

Operational Guidelines for the Fishery Management Process

Section I. Introduction

This document provides guidance on the development, review, and implementation of fishery management plans (FMPs), amendments and regulations. This guidance reflects and builds on the progress that NMFS and Councils have made, since implementation of the FCMA in 1976, towards fostering a cooperative and accessible public process for managing our nation's fisheries.

A. Background and Need

The MSA establishes the basis for Federal management of United States fisheries and vests primary management responsibility with the Secretary of Commerce. The Secretary has delegated this responsibility to the NMFS. Notably, the MSA management system is unique insofar as Congress has established eight regional fishery management councils with specific responsibilities for recommending fishery management plans (FMPs) and amendments and regulations to NMFS for implementation. FMPs and regulations must comply with the MSA and all other applicable law.

Councils are composed of Federal, state, and territorial fishery management officials, participants in commercial and recreational fisheries, and other individuals with experience or training in fishery conservation and management. The Councils' primary responsibility is to develop and recommend fishery management measures and actions for any fishery under their jurisdiction that requires conservation and management. Specifically, MSA section 302(h)(1) requires Councils to prepare and submit FMPs to NMFS for fisheries in need of conservation and management. Section 303(c) of the MSA requires Councils to submit to NMFS proposed regulations that the Councils deem necessary and appropriate to implement the FMP. The MSA mandates an open, public process for the development of fishery management measures and actions through the fisheries management council system. For MSA fishery management actions, NMFS's authority to modify Council-recommended fishery management plans and plan amendments is restricted: NMFS may only approve, disapprove, or partially approve a proposed FMP or FMP amendment recommended by the Council, and the sole basis for disapproval of any such recommendation is that it is not consistent with applicable law.

It is this unique partnership between NMFS and the Councils that creates the need for the guidelines.¹

¹ NMFS has also issued specific guidance pertaining to NMFS/Council roles as pertaining to NEPA and ESA compliance for fishery management actions. In 2013, NMFS issued a Policy Directive on "National Environmental Policy Act Compliance for Council-Initiated Fishery Management Actions under the Magnuson-Stevens Act," that pertains to roles and responsibilities for NEPA compliance; and in 2015, a Policy Directive on "Integration of Endangered Species Act section 7 with Magnuson-Stevens Processes." This guidance addresses the NMFS/Council relationship on a broader, process-wide level.

B. Goals and Objectives

The overarching goals of the Operational Guidelines are to:

- Promote and continually improve the quality of fishery management *decisions and documentation*; and
- Promote a timely, effective, and transparent *public process* for development and implementation of fishery management measures pursuant to the MSA.

Key objectives for achieving these objectives include:

- Simplify and speed the flow of work: Promote efforts to streamline compliance with regulatory requirements, including working to ensure that relevant information and comment is provided early in the process and that unnecessary delays are eliminated.
- Increase transparency: Promote transparency and effectiveness of the decision making process by clearly explaining the Council and regulatory process, promoting the public's accessibility to the process, fostering effective and constructive public input, and providing mechanisms for people to track the progress of different actions.
- Achieve appropriate standardization: Apply standardized practices where appropriate, while still recognizing regional variability, including continuing to seek ways to standardize compliance with other applicable laws (e.g., ESA, NEPA).

To help achieve these goals and objectives, section II of this document sets forth six guiding principles for NMFS and Council partnership.

Section II. Guidelines

The following principles will guide all actions taken to develop, review, and implement FMPs, amendments and regulations.

- NMFS and the Councils are Partners. NMFS and the Councils are partners and should cooperate in working towards the common goal of managing fishery resources; and continuing efforts to rebuild fish stocks, achieve sustainable fisheries, promote safe seafood production, and maintain vibrant fishing communities.
- Frontloading. To the extent possible, all Council and NMFS staff reviewing fishery management actions should participate in the development of those actions to ensure their concerns are raised early enough in the process to inform the Councils decisions and be addressed in a way that does not unduly delay or halt the review and approval process.
- Fishery Management Decisions Must be Supported by the Facts and Analyses in the Record. All fishery management decisions must be supported by documentation that

provides for the basis of a decision under the existing legal requirements. The respective decisions of the Councils and NMFS are sufficiently interrelated that they should be supported by the same record. Thus, collaborative efforts should be undertaken by Council and NMFS staff to cooperate in the development of the documentation that supports decisions.

- Coordination between NMFS Regions and Headquarters. The Regions must ensure that NMFS HQ offices have the opportunity to consider and provide input to fishery management decisions at the earliest stages of development. NMFS HQ will track decisions as they progress and will be expected early in the process to advise the Regional Offices of any national policy concerns.
- Clear and Concise Information and Analytical Products. Documents to support decisions must be clearly written and easily understandable by decision makers, stakeholders, and the public. Clear and concise writing will facilitate good decision making, informed and meaningful public participation, development of a clear and complete record, and development of enforceable regulations.
- Promoting Meaningful Public Participation. NMFS and the Councils should promote early and active involvement from stakeholders and the public by using communication tools to highlight opportunities for participation in the process and providing information and materials to support informed and meaningful participation.

NMFS and the Councils will work cooperatively to comply with these principles to the greatest extent possible. The documentation for how these principles are applied is specified in Regional Operating Agreements developed with each Council. Regional Operating Agreements should be reviewed and updated regularly. The contents of Regional Operating Agreements are described in Appendix 2b.

Section III. Use and Applicability

A. RESERVED [Use by NMFS, by Councils, by Public]

B. Appendices

In addition to the MSA, a variety of other applicable laws affect the process and timelines for developing and implementing FMPs. To enhance transparency and foster public awareness, appendices provide an overview of the fishery management process as well as general information about where key activities take place and where additional details can be accessed at a region/council level. Specifically, the Appendices to this document provide:

- Definitions of key terms and acronyms.
- A general description of the MSA process for development and implementation of fishery management actions (phases and timing).

- A general description of other applicable laws that affect the MSA decision-making process.
- A general description of roles and responsibilities with navigational tools to guide readers to council-specific information on this topic.
- A general description of record requirements as well as examples of approaches for documentation.
- References to additional resources

SUPPORTING APPENDICES

Appendix 1. General Terminology and Abbreviations

A. Terminology

Frontloading. Frontloading is the practice of involving relevant reviewers and contributors, and identifying legal and policy considerations, as early in the process as possible. Frontloading may require more investment of time upfront, but should help ensure that potential problems are identified early and are not allowed to become bigger problems in later stages of review and implementation.

Other Applicable Law (OALs). Various laws, administrative orders, and other directives must be addressed in the context of fishery management action development, approval, and implementation. The relevant other applicable laws, some of which provide for specific consultative roles for States and Indian Tribes, are described in section X.

Action Plans. An “action plan” is a planning tool that many Council/Region pairs use to organize tasking and scheduling, as well as facilitate frontloading, for any particular action. Where relevant, ROAs provide specific details of how each Council/Region pair uses action plans. Action plans may include some or all of the following: description of the problem or objective, the proposed action, and potential alternatives; timelines for steps in developing the action and complying with OALs; Council and agency staff designated to work on the issue; and early identification of resources and analyses required. These plans provide a realistic, mutually-agreed upon path for the development and completion of Council actions. They may evolve over time.

Fishery Management Action Teams (FMATs), Plan Development Teams (PDTs), and Interdisciplinary Plan Teams (IPTs). FMATs, PDTs, and IPTs are additional mechanisms that Council/Region pairs may use to promote frontloading. The structure and functions of these teams vary by Council and are further described in the ROAs. Depending on their purpose, these teams may include various mixtures of Council staff, NMFS staff, NOAA General Counsel, and, in some cases, Council members. Their functions vary, but may include development of alternatives, development of information for scoping, and development of technical information or analysis in support of specific Council actions.

Scoping. “To scope” means to assess or investigate something, or to look at it carefully. Pursuant to MSA section 302(h), Councils continually review incoming information and conduct public meetings to gather information about needs for conservation and management. Once a need has been identified, Councils gather more focused input regarding potential responses through their open public meetings. NEPA also establishes a specific scoping process related to the development of NEPA documents. However, in the MSA context, “scoping” refers to much

more than the NEPA process. It is important for the Councils and Regions to be clear and inform the public when scoping activities pertain specifically to the NEPA-related requirements.

B. Abbreviations

[PLACEHOLDER]

Appendix 2. Description of the Process

A. Overview

This section provides information on how the fishery management process works as characterized by 5 basic phases.²

The 5 Phases are as follow:

1. Planning
2. Document Drafting.
3. Public Review and Council adoption
4. After Council Action to Recommend a Measure
 - (a) Preparation for Transmittal
 - (b) Secretarial Review and Implementation
5. Ongoing Management (additional regulatory activity, monitoring, need identification, and response – feeds back into phase1).

B. Regional Operating Agreements

Details of how each region/council pair implements MSA and OAL requirements throughout the process are set forth in the ROAs.

1. Background and Purpose

The Regional Operating Agreements (ROAs) describe the planning tools, processes, products, roles, and responsibilities designed to maximize frontloading during each of the main rulemaking phases outlined in this Appendix. The ROAs confirm the mutual interests of and describe the working relationships between a NMFS Region and the Council, and may also include the corresponding NMFS Science Center and NOAA Office of Law Enforcement. Over the course of time, each Region-Council pair had developed systems to assign and track tasks and responsibilities that were documented in different formats. Documenting these systems in ROAs is intended to give NMFS and the Councils a platform to specify coordination mechanisms, roles and responsibilities in the fishery management plan process, and identify necessary tasks and ensure they are appropriately assigned and completed. NMFS and the Councils also recognized that the development of ROAs would help the public better understand the fishery management

² This description of phases is founded upon the description of the MSA process that was set forth in the 1997 Operational Guidelines, with clarification regarding the activities that occur between the Councils vote to recommend an action and the declaration of “transmittal.” For a complete description of the phases, see Appendix 2, section C, below.

decision making process, thus making NMFS and Council actions more transparent. The intended effect is to promote early planning, cooperation, and open communication in the development of fishery management documents, with the objective of streamlining the review and approval process, and ultimately, improving the quality and transparency of fishery management decision making. These OGs encourage NMFS and the Councils to use their ROAs to communicate the roles and obligations of all responsible contributing parties, including the Science Centers, NOAA Office of Law Enforcement, and General Counsel, to the maximum extent possible.

2. Scope and Use

The ROAs should be considered by all parties as “living documents”, which can change over time in response to learned or improved best practices, changing management needs and conditions, or new statutory requirements. The ROAs are not intended to limit or prevent staff from devising alternative processes on an ad hoc basis in response to specific needs or concerns. The ROAs are intended to document the specific roles and responsibilities of the Council and NMFS in developing, approving, and implementing fishery management actions under the MSA. These agreements have all been signed by the Council and the NMFS Regional Office. Individual ROAs may include other agency signatories where it was deemed appropriate. At all times the ROA is meant to make transparent the procedures and processes of developing a proposed Council action and facilitates “frontloading” as much as practicably possible.

3. Content

The preparation, review, approval, and implementation of the fishery management actions and the implementing rules and regulations under the MSA comprise a complex process in which the Councils and NMFS have distinct, yet overlapping roles. Each ROA specifies the frontloading procedures used to ensure the processes and documentation associated with fishery management proposals are adequate, timely, documented with a complete record, and provide a basis for decision making. Each ROA is unique for the NMFS Region and Council for whom it was developed. While unique, each ROA includes the following sections as basic content:

a. Acronyms and Abbreviations

The ROAs include a section on Acronyms and Abbreviations which provides NMFS, Councils, and the public with a quick overview of the terminology used by NMFS and the Council when developing analysis and conducting rulemaking. While there is some overlap between the Councils, there are some terms that may be unique to the Region-Council pair that developed the ROA.

b. General Overview/Background

This section briefly describes the scope of the agreement, including the objectives of the ROA and a short background on why it was developed. This section also provides brief information on how to navigate the document.

c. Roles and Responsibilities

This section briefly describes the products and roles and responsibilities during each of the main rulemaking phases for fishery management actions. These Phases are described in detail in the next section of these OGs. The Roles and Responsibilities section of the ROAs describe the primary roles of the Councils, Council planning teams, the National Marine Fisheries Service, the NMFS Science Centers, NOAA General Counsel and NMFS Office of Law Enforcement in developing fishery management plans and implementing regulations. In addition to the MSA, a variety of other applicable laws and EOs have analytical and procedural requirements, including NEPA, ESA, MMPA, RFA, PRA, the Information Quality Act, EO 12866 and the APA. The roles and responsibilities pertaining to these separate analyses may be included in the ROA or may be contained in a separate document. These OGs describe the basic responsibilities for the requirements of these other applicable laws in Section XX. While the ROAs are specific to the Region-Council that developed it, these OGs also briefly detail the general roles and responsibilities of Council planning bodies, NMFS, and Regions in Section XX.

d. Description of Action Plans or Phases for FMP and Rule Development

Either in the above section, or included in a separate section is a description of how the Councils and NMFS identify necessary tasks and ensure they are appropriately assigned and completed for each phase of the fishery management process. Some ROAs describe how Action Plans are used to provide a path for development and completion of major actions. Other ROAs detail each phase, describe how each phase is completed, and identify who is responsible for products or documents in those phases. No matter the approach, this has the intended effect of informing internal and external stakeholders of how each phase of the process is initiated and completed.

4. Final Regional Operating Agreements

The current signed versions of these ROAs are appended to these OGs. The ROAs, besides including the above sections, also include a diagram for each Council. These diagrams show the structure and function of Council committees, planning bodies, and other Council created entities. How these Council bodies work may be reviewed in the ROAs, or they may be briefly described within these OGs.

C. Detailed Description of the Process

1. Phase I—Planning and Scoping. Phase I is the planning and scoping phase. It may include scoping activities for initiation of problem description and potential solutions under the MSA. As noted in the section on terminology, Councils conduct activities considered to be generic scoping such as regular hearings and information gathering and review as described in section 302(h) of the MSA. In addition, scoping activities that are prescribed by NEPA may be conducted during this phase. When NEPA scoping is occurring it should be clearly identified as such.

As part of the scoping process, regulatory analysis and information collection requirements may be examined and preliminary estimates may be made of the costs and benefits of regulations. Concerns of affected States, including potential CZMP impacts, and Indian tribes are identified and public participation is encouraged. Consideration of potential impacts relating to the ESA, MMPA, EFH, and social impacts of the FMP also begins.

Many Council/Region pairs develop action plans and convene IPTs or FMATs at this point.

2. Phase II - Document Development. Phase II is the document development phase. Under the ROAs, the Councils and NMFS typically agree to use a standardized analytical format within each region. Each regional format typically includes the requirements of MSA, NEPA, and other applicable laws. The Council, NMFS Regional Office, and NOAA GC collaborate, through their plan teams where applicable, to identify, synthesize, review, and analyze data needed to support fishery management proposals or actions.

Phase II can include general frontloading activities and communications. It results in the development of draft analytical documents to inform the Council, NMFS, and the public.

3. Phase III – Public Review and Council Action. Once the draft documents have been prepared, the Council shares them with the public and considers them publically. Depending on individual Council preferences and variations in management needs, the range of activities that take place during Phase III can vary widely, in some cases encompassing years of iterative drafting, public hearings, public comment, and multiple options papers and whitepapers; in other cases consisting of a single staff-level draft. During Phase III, the Councils have broad discretion and few constraints on their ability to explore alternatives and develop recommendations. In many instances, the bulk of Council activity may take place during Phase III. Phase III is also critically important for the frontloading of ESA and EFH information.

Phase III concludes when the Council votes to make a management recommendation to NMFS.

4. Phase IV. After Council Vote to Recommend a Measure.³ After the Council votes to recommend an action, two things must happen: (a) the package of supporting materials (such analyses, proposed regulations, letters to States, etc.) must be finalized, then transmitted to NMFS; and then (b), once transmittal occurs, NMFS must review and take final action on the recommendation pursuant to the MSA formal review process.

³ The 1997 Operational Guidelines described Phase III as concluding with the Council's adoption of a recommendation, and Phase IV beginning with transmittal. There was little discussion of activities required to complete the package for "transmittal." The 2005 Draft Revised Operational Guidelines attempted to address this issue by characterizing Phase III as Council Final Action, and Phase IV as Secretarial Final action, and then discussing the post-vote activities that each party might need to undertake to prepare the package for transmittal. Partially as a result of this approach and partially as a result of the 2005 Draft's suggested check-point system, the 2005 outlined up to 16 specific steps that could take place within the main 4 phases. This 2015 version recognizes the reality that via frontloading, FMATs, and general cooperative tasking and staffing, there is no real separation of roles during the post-vote preparation process. Rather, the key procedural distinction should be between what happens after the council vote and prior to transmission regardless of which party performs any particular task. In this 2015 document, these activities are sorted into Phases IV(a) (after vote/prior to transmittal) and (b) (after transmittal). We note that some of the ROAs refer to the 16 steps set forth in the 2005 draft. This is not inconsistent with these 2015 OGs. Rather, it is just another way of characterizing the sequence of events. In addition, the specific tasking and scheduling associated with each action is further clarified within an action plan or other planning tool.

Phase IV(a). Preparation for Transmittal. While NMFS and the Councils strive to complete as much supporting documentation as possible early in the process, for various reasons, it is not always feasible to finalize all materials prior to the Councils vote. In the case of ESA section 7 consultations, the consultation cannot begin until there is a defined action. Likewise, CZMA consistency letters cannot be completed prior to identification of a proposed action. Thus, after the Council's vote, NMFS and Council staff conduct additional work to prepare documents for transmittal. Each region/council pair has its own working relationship governing who finalizes these documents – these are explained further in the ROAs. The degree of complexity of a recommended measure could affect the amount of time necessary to finalize a package. For instance, if regulatory text has not been completed, or must be revised, after the Council's final vote, a significant amount of time could be necessary to complete this task.

Documentation that is required by OALs should be complete prior to transmission when possible. Failure to complete documentation/procedure required by other laws prior to transmission can affect/compromise/undermine the Secretary's ability to make determinations under 304(a) that an FMP or amendment is consistent with applicable laws for the purposes of approval.

Phase IV(b)–Secretarial Review and Implementation. During Phase IV(b), the Secretary reviews and approves, or disapproves, the Councils' recommendations, and conducts rulemakings to implement regulations. This phase is subject to strict timelines and procedures set forth in the MSA (sections 304(a) and (b)), as well as timing and procedural requirements applicable to agency rulemakings pursuant to the APA. In addition, the MSA restricts the Secretary's discretion to make any changes to Council-submitted recommendations at this point.

NMFS initiates formal public review of the Council's proposed measures by publishing in the *Federal Register* the Notice of Availability (NOA) of an FMP/FMP amendment and/or the proposed rule to implement the Council's recommendation. The MSA requires that, for FMPs and FMP amendments, NMFS must publish the NOA of the FMP immediately (within 5 days) for a 60-day comment period. Within 30 days of the close of the comment period, the agency must approve, partially approve, or disapprove the Council's recommendation. NMFS will send a letter to the appropriate Council notifying it of the official start date of the Secretarial review period. After reviewing public comment received on the NOA and/or proposed rule, the RA makes his/her decision regarding approval/disapproval of the action to the AA, and the AA determines whether to concur. The final step for implementing an approved final rule is to send it to the Office of the Federal Register for publication.

5. Phase V – Ongoing Management

While NMFS reviews each FMC recommendation on an individual basis, these recommendations are typically pieces of a more complex management regime taking place in an ongoing management continuum that must address continually evolving information and needs.

The activities involved in continuing fishery management include monitoring, evaluation, adjustment, and revision. Exercising foresight on the structuring of FMPs and regulations can improve efficiency of continuing management by identifying research, data, and monitoring

needs to monitor the changing conditions in the fishery and establishing an adaptable management structure that facilitates rapid response to changing conditions.

D. Other Applicable Law

1. Overview

Section 303(a)(1)(C) of the MSA requires federal fishery management plans to be consistent with other applicable laws which impose additional procedural, substantive and timing requirements on the decision process. While the particular laws that apply to any given action must be assessed on a case-by-case basis, this section provides an overview of the OALs that most frequently apply. They include the:

- Administrative Procedures Act
- Coastal Zone Management Act
- Endangered Species Act
- Executive Orders 12630, 12866, 12898, 13089, 13132, 13158, 13175, 13272
- Information Quality Act
- Marine Mammal Protection Act
- National Environmental Policy Act
- Paperwork Reduction Act
- Regulatory Flexibility Act

This section provides a table with a checklist of key considerations for each law and then briefly describes the purpose and key requirements of each statute and executive order.

This section highlights key considerations but is not intended to address comprehensively all requirements of the above-referenced statutes and their implementing regulations. The statutes with their regulations and associated case law are controlling in the instance of any discrepancy between them and this document

2. Table X. Other applicable laws

Law	Effect on FMP and Regulatory Process			Documentation	Resources
	Procedural	Substantive	Timing		
Administrative Procedure Act	✓ (public notice and comment)	✓ (record shows reasoned decision making)	✓ (public comment period + 30 day delayed effectiveness (unless waived))	Administrative Record	Document Drafting Handbook, OFR ; NMFS Administrative Record Guidelines (Policy Directive 30-23, 2005)
Coastal Zone Management Act	✓ (state notifications and comment opportunity)	✓ (consistency determination)	✓ (notify states 90 days before final decision; infer concurrence by day 60 if no state response)	Letters to states, state concurrence	NOAA Federal Consistency Regulations
Data Quality Act	✓ (pre-dissemination review)	✓ (quality, objectivity, utility and integrity determinations)		Pre-dissemination Review Form	May 5, 2003, NMFS Section 515 Pre-dissemination Review Guidelines; NOAA Information Quality Guidelines ; NMFS Guidance on DQA Implementation
Endangered Species Act	✓ (analytical, documentation requirements)	✓ (jeopardy and destruction/ adverse modification determinations)	✓ (If formal consultation, BO must be signed before final decision; allow minimum of 135 days after description of proposed action for formal consultations and BO)	Letter of concurrence or Biological Opinion	Section 7 ESA Consultation Handbook ; ESA Section 7 Regulations
Executive Orders					
E.O. 12630	✓			Takings Implication	

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Law	Effect on FMP and Regulatory Process			Documentation	Resources
(Takings)	(takings assessment/determination)			Assessment	
E.O. 12866 (Regulatory Planning and Review)	✓ (consider costs, benefits, alternatives; OMB review requirement)	✓ (benefits justify costs determination)	✓ (10/90/45-day OMB reviews)	Listing Document and Regulatory Impact Review	Guidelines for Economic Analysis of Fishery Management Actions ; Policy on RFA and RIR Review Process (Policy Directive 01-111, 1997); NMFS E.O. 12866 Listing Procedures (Policy Directive 30-102, 2014);
E.O. 13132 (Federalism)	✓ (state consultation, documentation, OMB review requirements (if federalism implication))	✓ (certification (if federalism implication))		Federalism Summary Impact Statement	
E.O. 13272 (RFA Compliance)	✓ (SBA notification requirement)				SBA Compliance Guide
Marine Mammal Protection Act	✓ (analytical, documentation requirements)	✓ (consistency determination)			MMPA Regulations
National Environmental Policy Act	✓ (public review, documentation, timing, reasonable range of	✓ (Yes, if significance determination)	✓ (The NAO suggests a (?)30-day comment period on NOI; 45-day comment period on DEIS; at least 90 days	CE or EA/FONSI or NOI, DEIS, FEIS and ROD	NEPA Compliance for Fishery Management Actions under MSA (Policy Directive 30-132, 2013); NAO 216-6 ; CEQ Implementing Regulations; CEQ 40 Questions; NMFS Guidelines for

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Law	Effect on FMP and Regulatory Process		Documentation	Resources
	alternative requirements)		between DEIS and final rule; 30-day cooling off period between FEIS and ROD)	FONSI Preparation (Policy Directive 30-124-1, 2005)
Paperwork Reduction Act	✓ (documentation, public notice and comment, OMB review requirements (if collecting information))		✓ (9-month process for OMB clearance)	NOAA PRA Guidance ; PRA Regulations ; NMFS Standard Operating Procedures for PRA Submissions ; PRA Review Checklist
Regulatory Flexibility Act	✓ (economic impact analysis, alternatives and public review requirements)	✓ (Yes, if significance determination)		“No Significant Effect” Certification or IRFA/FRFA and publication of summary Guidelines for Economic Analysis of Fishery Management Actions ; Policy on RFA and RIR Review Process (Policy Directive 01-111, 1997); SBA Compliance Guide

3. Description of Key OALs

Administrative Procedures Act (APA)

The APA applies procedural requirements to federal rulemakings to ensure public access to the federal rulemaking process and to give the public adequate notice and opportunity to comment. It also requires that agency decisions be reasonable based on facts in the record.

Key Requirements/Considerations:

- Record must support decision
- Public comment requirement applies to most rules, unless waived for good cause
- 30-day delayed effectiveness applies to most final rules, unless waived for good cause

The APA allows judges to set aside agency actions found to be:

- “arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law”
- “contrary to constitutional right”
- “in excess of statutory jurisdiction”
- “without observance of procedure required by law...”

To determine whether an agency action is arbitrary and capricious (unreasonable), the court reviews the facts in the agency’s record. The Administrative Record contains all the information that the decision maker considers, and, in court, it provides the evidence that the agency complied with required procedures and that the final decision was not “arbitrary and capricious. “However, the APA does not require a particular outcome, as long as the final decision is supported by facts in the record. Thus when dealing with decisions affected by conflicting priorities or scientific uncertainty, it is important that to describe the conflicts and document the rationale for the approach selected, including responding to all comments and acknowledging, even highlighting, areas of contention.

With respect to the opportunity for public comment, the APA does not prescribe a minimum comment period. However, this procedural requirement must be read in conjunction with the procedural requirements of the MSA, which specify time periods for public comment on FMPs and amendments. (60 days on FMPs and amendments; 15 – 60 days on regulations, with an agency preference for 45 days).

Agencies must provide a 30-day delay in the effective date of “substantive” final regulations unless an exception applies.

Coastal Zone Management Act (CZMA)

The CZMA requires federal activities that directly affect a state’s coastal zone to be consistent with that state’s approved coastal zone management program to the maximum extent practicable.

Key Requirements/Considerations:

- Consistency determination must be provided to state agencies at least 90 days before approving the FMP or FMP amendment or publishing the final rule, unless NMFS and the state agency agree to an alternative notification schedule

Data Quality Act (DQA)

The DQA requires federal agencies to ensure the information they disseminate is of appropriate quality, integrity and utility. NOAA guidelines implementing the DQA require us to conduct a pre-dissemination review of the public information products we disseminate in support of fishery management decisions (including statistical information) to ensure the information they contain is of maximum quality, objectivity, utility and integrity.

Key Requirements/Considerations:

- Pre-dissemination review
- Quality, objectivity, utility and integrity determinations

Endangered Species Act (ESA)

The ESA requires federal agencies to ensure the activities they fund, authorize or carry out do not jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat.

Key Requirements/Considerations (apply only if a listed species may be affected):

To protect species in danger of extinction, the ESA sets out a 3-pronged strategy. It requires:

1. Federal agencies use their authorities to carry out programs for the conservation of listed species;
2. Federal Agencies to ensure that their actions do not jeopardize the continued existence of the species, and it spells out a consultation process for making this assurance; and it
3. Prohibits the “taking” of any listed species.

It is compliance with this second requirement that primarily affects the fishery management process. To demonstrate that an action will not jeopardize, or adversely affect the critical habitat of a listed species, an action agency must document that determination either through an informal or a formal consultation.

Requirements:

- Informal consultation, concluding with “not likely to adversely affect,” documented by “Letter of Concurrence,” or
- Formal consultation

For a formal consultation, requirements are:

- Biological evaluation must be included in FMP, FMP amendment or supporting analyses
- “Jeopardy,” “destruction” and/or “adverse modification” determinations
- 135-day maximum consultation period (starting from written request including description of proposed action)

- Products of formal consultation include:
 - Biological Opinion
 - Reasonable and Prudent Alternatives
 - Incidental Take Statement
 - Reasonable Measures
 - Conservation Recommendations

Timing: Formal consultation should be concluded within 90 days of initiation unless the parties mutually agree to an extension. The consulting agency will provide a Biological Opinion providing its official conclusions regarding the effects of the action within 45 days of completing the consultation. (Thus the basic timeline for a formal consultation is 135 days from initiation of consultation on a proposed action, bearing in mind that extensions are sometimes made). Putting this into context of developing fishery management actions under the MSA, it is important to note that the consultation timeline of 135 days does not begin until a preferred alternative (i.e., proposed action) has been identified. For council- initiated actions, the ESA consultation cannot begin prior to the Council selecting its preferred alternative. Bearing in mind the strict MSA timelines and limited scope of Secretarial review, it is important to coordinate with NMFS PR or FWS as appropriate as early as possible.

ESA, Section 9

Section 9 of the ESA prohibits the “taking” of threatened and endangered species by anyone, with a limited exception provided in section 10.

Section 10 of the ESA does allow the agency to issue, with appropriate such terms and, permits for certain types of research-related takings (ESA section 10 (a)(1)(A)) and for takings incidental to an otherwise lawful activity (ESA section 10 (a)(1)(B)).

Executive Orders

E.O. 12630 (Takings)

The E.O. on Government Actions and Interference with Constitutionally Protected Property Rights (Takings) requires federal agencies to assess the potential for administrative, regulatory, and legislative policies and actions that affect, or may affect, the use of any real or personal property, to result in a taking.

Key Requirements/Considerations:

- Takings assessment/determination

E.O. 12866 (Regulatory Planning and Review)

This E.O. on Regulatory Planning and Review requires OMB to review proposed regulatory programs that are considered to be significant; e.g., likely to (1) 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) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary

impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Order.

Key Requirements/Considerations:

- OMB concurrence with significance determination
- Regulatory Impact Review analyzing costs, benefits and effective alternatives required for rules that are considered to be significant.
- 90-day + OMB review of significant actions

E.O. 13132 (Federalism)

The E.O. on Federalism requires federal agencies to consult with state and local governments on regulations with federalism implications and to report to OMB on the extent of that consultation, the nature of their concerns, the need for the regulation and to what extent state and local concerns have been met.

Key Requirements/Considerations:

- Consultation requirement for regulations with federalism implications
- Federalism summary impact statements and certifications required for regulations with federalism implications
- OMB review

E.O. 13272 (RFA Compliance)

The E.O. on Proper Consideration of Small Entities in Agency Rulemaking intends to improve compliance with the Regulatory Flexibility Act by requiring federal agencies to notify SBA of rules that may have a significant economic impact on a substantial number of small entities.

Key Requirements/Considerations:

- SBA notification

Marine Mammal Protection Act (MMPA)

The MMPA prohibits the take of marine mammals during fishing activities except when expressly authorized by NMFS (whales, porpoises, seals, and sea lions) or the Fish and Wildlife Service (other marine mammals).

Key Requirements/Considerations:

- Marine mammal impacts must be assessed/considered in FMP, FMP amendment or supporting analyses
- Consistency determination

National Environmental Policy Act (NEPA)

NEPA requires federal agencies to assess and consider the effects of major federal activities on the human environment, and to provide the public the opportunity to help identify, review and comment on such effects.

Key Requirements/Considerations:

- Environmental Impact Statement (EIS) required for major federal actions that significantly affect the quality of the human environment
 - Analyze environmental impacts; consider alternatives
 - 30-day minimum public comment period on notice of intent to prepare EIS/conduct scoping (per NAO 216-06)
 - 45-day public comment period on draft EIS (per CEQ regulations)
 - 30-day cooling off period between final EIS and Record of Decision (ROD) (per CEQ regulations); or
- Finding of No Significant Impact (FONSI) determination required for major federal actions supported by Environmental Assessments; or
- CE: If an action falls within the scope of actions the agency has officially determined do not “individually or cumulatively have a significant effect on the human environment,” then a CE may be asserted and no further analysis is required. NOAA has described the applicability of categorical exclusions in NAO 216-06. If a CE is asserted, then a memo to the file should be prepared describing the basis for the CE.

Timing. At the time of the final decision (at least 30 days after the EIS is noticed and at least 90 days after the DEIS is noticed), agencies must prepare a ROD.

Links to MSA Decision-Making Process: It is important to be aware of the interaction of NEPA and MSA timing requirements. For example, Day 95 (decision day) under the MSA should not occur prior to signing the ROD on the NEPA EIS. And the ROD on the EIS may not be signed sooner than 30 days after noticing the availability of the FEIS.

Paperwork Reduction Act (PRA)

The PRA requires federal agencies to consider and minimize recordkeeping and reporting burdens when collecting information from the public. OMB approval is required to implement new information collection requirements and clearances expire after 3 years.

Key Requirements/Considerations:

- Estimate burden hours, cost and need for action
- OMB review and approval
- Public notice and comment opportunity

Regulatory Flexibility Act (RFA)

The RFA requires federal agencies to describe and analyze the effects of proposed regulations, and possible alternatives, on small business entities.

Key Requirements/Considerations:

- SBA concurrence with significance determination
- Initial regulatory flexibility analysis (IRFA) analyzing costs, benefits and effective alternatives required for proposed rules that may or will have a significant economic impact on a substantial number of small entities
- Final regulatory flexibility analysis (FRFA) required for final rules determined to have a significant economic impact on a substantial number of small entities, respond to comments.
 - Small entity compliance guide: for each rule, or group of rules, for which the agency is required to prepare an FRFA, it must provide a “small entity compliance guide” explaining in “plain English” the requirements of the rule. Failure to do so will be considered by any court reviewing an enforcement action.
 - Periodic review: Another consideration in determining whether to prepare an FRFA or attempt to certify is the requirement that for all rules determined to have significant economic impacts under the RFA, the agency must periodically review them and determine whether they are still necessary.

Or

- Certification

E. Rulemaking Details/Types of Rulemakings ((planning in phases 1 and 2, implementing in phases 3 and 4)

1. Overview

To implement a Council-recommended or Secretarial action, NMFS may need to conduct rulemaking. The MSA provides four different sources of authority for rulemakings and requires different types of procedure depending on the authority used. In addition, the APA requires notice and comment and a delayed effective date on all regulations with limited exceptions. When planning to develop an MSA fishery management measure, forethought should be given to the available authorities for implementation as well as the standard procedures required.

1. *Standard Rulemaking/Regulations Deemed Necessary By Councils.* MSA sections 303(c) and 304(b) describe the typical scenario for proposed rules prepared to implement an FMP or amendment. As described in section 303(c), a Council submits to NMFS proposed regulations that it “deems necessary or appropriate” for the purposes of— implementing an FMP or amendment (FMP Rulemaking) or modifying regulations that implement an FMP or amendment (Regulatory Amendment). Section 304(b) outlines the procedures for NMFS to review and implemtn such rules.
2. *Emergency Actions and Interim Measures to Reduce Overfishing.* MSA section 305(c) provides authority for temporary rules to address unanticipated emergencies

or reduce overfishing (Emergency Rulemaking, Interim Rulemaking) (Authority: MSA 305(c)). If such a rule changes and existing FMP, it is considered an amendment to that FMP during the period that it is ineffect, which is limited to 366 days.

3. *Fishery Management Actions Developed by the Secretary.* MSA sections 304(c)(6) and (7)..... (Authorities: MSA 304(c)(6), (7)).
4. *General Rulemaking Authority.* In addition to the above authorities, MSA section 305(d) authorizes the Secretary to promulgate regulations in accordance with the APA, that are necessary to implement approved FMPs or regulations or to carry out any other provision of the MSA (Authority: MSA 305(d)).

Each of these authorities is designed to address or adapt to different circumstances. As a result, they may differ in terms of how they are initiated, the effect and duration of the rules to implement them, the degree of public participation they enable or, in some cases, the factual determinations they require. Table X summarizes the key differences in these rulemaking authorities and processes. Section/Chapter X describes a planning technique, known as “frameworking,” through which an FMP, amendment, or regulation can prescribe a procedure that is designed to develop and/or implement future management actions more rapidly when needed and appropriate.

2. Table X. Rulemaking authorities and processes.

Rulemaking Process/ Authorities	Effect	Who Initiates	How Initiated	When Used	Duration	Examples	Required MSA Procedure	APA Public Comment Period	APA Delayed Effectiveness	OALs
1. Standard/ Deemed Rule (MSA 303(c), 304(b))	Implement or Amend FMP or modifying regulations implementing an FMP	Council	[council public process...]	Problem/ Action Falls Outside Scope of FMP	Typically, indefinite	New Rebuilding Plans, Catch Share Programs	5 days initiate review 15 days determine consistency 15–60 comment period 30 days final regulations	Yes, unless reduced for good cause (cannot be waived below MSA minimum 15 days)	30-day delay unless waived for good cause	
2. Emergency Rule / Interim Measures (MSA 305(c))	Temporarily Amend FMP and Regulations	Council or NMFS	Sec. or Council “finds”	Address Emergency	180 days with potential 186-day extension	Oil Spill Closure		Yes, unless reduced for good cause (can be waived to zero; no MSA minimum)	30-day delay unless waived for good cause	Special Provisions in NEPA, CZMA, other?
Emergency Rule										
Interim Measure			Sec. or Council “finds”	Address Overfishing						
3. Rule Implementing a Secretarial plan or Amendment (MSA 304(c)(6), (7))	Implement or Amend FMP or Regulations	NMFS	Public hearings, Council review, Consultations with other agencies	To implement FMPs or amendments developed by the Secretary pursuant to 304(c)(1), 304(e)(5), 306(b))			60-day comment period (unless reduced for minor revisions)	Yes, unless reduced for good cause (cannot be reduced below MSA minimum 60 days, unless a minor revision)	30-day delay unless waived for good cause	
4. General Rulemaking authority		NMFS	N/A				N/A	Yes, unless reduced for good cause (can be	30-day delay unless waived for good cause	

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(305(d))								waived to zero; no MSA minimum)		
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3. Description of MSA Rulemaking Authorities and Requirements

a. Standard Rulemaking/Regulations deemed necessary by Councils.

Authorities: MSA sections 304(b) and 303(c)

Standard rulemakings are used to implement fishery management plans or amendments and may be used to amend regulations implementing plans and amendments. A Council typically initiates such rules by submitting to NMFS proposed regulations that it deems necessary or appropriate to implement an FMP or amendment or modifying existing regulations. After Council submission of proposed regulations, NMFS follows the below process:

Key Timing Requirements/Considerations:

- 5 days to initiate review of proposed rule
- 15 days to determine whether proposed rule is consistent with fishery management plan/amendment, MSA and other applicable law
- 15-60 (typically 45) day public comment period on proposed rule
 - This comment period generally runs concurrent with 60-day public comment period on associated fishery management plan or amendment
 - 15-day minimum comment period required regardless of whether an APA exception or good cause waiver is applicable
- 30-days to publish final rule after comment period ends on proposed rule
- Effectiveness of final rule delayed 30 days (unless an exception or good cause waiver is applicable)

Examples: Rules implementing rebuilding plans, catch share programs, etc.

b. Emergency Actions and Interim Measures to Reduce Overfishing

Authority: MSA section 305(c)

Section 305(c) of the MSA authorizes the use of temporary rules to address unanticipated emergencies or interim measures needed to reduce overfishing, regardless of whether a fishery is managed under a fishery management plan. Such rulemakings may be initiated by a regional fishery management council or the Secretary of Commerce and are subject to all other applicable laws. APA good cause waivers may be applicable, but each waiver must be assessed on a case by case basis. And several other applicable laws also provide for exemptions, waivers or special arrangements under certain circumstances. [ADD HOTLINKS to relevant NEPA and CZMA regulations, etc.]

The Secretary *must* implement emergency or interim regulations if requested by unanimous vote of all present voting members of a regional fishery management council. The Secretary *may* implement emergency or interim regulations requested by a regional fishery management council if the vote is less than unanimous. The Regional Administrator or other NMFS representative participating in the council vote typically opposes such a motion, if necessary to avoid a unanimous vote, to preserve the Secretary's authority to approve or deny the request.

Key Timing Requirements/Considerations

- Opportunity for public comment on proposed rule (unless an exception or good cause waiver is applicable)
- 30-days to publish final rule after comment period ends on proposed rule
- Effectiveness of final rule delayed 30 days (unless an exception or good cause waiver is applicable)
- Final rules generally are limited to 180 days duration but may be extended one time for up to 186 days
 - If public comment has been taken; and, in the case of a council recommendation,
 - The Council agrees and is actively working on a permanent fix.
- If responding to a public health emergency or oil spill, an emergency rule may remain effective until the circumstances that created the emergency no longer exist, provided the public has an opportunity to comment and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Secretary's action.

[ADD HOTLINKS to 50 CFR 600.310(j)(4); OSF oil spill rule protocol/policy]

Emergency Rule

NMFS' policy guidelines promote limiting the use of emergency rules to extremely urgent, special circumstances where substantial harm to or disruption of the resource, fishery or community would be caused in the time it would take to follow standard rulemaking procedures. The guidelines define an emergency as a situation that:

- Results from recent, unforeseen events or recently discovered circumstances;
- Presents serious conservation or management problems in the fishery; and
- Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

Once an emergency has been determined to exist, the guidelines indicate emergency procedures may be justified under one or more of the following situations if the time it would take to complete notice-and-comment rulemaking would result in substantial damage or loss to a living marine resource, habitat, fishery, industry participants or communities, or substantial adverse effect to the public health:

- Ecological – to prevent overfishing or other serious damage to the fishery resource or habitat;
- Economic – to prevent significant direct economic loss or to preserve a significant economic opportunity that otherwise might be foregone;
- Social – to prevent significant community impacts or conflict between user groups; or
- Public Health – to prevent significant adverse effects to the health of fishery participants or to the consumers of seafood products.

The guidelines state that emergency actions should not be routine events and should not be used to solve long-recognized problems. They also suggest that controversial actions with serious economic effects should be implemented through normal notice-and-comment rulemaking, except under extraordinary circumstances.

Emergency rules are not exempted “per se” from APA notice and comment requirements (or requirements of other applicable laws such as NEPA, ESA, etc). However, the same factual justification supporting emergency action may also support an APA good cause waiver. That is a case-by-case determination.

See *Policy Guidelines for the Use of Emergency Rules* for additional information. Add HOTLINKS to Policy Directive 01-101-07 and 62 FR 44421.

Examples:

Interim Measures to Reduce Overfishing

Interim measures may be implemented to reduce overfishing while a regional fishery management council develops an FMP, amendment or proposed regulations to address (eliminate??) the overfishing. MSA section 304(e)(6) (ADD HOTLINK) authorizes the use of interim measures to reduce but not end overfishing if they are otherwise in compliance with the MSA. NMFS’ guidelines state that, in considering a Council request for interim rulemaking, the Secretary would consider, among other things, the need for and urgency of the action and public interest considerations, such as benefits to the stock or complex and impacts on fishery participants.

**NOTE that the MSA term “interim measures” (sections 304(e)(6) and 305(c)) is different from the terms “interim rule” or interim final rule,” which are used in the APA context to refer to a final rule published with good cause waiver of prior notice and comment. The latter types of rules, which are infrequently used, generally provide for public comment after the rules publish.

Examples:

- c. Authority to Implement Fishery Management Actions Developed by the Secretary
Authorities: MSA sections 304(c)(6), (7)

The MSA authorizes the Secretary to develop and implement fishery management plans and amendments in the following circumstances:

- The Secretary *may* take action when a fishery requires conservation and management and the appropriate Council either fails to develop management measures within a reasonable time or recommends measures that are disapproved and not revised/re-submitted (MSA 304(c));
- The Secretary *shall* take action if, within 2-years of an overfished notification, the appropriate Council fails to submit a FMP, amendment or proposed regulations to end overfishing and rebuild affected stocks (MSA 304(e)(5)); and

- The Secretary is authorized to prepare FMPs, amendments and implementing regulations for Atlantic Highly Migratory Species (MSA section 304(g)).

Timing Requirements/Considerations

- In general, the process for developing a Secretarial fishery management plan and accompanying regulations requires public hearings and consultations with appropriate Councils and other federal agencies.
- Secretarial FMPs and implementing regulations are required to have 60-day comment periods, except that comment periods may be shorter for proposed rules that are minor revisions to existing regulations.
- Additional procedures and requirements apply in the case of preemption (i.e. Secretarial action to regulate a fishery within the boundaries of a State) (MSA section 306(b)).

Examples:

d. General Rulemaking Authority

Authority: MSA sections 305(d)

The Secretary may promulgate regulations in accordance with the APA, that are necessary to implement approved FMPs or regulations or to or to carry out any other provision of the MSA.

e. Rulemaking terminology

[RESERVE for discussion of Rulemaking terminology:

Interim Rule/Interim Final Rule; Direct Final Rule; Etc.]

Appendix 3. Documentation

A. The Administrative Record

1. Documentation

Introduction: Council members make fishery management decisions that are considered “agency actions” under the Administrative Procedures Act, the law that governs procedures for agency decision-making. Courts have defined what must be in an “administrative record” that supports the rationale behind making the decision. Employees are required to keep files and documents either in hard copy or electronically that relate to these decisions, but are not required to compile an “administrative record” until that Council decision is challenged in a court of law. That said, careful documentation of the steps of the Council decision making process is not only useful for ensuring success in litigation, it is also a part of being transparent to the regulated public. Any

questions on record keeping should be consulted with NOAA General Counsel or the NMFS Regional Office.

Documentation: Examples of standardized templates that can be/have been used to promote consistency, improve readability, and facilitate the review and clearance process:

- Caribbean Council
- Gulf of Mexico Council
- South Atlantic Council
- North Pacific Council
- Other?

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2. Record Development:

The Administrative Record is the record of an agency’s (or Council’s) decision making process. It must fully and accurately document the facts and processes used to make a final decision. At NMFS, this may include the notice and comment provisions of the APA, provisions of the MSA, the NEPA, the RFA, the IQA, the CZMA, the ESA, the MMPA, and the NMSA, among others. The Administrative Record must also demonstrate that the agency has complied with executive procedural policies, such as those in EO 12886 and 13132. The Administrative Record must include all documents considered by the Council or agency in making the decision and any document that has a logical connection to the action considered.

The record MUST:

- a) Rationally explain the agency’s decisions. It must contain those documents necessary to show a complete history of the decision making process.
- b) Include relevant factual information and data that is in support of and in opposition to the decision made.
- c) Outline and explain how differing points of view were considered and provide explanations as to why the Council/agency chose a certain preferred course of action.
- d) Show that the required statutory or regulatory procedures were followed, such as those criteria found in OALs.

Several key documents found in a complete Administrative Record include, but are not limited to:

- a) The final decision document (whether an FMP or an EIS/EA) signed by the official with authority to make the decision.
- b) Technical and scientific information such as surveys, models, stock assessments, etc.
- c) All Federal Register notices related to the rulemaking process
- d) Any comments the Council or agency receives during the decision making process
- e) Transcripts, minutes, summaries or web recordings of meetings, where such documents are required to be developed by law. This includes any presentations or handouts provided during such events.
- f) Any required analyses developed under OALs that support the development of the final action.

B. Models and Examples

- FMP Templates

There are several options for achieving efficiencies....

1. *Frameworking* is a planning technique through which an FMP, amendment or regulation can prescribe a procedure that is designed to implement future regulatory actions more rapidly when needed and appropriate.
2. *Programmatic NEPA Documents.*
 - a. Framework Amendment

Regional fishery management councils may identify in fishery management plans a range of routine framework or regulatory actions they anticipate they may want to expeditiously implement through future rulemakings. If adequately described and analyzed in the fishery management plan and supporting documents, these actions may be implemented through an abbreviated process. The intent of this process is to provide a mechanism to quickly effect needed changes that are anticipated but cannot always be absolutely predicted early in the decision-making process. Because this process amends only the regulations, it does not involve a separate 60-day public comment period on the fishery management plan or amendment, as occurs during standard rulemakings. Also, because framework actions are typically analyzed to some degree when they are first identified as such in fishery management plans, they generally require lesser analyses when implemented or adjusted through the framework or regulatory amendment process.

The framework process is not intended to circumvent the standard rulemaking process required to effect substantial changes, and does not obviate the need to comply with all other applicable laws. Every action must be fully analyzed and subject to public comment at some time prior to implementation. The analysis and public comment period may be conducted at the time the action is identified in the fishery management plan or when the action is actually taken. The extent of analysis, notification and public comment required at the time the action is taken depends on whether, and to what extent, those requirements were satisfied when the framework measure was established.

Key Timing Requirements/Considerations:

- 5 days to initiate review of proposed rule
- 15 days to determine proposed rule is consistent with fishery management plan, MSA and other applicable law
- 15-60 (typically 45) day public comment period on proposed rule (unless waived)
- 30-days to publish final rule after comment period ends on proposed rule
- Effectiveness of final rule delayed 30 days (unless waived)

Examples: Quota adjustments, in-season closures, trip limit or bag limit adjustments.

b. Programmatic NEPA Documents

Appendix 4. Resources and Appendices

- ROA's
- ESA MOU's
- NEPA PD
- Transmittal PD
- SOPPs

- Tracking Mechanisms Actions through the Process
- (Working group should identify mechanisms to track progress).

- Comparative Matrix of Council Processes