



# CCC NEPA Subcommittee Report

---

Chuck Tracy (PFMC - Chair), Myra Brouwer (SAFMC),  
Deirdre Boelke (NEFMC), Jessica Coakley (MAFMC),  
Kit Dahl (PFMC), Diana Evans (NPFMC), Graciela  
García-Moliner (CFMC), Asuka Ishizaki (WPFMC), and  
Ava Lasseter (GMFMC)

# Background



- New CEQ NEPA regulations finalized September 14, 2020
  - Time limits, Page limits, Cumulative effects, Reasonable alternatives, etc.
  - Functional Equivalence
  - Requires Agency compliance procedures revisions within one year
- NOAA response
  - Interim guidance
  - Temporary page and time limit waiver
  - Proposal for workshop with CCC
    - CCC NEPA Subcommittee formed to help develop and participate
    - Functional Equivalence not dependent on status of new CEQ regulations
  - NOAA NEPA Coordinator Memo: Guidance on NEPA functional equivalence and substitute procedures and documents
- New administration
  - Reviewing regulations
  - Workshop delayed

# NEPA Subcommittee Activities



- Objective: Develop list of issues and questions to be addressed in workshop
- Regulation review and workshop delay changed focus to Functional Equivalency
- Several meetings between October 2020 and April 2021
- Developed Report for CCC consideration at this meeting
  - Report format assumes a workshop will still occur
    - List of issues and questions
  - Functional Equivalency and Substitute Procedures
  - Regulations and Agency Guidelines
  - Brief history of MSA/NEPA Environmental Review Process

# Functional Equivalency



- NOAA NEPA Coordinator Guidance November 2020
  - Primarily involves management, conservation, permitting or authorization related to environmental resources (natural and cultural)
  - Requires consideration of the core NEPA issues: effects of the proposal on the human environment, potential adverse effects, possible alternatives, the relationship between long-term and short-term uses and goals and any irreversible commitment of resources
  - Provides for meaningful public participation in the decision-making process
  - Ensures documentation of the foregoing consideration in a record presented to and evaluated by the decision maker before a final decision on the proposed action is made
  - Requires documentation of the reasons for the final decision

# SubCom Report: Functional Equivalency



- Workshop objective: Develop a workable functional equivalence rationale and related procedures agreed to by both Council and NMFS participants
- Questions for workshop
  - Will procedures be implemented through regulations or administrative order?
  - How has functional equivalence been applied to other statutes?
  - If not case-by-case, would all MSA actions be covered, or different classes of actions?
  - Does the “major federal action” threshold affect consideration of functional equivalency?
  - How would other applicable law affect functional equivalency procedures?
  - Will CCC/Councils have a role in NOAA/NMFS development/approval of procedures with CEQ?
- Attachment 1 identifies MSA provisions that address the five criteria in the NOAA Guidance Memo

# SubCom Report: NEPA Procedures



- Workshop objective: Develop clear and useful guidelines in NMFS NEPA procedures
- Topics for workshop
  - The “major federal action” threshold applicability of NEPA relative to the scope of MSA actions
  - Application of revised criteria for determining significance replacing context and intensity of effects
  - Clarification on “reasonable alternatives” and “technically and economically feasible”
  - Clarification on “reasonably foreseeable” and having “a reasonably close causal relationship to the proposed action”
  - Additional guidance on time limits, page limits, and estimating costs of preparing an EIS
- Appendix 3 provides additional detail on these questions and issues

# Recommendations to CCC



- Urge NMFS to hold the proposed workshop with the aim of producing revised NEPA procedures that improve transparency, allow greater flexibility, and result in more concise documents that are easier for stakeholders and managers to understand and use for decision making. Revised procedures should reduce the time between Council final action and its implementation, reduce complexity of processes and products, and reduce duplication of analyses required under different mandates.
- Urge NMFS to clarify how and whether its NEPA procedures will be updated, particularly in relation to the impending September 14, 2021, deadline imposed by the CEQ regulations.
- Plan for training Council staffs on the application of NEPA under the 2020 CEQ regulations and agency procedures.
- If no workshop is held, the CCC requests NMFS continue the dialogue with the CCC on the application of the functional equivalence doctrine (in relation to MSA §304(i) and recognizing the doctrine's basis in case law) or, failing that, the development of alternative procedures and documents.