consistent with the national standards, other provisions of the Magnuson-Stevens Act and other applicable laws;

(2) Immediately (defined in the Magnuson-Stevens Act as meaning within 5 days) publish in the Federal Register a notice stating that the FMP/amendment is available and the written information, views, or comments of interested persons on the FMP/amendment may be submitted during the 60-day period beginning the day after the notice is published;

(3) Approve, disapprove, or partially approve an FMP/amendment within 30 days of the end of the comment period on the FMP/amendment, in writing to the Council;

(4) If an FMP/amendment is disapproved or partially approved, the RA must specify in writing to the Council the inconsistencies of the FMP/amendment with the Magnuson-Stevens Act and/or other applicable laws, the nature of inconsistencies, and recommendations for actions to make the FMP/amendment conform to applicable laws.

If the Council is not notified within 30 days of the end of the comment period on the FMP/amendment of the approval, disapproval, or partial approval, such FMP/amendment shall take effect as if approved. If an FMP/amendment is disapproved or partially approved, the Council may resubmit a revised FMP/amendment and revised proposed rule, where applicable. There is no required schedule for the resubmission by a Council of a disapproved or partially approved FMP/amendment. Such resubmission would be subject to the same schedule as a newly submitted FMP/amendment.

b. Review of Regulations - Section 304(b) of the Magnuson-Stevens Act specifies that, upon transmittal by the Council of proposed regulations that the Council deems necessary and appropriate for carrying out an FMP/amendment, NMFS must immediately (defined in the Magnuson-Stevens Act as within 5 days) initiate an evaluation of the proposed regulations to determine whether they are consistent with the FMP/amendment, the Magnuson-

Stevens Act, and other applicable laws and, within 15 days, make a determination.

(1) If the determination is affirmative, NMFS will publish the proposed regulations in the Federal Register, with such technical changes as may be necessary for clarity and an explanation of those changes, for a public comment period of 15 to 60 days (normally this will be 45 days for a proposed rule implementing an FMP/amendment, and 30 days for a regulatory amendment); or

(2) If the determination is negative, NMFS must notify the Council in writing of the inconsistencies and recommend revisions.

Upon being notified of inconsistencies in proposed regulations, the Council may revise the proposed regulations and resubmit them under the above schedule (b).

Final regulations must be published in the Federal Register within 30 days after the end of the comment period on the proposed rule; the Council must be consulted before making any revisions to the proposed regulations.

3. Secretarial Review of a Revised FMP/amendment

If NMFS disapproves or partially approves an FMP/amendment, the Council may submit a revised FMP/amendment under section 304(a)(1) of the Magnuson-Stevens Act.

Event Schedules

IV-1. Fishery Management Plan or Amendment

IV-1(1). Council transmits package to Region. The number of copies needed for HQ is included in parentheses; each Region determines its own needs.

a. Final FMP/amendment (50).
b. FEIS/EA, if needed (50).
c. DRIR (may be clarified or supplemented per public comment) including IRFA, if necessary (50, when separate document).
d. Proposed regulations and preamble, if the FMP/amendment is to be implemented through proposed regulations (10).
e. Request for information collection (OMB 83-I and justification), if needed (6).
f. CZM consistency determination (positive or negative), if separate from the FMP (4):
    1. Letter from Council/RA to appropriate states; and
    2. Copies of responses from any states.
g. ESA section 7 consultation requirements, if needed:
    1. Informal consultation documents (6); or
    2. Biological opinion resulting from formal consultation (6).

h. Notice of Availability for FMP/amendment (1).
i. Source documents, if any (4).

IV-1(2). Because the transmittal date may occur on any day of the week, key events may fall on any day of the week, including weekends or holidays. If a calculated decision day falls on a weekend or Federal holiday, the decision must be made no later than on the preceding Federal working day. If a calculated comment period would end on a weekend or Federal holiday, it will be extended to end on the next Federal workday. Upon the identification of the transmittal date by the RA, a schedule is produced and made available by F/SF5. F/SF3 coordinates the review of the FMP/amendment and associated documents in HQ, and with NOAA and other agencies, as required.

IV-1(3). Begin Secretarial Review F/SF3 reviews the Notice of Availability and sends to GCF for legal clearance.

IV-1(4). F/SF3 submits the Notice of Availability to the Office Director for signature, to be published in the FR.

IV-1(5). Within 5 days after the transmittal date, the Notice of Availability is published in the FR (this requires the notice to be submitted to the OFR 3 working days before it is published). Public comments will be due within 60 days, beginning with the day after the date of publication of the Notice of Availability.

IV-1(6). RA, F/SF3, and GCF begin review of the FMP/amendment, associated documents, and the proposed preamble and regulatory text.

IV-1(7). RA and F/SF3 distribute the FEIS(EA)/FMP/amendment, proposed regulations, RIR, and other documentation to reviewers, including, among others, F/SF4, F/ST, F/PR, F/HC, F/OM, GCF, USCG, and N/ORM3. Copies of the documents, in addition to a review schedule, are sent from F/SF3 to GC and AGC/L&R. F/SF sends the IRFA to SBA, if the FMP/amendment and/or its implementing regulations are determined to be significant under RFA.

IV-1(8). If there is an EIS or SEIS for the FMP/amendment, the Notice of Availability of a final EIS or SEIS must be published by EPA such that there is a 30-day period before Decision Day. (CEQ requires the 30-day period to ensure that the documents and supporting record are complete prior to the decision.) EPA requires the notice to be delivered on or before a Friday to be published the following Friday.

IV-1(9). Public comment period on the FMP/amendment ends. RA begins preparation of the decision memo on the FMP/amendment (RA to

F), including final determinations for applicable laws. Public comments on the FMP/amendment and the proposed rule received through the end of the comment period on the FMP/amendment must be summarized and responded to in the final rule. If the action is significant under the RFA, a FRFA is prepared (IRFA is modified; Council provides supplement to the RIR/RFA, as necessary) that will be made available to the public (see PHASE II, 5.4). Appropriate elements of the package must be cleared by GCRA and Center. The RA must consult with F regarding the RA's intended decision, prior to that decision being finalized. The RA's decision memo on the FMP/amendment must reflect a full discussion of key issues, including disagreements, if any.

IV-1(10). The RA approves, disapproves, or partially approves the FMP/amendment, based on consistency with the Magnuson-Stevens Act and other applicable laws; after verifying that the supporting documents (EA, RIR, FRFA, etc.) are adequate, makes final recommendations of economic impact under the RFA; and signs the RA's decision memo on the FMP/amendment. If, as a result of public comment, reporting requirements have been changed from those proposed in the proposed rule, the Region will provide a revised 83-I and supporting statement to F/SF5, with a copy to F/SF3. The RA transmits to F/SF the decision memo (RA to F), RIR/FRFA, final rule, draft transmittal memos (F to AGC/L&R and AS) and draft letter to the Council approving, disapproving, or partially approving the FMP/amendment.

IV-1(11). F/SF consults with the RA, if necessary; and may brief F on the pending decision.

IV-1(12). F concurs in the decision of the RA to approve, disapprove, or partially approve the FMP/amendment, and the Region notifies the Council in writing of that decision.
(Note: Concurrence with the decision to approve, disapprove, or partially disapprove must occur on or before the 30th day after the end of the public comment period on the NOA.)

IV-2 Review of Regulations implementing FMP/Amendment

IV-2(1) Upon transmittal of the proposed rule, NMFS must initiate a review of the proposed regulations within 5 days to determine whether they are consistent with the FMP, amendment, Magnuson-Stevens Act, and other applicable laws.

IV-2(2) Proposed rules are reviewed for appropriate legal text, required publication format, and consistency with FMP/amendment management measures and other applicable laws. F/SF reviews the action from a national perspective. If the reporting burden is

changed, F/SF5 reviews the paperwork budget and supporting statement prior to transmitting the 83-I to NOAA, along with the proposed rule as received from the Council, and PRA supporting statements. F forwards the PRA package to OA1x1 for formal NOAA review.

IV-2(3). Within 15 days of initiating evaluation of the proposed regulations, F makes a determination whether the proposed regulations are sufficiently consistent with the FMP/amendment, the Magnuson-Stevens Act, and other applicable laws to publish the proposed rule for public comment.

If F's determination is affirmative, F transmits the proposed regulations to AGC/L&R and to AS for clearance to publish the proposed rule.

If F's determination is negative, F returns the proposed rule to RA with recommendations for revisions. The RA notifies the Council in writing of the inconsistencies and recommended revisions to the proposed rule. Regardless of F's determination on the proposed rule, Secretarial review on the FMP/amendment continues, and the decision to approve, disapprove, or partially approve must be made within the statutory timeframe established by the date of publication of the NOA.

IV-2(4). NOAA forwards the PRA package to OMO for formal DOC review, if applicable.

IV-2(5). AGC/L&R reviews the regulatory package and clears publication of proposed regulations by providing a docket number to F/SF3; transmits regulatory package to OMB, if the action is significant under E.O. 12866; and transmits the PRA request to OMB, if applicable.

IV-2(6). F signs and F/SF5 sends the proposed rule to OFR. This should occur within 5 working days after F has cleared the proposed rule (see IV-2(3)). AGC/L&R transmits the certification of nonsignificance under the RFA to SBA, if applicable.

IV-2(7). Publication of the proposed rule initiates a comment period, that is generally 45 days, but may range from 15-69 days.

IV-2(8). OMB comments on the proposed rule and RIR, if the action is significant under E.O. 12866, and AGC/L&R transmits these and its own comments to GCF; NOAA transmits its comments to F/SF3; F/SF transmits public comments and other OMB, DOC, NOAA, and NMFS comments received on the FMP/amendment and the proposed rule to the RA.

IV-2(9). RA prepares final rule and associated documents; addresses public comments in the final rule.

IV-2(10). F/SF3 prepares the final rule for clearance and submits the RA's decision memo with transmittals (F to AGC/L&R and AS) and the final EA with transmittals (F to PSP and public). F/SF3 forwards the decision package to GCF and F/SF for clearance.

IV-2(11). F signs the memo transmitting the final rule to AGC/L&R and AS and signs the FONSI for the EA, if applicable. F/SF3 notifies the Region of concurrence by F.

IV-2(12). AGC/L&R provides a docket number for the final rule to F/SF3. AGC/L&R transmits the certification of nonsignificance to SBA, if applicable and not previously done at the proposed rule stage.

IV-2(13). F signs the final rule. F/SF5 sends the final rule to the OFR.

IV-2(14). Final rule is published by the OFR. APA 30-day delayed effectiveness period begins, except when all or part of that period is waived for good cause (which must be explained in the Determinations section of the RA's decision memo and the Classification section of the final rule).

IV-2(15). End of APA 30-day delayed effectiveness period. Final regulations become effective, unless otherwise specified. OMB has 60 days from the date of publication of the final rule to approve, disapprove, or modify a collection of information contained in the final rule. The regulations become effective at end of the APA 30-day delayed effectiveness period, or earlier if delayed effectiveness is waived. Data collection cannot legally take place and someone cannot be prosecuted for failing to provide information before OMB issues a control number, the control number is added to the regulations, and the public is notified of approval.

F. PHASE V: CONTINUING AND CONTINGENCY FISHERY MANAGEMENT

This phase involves aspects of operational fishery management: (1) Continuing management after the FMP (or amendment) is in place, (2) emergency provisions of the Magnuson-Stevens Act, (3) disapproval/partial approval of an FMP/amendment, (4) Secretarial FMP/amendment, and (5) rebuilding overfished fisheries.

1. Continuing Fishery Management

<u>The Framework Concept</u>

The activities involved in continuing fishery management include monitoring, evaluation, adjustment, and revision. Ease of continuing management depends almost entirely on the foresight exercised in preparing the FMP, and on identification of continuing research and data needs to monitor the changing conditions in the fishery. These guidelines focus on the "adjustment" features of continuing management; they summarize and slightly modify the informal guidelines issued by NMFS in May 1982 on framework measures.

The essence of the framework concept is the adjustment of management measures within the scope and criteria established by the FMP and implementing regulations. This is distinguished from revision of a management program by FMP amendment. Framework measures are intended to describe future management actions, which would be implemented within a range as defined and analyzed in the FMP and associated analyses. If a proposed regulatory action under a framework measure is outside the scope of the FMP and its implementing regulations, the FMP must be amended before the action can be implemented. The Magnuson-Stevens Act Secretarial review schedule (see Phase IV) is too long for practical management of certain aspects of many fisheries. The purpose of a framework measure is to make it possible to manage fisheries more responsively under conditions requiring "real time" management.

The framework concept is not intended to circumvent the FMP amendment process that must take place when circumstances in the fishery change substantially or when a Council adopts a different management philosophy and objectives, triggering significant changes in the management regime. Nor are framework measures intended to avoid statutory requirements of the Magnuson-Stevens Act, other applicable laws, and Executive Orders. These other applicable laws direct agencies to give special attention to certain national values in the decisionmaking process and/or require a process for assessing and analyzing various impacts of proposed regulatory actions. OMB must still review requests for collections of information under the PRA and significant rules under E.O. 12866. Every framework measure must be analyzed and be available to the public for comment at <u>some</u> time prior to implementation. The analysis may be provided at the same time the framework is added to the FMP, or it may be provided subsequently when the framework action is actually taken. Public notification and opportunity for comment must be provided, either when the framework measure is established, or later, when the framework action is taken under the framework process in the FMP and/or its implementing regulations. The extent of analysis and notification and comment required will depend on the specificity and analysis when the framework was established.

Non-codified framework measures may be in effect for more than a fishing year (i.e., 12 months), under certain circumstances, but the effective dates must be explicit. Codified regulations

appearing in the CFR can be amended only by final rule documents, and not by non-codified framework actions.

Traditional or "Closed" Framework Measures

A "closed" framework describes with great specificity the circumstances under which a particular management action is to be taken. The action is ministerial, and virtually without discretion by the RA, or F/SF for Atlantic highly migratory species. The action's ecological, economic, and social impacts have already been described in the analyses prepared when the framework measure was adopted. An example of one of the simplest, quickest types of inseason adjustment that can be made under a framework is the closure of a fishery based on projection of attainment of a quota. Other examples include adjustment of trip limits or hours of fishing, based on actual effort; alteration of a closed season based on biological data; and adjustment of quotas, based on computational errors or late reporting.

These actions are taken by "rule-related notices" that are cleared by GCRA and GCF, signed by F/SF, and sent from F/SF to the OFR for publication in the Rules and Regulations section of the FR. Closed-framework actions are exempt from review by OMB under NMFS' long-standing arrangement with that office, because there is no need for prior public comment and the basis for the actions has already been analyzed under E.O. 12866 (or predecessor orders. Routine inseason actions have been signed by F/SF and sent to the OFR within 1 day after the RA decided to take the action, provided that the necessary Regional clearances have been submitted and the documents have been properly prepared. For routine measures, advance clearance by GCF and F/SF3 can be obtained, allowing quick response when the RA determines that an action must be taken (e.g., the quota has been reached).

Event Schedule

a. Region notifies F/SF3 at earliest opportunity of intended action.

b. Region prepares notification document and information memo to F/SF, GCRA clears, and RA signs memo. Region transmits to F/SF3 and identifies a Regional contact point.

c. F/SF3 logs, tracks, reviews, and clears FR document; sends to

GCF for clearance.

d. F/SF3 receives GCF clearance, sends to F/SF for signature.

e. F/SF signs and F/SF5 sends to the OFR.

"Open" Framework Measures

Not every management adjustment can be forecast and described with the specificity of closed framework actions. A wide range of numbers for TAC might be identified in an FMP, but the annual determination of TAC might be based on so many factors that the Council would want to make its own recommendation and to provide for public comment on the proposed level of harvest. This sort of framework is called "open," because there is more latitude in choosing the specification or management measure, in response to a less well defined set of circumstances. Its effects are less susceptible to thorough prior analysis than those of a closed framework; if the RIR/RFA did not adequately treat the impacts of the proposed action, additional analysis must be done. Because the parameters are broader than for a closed framework action, public comment on the original framework mechanism is less likely to satisfy the APA requirements for notice and comment on the eventual management action. NMFS' arrangement with OMB provides for an exemption of open framework proposals from review by OMB.

A common example of an open framework is the annual specification of OY, DAH, TALFF, JVP, DAP, and other amounts that act as limitations or guidelines for different harvesting and processing sectors. FMPs with this type of framework generally provide for Council recommendations to the RA at a designated time of year, the RA's acceptance or rejection of the Council's recommendation, publication of initial specifications in the Proposed Rules section of the FR, a public comment period, and publication of final specifications in the Rules and Regulations section of the FR. Other open frameworks involve adjustment of area boundaries to respond to shifting fish populations, changes in size limits to reduce discards, prohibitions against use of certain gear to ameliorate gear conflicts, and the collection of additional data. Open framework actions may be inseason or annual and may last no longer than the fishing season, or they may be intended to be effective indefinitely. The extent of analyses depends on whether, and to what extent, the impacts were analyzed when the framework measure was established.

Abbreviated Rulemaking

Some Councils have chosen to combine the attractive attributes of closed frameworks (notice action, short timetable, no additional

analysis) and those of open frameworks (less specificity, more flexibility, Council input). A Council may be unable to describe in any detail the future problems that might occur or the responses that might be made, but want the action to be implemented very quickly. An example of this type of rulemaking is Measures for the Northeast Multispecies Fishery
(50 CFR 649.90), which authorizes use of supporting rationale, analysis of management measures, if any, and informed public testimony at the Council level as the "good cause" for waiving the usual notice and comment procedure under the APA. Thus, if the RA concurs, the measures may be issued as a final rule.
Also see Part 660-Fisheries Off West Coast and Western Pacific States, subpart G-West Coast Fisheries, section 660.321, Specifications and Management Measures.

Regulatory Amendments

Regulatory amendments amend regulations, not an FMP. Section 303(c)(2) of the Magnuson-Stevens Act provides that a Council shall submit proposed regulations the Council deems necessary or appropriate to modify regulations implementing an FMP/amendment at any time after the FMP/amendment is approved. A regulatory amendment is used to clarify Council intent or to interpret broad terms contained in approved FMPs; it may be used to implement a portion of an approved FMP/amendment that was reserved and the Council now desires NMFS to implement.

Regulatory amendments can be used when a Council believes a specific problem may occur in the fishery that would require addition to or amendment of the original regulations, but the exact nature of the event or the remedial action cannot be foreseen at the time the FMP is being prepared. An example is the concern that, with the growth of a fishery, a gear conflict might arise that could lead to serious disruption. In such cases, a Council may not be able to predict the nature, location, or magnitude of the event with sufficient certainty to describe the measures needed to address the problem, the effects of the regulatory change, or the criteria to be used with sufficient precision to use abbreviated rulemaking procedure. Nevertheless, there may be a need to act more rapidly than is possible through the FMP amendment process. The mechanism to use under these circumstances is a regulatory amendment, if the authority is provided for in the FMP.

Regulatory amendments must go through the normal rulemaking procedure, including determination of significance under E.O. 12866; time saved is derived from the fact that the change was anticipated within the scope of the FMP/amendment (thus obviating the necessity for the full FMP amendment process), and the comment period is normally 15 to 30 days, instead of the 60-day period set

forth by the Magnuson-Stevens Act for FMP/amendments. However, a regulatory amendment submitted by a Council under section 303(c)(2) of the Magnuson-Stevens Act must be reviewed by NMFS according to statutory deadlines: 5 days to initiate evaluation of the proposed rule, 15 days for F to make a consistency determination and clear the proposed rule, a standard 30-day public comment period, and publication of the final rule within 30 days after the close of the comment period on the proposed rule. An interim final rule may be used when a measure must be made effective immediately and, when justified, the advance period of public notice and comment and APA delayed effectiveness can be waived; however, public comment is requested upon publication of the interim final rule. A final rule, which responds to public comments, implements the final rule on a permanent basis, if still found necessary and appropriate.

The FMP and associated documents should define and analyze as completely as possible the problems foreseen; the kinds of actions that may be taken to overcome them; any criteria for action that may be foreseen; the economic, social, and environmental effects that may occur as a result; and the procedures that are to be used for taking the action. The implementing procedures should compensate for the fact that appropriate analysis and opportunity for public comment on the action may have been limited in the original FMP. A suggested procedure follows:

a. The monitoring team (or plan maintenance team) established by the Council, upon becoming aware of a problem in the fishery covered by an approved FMP, identifies it; shows how regulatory changes can occur that are within the FMP scope and objectives; proposes alternatives to overcome it; analyzes the ecological, economic, and social effects of these alternatives; and presents the package to the Council. If the problem is outside the scope of the FMP, an FMP amendment is the appropriate response.

b. The Council reviews alternative management regimes and determines the alternative that is most appropriate to meet the objectives of the FMP, least burdensome to those affected, and most likely to correct the problem.

c. The Council's proposed regulatory action, the analysis, and reasons for selection, is made available by the Council for public review and comment.

d. The Council may hold a hearing to take public comment, after which it prepares analyses of ecological, economic, and social effects of various alternatives and a final recommendation.

e. The RA, in consultation with GCRA, reviews the action to determine if it falls inside the scope and objectives of the FMP

(requiring a regulatory amendment) or outside (requiring an FMP amendment). If it is a regulatory amendment, the RA advises F of the intention to submit the necessary regulatory changes and analyses for processing through NMFS/NOAA/DOC to the OFR. Such regulations, if determined to be not significant under E.O. 12866, would not be further reviewed by OMB. Part or all of the APA delayed effectiveness period could be waived for good cause.

Section 305(d) authorizes NMFS, on behalf of the Secretary, to promulgate regulations, and amend regulations, as may be necessary to carry out provisions of the Magnuson-Stevens Act, without specific FMP authority. Part or all of the APA delayed effectiveness period, or the advance notice and public comment, could be waived for good cause.

Technical Amendments

Some amendments to regulations are categorized as final rules under the APA, without the requirement for notice and opportunity for public comment. To distinguish these from normal final rules, the action caption "final rule; technical amendment(s)" is used. Examples of technical amendments include simple housekeeping changes to existing regulations, updating to cross-reference other effective rules or laws that are no longer clearly or accurately presented in fishery regulations, and clarifications or corrections of implemented rules that did not appropriately express the intent of the FMP or the amendment. Technical amendments are also used to correct codified text after it has been incorporated into the bound version of the CFR (i.e., October 1 of each year, for Title 50). Such actions are exempt from review under E.O. 12866.

Corrections

All documents sent to the OFR should be proofed against a copy of the original document to discover any errors that may have occurred in publication. If an error was made in the publication process, F/SF5 should be notified. F/SF5 will notify the OFR and the OFR will prepare and publish, at its expense, a correction document that reflects the content of the original document. If the error was made in the original document submitted to the OFR, the agency must publish in the FR a signed document with the action caption "Proposed rule; correction," "Final rule; correction," or "Emergency interim rule; correction," as appropriate, to correct the error. Error corrections may be made to the regulatory text, preamble, or tabular material. However, a correction to Title 50 of the CFR must be submitted to the OFR before October 1 of each year to prevent the error from being printed in the CFR annual publication. If the error is undetected and becomes codified in the published CFR volume, it must be corrected through a technical

amendment.

2. Emergency Provisions of the Magnuson-Stevens Act

The emergency provisions of section 305(c) of the Magnuson-Stevens Act should be used only in extreme circumstances. The emergency authority should address unanticipated events or problems that require immediate attention. If the Secretary finds that an emergency or overfishing exists or that interim measures are needed to reduce overfishing for any fishery, the Secretary may promulgate emergency regulations or interim measures necessary to address the emergency or overfishing, without regard to whether an FMP exists for such fishery. A recommended emergency action that does not conform to the NMFS policy regarding the use of emergency rules will not be supported by NMFS. (See Policy Guidelines for the Use of Emergency Rules, 57 FR 875, January 6, 1992.)

The Secretary's authority to take action under this section is delegated to NMFS, subject to being informed in advance of controversial emergencies. The NMFS/NOAA/DOC review of an emergency rule can ordinarily be completed within 23 to 30 days of the date of receipt in HQ of the complete package from a Region, subject to a number of variables. Every effort is made to expedite an emergency rule by placing a high priority on these actions. Section 305(c) does not relieve the Secretary from the requirements of NEPA, ESA, E.O. 12866, PRA, CZMA, and APA, although exemptions, waivers, and special arrangements are possible under certain circumstances (see section below on "Effect of other applicable laws on emergency rules"). Processing an emergency action could disrupt the flow of documents already going forward under the statutory schedule for FMP/amendments and regulatory actions.

Under section 305(c)(2)(A) of the Magnuson-Stevens Act, the Secretary is required to promulgate emergency regulations if a Council finds that an emergency or overfishing exists or interim measures are needed to reduce overfishing involving any fishery within its area of authority and requests the Secretary to do so by unanimous vote of the voting members. The NOAA Office of General Counsel has defined the phrase "unanimous vote" to mean the unanimous vote of a quorum of the voting members of the Council only. An abstention has no effect on the unanimity of the quorum vote (i.e., an abstention is not considered a negative vote).

Under section 305(c)(2)(B) of the Magnuson-Stevens Act, the Secretary may promulgate emergency regulations or interim measures to address an emergency or overfishing if the Council, by less than a unanimous vote, requests such action.

Under section 305(a) of the Magnuson-Stevens Act, the Secretary is required to publish a list of fisheries under the authority of each Council and all fishing gear used in such

fisheries. A Council may request the Secretary to promulgate emergency regulations under section 305(c) to prohibit any persons or vessels from using an unlisted gear or engaging in an unlisted fishery if the appropriate Council, or the Secretary (NMFS) in the case of Atlantic highly migratory species, determines that unlisted gear or an unlisted fishery would compromise the effectiveness of conservation and management efforts under the Magnuson-Stevens Act.

An emergency rule is effective for no more than 180 days from the date of publication, with one extension for up to an additional 180 days, provided that the affected Council agrees, the public has an opportunity to comment, and, in the case of a Council recommendation, the Council is actively preparing a FMP, or FMP amendment, or proposed regulations to address the emergency or overfishing on a permanent basis. Early termination of an emergency recommended by a Council may be made only upon agreement of the Secretary and the Council concerned. An exception to the 180-day limitation is provided for an emergency that responds to a public health emergency or oil spill, which may remain in effect until the circumstances that created the emergency no longer exist. An emergency rule is published in the Rules and Regulations section of the FR.

The emergency rule package must include:

a. Emergency interim rule;

b. Decision memo from the RA, or F/SF for an Atlantic highly migratory species emergency, to F, information memo from F to AS, or, if controversial, a Secretary's information memo from A to the Secretary;

c. EA or request for alternative arrangements with CEQ; and

d. Other supporting documents providing required analyses under other applicable laws (e.g., ESA section 7 biological opinion or informal consultation by NMFS/FWS or, if appropriate, determination that consultation is not required), or the appropriate waivers (see explanations below).

Provisional Event Schedule

a. As soon as emergency action is initiated by a Council, the Council Chairman and the RA must prepare a joint memorandum and

transmit it to F, giving advance notice that an emergency rule is forthcoming, describing the action and public issues, noting potentially controversial aspects, if any, and estimating the date for action.

b. Day 1: Receipt of the emergency package from the RA, described above. F/SF3 begins review of the rule and associated documents.

c. Day 2: F/SF3 sends the reviewed rule to GCF for review. If the regulation would change paperwork burden, F/SF5 reviews the SF 83-I with supporting statement for information collection and emergency rule, and prepares the request for expedited review.

d. Day 5: GCF and the Region send review comments to F/SF3. If the paperwork burden is changed, F transmits the regulations and supporting PRA documents to NOAA for review and immediate transmission to DOC; F/SF5 notifies F/SF3 of the transmission of the request for collection of information.

e. Day 9-13: F/SF3 clears the emergency interim rule, transmittal memos, and the Secretary's decision memo, if controversial, with consolidated comments through GCF and appropriate offices.

f. Day 14: F/SF3 transmits the cleared rule and the Secretary's decision memo, if controversial, and transmittal memos to F/SF for review and comment.

g. Day 16: F/SF consults with the RA, if necessary, clears the memos, and sends to F.

h. Day 19: F approves the action, signs the information memo to AS, or the Secretary's decision memo to A, if controversial, and transmittal of rule to AGC/L&R. F signs EA, if applicable, and transmits it to PSP for clearance.

i. Day 23: AS informs F that he has been advised or A sends Secretary the information memo to advise of a controversial emergency. (Note: an acknowledgement of the information memo by the Secretary is not required.)

j. Day 25: AGC/L&R provides the docket number for the rule to F/SF3.

k. Day 26: F signs the emergency rule. F/SF5 submits the rule to the OFR. F/SF5 informs the Region and F/SF3 of filing. The Region informs the appropriate Council(s).

Effect of "Other Applicable Laws" on Emergency Rules

a. APA: Section 553(b) of the APA provides that notice and comment may be waived for "good cause," if such notice would be impracticable, unnecessary, or contrary to the public interest. Section 553(d) of the APA states that most informal rulemaking must have a delayed effectiveness period. This allows time for those affected by a regulation to make any necessary preparations. If F finds "good cause," a rule may be promulgated without prior notice and comment with an effective date less than 30 days after publication. The determinations section of the RA's decision memo and the Classification section of the final rule should explain the "good cause" reasons.

The APA also provides that the 30-day delayed effectiveness provision may be waived, if the rule is a substantive one (i.e., that is not merely procedural) that "relieves a restriction." The determinations section should also explain the basis of this waiver, if applicable.

b. CZMA: Federal agencies are required to notify states with approved coastal management (CZM) programs of any Federal action that will affect the land or water uses or natural resources of a state's coastal zone, and to provide a consistency determination. The consistency determination should provide information demonstrating the consistency of the action, to the maximum extent practicable, with the state's approved management program. A finding that the action has no effect requires a negative determination to the affected states. There are no general waivers or exceptions allowed under CZMA. The affected states are advised by letter of the determination.

c. Executive Order 12866: An emergency rule is subject to a determination of significance for purposes of E.O. 12866. As soon as the Council or the Region has found that an emergency is necessary and consistent with NMFS Policy Guidelines, F/SF3 is informed. Concurrently, the office preparing the rule transmits an E.O. 12866 listing document for the pending emergency action through GCF and AGC/L&R to OIRA for concurrence on the determination of non-significance.

d. NEPA: The NEPA requirements for preparing environmental documents are the same for emergency actions as for non-emergencies. However, when emergency circumstances make it necessary to take an action without observing CEQ's NEPA regulations, CEQ may grant alternative arrangements for meeting NEPA requirements. Further, a Categorical Exclusion (CE) from the preparation of an environmental document may be available, if the action meets specific criteria set forth in NAO 216-6 (Appendix 2.e.). The following provides general guidance for meeting NEPA

requirements for an emergency action (See Appendix 2.e. for detailed guidance.)

(1). If the emergency action is significant under NEPA, then an EIS should be prepared, as would be required for a non-emergency action.

(2). If the action has been determined to have no significant environmental impacts, an EA must be prepared that provides the formal basis for a finding of no significant impact on the human environment. In the determinations section of the decision memo, the RA recommends that F make the FONSI.

(3). In special circumstances, F may request from CEQ, through PSP, alternative arrangements for meeting NEPA requirements. This request and the response become part of the administrative record. The types of special arrangements CEQ may grant include: (1) The requirement for preparation of an environmental document is waived altogether; (2) preparation is delayed; (3) the 45-day public review period may be shortened; and (4) the 30-day NEPA period of delayed effectiveness is shortened/waived. These arrangements are not lightly granted by CEQ, must be sufficiently justified, and are to be used as infrequently as possible.

(4). NAO 216-6 provides for a programmatic determination by the responsible program manager that certain types of actions do not pose significant impacts on the human environment, and are exempted (CE) from further environmental analysis and requirements to prepare environmental documents. The determination that an action qualifies for a CE is based upon criteria set forth in NAO 216-6. A CE is not allowed when a new FMP will be implemented. FMP amendments may qualify for a CE if the amendment is within the scope of alternatives addressed in a previous EIS or EA, and the analysis in the original document is determined to be valid and complete. Emergency regulations without an FMP or amendment must meet the requirements of NAO 216-6 to qualify for a CE. The determinations section of the RA's decision memo provides the basis and rationale for a CE.

e. PRA: Most emergency rules will not involve an information collection requirement; therefore, the PRA would not apply. An emergency rule may involve a collection of information requirement that is not new and that has been approved under a previously established OMB control number. In that situation, the OMB Control Number is identified in the determinations section of the RA's decision memorandum.

In those rare instances when an emergency rule involves a collection-of-information that has not been previously approved, the PRA does apply. Under an emergency circumstance, DOC may request OMB to do an expedited review of the collection-of-information request. The determinations section of the RA's decision memo provides the justification and rationale for the collection of information, indicates the PRA package has been prepared, and requests expedited review (through NOAA, OMO, and OMB). The information may not be collected without OMB approval.

f. RFA: An emergency regulation is exempt from the procedures of the RFA because it is issued without opportunity for prior public comment.

g. E.O. 12606, E.O. 12612, E.O. 12630, E.O. 12898, and E.O 12988: An emergency rule is subject to these orders and is considered for adherence to the criteria for formulating and implementing policies.

3. Disapproval/partial Approval of FMP/Amendment or Proposed Regulations.

Background

a. Review of FMP/Amendment.

Under section 304(a)(3) of the Magnuson-Stevens Act, the RA, with the concurrence of F, may disapprove or partially approve an FMP/amendment after a finding that the FMP/amendment is not consistent with the national standards, other provisions of the Magnuson-Stevens Act, or other applicable laws. The Council involved must be notified of the disapproval or partial approval in writing on or before the close of the 30th day after the end of the comment period on the FMP/amendment, otherwise the FMP/amendment is approved automatically and must be implemented. The written notification to the Council must specify (1) the law with which the FMP/amendment is inconsistent; (2) the nature or substance of such inconsistencies; and (3) recommendations concerning the actions that the Council could take to bring the disapproved or partially approved FMP/amendment into conformance with the law.

The basis for disapproving or partially approving the FMP/amendment may involve a failure of the supporting documents to meet other applicable laws (e.g., the RIR does not fulfill E.O. 12866 requirements). In this event, the Council will be notified of the inadequacies of supporting analyses, as well as suggestions for resolving them.

If a Council decides to revise a disapproved FMP/amendment or the disapproved portion of a partially approved FMP/amendment, it

should carefully evaluate the need to revise the supporting documents (e.g., EIS/EA, RIR/IRFA). Such documents will need revision if the type, context, or intensity of economic, social, and environmental impacts of the revised FMP/amendment are not addressed by the Council's first submission. The RA will provide guidance and assistance, as requested, concerning the need for, and type of, changes to supporting documents. Such changes are essential for the Council to ensure that the revised FMP/amendment is consistent with all applicable laws.

b. Review of Proposed regulations.

Under section 304(b) of the Magnuson-Stevens Act, the RA, with the concurrence of F, may determine that a proposed regulation is not consistent with the FMP/amendment, the Magnuson-Stevens Act, or other applicable laws. If an inconsistency determination is made, the Council involved must be notified in writing of the inconsistencies and provided recommendations for making the proposed regulation consistent. After being notified of an inconsistency determination, a Council may revise and resubmit the proposed regulations.

4. Secretarial FMP/amendment

Preparation and review of Secretarial plans.

In certain cases the Secretary (or a designee) may prepare an FMP or an FMP amendment. Section 304(c) of the Magnuson-Stevens Act specifies that the Secretary may prepare an FMP or amendment if: (1) A fishery requires conservation or management, but the Council has not submitted the necessary FMP or amendment "after a reasonable period of time;" (2) when a Council's FMP/amendment has been disapproved, or partially approved, and the Council has not submitted a revised FMP/amendment; or (3) the Secretary is given authority under section 304 (i.e., for Atlantic highly migratory species, and overfished fisheries for which the appropriate Council has not submitted a rebuilding plan within the statutory timeframe). Like any Council FMP/amendment, such Secretarial amendments must be consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. A majority of the voting members of each appropriate Council must approve any Secretarial action establishing a limited access system, including any individual fishing quota system, within that Council's area of authority.
The authority to issue Secretarial FMPs/amendments has been delegated to NOAA and F with the standard reservation that the Secretary must be advised in particular cases before final action

is taken. This has generally been exercised only where FMP approval/disapproval was particularly controversial. The authority to issue Secretarial actions has not been delegated to the RAs; it is retained in F. However, it is expected that in most cases the RA will prepare the Secretarial amendment for F's approval.

During Secretarial FMP/amendment preparation, F will consult with the USCG with respect to enforcement at sea and DOS with respect to foreign fishing, and prepare any necessary or appropriate proposed regulations to carry out the Secretarial action. As in the case of a Council-prepared FMP, there are no legislated deadlines for PHASES I-III, which allows time for thorough preparation and informal advance review by the Council. Public hearings shall be conducted, at appropriate times and places in the geographic areas concerned, so as to allow interested persons an opportunity to be heard in the preparation of the FMP/amendment and implementing regulations.

When the Secretarial action and proposed regulations have been prepared, F declares a transmit date and, within 5 days, sends the documents and supporting analyses to the appropriate Council for comment, publishes a Notice of Availability of the FMP/amendment in the FR, and asks for public comments for 60 days. Within 15 days after submission to the concerned Council(s), F will clear the proposed rule and transmit it to NOAA and AGC/L&R; if significant under RFA, the IFRA is submitted to the SBA. When a docket number is issued by AGC/L&R, F signs the proposed rule. F/SF5 sends the proposed regulations to the OFR for publication for a 60-day public comment period. The Council must submit any comments on or before Day 60 of the comment period on the Secretarial FMP/amendment. After taking into account any Council and public comments received during the 60-day period, F may approve the Secretarial FMP/amendment and associated documents (i.e., EA, FRFA, if applicable). NOAA is advised of the action and the final regulations are submitted to AGC/L&R for clearance. When a docket number is provided, F signs the final rule. Final regulations implementing the Secretarial FMP/amendment shall be published in the FR within 30 days after the end of the comment period on the proposed rule.

5. Rebuilding Overfished Fisheries

a. The Secretary shall report annually to the Congress and to the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For those fisheries managed under an FMP or international agreement, the status shall be determined using the criteria for overfishing specified in such FMP or agreement. A fishery shall be

classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within 2 years.

b. If the Secretary determines at any time that a fishery is overfished, NMFS shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. NMFS shall publish each such notice in the Federal Register.

c. Within 1 year of an identification of overfishing under (a) above or notification under (b) above or (g) (below), the appropriate Council, or Secretary, in the case of Atlantic highly migratory species fisheries, shall prepare an FMP/amendment and/or proposed regulations for the fishery so identified to:
(1) End overfishing in the fishery and to rebuild affected stocks of fish; or (2) prevent overfishing from occurring in the fishery, whenever such fishery is identified as approaching an overfished condition.

d. For a fishery that is overfished, any FMP/amendment, or proposed regulations prepared pursuant to (c) above, or (e) (below) for such fishery shall--

(1) Specify a time period for ending overfishing and rebuilding the fishery that shall: (A) Be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and (B) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

(2) Allocate both overfishing restrictions and recovery benefits fairly and equitable among sectors of the fishery; and

(3) For fisheries managed under an international agreement, reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

e. If, within the 1-year period beginning on the date of identification or notification that a fishery is overfished, the Council does not submit to the Secretary an FMP/amendment, and/or proposed regulations required under (c)(1) above, the Secretary shall prepare an FMP/amendment and any implementing regulations to stop overfishing and rebuild affected stocks of fish within 9 months (see PHASE V. 4. Secretarial FMP/amendment).

f. During the development of an FMP/amendment, or proposed regulations required under this authority of the Magnuson-Stevens Act, the Council may request the Secretary to implement interim measures to reduce overfishing under the emergency authority of the Magnuson-Stevens Act (see PHASE V. 2. Emergency Provisions) until such measures can be replaced by such FMP/amendment, or regulations. Such measure, if otherwise in compliance with the Magnuson-Stevens Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

g. The Secretary shall review any FMP/amendment or regulations required by this authority to rebuild overfished fisheries at routine intervals that may not exceed 2 years. If the Secretary finds as a result of the review that such FMP/amendment or regulations have not resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks, the Secretary shall:

(1) In the case of Atlantic highly migratory fisheries, immediately make revisions necessary to achieve adequate progress; or

(2) For all other fisheries, immediately notify the appropriate Council. Such notification shall recommend further conservation and management measures that the Council should consider under (c) above to achieve adequate progress.