

<i>NATIONAL MARINE FISHERIES SERVICE POLICY 09-102</i> Effective on: January 5, 2024	
To be reviewed on: January 5, 2029	
National Environmental Policy Act	
Resourcing NOAA’s lead agency role for Environmental Impact Statements for Aquaculture Pursuant to Executive Order 13921	
<p>NOTICE: This publication is available at: https://www.fisheries.noaa.gov/national/laws-and-policies/policy-directive-system</p>	
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I. Introduction

The [National Aquaculture Act of 1980](#)¹ established aquaculture as a national policy priority for the United States. The National Marine Fisheries Service (NMFS) plays a central role in developing and implementing aquaculture policies for the Department of Commerce and the National Oceanic and Atmospheric Administration (NOAA). [Executive Order \(EO\) 13921, Promoting American Seafood Competitiveness and Economic Growth \(May 7, 2020\)](#)² calls for the expansion of sustainable U.S. seafood production and requires NOAA to undertake additional responsibilities.

The purpose of this policy is to outline the agency approach to resourcing NOAA’s responsibility as lead agency for National Environmental Policy Act (NEPA) Environmental Impact Statements (EISs) for aquaculture projects, pursuant to Section 6 of the EO. The EO designates NOAA as the lead agency for aquaculture projects located outside of the waters of any State or territory and within the exclusive economic zone of the United States (U.S.) that require environmental review or authorization by two or more agencies when the lead agency has determined that it will prepare an EIS under NEPA. The U.S. Army Corps of Engineers (USACE) and Environmental Protection Agency (EPA) remain the primary permitting agencies. NMFS may issue permits under the Magnuson–Stevens Fishery Conservation and Management Act (MSA)³ or authorizations under the Marine Mammal Protection Act⁴ and have consultative roles pursuant MSA and the Endangered Species Act (ESA).⁵ The NMFS Regional Offices (NMFS Regions) will lead EIS development for permit applications filed with the USACE and EPA within their regional jurisdiction where it is

¹ P.L. 96-362, 94 Stat. 1198 (Sept. 26, 1980).

² 85 Fed. Reg. 28471 (May 12, 2020).

³ 16 U.S.C. §§ 1801 et seq.

⁴ 16 U.S.C. §§ 1361 et seq.

⁵ 16 U.S.C. §§ 1531 et seq.

determined that NOAA will serve as the lead agency for the EIS.

Consistent with NOAA policy, EISs must be prepared by the lead agency, or by a contractor selected by the lead agency (Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities, 18 (2017)). NOAA must independently evaluate a contractor-prepared EIS prior to its approval, take responsibility for its scope and contents, and sign the Record of Decision, if applicable. A contractor who prepares an EIS must have no financial or other interest in the outcome of the analysis and must sign a conflict-of-interest disclosure form provided by NOAA.

This policy directive applies to all EISs developed by NOAA (NMFS) as lead agency for aquaculture projects under the EO. The policy directive clarifies the agency's preferred resourcing approach. The policy applies to NMFS Regions, the NMFS Deputy Assistant Administrator (DAA) for Regulatory Programs, and any other relevant NMFS office.

II. Objective

The agency will rely upon applicants for aquaculture projects to fund the development of EISs for such projects led by NOAA under the EO. This approach will benefit NOAA, the aquaculture industry, government partners, and stakeholders. A consistent agency resourcing strategy for EISs provides predictability for agency partners and stakeholders, process efficiency, and legal defensibility.

The agency may consider a different approach, on a case-by-case basis, if the approach is more appropriate in a specific situation. To take a different approach, the Regional Administrator (RA) of the NMFS Region leading the EIS development must submit a written request to the NMFS DAA for Regulatory Programs. The request must include: a project description, a list of applicable permitting and authorization agencies, expected consultation requirements, an expected timeline, the proposed funding entity, including any cost-sharing arrangement (if applicable), a rationale for the approach, and any other applicable information.

III. Roles and Responsibilities

This policy directive establishes the following roles and responsibilities:

1. The NMFS Region leading an EIS pursuant to the EO will default to using an applicant-funded approach to develop the EIS.
2. If a NMFS Region believes that a different approach is more appropriate, the NMFS RA will submit a request to the NMFS DAA for Regulatory Programs, as detailed in Section II above.

This policy does not apply to EISs in the planning or development stage at the time of signing or for which a Notice of Intent has been issued prior to the date of signing.

IV. Measuring Effectiveness

This policy will be reviewed and updated by OAQ, as necessary, in accordance with the NMFS Policy Directive System, should Congress fund the agency to undertake the lead agency role and fully fund the development of EISs, or due to relevant changes to NEPA, Council on Environmental Quality NEPA Regulations, or NOAA policy. OAQ will work with the Regional Aquaculture Coordinators and NMFS Office of Policy to track use of the default approach established in this

Policy Directive and any other approaches that are used, and reassess this policy, as needed. This policy will be rescinded if the EO is revoked.

V. References

This policy directive is supported by the references listed in Attachment 1.

Signed _____

Janet Coit
Assistant Administrator for Fisheries

Date

Attachment 1

References

Executive Order 13921 (May 7, 2020). Promoting American Seafood Competitiveness and Economic Growth. 85 Fed. Reg. 28471 (May 12, 2020). Available at <https://www.govinfo.gov/content/pkg/FR-2020-05-12/pdf/2020-10315.pdf>.

National Oceanic and Atmospheric Administration Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities - Companion Manual for NOAA Administrative Order 216-6A (Jan. 13, 2017).

National Oceanic and Atmospheric Administration Transmittal No. 61 section II.

National Oceanic and Atmospheric Administration Administrative Order (NAO) 216-6A: Compliance with the National Environmental Policy Act, Executive Orders 12114, Environmental Effects Abroad of Major Federal Actions; 11988 and 13690, Floodplain Management; and 11990, Protection of Wetlands (Apr. 22, 2016).

National Oceanic and Atmospheric Administration Transmittal No. 101.