



**NOAA
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Magnuson-Stevens Act (MSA) National Environmental Policy Act (NEPA) Procedure Revisions

Presented to the Council Coordination Committee
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Magnuson-Stevens Reauthorization Act of 2007

Section 304(i):

The Secretary shall...

revise and update agency procedures for compliance with [NEPA]

The procedures shall—

- (A) conform to the timelines for review and approval of fishery management plans and plan amendments under this section; and
- (B) integrate applicable environmental analytical procedures, including the time frames for public input, with the procedure for the preparation and dissemination of fishery management plans, plan amendments, and other actions taken or approved pursuant to this Act in order to provide for timely, clear and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork, and effectively involve the public.



Magnuson-Stevens Reauthorization Act of 2007

- As a result, NMFS developed Policy Directive 30-132 in 2015
- This policy directive was adopted into the NOAA-level procedures, called the Companion Manual, as Appendix C



NEPA and Rulemaking History

- 1970: January 1 - NEPA enacted
- 1978: November 29 - First NEPA implementing regulations
- 2020: July 16 - 2020 Rule (new implementing regulations)
- 2022: April 20 - Phase 1 Rule (new implementing regulations)
- 2023:
 - June 3 - NEPA amended by the Fiscal Responsibility Act of 2023 (FRA)
- 2024:
 - May 1 - NEPA Implementing Regulations Revisions Phase 2 Final Rule ([89 FR 35442](#); new implementing regulations)
 - July 1 - Phase 2 Final Rule became effective

Our Goals for this Revision

- Recognize and provide for differences in each Council-Region pair's working relationships for cooperating on and coordinating fishery management and NEPA requirements
- Not alter cooperative processes and actions that are working well
- Provide assistance on how to implement new requirements

Changes Addressed in the Revised MSA NEPA Procedures

- New draft retains much of the approach from the current procedures
- How to address:
 - Deadlines, including extensions
 - Page limits
- Updates to reflect:
 - Better describe differences between Secretarial and Council actions
 - Changes in technology
- Format:
 - Policy directive instead of appendix in the NOAA-level procedures
 - Procedural directive tiered from policy





Deadlines

- Imposed by the FRA amendments to the NEPA statute
- Must be implemented now
- Environmental Assessment (EA): 1 year (42 U.S.C. 4336a.(g)(1)(B))
- Environmental Impact Statement (EIS): 2 years (42 U.S.C. 4336a.(g)(1)(A))
- Starting:
 - When the agency determines that NEPA requires an EA or EIS
 - When the agency issues a notice of intent (NOI) for the proposed action
- Ending:
 - For EAs, when the EA is published or an NOI for an EIS is published
 - For EISs, when the EPA publishes a notice of availability for the final EIS
- Exceeding a deadline requires a report to Congress

Deadline Extensions

- Prior to the 1-year or 2-year deadline:
 - May establish a new deadline that “provides only so much additional time as is necessary” to complete the review (40 CFR 1501.10(b)(1), (2))
 - If there is an applicant, the decision maker must consult with the applicant. *Applicant* is defined as a non-Federal entity, including a project sponsor, that seeks an action by a Federal agency such as granting a permit, license, or financial assistance. 40 CFR 1508.1(c) Councils are not considered applicants because of their unique status under Federal law.
- Decision maker must document the new deadline and provide rationale, such as public engagement obligations, consultation obligations, requirement to obtain information or input from outside entities and parties, or required engagement in other statutory processes
- Can repeat this process as necessary

Page Limits



- Imposed by the FRA amendments to the NEPA statute
- Must be implemented now
- EAs
 - 75 pages (42 U.S.C. 4336a (e)(2))
- EISs
 - 150 pages (42 U.S.C. 4336a (e)(1)(A)), or
 - 300 pages for proposals of extraordinary complexity (42 U.S.C. 4336a (e)(1)(B))
- *Page* is defined as 500 words and does not include citations, explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information (40 CFR 1508.1(bb))



Notable upcoming structural changes to MSA NEPA Procedures

- Remove MSA NEPA Procedures from Companion Manual (Appendix C)
- Add to NMFS Policy Directive System and update structure
- **Policy Directive 09-103: NEPA Compliance for Actions Taken Under the MSA**
 - States and explains directions and objectives
- **Procedural Directive 09-103-01: NEPA Procedures for Actions Taken Under the MSA**
 - Provides guidance and best practices for how to apply the policy

As a procedural directive, NMFS will be able to review and revise whenever needed.



MSA NEPA Procedures - Procedural Directive Outline

● Objectives

- Clarifies roles and responsibilities;
- Provides guidance on timing of NEPA compliance, including documentation of extensions;
- Describes the MSA fishery management process;
- Provides guidance on issues pertaining to NEPA documentation, including the statement of purpose and need, identifying alternatives, content of decision documents, page limits, and the use of integrated documents; and
- Provides guidance on techniques for improving partnerships and efficiencies.

MSA NEPA Procedures - Procedural Directive Outline (continued)

● Guidance

- Applicability
- Roles & Responsibilities
 - For Councils under MSA and NEPA
 - For NMFS under MSA and NEPA
- Integrating Timing and Applicable Analytical Requirements
 - MSA Timelines
 - Applicable Analytical Procedures and Opportunities for Public Input
 - NEPA Deadlines & Extensions
 - Timeliness, Useful Analysis, and Public Input



MSA NEPA Procedures - Procedural Directive Outline (continued)

- Guidance (continued)
 - Analysis Components
 - Identification of Purpose & Need
 - Alternatives
 - Integrated Analyses
 - Documenting the Decision
 - NEPA Related Documents & Approaches
 - Incorporation by Reference
 - Supplemental Information Report
 - A Model for Utilizing Tiering: NEPA Advanced Planning Procedure
 - Partnerships with Councils



Phase 2 Final Rule Key Dates

Effective Date: July 1, 2024

- Applies to new actions as of this date
- Actions started prior to this date can follow previous versions of the regulations* (e.g., Amendment 16)



Agencies to Propose Procedures to CEQ: July 1, 2025

- Both NOAA and NMFS will need to update procedures
 - NAO 216-6A's Companion Manual
 - MSA NEPA Procedures

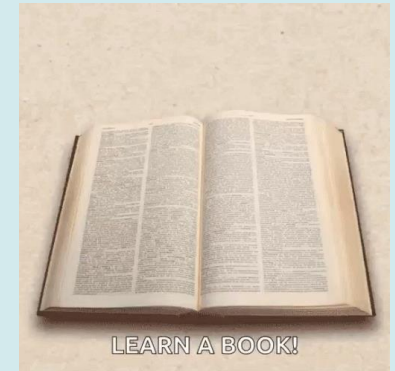
*Note again that the FRA amendments to NEPA (including those listed on slide 4, like time and page limits) were immediately effective and must be adhered to for all actions now.

Timeline for Revision of Procedures

- October 2024: draft MSA NEPA Procedures provided to the Council Coordination Committee (CCC) (publically available draft)
- November 5: CCC Work Group comments requested (initial feedback, missing parts, overarching approach, red flags)
- March 15: CCC and Council comment deadline
- July 1: MSA NEPA Procedures delivered to Council on Environmental Quality (CEQ) for review
- Timeline undetermined from here; the steps will be:
 - Address CEQ comments
 - Publish draft procedures in FR **for public comment** (as per 40 CFR 1507.3(b)(2); not rulemaking)
 - Address public comments
 - Deliver final procedures to CEQ
 - Address CEQ comments
 - Finalize policy and procedural directives and publish final procedures in the FR



References



- Council on Environmental Quality

- [2024 Desk Reference \(including Phase 2 Final Rule and FRA amendments to NEPA\)](#)
- [Phase 2 Final Rule presentation slides](#)

- National Oceanic and Atmospheric Administration

- [NOAA Administrative Order \(NAO\) 216-6A](#)
- [NAO 216-6A's Companion Manual \(including Appendix C - MSA NEPA Procedures\)](#)

Acronyms

- BPRI: Bipartisan Permitting Reform Implementation
- CEQ: Council on Environmental Quality
- CCC: Council Coordination Committee
- CFR: Code of Federal Regulations
- EA: Environmental Assessment
- EIS: Environmental Impact Statement
- EJ: Environmental justice
- EPA: Environmental Protection Agency
- FR: *Federal Register*
- FRA: Fiscal Responsibility Act of 2023
- MSA: Magnuson-Stevens Fishery Conservation and Management Act
- NAO: NOAA Administrative Order
- NEPA: National Environmental Policy Act
- NOI: Notice of Intent
- U.S.C.: United States Code

