

DRAFT OPERATIONAL GUIDELINES:

**For
Development
and
Implementation of
Fishery Management Actions**



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I. Introduction

A. Statement from the Assistant Administrator

[Reserved]

B. Structure of the Operational Guidelines

Parts I and II of these OGs provide background on and an overview of the philosophy of the guidelines. Parts III and IV define the roles of the various parties involved in the development and implementation of fishery management actions, and identify applicable standards. Part V provides a model for the fishery management process that is quality-based and outcome-oriented, and that identifies checks for assuring adequacy of process and analyses at critical junctures. The model is intended to serve as a tool rather than a mandate. Adherence to the model is not mandatory for the Councils.

C. Purpose and Objectives

These OGs provide an approach for establishing a formalized cooperative relationship with the Councils and set forth a model for integrating the many statutory mandates that apply to the development of fishery management actions. Consistent with our efforts under the Regulatory Streamlining Project (RSP), the approach taken in the OGs addresses problems with “unnecessary delays, unpredictable outcomes, and lack of accountability” and moves us towards the application of “standardized practices” to “improve the quality and efficiency of regulatory decisions and raise the likelihood of success in litigation” (S. RPT 107-42).

These guidelines are based on the concept of “frontloading,” which refers to active participation of Council and key agency staff (e.g., Sustainable Fisheries, Protected Resources, Habitat Conservation, Economists, Social Scientists, and General Counsel) at the early stages of fishery management action development – a “no surprises” approach. The goal is to ensure that, to the extent practicable, all significant legal and policy issues will be identified early in the process.

The objective of these OGs is to facilitate development and implementation of fishery management actions under the Magnuson-Stevens Fishery Conservation and Management Act (MSA).¹ A related goal is to facilitate development of more concise documentation. While these guidelines have been tailored to fit the MSA fishery management process for Council-developed actions, the underlying principles have broad applicability, and National Marine Fisheries Service (NMFS) will apply them to other agency actions as appropriate.

The preparation, review, approval and implementation of fishery management actions and the attendant rules and regulations under the MSA is, by its very nature, a complex process in which the Councils and the Secretary have distinct, yet overlapping roles. In many instances, the issues presented are controversial, politically charged, and difficult to analyze. In addition, a variety of other applicable laws impose even more analytical and procedural requirements on an already complex system. NMFS, with direction from Congress, initiated the RSP to improve the way the agency and the Councils integrate the multiple mandates governing fisheries management; increase efficiency in designing and implementing fishery management measures; and improve overall the decision-making process. The ultimate intent of streamlining is to ensure that the process is done correctly the first time. This implies:

- Legal and policy requirements will be identified and considered earlier in the process so that they may be dealt with more expeditiously (“frontloading”). The frontloading process may require more investment of time upfront, but should help ensure that potential problems are identified early and are not allowed to become real problems in later stages of review and implementation.

¹ The term “fishery management actions” should be interpreted broadly to include a wide range of activities taken pursuant to the MSA, including proposed and final rulemakings, Fishery Management Plans with no implementing regulations, and other substantive actions by the agency that promulgate or are expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, and advance notices of proposed rulemaking.

- The OGs will provide clear and consistent articulation of critical requirements while allowing Regional Staff flexibility to work with their Councils to achieve overall objectives for frontloading and the development of quality documentation of their decision making process.
- Quality control and assurance activities will ensure that requirements are being met, and that, if problems arise, they do not recur.
- Timely inputs and review by staff will occur as early as possible in the process.
- The ability of the Councils and NOAA to develop actions and policy will be enhanced when we work together to follow the standards and requirements set forth in the OGs.²
- NMFS Headquarters offices (HQ) will be involved early in substantive discussions that have implications for consistency with national policies and guidance, develop new guidance as needed and make it available via the web, facilitate the processing of decision documents, and conduct training and quality assurance.

These guidelines identify requirements and standards, while allowing maximum flexibility for the Councils and NMFS Regional Staffs to design implementation procedures that are most effective in their particular contexts. These guidelines focus on the fishery management plan (FMP)/regulation process and completely supercede the OGs prepared in 1997.

D. Philosophy and Approach

1. Fishery management decisions must be supported by documentation that adequately provides for the basis of a decision under the existing legal requirements.
2. The respective decisions of the Councils and NMFS are sufficiently interrelated that they ought to be supported by the same record. Thus, the guidelines focus on collaborative efforts by Council and NMFS staff to develop the documentation that supports their decisions.
3. Consistent with the objective of emphasizing the roles of Councils and NMFS Regional Staff, the approach is to raise, analyze and properly deal with all issues as soon as they can be anticipated. The model contained within these guidelines identifies points in the process where agency feedback is critical (Critical Feedback Points (CFPs)), and the basic documents that are required at each CFP to assure quality. The model then sets forth a system for obtaining agency feedback that the process and documents support and provide a rational basis for decision-making and are legally sufficient at that stage for the process to move forward. Details regarding how each Council and NMFS Regional Office address their particular implementation of procedures to achieve this sufficiency will be left to them to develop collaboratively through Regional Operating Agreements (ROAs). The use of feedback mechanisms at CFPs in the model is not intended to prevent the use of more frequent, or continuous, feedback loops.

A CFP is a step in the decision-making process at which critical decisions are made that could ultimately affect approvability of the action. The number of CFPs applicable to an action varies depending on the NEPA and MSA requirements that apply to that action. The OGs identify a full list of steps and CFPs for each type of action in the model.

² NMFS Regional Staffs include both the Science Center staff and the Regional Office staff. Although Regional GC is technically part of NOAA GC rather than NMFS staff, whenever possible, Regional GC will participate as part of the Regional Staff team.

4. All relevant NOAA and DOC reviewers will participate early in the process to ensure that their concerns are raised at a point in the process where they can be addressed in such a way that progress is not delayed or halted later. In short, the intent is to avoid sequential reviews and encourage concurrent input to decisions at the earliest stage possible.
5. Councils and NMFS Regional Staffs will each undertake a joint planning process that occurs at least once annually and provides for a 12- to 24-month planning horizon. This process should provide a forum for identifying and prioritizing upcoming needs and actions. Any issues with national policy implications will be raised to NMFS HQ for early guidance.
6. Councils and NMFS Regional Offices will enter into written ROAs that specify responsibilities and steps that will be taken to prepare documentation for fisheries conservation and management decisions.

Each region will enter into written Regional Operating Agreements with its Council/s delineating specific roles, responsibilities, and timing issues necessary to conform with these OGs.

II. General Principles for the Fishery Management Process

A. Use of the MSA and NEPA Processes as an Umbrella. The open and public processes required by the MSA and the National Environmental Policy Act (NEPA) will provide the basis for implementing regulatory streamlining. Together, the MSA and NEPA require the incorporation of all relevant factors into fisheries conservation and management decisions, prescribe an open process for identifying issues and considering a range of alternatives, provide for review and participation by affected States and Indian tribes, and promote effective public review and input. The MSA requires fishery management actions to be consistent with other applicable laws. Similarly, Council on Environmental Quality (CEQ) Regulations for Implementation of NEPA require agencies to integrate the NEPA process with other planning and regulatory compliance requirements (such as the consultation requirement under Section 7 of the Endangered Species Act (ESA), and consistency determinations under the Coastal Zone Management Act (CZMA)). This integration must occur at the earliest possible time to ensure that planning and decisions take into account environmental values reflected in these other laws and regulations, avoid delays later in the process, and prevent potential conflicts with alternatives and mitigation methods required by other laws. Documents prepared under the MSA and NEPA do not replace other applicable requirements, such as the Regulatory Impact Review (RIR), which is prepared in compliance with EO 12866, or the Preliminary Regulatory Economic Evaluation (PREE) prepared in compliance with the Regulatory Flexibility Act (RFA). Rather, the public processes of the MSA and NEPA provide a venue for addressing all applicable requirements.

B. Frontloading. All relevant reviewing parties will participate early in the process to ensure that all significant legal and policy issues are identified to the extent practicable. Draft documents will be circulated to all Regional, Science Center, GC, and Council staff in key responsibilities, as well as Headquarters Staff (HQS) as appropriate, for review and comment. When the model is followed, drafts will be circulated prior to CFPs.

The term HQS refers to Headquarters staff who will be expected to review and/ or clear an action. Specifically, HQS include the NOAA Office of Strategic Planning (OSP); the Office of the General Counsel (GC); the NMFS Assistant Administrator for Fisheries (AA); the Offices of Sustainable Fisheries (OSF), Habitat Conservation (OHC), and Protected Resources (OPR); the Office of Law Enforcement (OLE); and the Department of Commerce Office of General Counsel (DOC OGC), as applicable.

C. Collaboration in the Preparation of Documents. Beginning at the earliest planning stage, it is essential that the staffs of the Councils and the NMFS Regional Offices collaborate in the preparation and drafting of documents. It should not be assumed that either the Councils or the Regional Offices have a particular responsibility for doing all of the staff work for any given required document. How this happens in each Council/Region pairing will be established by an operating agreement between the Council and the Regional Office.

D. Regional Operating Agreements with Councils. Individual needs and variations among regions should be accommodated while ensuring adequacy of process and documentation nationwide. There is a need for a clear understanding of roles, responsibilities, and obligations among all parties who have a role in ultimately clearing an action. Therefore, each Region will develop ROAs with its individual Councils, via the Council Executive Directors and in consultation with the appropriate Regional Attorney, that set forth the procedures and review/clearance processes it will use to ensure the preparation of adequate and complete documents.

E. Coordination with NMFS Headquarters. The Regions shall ensure that NMFS HQ offices have the opportunity to consider and provide input to decisions from the earliest stages. NMFS HQ will track decisions as they progress and will be expected early in the process to advise the Regional Offices of national policy concerns. In addition they will facilitate the consideration of decisions in process by other HQ reviewers (NOAA and DOC). A formal Communication Protocol will be established to facilitate such coordination.

Communication Protocol: NMFS HQ will work with the regions to establish a protocol to ensure good communication between the regions and HQ on all actions. The protocol will specify how and when the AA should be advised of issues relating to actions, as well as prioritizations of actions made pursuant to the joint

F. Council Action/NMFS Advisory Statements. When the model is followed, at CFPs the Regional Administrator will provide written feedback that the process and documentation are adequate and complete. These procedures are described in greater detail in section V, below.

G. Determinations Must be Logically Supported by the Facts and Analyses in the Record. Determinations regarding an action's legal and programmatic sufficiency must be supported by the underlying analyses. This applies to both substantive conclusions and determinations regarding procedural sufficiency.

Advisory Statements are letters to a Council from the RA indicating that the relevant documentation and process are adequate and complete for that step and that all necessary reviewers have been consulted. The Advisory Statement requires a determination of legal sufficiency by the Regional GC before its transmission to the Council.

H. Clear and Concise Documentation. Documents to support decisions must be clearly written and easily understandable by the public. Clear and concise writing will facilitate development of a clear and complete record and will ensure the development of enforceable regulations.

I. Expedited Approval and Implementation Process, Benefits of Conformance. Adherence to agency guidance on standards for analytical documents will expedite the approval and implementation process. Documentation that does not adhere to agency guidance (e.g., requires additional analysis or consideration of additional issues) may not be processed in an expedited manner. To the extent that Councils and NMFS staff follow the model set forth below, Council-recommended fishery management actions will benefit from more timely review, approval, and implementation; higher likelihood of approval; and decreased risk of litigation. In some circumstances, adherence to the model may enable

NMFS to approve an FMP or amendment earlier than day 95 of the Secretarial review process (i.e., between days 61 and days 95). In addition, adherence to the model will ensure greater accountability of NMFS and GC staff charged with reviewing Council documents and providing timely advice.

- J. Concurrent Reviews.** These reviews are encouraged throughout the process of developing documentation. Sequential reviews delay the decisions from moving forward in a timely manner.

III. Roles

This section describes the general roles of various parties involved in preparation and implementation of fishery management actions. Additional details regarding specific responsibilities for analysis, drafting, and review, including provisions for assuring appropriate coordination between HQ and regional offices and ensuring consistent interpretation and application of national policies, should be specified in the ROAs and Communication Protocol.

A. Roles in General

- **The Councils** are responsible under the MSA for the preparation of FMPs. The Councils initiate documentation to support fishery conservation and management decisions, and collaborate with the NMFS Regional Offices, and state agencies and other stakeholders as appropriate.
- **The NMFS Regional Staffs** are responsible for working as part of a team with Council staff to develop adequate and complete documentation, coordinating comments from HQ and Regional Staff such that the agency presents a unified message pursuant to procedures set forth in the ROA and Communication Protocol, advising NMFS HQ of decisions being made, and forwarding documentation to HQ. When the model is followed, the Regional Administrator (RA) will provide Advisory Statements confirming the adequacy and completeness of process and documentation as provided in these guidelines, or elevate to HQ and seek to resolve any issue preventing the issuance of an Advisory Statement, including any issue preventing a determination of legal sufficiency.
- **The NMFS Science Centers**, in addition to working as part of the NMFS Regional Staffs described above, and working as part of the team cooperating with the Councils, in some instances, the Science Centers make certifications regarding certain requirements, including overfishing definitions. The specific responsibilities of each Science Center are specified in the Region's ROAs.
- **At NMFS Headquarters**, the AA is responsible for (1) deciding whether to concur in the RA's decision regarding approval of Council-recommended FMPs/amendments; (2) deciding whether to approve final rules; (3) determining that the appropriate environmental impact review, EIS, or FONSI has been completed for the action; and (4) resolving with NOAA/GC HQ any issues elevated to HQ including issues preventing issuance of an Advisory Statement and issues related to a determination of legal sufficiency. Within HQ, the Office of Sustainable Fisheries (OSF) will track Regional Council and NMFS FMP activities; consult with and advise regions on the national policy implications of decisions; package and forward regional documents to the NMFS leadership; and facilitate communications to resolve problem issues raised during HQ or NOAA/DOC/OMB reviews, either as a participant on an FMAT or as otherwise appropriate.
- **NOAA GC** will advise the Councils and NMFS Regional Offices, through the NOAA GC Regional Offices, throughout the process of developing documentation and making and reviewing decisions. GC Regional Offices will provide legal advice to the RA confirming legal sufficiency of

documentation and process, and elevate to NOAA/GC HQ any issue preventing a determination of legal sufficiency. NOAA GC will also provide legal advice, through GCF, to NMFS leadership as appropriate, and will provide final approval for legal sufficiency of regulatory packages requiring clearance from NOAA HQ or DOC/GC. NOAA GC HQ will also work with NMFS HQ to resolve legal issues elevated from the Regions.

- **NOAA's NEPA Coordinator**, in the Office of Strategic Planning, Program Planning and Integration (PPI/OSP), reviews and provides final clearance for all EISs and FONSIIs. Additionally, the NOAA NEPA Coordinator is responsible for filing EISs with the Environmental Protection Agency and signing all transmittal letters that disseminate NEPA documents for public review.³

B. Specific Duties and Responsibilities

- 1. Regional Operating Agreements (ROAs).** Each Region will enter into written agreements with its Council/s, in consultation with the appropriate Regional Attorney, delineating specific roles and responsibilities necessary to conform with these OGs. The provisions of the ROAs must be sufficient to ensure compliance with the applicable requirements. The ROAs should also specify the roles of the Science Centers and may address interactions with Regional GC. If an existing Operations Plan explains the role of the Science Center, the ROA may simply reference the existing plan. The ROA should also address timing issues associated with the need to provide draft documents with sufficient lead time to allow for quality review and comment.
- 2. Communication Protocol.** NMFS HQ will work with the regions to establish a protocol to ensure good communication on all actions. The protocol will specify how and when the AA should be advised of issues relating to actions, as well as prioritizations of actions made pursuant to the joint planning process. The protocol will also establish steps that HQ will take to facilitate movement of actions through HQ review. Each HQ office that has responsibility for ensuring national consistency on fishery management activities is encouraged to develop protocols with its regional counterparts to set forth procedures for ensuring early involvement, providing opportunities for review, and communicating about how issues have been resolved. In addition, NMFS may wish to develop a Communication Protocol for communicating on issues and decisions with States, interstate commissions, and Indian Tribes that share management responsibility for affected resources.

IV. Standards

A. Standards for Assessing Adequacy of Content

NMFS currently relies on the following guidance documents that provide standards of adequacy for relevant applicable laws:

- FRA, APA: Document Drafting Handbook, OFR; Preparation of FR Documents, 2004.
- CZMA: NOS regulations at 15 CFR part 930.
- DQA: May 5, 2003, NMFS Section 515 Pre-dissemination Review Guidelines; NOAA's Information Quality Guidelines, October 1, 2002.
- ESA: ESA Consultation Handbook; ESA CFR regulations (50 CFR 402.01 et seq.).

³ Note that the NOAA NEPA Coordinator is a separate position from the NMFS NEPA Coordinator whose job is to assist at the Fisheries level with NEPA compliance.

- MSA: National Standards Guidelines 50 CFR 600 et seq.; Essential Fish Habitat (EFH) Final Rule (67 FR 2343, Jan. 17, 2002); EFH Consultation Guidance; Social Science Guidelines.
- NEPA: CEQ Regulations; NAO 216-6; EPA Guidance, “Reviewing Environmental Impact Statements for Fishery Management Plans,” Nov. 2004.⁴
- RFA, EO 12866: Guidelines for Economic Analysis of Fishery Management Actions (65 FR 65841, Nov. 2, 2000); GCF Guidance on EO 12866 compliance (Macpherson memo, 2/06/98).
- PRA: 5 CFR 1320 et seq.

B. Standardized Format, Templates, and Examples

OSF will develop and maintain a website that contains a comprehensive set of templates and examples of documents.

V. Model for Achieving RSP Goals

This model combines outcome-oriented guidance on requirements at various stages in the decision-making process with quality control checkpoints to ensure timely feedback on whether standards are being met. As a first step, the model identifies the relevant steps in the process, then identifies those steps at which critical decisions must be made that could ultimately affect the approvability of a fishery management action, i.e., CFPs. The full range of steps is set forth in Table 1, below. The model requires feedback at certain CFPs to ensure that frontloading is occurring and that documentation and process are adequate and complete to support decision making at the following steps: Step 2, the initial determination of which NEPA document to prepare; Steps 4, and 4(c) if relevant, Council identification of preferred alternative and adoption of a Draft Environmental Impact Statement (DEIS); Step 7, Council vote to recommend agency action; and Step 9, the step at which the RA prepares a Decision Memorandum to begin Secretarial review.

The model uses new terminology to describe the quality-based approach. The terminology and procedures of the model are explained below and in Table 1.

A. Terminology and Concepts.

- 1. Critical Feedback Points (CFPs).** A CFP is a step in the decision-making process at which critical decisions are made that could ultimately affect approvability of the action. The number of CFPs applicable to an action varies depending on the MSA and NEPA requirements that apply to that action. For an FMP with an EIS, there are 16 steps, and potentially three additional substeps if ESA or EFH consultations are necessary, four to five of which are CFPs. In contrast, other actions, such as a regulatory amendment for which a Categorical Exclusion (CE) is asserted, may have only ten steps, of which three are CFPs. The full list of steps and CFPs for each type of action are delineated in Table 1.

⁴ In addition to the published regulations, CEQ has developed a variety of guidance documents to assist drafters in preparing environmental analyses. Guidance on issues such as conducting scoping, assessing cumulative impacts, and addressing environmental justice requirements, among other topics, are available via the CEQ website at <http://ceq.eh.doe.gov/nepa/nepanet.htm>. Information regarding EPA's review process is available at EPA's website, http://www.epa.gov/compliance/resources/policies/nepa/nepa_policies_procedures.pdf.

2. Feedback Mechanisms. In this model, feedback mechanisms are used at steps 2, 4, 4(c) (if applicable), 7, and 9, to ensure that the necessary procedural steps have been completed and the documentation and analyses are sufficient to allow the process to proceed. These checks take the form of written documentation from the RA and are described in greater detail below.

a. Steps 2, 4, 4(c), and 7, Advisory Statements. At steps 2, 4, 4(c), and 7, the RA provides written feedback known as an “Advisory Statement,” in the form of a letter to the Council indicating the relevant documentation and process are adequate and complete for that step and that all necessary reviewers have been consulted. The Advisory Statement is accompanied by a written determination of legal sufficiency. As described below in paragraphs 4 and 5, assessments of adequacy and legal sufficiency will be based on applicable standards and will vary according to the point in the process at which the action is being evaluated. It is likely that requisite degrees of review will also vary according to the CFP. The ROAs and the Communication Protocol will specify procedures for ensuring that all necessary parties participate and provide feedback. Timing is a factor here – in order for the RA to sign an Advisory Statement, he/she must have draft documents available for review to circulate to all relevant reviewers sufficiently in advance of planned Council action.

The Advisory Statement is a new type of feedback mechanism created in these guidelines. It serves several important functions in RSP: (1) it ensures that concerns are raised at the points in the process where they can be addressed and corrected; (2) it makes agency reviewers accountable for raising issues early in the process; (3) it helps prevent unexpected outcomes and/or delays at the end of the process; and (4) it ensures that decisions reflect regional and national policy, thereby achieving consistency.

b. Step 9, RA’s Decision Memorandum. The RA’s Decision Memorandum to initiate Secretarial review will serve to certify that the analyses as presented by the Council support the final decision and were reasonably considered by the Council in accordance with the procedures and requirements in the OGs. The Decision Memorandum is accompanied by a Certification of Attorney Review from the Regional GC. If the documentation does not fully reflect the action the Council took, that concern should be conveyed to the Council. The Decision Memorandum to initiate Secretarial review is not a new document. However, this model identifies it as an appropriate tool for ensuring feedback is provided at the relevant CFP.

3. Action Plan. Under this model, a preliminary planning and vetting document called an “Action Plan” is prepared prior to the commencement of drafting the initial NEPA document (EA, CE, or Notice of Intent (NOI) to prepare an EIS) at step 2. The Action Plan describes the problem to be addressed and the objective to be met, indicates what type of NEPA analysis will initially be undertaken, includes an estimated timeline to implementation taking into account the possible need to reconcile differences and all relevant timing requirements (e.g., APA, ESA), describes a reasonable range of alternatives, provides an estimate of staff resource requirements (if practicable), identifies the core staff who will work on development of the action (the “fishery management action team, i.e., FMAT, defined below), and includes a checklist of other applicable laws indicating which are likely to raise issues that will need to be addressed, and, if possible, an initial plan for ensuring they are addressed. The other applicable laws that are most likely to be relevant include the following: MSA, ESA, MMPA, RFA, APA, EOs 12866 and 13272 (Economic Impacts), EO 13132 (Federalism), PRA, CZMA, and the DQA. Some fishery management actions may also be subject to additional laws, such as Indian Treaty Rights. The specific laws applicable to a particular fishery management action can only be identified on a case-by-case basis.

The Action Plan is a preliminary document intended to help guide the drafting of initial documentation for the planned action. It is not intended to constrain the development or revision of alternatives and/or analysis. It is likely that the range of alternatives may change as the process progresses and public participation occurs. The acceptability of such changes will be evaluated at subsequent CFPs. Councils may choose to participate and vote on the development of all or part of the Action Plan, or they may delegate the responsibility to their staff in the interest of time.

4. **“Adequate and Complete.”** The term “adequate and complete” refers to compliance with applicable standards as they relate to a particular point in the process. It includes both procedural and substantive requirements. Because different requirements will apply to different types of actions, and different requirements apply at different phases of the process, adequacy and completeness must be assessed on a case-by-case basis. A determination of “adequacy and completeness” includes a finding of “legally sufficiency” by Regional GC.
5. **“Legally Sufficient.”** An action is legally sufficient if: (1) there is a credible basis to conclude that the action is within the agency’s authority and consistent with any constraints imposed by statute or regulations; (2) there is a credible basis to conclude that the agency has complied with all applicable procedural requirements; and (3) the agency has articulated a rational explanation for the action in the administrative record.
6. **Other Applicable Law.** Various laws, administrative orders, and other directives must be addressed in context of fishery management action development, approval, and implementation. The relevant other applicable laws, some of which provide for specific consultative roles for States and Indian Tribes, may include the MSA, ESA, MMPA, RFA, APA, EOs12866 and 13272 (Economic Impacts), EO 13132 (Federalism), PRA, CZMA, Indian Treaty Rights, and the DQA. At each CFP, all relevant applicable law should be considered, and issues relevant to the particular CFP identified, considered, and addressed.
7. **Fishery Management Action Team (FMAT).** The FMAT is an interdisciplinary group that consists of core agency and Council staff, and others as necessary, who work on a particular action from the beginning. To the extent practicable, members of the team should be specified in the Action Plan for each action. The team should include representatives of each part of the agency that has a significant issue to address and that will be involved in review and implementation of the ultimate action, and should include or coordinate with HQS, described in greater detail below, as appropriate. The Action Plan will set forth the list of participants on the FMAT. Additional HQS will participate as specified in the Communication Protocol described below.
8. **Headquarters Staff (HQS):** The term HQS refers to Headquarters staff who will be expected to review and/or clear an action. Specifically, HQS includes the NOAA Office of Strategic Planning (OSP) and Office of the General Counsel (GC); the NMFS Assistant Administrator for Fisheries (AA) and Offices of Sustainable Fisheries (OSF), Habitat Conservation (HC), and Protected Resources (OPR); the Office of Law Enforcement (OLE); and the Department of Commerce Office of General Counsel (DOC OGC), as applicable.
9. **Technical Assistance:** The term “technical assistance” refers to the various forms of activities and advice described on pages 3-6 of the ESA Consultation Handbook. It consists of interactions between the action agency and the consulting agency concerning listed species issues prior to a consultation. In some cases, technical assistance will result in all information necessary to initiate informal consultation. In other instances, the action agency may have to provide additional information to the consulting agency.

10. Consultation Assessment: A “Consultation Assessment” is a new document that can be used during ESA section 7 consultations to facilitate coordination of ESA, MSA, and NEPA timelines and processes. The “Consultation Assessment” is a formal, written memorandum from the appropriate decision-maker in PR (either the RA or the PR ARA) to the SF ARA. It contains a summary of analyses and information developed during formal consultation, as well as preliminary conclusions that would form the basis for the Biological Opinion. It is not a substitute for a formal Biological Opinion.

Specifically, the Consultation Assessment would describe the action being analyzed and summarize the data gathered during the consultation, the analysis of that information, and discussions about the analyses that occurred among PR, SF, and the Councils (as appropriate). It would provide sufficient information to facilitate meaningful discussion about (i) the probable effects of a proposed fishery management action, or its alternatives, on listed species and designated critical habitat, and (ii) additional measures that could be taken to avoid potential risks to listed species and critical habitat. The Consultation Assessment would not include PR’s determinations regarding “jeopardy” or “destruction or adverse modification of critical habitat.” Those determinations would be provided in the subsequent Biological Opinion.

Under the model in these OGs, the Consultation Assessment would be completed at step 4(a) to document the results of the consultation on the preferred alternative. The information set forth in the Consultation Assessment would permit SF and the Council to make informed decisions about a proposed action or alternative prior to completion of a formal Biological Opinion

B. The Phases of FMP/Rulemaking Under the Model

This model identifies four basic phases to the development and implementation of any fishery management action. Whether an action is a rule or an FMP, and whether it will be supported by an EA, an EIS, or a CE, it is developed through the following four phases: (1) Phase I, Planning and Scoping; (2) Phase II, Preparation; (3) Phase III, Council Final Action; and (4) Phase IV, Secretarial Review and Implementation. For each of these phases the model identifies one or more sequentially numbered steps that are set forth in Table 1. This section provides a description of the procedures and steps in Table 1 and highlights actions required to conform to the model.

Phase I – Phase I is the planning and scoping phase. It contains up to two steps: the initiation of scoping, and a decision about which level of NEPA analysis to undertake initially. It is important to note that the term “scoping” has a legal meaning under NEPA, and that NEPA applies certain requirements to NEPA scoping. Because NEPA scoping is similar to MSA requirements for early public notice, these guidelines use the term “scoping” to refer to the broad range of activities that may take place in the initial stages of identifying a need for management and developing alternative solutions. As part of the scoping process, regulatory analysis and information collection requirements may be examined and preliminary estimates may be made of the costs and benefits of regulations. Concerns of affected States, including potential CZMP impacts, and Indian tribes are identified and public participation is encouraged. Consideration of potential impacts relating to the ESA, MMPA, EFH, and social impacts of the FMP also begins.⁵ Informal scoping activities can take place as part of informal early planning in Step 1. However, if a decision is made to publish an NOI to prepare an environmental impact statement, even if the purpose of publishing the notice is to solicit input on the appropriateness of an EIS, certain legal requirements will be triggered. Once a

⁵ We note that in some cases the ESA consulting agency will be the Fish and Wildlife Service (FWS) rather than NMFS OPR. In these cases, early cooperation with FWS is encouraged, but NMFS cannot commit to FWS’s adherence to the approach in the model.

decision is made to draft an NOI or another type of NEPA document, the action will be considered to fall within Step 2, “Initial Determinations,” and require an Action Plan.

During step 2, the Action Plan is completed prior to publication of an NOI, if applicable, or prior to drafting other NEPA documents. If an NOI has been used, the scoping summary report is prepared at the conclusion of the scoping period set forth in the NOI. The scoping summary report may modify some of the initial plans set forth in the Action Plan. Such modifications do not require formalized agency review at this point. Feedback at subsequent CFPs will address such changes.

Phase II – Phase II is the document development phase, and results in materials ready to support a final Council recommendation. It generally contains up to four steps, but might include up to seven steps if there is a need for EFH or ESA consultation. Step 3 consists of general frontloading activities and communications and results in the development of preliminary draft analytical documents to serve as a basis for selection of a preferred alternative and the Council’s adoption of the draft analyses for public review at Step 4. Depending on individual Council preferences and variations in management needs, the range of activities that take place during Step 3 can vary widely, in some cases encompassing years of iterative drafting, public hearings, public comment, and multiple options papers and white papers; in other cases consisting of a single staff-level draft. During Step 3, the Councils have broad discretion and few constraints on their ability to explore alternatives and develop recommendations. In many instances, the bulk of Council activity may take place at Step 3. Step 3 is also critically important for the frontloading of ESA and EFH information. If no EIS is being prepared and no protected resources or EFH issues are present, the Council may choose to proceed directly from Step 3 to Step 7, the vote on recommended action. However, this model encourages the circulation of all such draft analyses for public comment while at the Council level.

Because applicable laws, including the MSA, NEPA, the ESA, and the APA, encourage the identification of a preferred alternative, limit our ability to select an alternative that has not been fully analyzed, and impose strict timelines on the decision making process, in this model, the preferred alternative is identified at Step 4 (i.e., prior to the publication of the DEIS), except in limited circumstances where the RA and GC agree that there appear to be no significant environmental or economic issues. In other words, once a preferred alternative is identified, the required processes of the MSA and other applicable law should move expeditiously forward through the MSA approval and implementation system and few, if any, additional modifications should be made to the preferred alternative. The work accomplished during steps 1-3 should facilitate expeditious review and implementation later in the process. If at Step 4 the preferred alternative would trigger the need for formal consultation under the ESA or an EFH consultation, then under the model, such consultations must take place on the preferred alternative, underlying analyses must be revised as necessary, and the Council may need to take another vote to select a preferred alternative based on the revised analyses. The consultation would conclude with production of a Consultation Assessment 90 days after initiation. The 45-day period for preparing the BO would not begin until SF requests PR to begin drafting. In cases where an EIS is being prepared, the 45-day preparation of the BO could run concurrently with the 45-day public comment period on the DEIS.

Once the draft NEPA analyses have been completed, they should be circulated for public review. When an EIS is being prepared, publication of the DEIS for public comment is mandatory under NEPA. Circulating the draft EA or CE for public comment is encouraged.

Phase III – During Phase III, the Council takes its final actions to select and recommend management measures to NMFS. There are two steps in this phase: (1) the Council’s vote to adopt an FMP or regulatory amendment, followed by (2) staff work to prepare the recommendation for Secretarial review. Under this model, prior to the Council’s vote, draft documents are reviewed by the RA, GC, and other necessary staff to determine whether they are complete and legally sufficient to support decision-making. The analytical work must be complete prior to the Council’s vote; however, some additional tasks may remain to be completed after the vote. For instance, an ROA may provide for Council staff to prepare the CZMA letters, finalize regulatory text, or perform other tasks to finalize the Council’s recommendation. The degree of complexity of a recommended measure could affect the amount of time necessary to finalize a package. For instance, if regulatory text has not been completed, or must be revised, after the Council’s final vote, a significant amount of time could be necessary to complete this task. This type of timing issue should be factored, to the extent possible, into the Action Plan at Step 2. Note that parts of Phase III and Phase IV may occur simultaneously in that any remaining Council responsibilities necessary to prepare the recommendation package for formal submission may be completed at the same time that agency staff complete their own responsibilities necessary to prepare the Council’s recommendation for formal submission.

Phase IV – During Phase IV, the Secretary reviews and approves, or disapproves, the Councils’ recommendations. This phase encompasses the full range of agency activities necessary to package, review, and conduct proposed and final rulemaking on recommended fishery management measures. After the Council has completed its recommendation, agency staff complete their responsibilities necessary to prepare the Council’s recommendation for formal submission. These activities occur as part of Step 9 and may occur simultaneously with Step 8, during which Council staff make final preparations for formal submission. As in Step 8, it is important to note that the degree of complexity of a recommended measure could affect the amount of time necessary to finalize a package for review. NMFS initiates formal public review of the Council’s proposed measures by publishing in the *Federal Register* the Notice of Availability (NOA) of an FMP/FMP amendment and/or the proposed rule to implement the Council’s recommendation. At this step, NMFS also files the FEIS with the Environmental Protection Agency (EPA). The MSA requires that, for FMPs and FMP amendments, NMFS must publish the NOA of the FMP immediately (within 5 days) for a 60-day comment period. Within 30 days of the close of the comment period, the agency must approve, partially approve, or disapprove the Council’s recommendation. NMFS will send a letter to the appropriate Council notifying it of the official start date of the Secretarial review period. After reviewing public comment received on the NOA and/or proposed rule and on the Final Environmental Impact Statement (FEIS), the RA makes his/her decision regarding approval/disapproval of the action to the AA, and the AA determines whether to concur. The final step for implementing the approved final rule is to send it to the Office of the Federal Register for publication.

C. Tables

Table 1: Model Process for Achieving Goals of RSP

Unless otherwise noted, the procedures set forth below are appropriate to apply to all Council-recommended MSA fishery management actions. Certain provisions may not apply to actions taken directly at the agency level. If a provision applies only to a certain type of action depending on its level of NEPA analysis or status as an FMP versus regulatory amendment, such distinction will be noted.

STEP/CFP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	DOCUMENTATION	COMMENT
<i>Phase I: Planning and Scoping</i>						
1	Early Problem Identification and Planning (optional) ⁶	<u>All:</u> <ul style="list-style-type: none"> Council RA/RO Staff OSF Director signature on NOI 	<u>All:</u> <ul style="list-style-type: none"> Document Drafting Handbook, OFR Preparation of <i>Federal Register</i> (FR) Documents MSA public meeting requirements CEQ Regulations NAO 216-6 ESA Consultation Handbook EFH Consultation Guidance 		<u>All:</u> <ul style="list-style-type: none"> Notice of public meetings if any ESA Technical Assistance, informal consultation or both⁷ 	<p>Early input from affected States and Indian tribes should be solicited/encouraged.</p> <p>If ESA-listed species subject to FWS jurisdiction are present, early efforts should be made to coordinate with FWS and request their cooperation with our model, to the extent practicable.</p> <p>*If the decision is made to publish an NOI, even as an early planning document, proceed to step 2 before publishing. (The NOI is the first step in development of an EIS. Therefore, the NOI should be reviewed for adequacy and completeness, and appropriate parties assembled on the FMAT before publishing).</p>

⁶ The Early Planning step is an optional step that can precede the decision on what type of NEPA analysis to undertake. While the decision to engage in various types of pre-planning is optional, if these activities are undertaken, some of them involve legal requirements that must be met as set forth in this table.

⁷ The term "technical assistance" refers to the various forms of activities and advice described on page 3-6 of the ESA Consultation Handbook.

STEP/CFP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	DOCUMENTATION	COMMENT
2 CFP	Initial Determination	<u>All:</u> <ul style="list-style-type: none"> FMAT (includes Council, GC, and Regional Staff as appropriate) Consultation with HQS⁸ Council (may approve action plan) RA (concur in action plan) OSF Director signature on NOI 	<u>All:</u> <ul style="list-style-type: none"> CEQ Regulations NAO 216-6 Document Drafting Handbook, OFR Preparation of <i>Federal Register</i> (FR) Documents ESA Consultation Handbook EFH Consultation Guidance 	<u>All:</u> <ul style="list-style-type: none"> RA provides Advisory Statement on Action Plan prior to drafting NOI, DEIS, EA, RIR/PREE, social impact assessment. <u>EIS:</u> <ul style="list-style-type: none"> 30-day minimum comment period on NOI 	<u>All:</u> <ul style="list-style-type: none"> Advisory Statement Action Plan⁹ ESA Technical Assistance, informal consultation, or both <u>EIS:</u> <ul style="list-style-type: none"> NOI Scoping Meetings/ Notices (optional) Scoping Summary Report (encouraged) 	
<i>Phase II: Preparation of the Action</i>						
3	Frontloading/ Communication activities	<ul style="list-style-type: none"> FMAT HQS as appropriate 	<ul style="list-style-type: none"> CEQ Regulations NAO 216-6 ESA Consultation Handbook EFH Consultation Guidance <p>*Although no additional standards for documentation apply at this point, drafters should be cognizant of the standards that will apply at steps 4 and 7. See below.</p>	*Note that for EA/CE actions, this may be the last step prior to the Council's vote at Step 7.	Preliminary analysis (DEIS, EA, CE) ESA Technical Assistance, informal consultation or both.	Note that there are no specific requirements associated with this step. The range of activities during step 3 can vary widely depending on council practice and individual management needs, in some cases encompassing years of iterative drafting, public hearings, public comment, and multiple options papers and white papers; in other cases consisting of a single staff-level draft.

⁸ The term HQS refers to Headquarters staff who will be expected to review and/or clear an action. Specifically, HQS include the NOAA Office of Strategic Planning, Program Planning and Integration (PPI/OSP); the NOAA Office of the General Counsel (GC); the NMFS Assistant Administrator for Fisheries (AA) and Offices of Sustainable Fisheries (OSF), Habitat Conservation (HC), and Protected Resources (PR); the Office of Law Enforcement (OLE); and the Department of Commerce Office of General Counsel (DOC OGC).

⁹ The Action Plan needs to be in writing and include an Advisory Statement from the RA. The Action Plan must describe the problem to be addressed and the objective to be met, indicate what type of NEPA analysis will initially be undertaken, include an estimated timeline to implementation taking into account the possible need to reconcile differences and all relevant timing requirements (e.g., APA), describe an initial reasonable range of alternatives, provide an estimate of staff resource requirements (if practicable), identify the participants assigned to the FMAT, and include a checklist of other applicable laws indicating which are likely to raise issues that will need to be addressed, [and, if possible, an initial plan for ensuring they are addressed]. The other applicable laws that are most likely to be implicated include the following: MSA, ESA, MMPA, EFH, RFA, APA, Executive Orders 12866 and 13272 (Economic Impacts), Executive Order 13132 (Federalism), PRA, CZMA, and the DQA. Some fishery management actions may also implicate additional laws, such as Indian Treaty Rights. The laws applicable to a particular fishery management action must be identified on a case-by-case basis. The Advisory Statement from the RA indicates that GC has found the process set forth to be legally sufficient and that the RA agrees to the commitments of agency staff and resources that appear to be necessary for the development of the action.

STEP/CFP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	DOCUMENTATION	COMMENT
4 CFP	Identification of preferred alternative/ Adoption of draft analysis	<u>All:</u> <ul style="list-style-type: none"> FMAT (includes Council, GC, and Regional Staff as appropriate) Consultation with HQS Council (approves) <u>EIS:</u> <ul style="list-style-type: none"> RA (concurrence) 	<u>All:</u> <ul style="list-style-type: none"> CEQ Regulations NAO 216-6 National Standards Guidelines (63 FR 24212, May 1, 1998) Social science guidelines Guidelines for Economic Analysis of Fishery Management Actions (65 FR 65841, Nov. 2, 2000) EFH Final Rule (67 FR 2343, Jan. 17, 2002) EFH Consultation Guidance ESA Consultation Handbook ESA regulations, 50 CFR 402.01 et seq. NMFS Sec. 515 Pre-dissemination review guidelines, May 5, 2003 NOAA Information Quality Guidelines, Oct. 1, 2002 	<u>All:</u> <ul style="list-style-type: none"> Advisory Statement¹⁰ must be available to Council prior to decision. *This means that all other documents listed in the documents column must be available with sufficient lead time to allow review, and clearances if necessary.	<u>All:</u> <ul style="list-style-type: none"> Advisory Statement Preliminary Draft NEPA document (preliminary DEIS, EA or CE) DFMP or Draft reg. amendment to the extent practicable PREE Draft RIR Draft regulatory text (to the extent practicable or necessary) Science Center certification as applicable ESA Technical Assistance, informal consultation if appropriate Draft Social Impact Assessment DQA Predissemination review form signed at regional level 	At the end of Step 4, the Council has identified a preferred alternative that is covered by the NEPA Analysis. If there are no ESA/EFH duties, proceed to step 5 and publish the DEIS, or to step 7 if appropriate. <i>If the preferred alternative is subject to ESA formal consultation requirements or EFH consultation requirements, initiate such consultation and proceed to step 4(a).</i> <u>*EA/CE:</u> For EAs/CEs, this step may occur simultaneously with Council recommendation of agency action (at step 7) if appropriate.
(a)	ESA/EFH consultations on preferred alternative	<u>All:</u> <ul style="list-style-type: none"> Regional Staff Consultation with HQS FWS (if appropriate)¹¹ 	<ul style="list-style-type: none"> EFH Final Rule (67 FR 2343, Jan. 17, 2002) EFH Consultation Guidance ESA Consultation Handbook ESA regulations, 50 CFR 402.01 et seq. 	*Note that receipt of EFH Conservation Recommendations triggers a 30 day period within which a written response must be submitted. In some instances, an "interim response" will be necessary. *Formal ESA Consultation must be completed within 90 days of initiation unless extended by mutual agreement.	<ul style="list-style-type: none"> Completed Consultation phase of formal ESA § 7 consultation and documentation thereof with "Consultation Assessment"¹² Completed EFH assessment, and Conservation Recommendations if appropriate Response to EFH Conservation Recommendations, or Interim Response, if appropriate 	

¹⁰ "Advisory Statements" are in the form of a letter to the Council indicating that the relevant documentation and process are adequate and complete for that step and that all necessary reviewers have been consulted. Because an Advisory Statement requires a determination of legal sufficiency, issues preventing the determination of legal sufficiency also prevent issuance of the Advisory Statement.

¹¹ FWS may not agree to operate according to our OGs, but we can request – especially if we contacted early via FMAT.

¹² The "Consultation Assessment" is a formal, written memorandum from the appropriate decision-maker in PR (either the RA or the PR ARA) to the SF ARA. It contains a summary of the analysis, information, and conclusions of a formal consultation that would form the basis for the Biological Opinion. Those determinations would be provided in the subsequent Biological Opinion. Under the model in these OGs, the Consultation Assessment would be produced at step 4(a) to document the results of the consultation on the preferred alternative.

STEP/CFP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	DOCUMENTATION	COMMENT
(b)	Revise analysis as necessary based on consultations	<u>All:</u> <ul style="list-style-type: none"> FMAT (includes Council, GC, and Regional Staff as appropriate) Consultation with HQS 	<u>All:</u> <ul style="list-style-type: none"> CEQ Regulations NAO 216-6 National Standards Guidelines (63 FR 24212, May 1, 1998) Social science guidelines Guidelines for Economic Analysis of Fishery Management Actions (65 FR 65841, Nov. 2, 2000) 			If, based on the Consultation Assessment, it appears that modifications to the preferred alternative will be necessary (RPAs likely), the revised analysis must include alternatives that incorporate such modifications. It is critical that NMFS and the Council work collaboratively in developing alternatives that will avoid a jeopardy opinion and avoid the need for repeated cycles of the consultation process.
(c) CFP	Revote on preferred alternative as necessary	<u>All:</u> <ul style="list-style-type: none"> FMAT (includes Council, GC, and Regional Staff as appropriate) Consultation with HQS Council (approves) <u>EIS:</u> <ul style="list-style-type: none"> RA (concurrence) 	<u>All:</u> <ul style="list-style-type: none"> CEQ Regulations NAO 216-6 National Standards Guidelines (63 FR 24212, May 1, 1998) Social science guidelines Guidelines for Economic Analysis of Fishery Management Actions (65 FR 65841, Nov. 2, 2000) EFH Final Rule (67 FR 2343, Jan. 17, 2002) EFH Consultation Guidance ESA Consultation Handbook ESA regulations, 50 CFR 402.01 et seq. NMFS Sec. 515 Pre-dissemination review guidelines, May 5, 2003 NOAA Information Quality Guidelines, Oct. 1, 2002 	<u>All:</u> <ul style="list-style-type: none"> Advisory Statement, must be available to Council prior to decision *This means that draft documents must be available with sufficient lead time to allow review, and clearances if necessary. *Note that receipt of EFH Conservation Recommendations triggers a 30 day period within which a written -response must be submitted. In some instances, an "interim response" will be necessary.	<u>All:</u> <ul style="list-style-type: none"> Advisory Statement Draft NEPA document (DEIS, EA or CE) DFMP or Draft reg. amendment to the extent practicable PREE Draft RIR ESA Consultation Assessment (produced at step 4(a)) Draft regulatory text (to the extent practicable or necessary) Science Center certification as applicable EFH assessment and Conservation Recommendations (produced at step 4(a)) Response to EFH Conservation Recommendations, or Interim Response, if appropriate DQA Predissemination review form signed at regional level 	<u>All:</u> For NEPA purposes, draft NEPA document should include for public review the information contained in the Consultation Assessment. <u>EA:</u> After final selection of preferred alternative, SF should request PR to initiate drafting of Draft B.O. (DBO) on preferred alternative. Drafting should be complete within 45 days
5	File DEIS w/EPA <u>EA/CE:</u> n/a	<u>EIS:</u> <ul style="list-style-type: none"> RA, RO Staff OSF (transport document to EPA) PPI F 	<u>EIS:</u> <ul style="list-style-type: none"> EPA filing standards NAO 216-6 Examples Package CEQ Regulations 	<u>EIS:</u> <ul style="list-style-type: none"> 45-day minimum comment period begins File with EPA by 3:30 Friday, the week prior to publishing At least 90 days must pass after publication of DEIS before agency can take final action PR drafts DBO within 45 days of filing DEIS with EPA 	<u>EIS:</u> <ul style="list-style-type: none"> Memo from F to NOAA PPI/OSP Memo from NOAA PPI/OSP to EPA "To All Interested Parties" Memo EPA publishes NOA on DEIS in FR 	

STEP/CFP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	DOCUMENTATION	COMMENT
6	Public Comment on DEIS	<u>EIS:</u> FMAT and/or Council Staff EPA	<u>EIS:</u> • CEQ Regulations • NAO 216-6 • EPA Guidance	<u>EIS:</u> • Comment period on DEIS must be at least 45 days	<u>EIS:</u> • Public Hearings/Meetings/Written Comments • FR notices advising public of meetings	<u>EIS:</u> If EPA rates the DEIS at a "3" (inadequate), then a new DEIS must be prepared and circulated for public comment.
	<u>EA/CE:</u> Optional	<u>EA/CE, if opted:</u> FMAT and/or Council Staff	<u>EA/CE, if opted:</u> • CEQ Regulations • NAO 216-6	<u>EA/CE, if opted:</u> n/a	<u>EA/CE, if opted:</u> • Public Hearings/Meetings/Written Comments • FR notices advising public of meetings	
<i>Phase III: Council Final Action</i>						
7 CFP	Council Adoption of FMP or Reg. amendment	<u>All:</u> • Council/Staff • RA, RO Staff • HQS (consult as appropriate) • Public Comment at meeting	<u>All:</u> • CEQ Regulations • NAO 216-6 • National Standards Guidelines • Social science guidelines • Guidelines for Economic Analysis of Fishery Management Actions (65 FR 65841, Nov. 2, 2000) • EFH Final Rule (67 FR 2343, Jan. 17, 2002) • EFH Consultation Guidance • ESA Consultation Handbook • ESA regulations, 50 CFR 402.01 et seq. • NMFS Sec. 515 Pre-dissemination review guidelines, May 5, 2003 • NOAA Information Quality Guidelines, Oct. 1, 2002	<u>All:</u> • Advisory Statement, must be available to Council prior to adoption. *This means that all other documents listed in the documents column must be available with sufficient lead time to allow review, and clearances if necessary.	<u>EIS or EA:</u> • Advisory Statement • Preliminary Final NEPA document (either preliminary final EIS or draft EA) with summary of comments and responses thereto • PREE • Draft RIR • Consultation Assessment if preferred alternative subject to ESA section 7 (or DBO if available) • Draft regulatory text (to the extent practicable or necessary) • Final Responses to EFH Conservation Recommendations if not already provided • Social Impact Assessment <u>CE:</u> • All of the above except with a CE memo signed by RA with cc: to OSP rather than DEIS or EA	<u>All:</u> "Adequacy and completeness" must be judged based on a case-by-case basis. In some cases, "completeness" may require preparation of draft regulatory text. If inadequacies are identified, including issues that prevent the determination of legal sufficiency, action must stop until corrected, and issues must be elevated for resolution. <u>EIS:</u> Note that for EIS- based actions subject to ESA section formal consultation, a DBO will probably be available since it is produced during the 45 day comment period on the DEIS. <u>EA:</u> Confirm that Draft EA supports FONSI.
8	Council Completion of recommendation package	<u>All:</u> • Council/Staff • RA, RO Staff • GC		<u>All:</u> • Steps 8 and 9 may begin simultaneously *Note that complex requirements may take more time to finalize for submission.	<u>All:</u> • Final FMP or Reg. amendment • Identification of APA issues and/or prepare Proposed Rule • CZMA letters <u>For proposed rules only:</u> • Draft IRFA or Draft RFA certification • Draft RIR	

STEP/CFP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	DOCUMENTATION	COMMENT
<i>Phase IV: Secretarial Approval</i>						
9 CFP	Completion of Decision Package	<u>All:</u> <ul style="list-style-type: none"> Council Staff RO Staff GC HQS (as appropriate) Regs unit, if possible 	<u>All:</u> <ul style="list-style-type: none"> CEQ Regulations NAO 216-6 National Standards Guidelines (63 FR 24212, May 1, 1998) Social science guidelines Guidelines for Economic Analysis of Fishery Management Actions (65 FR 65841, Nov. 2, 2000) EFH Final Rule (67 FR 2343, Jan. 17, 2002) ESA Consultation Handbook ESA regulations, 50 CFR 402.01 et seq. Document Drafting Handbook, OFR Preparation of FR Documents GCF Guidance on EO 12866 compliance (Macpherson memo, 2/10/98) Examples Package NMFS Sec. 515 Pre-dissemination review guidelines, May 5, 2003 NOAA Information Quality Guidelines, Oct. 1, 2002 PRA Guidance 	<u>All:</u> EO 12866: <ul style="list-style-type: none"> GCF submits listings to DOC/OMB the first Wednesday of the month OMB gets 10 days to object to significance determination 90 days to complete review of significant rules If subject to ESA consultation, PR has 45 days from submission of request to confirm PBO <u>PRA:</u> <ul style="list-style-type: none"> OMB gets 90 days to complete review CZMA-states get 90 days to respond to consistency determination As early as possible, draft Proposed Rule should be sent to regs unit <u>CE:</u> <ul style="list-style-type: none"> OSP must receive copies of CEs within 3 months 	<u>All:</u> <ul style="list-style-type: none"> Decision Memo and determinations, determined to be legally sufficient by Regional GC. Certification of Overfishing Definition, if applicable Science Center Certifications as applicable Draft Memo, "F to DOC OGC" [approval] for package Draft NOAA GC memo Draft OSF to SBA memo, if applicable E.O 12866 Submission Form, if applicable Congressional Review Act (major/not major) PRA document (SF 83-1) DQA Predissemination review form signed at regional level <u>Proposed rules only:</u> <ul style="list-style-type: none"> IRFA or RFA certification RIR SBA transmittal 	<u>All:</u> RA must determine that final decision as presented is supported by final analysis and is complete, adequate and consistent with Council decision. <p>If RA determination is negative, action stops until corrective measures are take, e.g., may have to do SDEIS and take more comment.</p> <p>*For actions subject to formal ESA consultation, SF must request PR to review DBO for confirmation as Final BO.</p>
10	Begin MSA Secretarial Review <u>Reg. Am:</u> n/a	<u>FMP:</u> <ul style="list-style-type: none"> RA/RO Staff Councils 	<u>FMP:</u> <ul style="list-style-type: none"> Examples Package 	<u>FMP:</u> <ul style="list-style-type: none"> Transmit Date Begins MSA timelines 	<u>FMP:</u> Establish Transmit Date: <ul style="list-style-type: none"> Letter establishing transmit date RA to OSF memo transmitting NOA on FMP 	<p>*Note: ROA should establish who sends letter. If council doesn't send, then agency must ensure Council is notified.</p>

STEP/CFP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	DOCUMENTATION	COMMENT
11	<p>Publication of NOA (FMP), Proposed Rule</p> <p>File FEIS</p>	<p><u>EIS:</u> HQS, NOAA SP, EPA</p> <p><u>EA:</u> HQS, NOAA SP</p> <p><u>CE:</u> HQS</p> <p><u>Proposed Rule:</u> Regs unit</p>	<p><u>EIS:</u></p> <ul style="list-style-type: none"> EPA filing Standards Examples Package <p><u>EA/CE:</u></p> <ul style="list-style-type: none"> Examples Package <p><u>Proposed Rule:</u></p> <ul style="list-style-type: none"> Document Drafting Handbook, OFR Preparation of FR Documents 	<p><u>FMP:</u></p> <ul style="list-style-type: none"> NOA on FMP must publish within 5 Days of Transmittal Publication of NOA starts 90 day clock (60 days of comment, decision on FMP within 30 days CPE) <p><u>Proposed Rule:</u></p> <ul style="list-style-type: none"> 15-60 day comment period on PR (30 days recommended) Final Rule to issue within 30 days CPE on Proposed Rule <p><u>EIS:</u></p> <ul style="list-style-type: none"> The 30-day cooling off period of FEIS must be completed prior to the AA's decision on the FMP or final rule, whichever comes first. 	<p><u>All:</u></p> <ul style="list-style-type: none"> Fax copy of Federal Register to designated contact in State/Tribal offices <p><u>EIS:</u></p> <ul style="list-style-type: none"> F to NOAA PPI/OSP memo NOAA PPI/OSP to EPA memo "To All Interested Parties" Memo NOA of FEIS published in FR by EPA Final BO, if applicable 	<p>*Note: Whenever possible, it is encouraged for the comment periods on the FMP and the proposed rule to run concurrently.</p>
12	<p><u>FMP:</u> RA Decision to approve/disapprove FMP</p> <p><u>Reg. Am:</u> RA Decision to approve/disapprove final rule.</p>	<p><u>All:</u></p> <ul style="list-style-type: none"> RA, RO Staff Consult as necessary with HQS 	<p><u>All:</u></p> <p>Examples Package</p> <ul style="list-style-type: none"> NMFS Sec. 515 Pre-dissemination review guidelines, May 5, 2003 NOAA Information Quality Guidelines, Oct. 1, 2002 	<p><u>FMP:</u></p> <ul style="list-style-type: none"> Final Decision Memo, determined to be legally sufficient by Regional GC, on FMP and NEPA document must be signed by Day 95/30 days after CPE on NOA of FMP <p><u>Reg. Am:</u></p> <ul style="list-style-type: none"> No final action until CZMA time has tolled Final Rule due out within 30 days CPE on Proposed Rule 	<p><u>FMP/EIS:</u></p> <ul style="list-style-type: none"> Decision Memo and Determinations, determined to be legally sufficient by Regional GC NEPA document as approved by RA <p><u>FMP/EA:</u></p> <ul style="list-style-type: none"> All of the above, and Final BO, if applicable, and Draft FONSI Memos (F to PPI/OSP; "To All Interested Parties" memo) <p><u>Reg. Am/EIS:</u></p> <ul style="list-style-type: none"> Decision Memo and Determinations, determined to be legally sufficient by Regional GC Final Rule - includes responses to public comments NEPA document as approved by RA FRFA or certification DQA Pre-dissemination review form signed at regional level Issues Advisory if applicable <p><u>Reg. Am/EA:</u></p> <ul style="list-style-type: none"> All of the above, and Final BO, if applicable, and Draft FONSI Memos (F to PPI/OSP; "To All Interested Parties" memo) 	<p>*Note: The RA's approval of the EA/FONSI is not the final determination of FONSI - that authority has not been delegated.</p>

STEP/CFP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	DOCUMENTATION	COMMENT
13	<p><u>FMP:</u> AA concurrence on RA Decision to approve/disapprove FMP.</p> <p><u>Reg. Am:</u> AA concurrence on RA Decision to approve/disapprove final rule.</p> <p><u>EIS/EA:</u> AA sign final NEPA document (ROD or FONSI)</p>	<p><u>All:</u> HQS</p>	<p><u>All:</u> CEQ regs and NAO 216-06</p>	<p><u>All:</u></p> <ul style="list-style-type: none"> Decision Memo, determined to be legally sufficient by Regional GC <p><u>FMP:</u></p> <ul style="list-style-type: none"> Day 95 or before; No final action until CZMA time has tolled or State concurrence received <p><u>w/EIS:</u></p> <ul style="list-style-type: none"> At least 90 days after NOA (DEIS) At least 30 days after NOA (FEIS) <p><u>w/EA:</u></p> <ul style="list-style-type: none"> FONSI Must be signed by Day-95/30 days after CPE on NOA of FMP <p><u>w/CE:</u></p> <ul style="list-style-type: none"> Day 95 or before <p><u>Reg. Am:</u></p> <ul style="list-style-type: none"> No final action until CZMA time has tolled or State concurrence received Final Rule due out within 30 days CPE on Proposed Rule <p><u>w/EIS:</u></p> <ul style="list-style-type: none"> At least 90 days after NOA (DEIS) At least 30 days after NOA (FEIS) 	<p><u>All:</u></p> <ul style="list-style-type: none"> AA signed concurrence <p><u>EIS:</u></p> <ul style="list-style-type: none"> ROD <p><u>EA:</u></p> <ul style="list-style-type: none"> PPI/OSP concurrence on FONSI <p><u>FMP only:</u></p> <ul style="list-style-type: none"> Letter to Council 	
14	<p><u>FMP:</u> RA decision on final rule to implement FMP</p> <p><u>Reg. Am:</u> n/a</p>	<p><u>FMP:</u></p> <ul style="list-style-type: none"> RA, RO Staff Consult as necessary with HQS 	<p><u>FMP:</u></p> <ul style="list-style-type: none"> Examples Package Document Drafting Handbook, OFR Preparation of FR Documents NMFS Sec. 515 Pre-dissemination review guidelines, May 5, 2003 NOAA Information Quality Guidelines, Oct. 1, 2002 	<p><u>FMP:</u></p> <ul style="list-style-type: none"> Final Rule due out within 30 days close of comment period on Proposed Rule No final action until CZMA time has tolled 	<p><u>FMP:</u></p> <ul style="list-style-type: none"> Decision Memo and Determinations on final rule, determined to be legally sufficient by Regional GC, to F recommending promulgation of the Final Rule F to DOC OGC [approval] memo F to NOAA GC [approval] memo Final Rule - includes responses to public comments FRFA/RFA certification DQA Predissemination review form signed at regional level Issues Advisory if applicable 	<p><u>FMP:</u> Steps 14 and 15 may be compressed with steps 12 and 13</p> <p>*If final NEPA document was signed at FMP approval, decision package on Final Rule must also address NEPA to ensure the previous determination is still applicable.</p>

STEP/CFP	DESCRIPTION	WHO	STANDARDS	TIMING ISSUES	DOCUMENTATION	COMMENT
15	AA concurrence on final rule to implement FMP <u>Reg. Am:</u> n/a	<u>FMP:</u> HQS		<u>All:</u> • Decision Memo, determined to be legally sufficient by Regional GC <u>FMP:</u> • No final action until CZMA time has tolled <u>FMP/EIS:</u> • At least 90 days after NOA (DEIS) • At least 30 days after NOA (FEIS)	<u>All:</u> • AA signed concurrence	<u>FMP:</u> Steps 14 and 15 may be compressed with steps 12 and 13 *If final NEPA document was signed at FMP approval, decision package on Final Rule must also address NEPA to ensure the previous determination is still applicable.
16	Publication of Final Rule, or notice of agency decision on FMP, in FR	<u>All:</u> • SF5 • RA/RO and Council Staff as appropriate • OFR	<u>All:</u> • Document Drafting Handbook, OFR • Preparation of FR Document	<u>All (Final rule only):</u> • 30-day delay in effectiveness unless waived under APA • Publish within 30 days CPE on Proposed Rule	<u>All (Final Rule Only):</u> Submit Rule to Congress (Cong. Review Act) • Letters to Congress • Published final rule • Small entity compliance guide	*Note: Coordination with the States is encouraged. Copies of documents may be faxed to designated state contacts. NMFS and Councils may jointly request States to implement complementary measures where appropriate. *FR notice should refer to availability of ROD

TABLE 2: Summary of Steps and Feedback Points in Model Process

Step	Reg. Am w/EA or CE	FMP w/EA or CE	Reg. Am w/EIS	FMP w/EIS
1. Planning	X	X	X	X
2. Initial Draft/Action Plan	X	X	X	X
3. Frontloading	X	X	X	X
4. Preferred Alternative; DEIS (a) - (c)			X	X
(*If consultations, substeps (a) - (c))	(X)	(X)	(X)	(X)
5. File DEIS			X	X
6. Public Comment on DEIS			X	X
7. Council Vote	X	X	X	X
8. Council Staff Clean-up	X	X	X	X
9. Agency Preparations	X	X	X	X
10. Transmit		X		X
11. Publish Proposal	X	X	X	X
12. RA – Decision 1	X	X	X	X
13. AA – Decision 1	X	X	X	X
14. RA– Decision 2		X		X
15. AA – Decision 2		X		X
16. Publish final decision	X	X	X	X