

2014 Council Member Training The National Environmental Policy Act of 1969

October 27, 2015



Steve Leathery
NOAA Fisheries Service
National NEPA Coordinator



NEPA Presentation Outline

- ◆ Introduction
- ◆ Overview NEPA
- ◆ 2007 Magnuson-Stevens NEPA Provisions
- ◆ Other Cross-cutting Environmental Law
- ◆ General Q & A and Discussion Session



Why is NEPA Important to You?

- ◆ National Public Policy
- ◆ Litigation Risk for Fishery Management
- ◆ Conducting Research Activities That May Inform Fisheries Management
- ◆ Other Federal Agency Actions on Ocean and Coastal Activities including Oil and Gas Exploration and Development, Alternative Energy Development, Military Training, Aquaculture, Marine Sanctuaries



National Environmental Policy Act

Requires federal agencies to use all feasible means to create and maintain conditions under which man and nature can exist in productive harmony and to fulfill the social, economic, and other requirements of present and future generations

Federal agencies must consider and publicly disclose the potential environmental impacts of federal actions



The National Environmental Policy

“It is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”



NEPA Policy Implementation

All agencies of the Federal Government shall include in every recommendation or report on proposals for legislation and other major federal actions **significantly** affecting the quality of the human environment, a detailed statement by the responsible official on the action's potential environmental impacts, adverse impacts that cannot be avoided, and alternatives to the proposed action.



Council on Environmental Quality (CEQ)

Regulations For Implementing The
Procedural Provisions of The
National Environmental Policy Act
(40 CFR Parts 1500-1508)



Two Major Sources of NEPA Implementation Requirements

- ◆ Council on Environmental Quality's Regulations For Implementing The Procedural Provisions of NEPA
- ◆ NOAA Administrative Order 216-6, Environmental Review Procedures For Implementing NEPA



Major Federal Actions Include Projects or Programs Entirely or Partially:

- Funded By
- Assisted By
- Regulated By
- Conducted By
- Approved By
- Permitted By

A Federal Agency



Three Levels of NEPA Analysis

- ◆ Environmental Impact Statement
- ◆ Environmental Assessment
- ◆ Categorical Exclusion



Examples of NEPA Analysis for Fishery Management Plan Actions

- ◆ Minor technical changes to an FMP
 - Categorical Exclusion
- ◆ Some FMP Amendments
 - Environmental Assessment
- ◆ New FMP or Major Amendment
 - Environmental Impact Statement



NOAA's NEPA Significance Criteria

- ◆ Involves geographic area with unique characteristics
- ◆ Is subject of public controversy
- ◆ Has uncertain environmental impacts or unique or unknown risks
- ◆ Establishes precedent or decision in principle about future proposals
- ◆ May result in cumulatively significant impacts
- ◆ May have any adverse effects upon endangered or threatened species or their habitats



Key Concepts From CEQ's Implementation Regulations



Required Analyses Very Broad

- ◆ Must consider impacts to the human environment
- ◆ Includes natural and physical environment and the relationship of people with that environment
- ◆ Must discuss all interrelated ecological, physical, economic, and social effects



Analyses Must Be Prepared Early

- ◆ The analyses shall be prepared early enough so that it practically informs the Federal decision-making process and will not be used to rationalize or justify a decision already made.



Rationale For “Frontloading” NEPA

- ◆ CEQ regulations require broad analyses to include environmental, economic, and social factors
- ◆ CEQ regulations require analyses to be completed as early as possible in planning and decision-making process to better inform the public and decision-makers



Other Key Concepts

- ◆ **Scoping**--explaining the proposed action and receiving public input
- ◆ **Alternatives**--the analyses must cover a **reasonable range** of alternative actions to include the no action alternative and the preferred alternative
- ◆ **Mitigation Measures**--are used to limit or control potential adverse impacts
- ◆ **CEQ's Definition of Cumulative Impact:**

“Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to *other past, present, and reasonably foreseeable future actions* regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.”



Environmental Red Flags

- ✓ Adverse Impact to Endangered Species or Critical Habitat
- ✓ Over fishing
- ✓ Adverse Impact to Marine Mammals
- ✓ Adverse Impact to National Marine Sanctuary
- ✓ Adverse Impact to Essential Fish Habitat



More Red Flags

- ✓ Extensive Bycatch
- ✓ Failure To Consider Reasonable Range of Alternatives
- ✓ Failure To Analyze Cumulative Impacts
- ✓ Environmental Controversy



Role of The Environmental Protection Agency

- ◆ Receives all federal draft and final EISs
- ◆ Notifies the public of the availability of all draft and final EISs
- ◆ When requested, reduces or extends prescribed EIS review periods
- ◆ Reviews, comments on, and rates all draft EISs
- ◆ Refers unsatisfactory EISs to CEQ



2007 Magnuson-Stevens Act NEPA Provisions

- ◆ “The Secretary shall, in consultation with the Councils and the CEQ, revise and update agency procedures for compliance with the National Environmental Policy Act. The Procedures shall—
- ◆ Conform to the time lines for review and approval of fishery management plans and plan amendments; and”



New Magnuson Stevens Act NEPA Provisions (continued)

- ◆ “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, reduces extraneous paperwork, and effectively involves the public.”

February 2013 NMFS Policy Directive

June 30, 2014 Revised and Updated MSA
NEPA procedures for public comment

http://www.nmfs.noaa.gov/sfa/laws_policies/msa/nepa.html

<http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0024>

Draft Revised and Updated MSA NEPA Procedures

- ◆ Public comment period ended Sept 29, 2014
- ◆ 6 comment letters received
- ◆ NEFMC and PFMC
- ◆ 3 Environmental NGO letters — Pew, Oceana, Combined (TOC, NRDC, CLF)
- ◆ Councils — failure to “streamline” NEPA
- ◆ NGOs — concerns over new documentation, NEPA transparency, conflict of interest

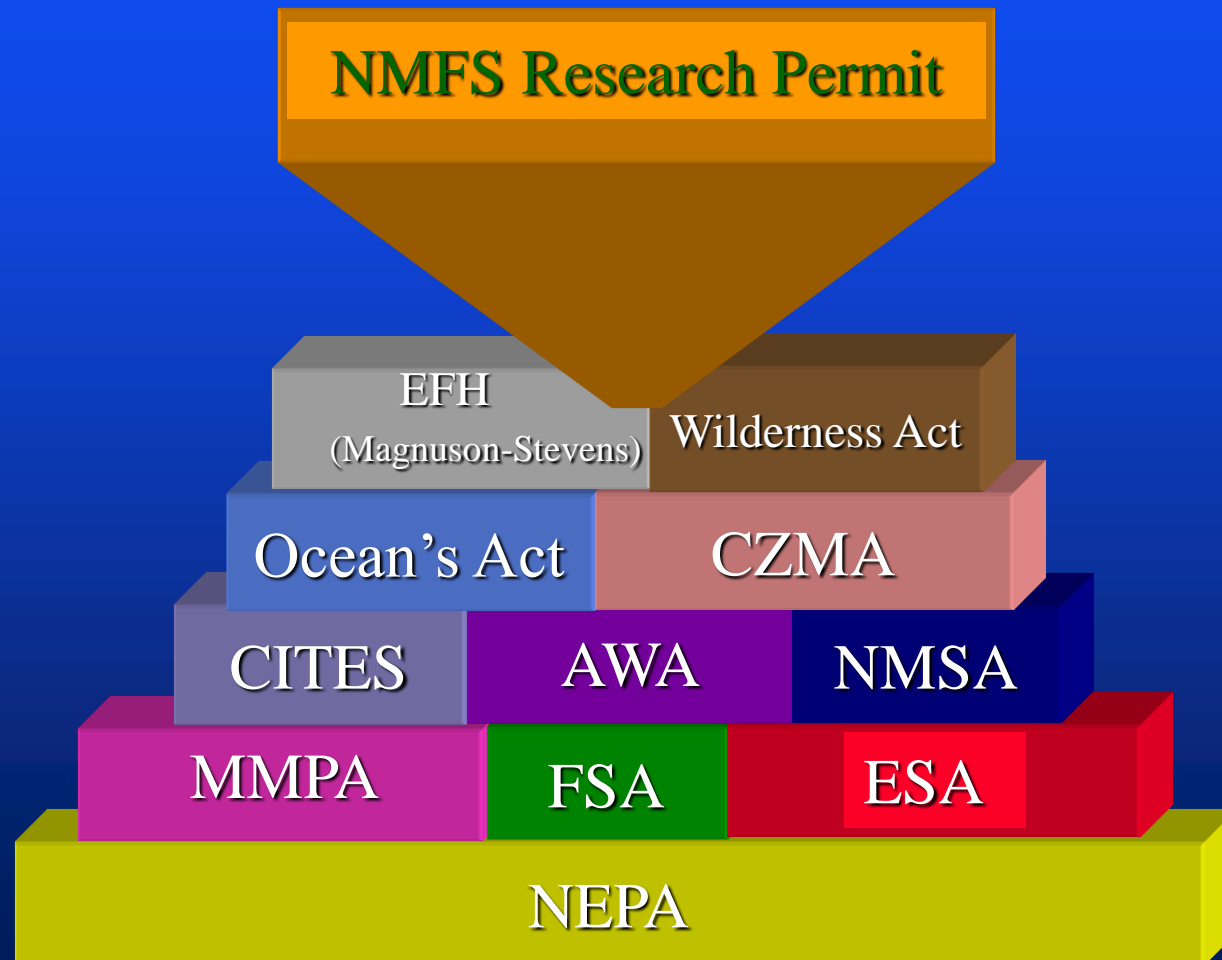


Cross-Cutting Environmental Statutes

- ◆ National Environmental Policy Act
- ◆ National Historic Preservation Act
- ◆ Endangered Species Act
- ◆ Magnuson-Stevens Act
- ◆ Coastal Zone Management Act
- ◆ Marine Mammal Protection Act
- ◆ Migratory Bird Treaty Act



Scientific Research Permits for Protected Resources





NOAA Fisheries Regional NEPA Coordinators

Greater Atlantic – Jennifer Anderson

Southeast – Noah Silverman

Pacific Islands – Marilyn Luipold

West Coast – Kathe Hawe, Sarah Biegel,
Shelby Mendez

Alaska – Gretchen Harrington

Headquarters – Patience Whitten



Where Do I Find Information on NEPA Implementation Requirements?



- Contact your Regional NEPA Coordinator
- Visit the NOAA website:
<http://www.nepa.noaa.gov>
- Stay right here for general Q&A and discussion