



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 700

[Docket No. 070824479-8107-02]

RIN 0648-AV53

Magnuson-Stevens Act Provisions; Environmental Review Process for Fishery Management Actions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; withdrawal.

SUMMARY: NMFS withdraws a proposed rule that would have established new regulations pertaining to compliance with the National Environmental Policy Act (NEPA) in the context of fishery management actions developed pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Instead of going forward with a final rule directly resulting from the 2008 proposed rule, NMFS issued an internal policy on February 19, 2013. This policy, entitled “National Environmental Policy Act Compliance for Council-Initiated Fishery Management Actions under the Magnuson-Stevens Act” clarifies roles and responsibilities of NMFS and the Regional Fishery Management Councils (Councils), explains timing and procedural linkages, provides guidance on documentation needs, and fosters partnerships and cooperation between NMFS and Councils on NEPA compliance.

NMFS consulted with the Councils and with the Council on Environmental Quality (CEQ) on proposed revisions to the 2013 NMFS NEPA policy directive, and based on those

consultations NMFS now proposes to use this policy as a basis for issuing revised and updated NEPA procedures for MSA actions in the form of a line-office supplement to NOAA Administrative Order (NAO) 216-6. On June 30, 2014, NMFS published a Federal Register notice of availability of the draft revised and updated NEPA procedures for MSA actions and requested public comments, with a 90-day public comment period.

DATES: The proposed rule published on May 14, 2008 (73 FR 27998) is withdrawn as of [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Steve Leathery via email at steve.leathery@noaa.gov or via phone at 301-427-8014.

SUPPLEMENTARY INFORMATION: The 2007 Magnuson-Stevens Reauthorization Act (MSRA) required NMFS to “revise and update” agency procedures to comply with the National Environmental Policy Act (NEPA) for fisheries actions. In developing a proposed approach, NMFS conducted extensive public outreach which included the following:

- Consulted with the CEQ and the Councils
- Posted Trigger Questions, developed by NMFS, and a Strawman proposal, developed by the Council Coordination Committee (CCC), for 60-day public comment
- NMFS made presentations at each meetings of each Council on Trigger Questions and Strawman during the 60-day period; NMFS received over 1600 comments
- NMFS published proposed rule May 2008 with a 90-day comment period; conducted 3 NMFS-sponsored public hearings and a public workshop; conducted presentations at meetings of all eight Councils; and received over 150,000 public comments.

NMFS’s initial approach was to propose a rule creating new regulatory requirements aligning the decision-making processes of the Councils and NMFS under the MSA with the

analytical and procedural requirements of NEPA. The proposed rule would have required Council consideration of draft NEPA documents prior to recommending fishery management measures, and NMFS consideration of a final NEPA document during Secretarial review of the measures. These comment periods could be less than 45 days each in limited circumstances, but in no case could the combined total of days be less than 45, which is the minimum comment period established by CEQ's regulations for Environmental Impact Statements (EISs). The proposed rule would have included regulatory provisions pertaining to inadequate and incomplete information, a new categorical exclusion for exempted fishing permits, and it would have changed the name of the EIS-level NEPA compliance document for fisheries to reflect the integration of fisheries management and environmental considerations. It also would have established a new NEPA tiering mechanism modeled on fishery management plan (FMP) "frameworks."

NMFS published the proposed rule on May 14, 2008, and provided for a 90-day public comment period. During the public comment period, NMFS delivered presentations at meetings of all eight Councils and conducted three NMFS-sponsored public listening sessions: one in Washington, DC metro area, one in St. Petersburg, FL, and one in Seattle, WA. In addition, NMFS, Council representatives and CEQ held an interactive public workshop in the Washington DC area. By the close of the public comment period, NMFS had received over 150,000 comment letters, many of which were form letters urging NMFS to withdraw the proposed rule and start over.

NMFS subsequently determined that it would be more appropriate to revise and update internal guidance rather than to create new regulatory requirements. On February 19, 2013, NMFS issued a policy titled "National Environmental Policy Act Compliance for Council-

Initiated Fishery Management Actions under the Magnuson-Stevens Act.” This policy clarifies roles and responsibilities of NMFS and the Councils, explains timing and procedural linkages, provides guidance on documentation needs, and fosters partnerships and cooperation between NMFS and Councils on NEPA compliance. This policy satisfied the requirements of section 304(i) of the MSA.

After issuing the 2013 Policy Directive, NMFS consulted with the Councils and with CEQ on proposed revisions to the 2013 NMFS NEPA policy directive, and based on those consultations, NMFS now proposes to use this policy as a basis for issuing revised and updated NEPA procedures for MSA actions in the form of a line-office supplement to NOAA Administrative Order (NAO) 216-6. On June 30, 2014, NMFS published a notice of availability of the draft Revised and Updated MSA NEPA procedures (79 FR 36726). Both the 2013 Policy Directive and the draft Revised and Updated MSA NEPA Procedures are available on the web at: http://www.nmfs.noaa.gov/sfa/laws_policies/msa/nepa.html.

Authority: 16 U.S.C. 1801 et seq.

Dated: July 8, 2014.

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