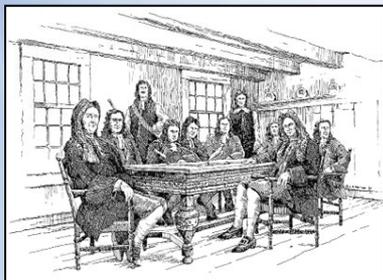


Part II

- **Councils**
 - MSA mandate
 - Who they are
 - How they work

- **NMFS**
 - MSA mandate
 - Review of FMPs and Amendments
 - Review of Regulations

The Big Picture



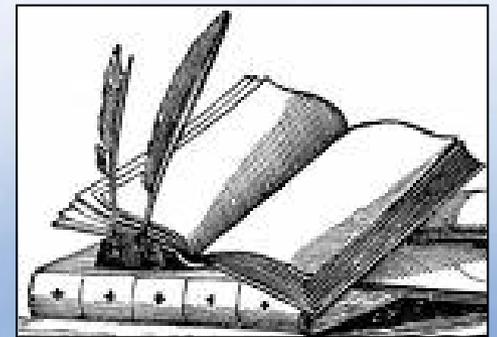
Magnuson-Stevens Act Mandate

Each Council shall:

for each fishery that requires conservation and management, prepare and submit to the Secretary

(A) a fishery management plan, and

(B) amendments to each such plan that are necessary



--MSA § 302(h)(1)

Council Functions

- **Prepare and submit FMPs/amendments**
- **Convene Committees and panels**
 - SSC; Fishing Industry Advisory Committee; Other advisory panels
- **Conduct Public Meetings**
- **Submit Periodic Reports**
- **Set ACLs based on science**
- **Develop, with SSC, research priorities**



Council Membership

- Voting members

- NMFS Regional Administrator
- State marine fishery management officials
- Individuals appointed by Secretary of Commerce

MSA § 302(b)

- Non-voting members

- USFWS Regional Director
- USCG Regional Commander
- Executive Director of Marine Fisheries Commissions
- US Department of State representative

MSA § 302(c)

Appointed Members

Governors

Nominate/Secretary
appoints

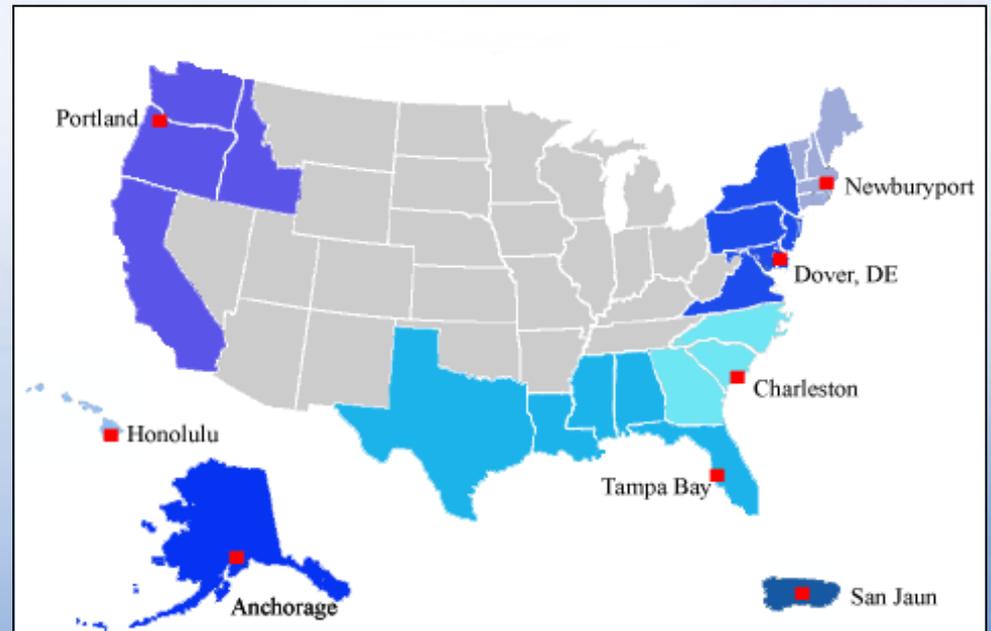
Special Representation

E.g., North Carolina on
Mid-Atlantic; Tribal seat on
Pacific

Qualifications

- Knowledgeable about fisheries
- Fair and balanced apportionment

MSA § 302(b)(2)



Council Member Terms

- Officials specified by statute as members serve as long as they hold their positions
- Appointed members serve 3-year terms
 - May serve for up to 3 consecutive terms
 - After served 3 terms, may be reappointed after 1 year off the Council



Voting Members

- NPFMC – 11 members
 - 4 officials
 - 7 appointed
- WPFMC – 13 members
 - 5 officials
 - 8 appointed
- PFMC – 14 members
 - 5 officials
 - 8/1 appointed
- GMFMC – 17 members
 - 6 officials
 - 11 appointed
- CFMC – 7 members
 - 3 officials
 - 4 appointed
- SAFMC – 13 members
 - 5 officials
 - 8 appointed
- MAFMC – 21 members
 - 8 officials
 - 13 appointed
- NEFMC – 18 members
 - 6 officials
 - 12 appointed

Typical Council Structure

Council Members

- Chair/Vice-Chair
- Oversight committees (topical or functional)
- Executive committee

Council Staff

- Executive Director
- Technical staff
- Administrative staff

Advisory Groups

- Advisory Panels
- Scientific and Statistical Committee
- Plan Development Teams



Review: Structure of the MSA

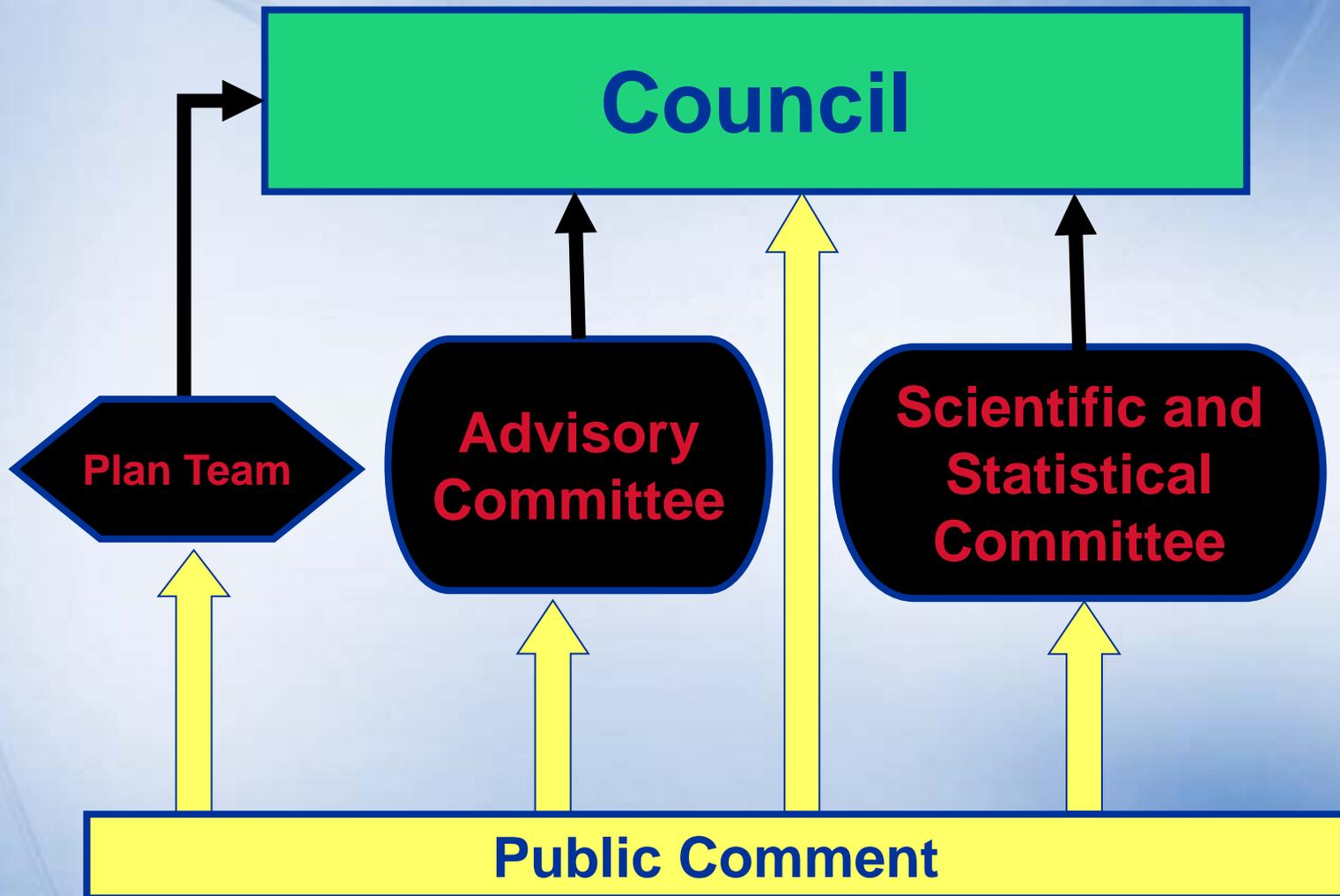
- Councils recommend within Congressionally prescribed mandates (National Standards and other requirements) (MSA § 301, 303, 304, 305, etc.)
- Secretary Reviews and Decides with limited discretion and time (MSA § 304(a), (b))
- Both must utilize open public process (MSA § 302, 304)
- Products are Fishery Management Plans (FMPs) and Regulations (MSA § 302(h), 304(a), (b))

How it Happens: Councils Develop a Management Recommendation

- Conduct Public Meetings
- Consider Public Testimony
- Consider Required and Additional Relevant Analyses
- Vote
- Complete the amendment package and transmit to NMFS



Venues for Public Input at FMC-level

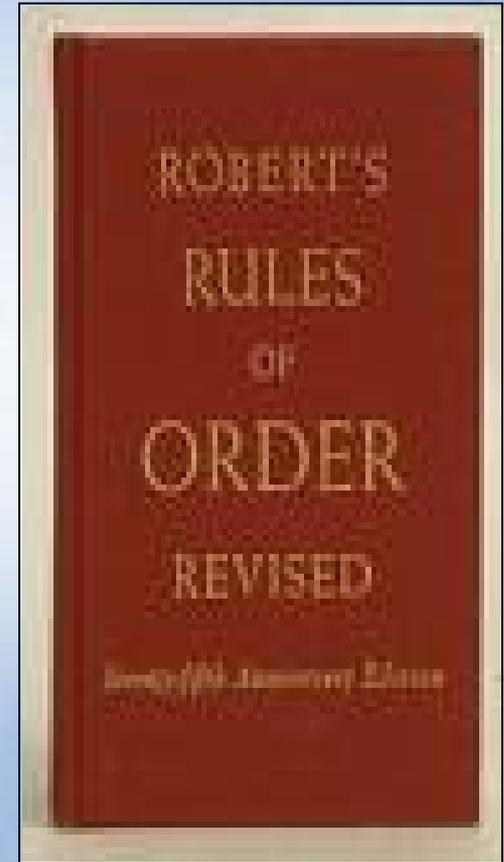


Statutory Requirements Pertaining to Conduct of Council Meetings

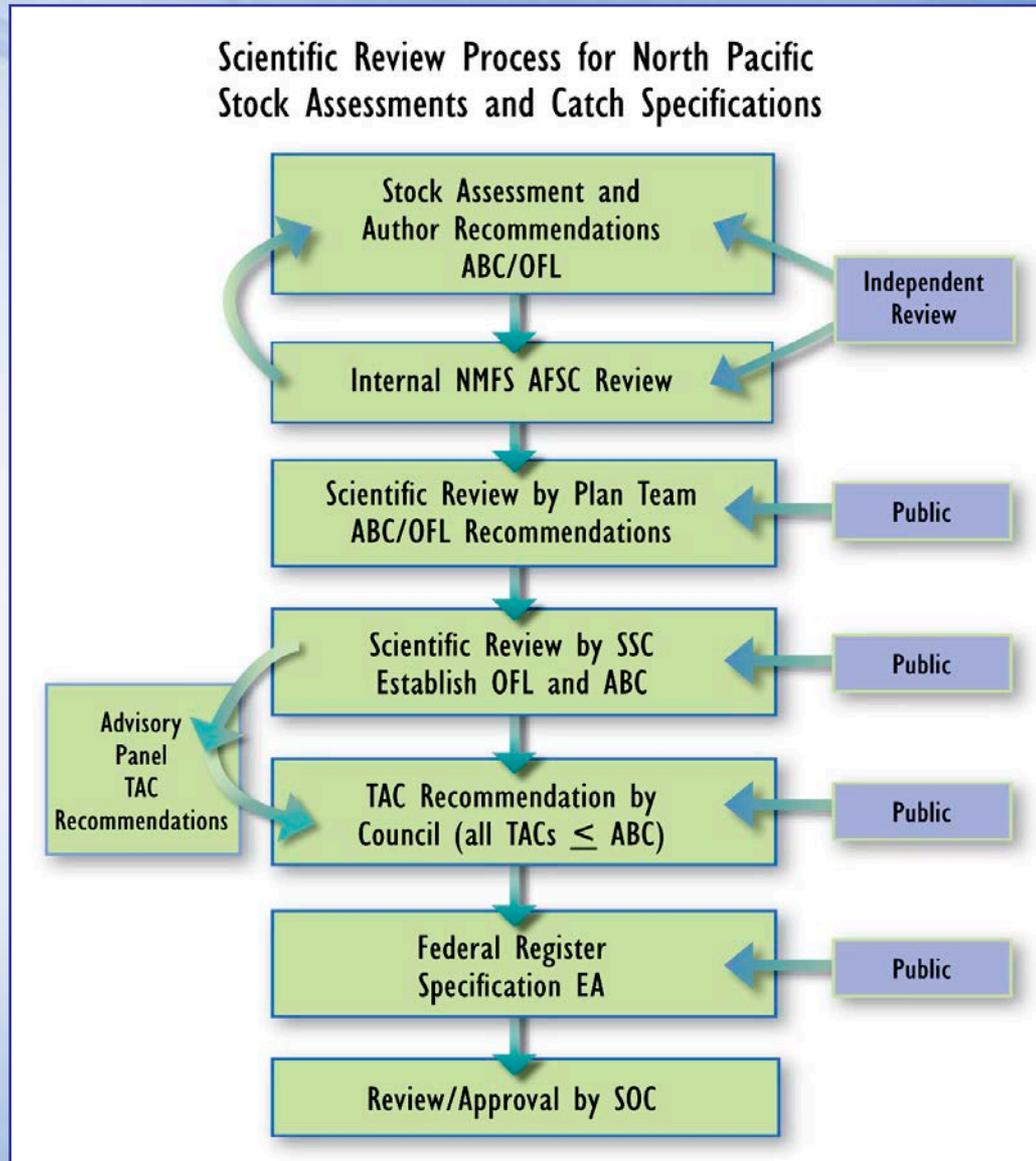
- **Committees and panels** - (MSA § 302(g); (i)(4)(5))
 - SSC; Fishing Industry Advisory Committee; Other advisory panels
- **Open public meetings** - (MSA § 302(i)(2))
- **14-day advance notice of action items; methods of notice** - (MSA § 302(i)(2)(C))
- **Taking public comment** - (MSA § 302(i)(2) – (6))
- **Disclose financial interests/recusal** - (MSA § 302(j))
- **FACA exemptions** - (MSA § 302(i)(1))

Additional Guidance on Conducting Meetings

- Actions affecting public must taken in public --50 CFR 600.135
- Statements of Organization, Practices, and Procedures
 - Describe committees and panels, and their procedures
 - Provide information about how the Councils conduct meetings and hearings
 - Procedures for providing notice
- Robert's Rules of Order



Ex.: NPFMC Quota Setting Process



MSA Mandates for FMPs and Regulations

National Standards (MSA § 301(a))

FMP Components (Mandatory and discretionary) (MSA § 303(a), (b))

Secretarial Review (MSA § 304(a), (b))

- Other Applicable Law
- Limited Discretion
- Strict Timelines

The MSA Requires 15 FMP Components

- (1) Prevent overfishing; rebuild; protect, restore, promote long-term health and stability
- (2) Description of the fishery
- (3) Specify MSY and OY
- (4) Specify capacity and domestic harvest and processing of OY
- (5) Specify the data to be submitted
- (6) Temporary adjustments to address unsafe ocean conditions
- (7) Essential fish habitat: identify, minimize impacts from fishing.
- (8) Specify the scientific data needed to implement the plan
- (9) Fishery impact statement
- (10) Overfishing definitions
- (11) Bycatch: reporting methodology and measures to minimize
- (12) Number, types, and mortality of fish caught and released recreationally; minimize mortality and ensure the extended survival
- (13)Describe sectors (commercial, recreational, and charter); quantify landings trends by sector
- (14) Allocate restrictions and benefits fairly and equitably among sectors.
- (15) Establish a mechanism for setting ACLs and Ams

(MSA § 303(a))

The MSA Lists 13 Discretionary FMP Components

- (1) Require permits and fees
- (2) Designate zones and times where fishing restrictions apply (area-based)
- (3) Establish restrictions on catch, sale, and transshipment,
- (4) Include gear requirements
- (5) Incorporate State measures
- (6) Establish a limited access system
- (7) Require processors to submit data
- (8) Require observer coverage
- (9) Assess and specify the effect of the FMP on anadromous fish
- (10) Include harvest incentives for reduced bycatch
- (11) Reserve a portion of the allowable biological catch for use in research
- (12) Conserve target and non-target species and habitat
- (13) Prescribe other measures, requirements, or conditions and restrictions necessary and appropriate for the conservation and management of the fishery

Secretarial Review of FMPs

- **Strict Statutory Timelines**
 - 95 days for FMPs/amendments

- **Statutorily Limited Scope**
 - 3 possible outcomes
 - Approve
 - Disapprove
 - Partially approve



- **Statutorily Specified Criteria for Approvability**
 - National Standards
 - FMP Components
 - Other applicable law
 - Disapproval must be based on inconsistency with law



Secretarial Review of FMPs

MSA §304. Action by Secretary

(a) Review of plans

(1) Upon transmittal ...the Secretary shall—

(A) Immediately commence review of the plan or amendment to determine consistency with national standards, other MSA provisions chapter, and other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

Secretarial Review of FMPs

MSA §304. Action by Secretary

(a) Review of plans

(2) In conducting the review... the Secretary shall—

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating

Secretarial Review of FMPs

MSA §304. Action by Secretary

(a) Review of plans

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment ... A notice of disapproval or partial approval shall specify—

- (A) the applicable law with which the plan or amendment is inconsistent;
- (B) the nature of such inconsistencies; and
- (C) recommendations ...to conform such plan or amendment to the requirements of applicable law.

Secretarial Review of FMPs

MSA §304. Action by Secretary **(a) Review of plans**

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

Review of Regulations based on FMPs/Amds

An FMP or FMP amendment is not a regulation. It may or may not be accompanied by implementing regulations.

MSA establishes a separate track for review of regulations.
(MSA §304(b))

Slightly more flexible review schedule

Allows for slightly more iterative process with the Council on making modifications

Secretarial Review of Regs

MSA §304. Action by Secretary

(b) Review of regulations

(1) Upon transmittal...of proposed regulations..., the Secretary shall immediately initiate an evaluation to determine whether they are consistent with the fishery management plan, plan amendment, this chapter and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and—

(A) if that determination is affirmative, ...publish such regulations in the Federal Register, ...for a public comment period of 15 to 60 days; or

(B) if that determination is negative, the Secretary shall notify the Council in writing...

Secretarial Review of Regs

MSA §304. Action by Secretary

(b) Review of regulations

(2) Upon receiving a [negative] notification..., the Council may revise ...and submit ...for reevaluation.

(3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (1)(A). The Secretary shall consult with the Council before making any revisions to the proposed regulations, and must publish in the Federal Register an explanation of any differences between the proposed and final regulations.

Public Input During Regulatory Process

- Development of Recommendations at Council Level:
 - Participate on Committees, panels, or teams
 - Provide comment to committees and panels
 - Testify at Council Meetings; Council must consider
- MSA Formal review
 - FMPs: Publish Notice for 60 day comment period, NMFS must consider views received
 - Regulations: Published proposed regulations for 15-60 days (45 is typical); Publish rationale for any changes made to final
- Other Applicable Laws
 - NEPA: scoping; 45 day comment period on DEIS, 30 day cooling off period on FEIS
 - RFA: public comment on IRFA
 - 27– APA: notice and comment required; 30 day delay in effectiveness

Requirements of the Other Applicable Laws

NEPA

- Consider Reasonable Alternatives
- EIS: analysis, **public review and comment**, 45/90/30 days
- FONSI: record-based determination

ESA

- “No jeopardy” record-based determination
- Timing: consultation = 135 days

RFA

- Consider Economic Impacts and alternatives; **public comment** on initial analysis
- Certification: record-based determination

EO 12866

- Alternatives, Cost-benefit analysis

APA

- Record shows compliance with all law;
- Notice and Comment**; 30-day delay

Others

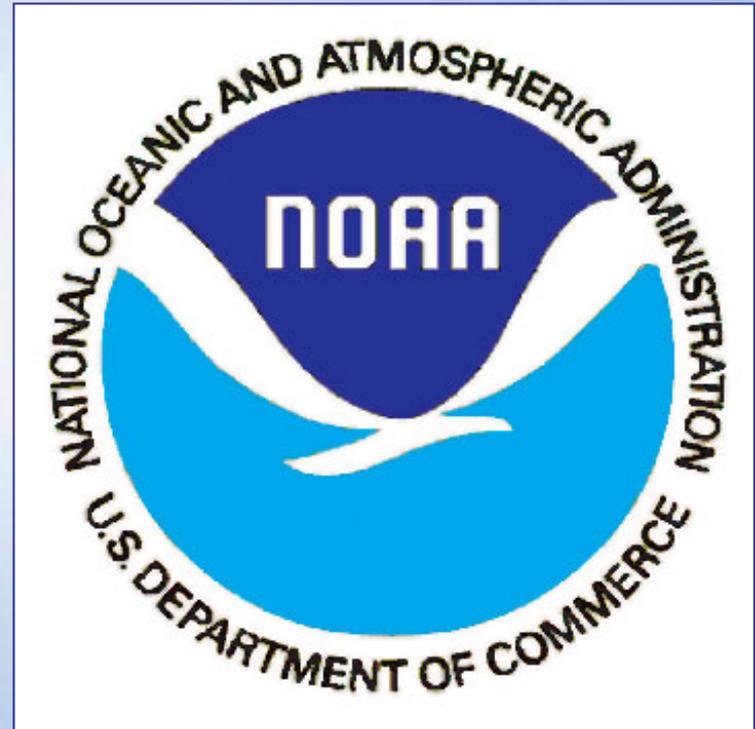
CZMA, PRA (**notice and comment**), treaty rights, etc.

Statutory and Regulatory Timelines

Source	Start Date	Requirement
MSA (FMP)	Transmittal	Day 5, Publish NOA for 60 days comment ; Day 65, CPE; Day 95, Decision Day
MSA (Regs)	Transmittal	Day 5, begin 15 day review; Day 20, publish Prop. Rule for 15-60 days comment ; Publish Final Rule w/30 days CPE
NEPA	EPA publish DEIS	Minimum 45 days comment , Minimum 90 days before ROD
ESA	I.D. preferred action	Minimum 90 days to consult + 45 to write B.O. (135 days)
CZMA	Consistency Determ. to State	Day 60 – Infer concurrence if no state response Day 90 – earliest possible decision day
APA	Publish Final Rule	30 day delay in effectiveness (unless waived)
EO 12866	Submission of Reg. Text to OMB	90 day OMB review period

Secretarial FMPs/amendments

- **The Secretary may prepare an FMP if:**
 - A fishery requires management and a Council fails to act
 - The Secretary disapproves a Council submission and Council fails to submit revision
 - Special Secretarial authority (e.g., HMS, overfishing)



Emergency Actions

MSA has special procedures for rapid, temporary actions when an emergency exists or when interim measures are needed to address overfishing. **-- MSA §305(c)**

NMFS's policy guidance on use of an emergency rule

- **Is it an Emergency?**
 - Unforeseen circumstances
 - Serious problems in fishery
 - Benefits outweigh normal public process

- **Is Emergency Procedure justified?**
 - Substantial damage and loss
 - For specific reasons:
 - Ecological
 - Economic
 - Social

Hypothetical Fishery Management Regulation with EIS

