These examples illustrate that NEPA's procedural steps of scoping, stakeholder engagement, assessment of indirect and ecosystem effects and alternatives analysis can contribute to finding solutions to fishery management challenges. In each case the use of environmental alternatives analysis added to what had been considered by the agency and councils and expanded the frontier of ocean ecosystem management.

Conclusion

The reauthorized Magnuson-Stevens Act requires new procedures for complying with NEPA and with the Council on Environmental Quality regulations. NMFS began the process of developing procedures a year ago and has been working internally to develop proposed rules. NMFS's public presentations on the proposal seem to be considering limiting the public's ability to comment and allowing the councils to approve alternatives that have not been presented to the public.

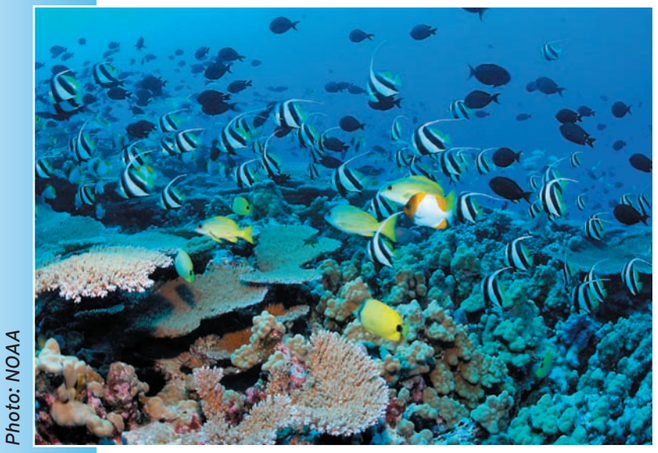

Photo: NOAA

Any constraint on public participation is in fundamental conflict with NEPA's emphasis on transparency, accessibility and engagement of stakeholders. The preceding examples demonstrate that public participation contributes new and expanded ideas for solving fishery management problems and pushes managers to consider an array of alternatives, including methods to evaluate the wider ecosystem impacts of fishing decisions on non-target species, important habitats or the prey of other species.

NEPA is a tool to help decision makers engage the public, consider alternatives, and understand the consequences of proposed actions. If used effectively by fishery managers, it can be both a sword and a shield: to move toward ecosystem-based approaches to fishery management, and to shield against challenges to administrative actions.

Endnotes

1 Aleutian Islands EFH Final Rule, 71 Fed. Reg. 36694 (June 28, 2006).
2 Pacific Coast Groundfi sh EFH Final Rule, 71 Fed. Reg. 27408 (May 11, 2006).
3 Natural Resources Defense Council v. Evans (2001) challenged EAs that NMFS prepared for plans aff ecting West Coast groundfi sh, that the assessments did not provide sufficient discussion of alternatives. The court ruled that the 2001 EA for bocaccio and lingcod as well as the EA for Amendment 12 were inadequate and directed NMFS to "study, develop, and describe appropriate alternatives."
4 Advocates previously had been unsuccessful in getting alternatives to protect juvenile cod habitat in the New England groundfi sh EISs. Oceana v. Evans, 2005 WL 555416 (D.D.C. March 9, 2005).
5 Final Environmental Impact Statement, Final Amendment 1 to the FMP for Atlantic Tunas, Swordfish and Sharks. November 2003. NOAA Fisheries, Highly Migratory Species Management Division, Silver Spring, Maryland.
6 Notice of Scoping Process. 72 Fed. Reg. 46608-46610 (Aug. 21, 2007).
7 Center for Marine Conservation v NMFS (D. Haw.) Civ. No. 99-00152 DAE. (1999).
8 News report available online at http://www.dfw.gov.mp/admin/news4-06-04.htm.

For more information, please contact:

Dave Bard (202) 778-4551 dbard@pewtrusts.org
Jo Knight (202) 552-2070 jknight@pewtrusts.org

THE PEW CHARITABLE TRUSTS

The National Environmental Policy Act (NEPA) An Ocean Conservation Success Story

The National Environmental Policy Act (NEPA) has made it possible to protect thousands of square miles of coral formations, reduce mortality of endangered sea turtles and begin the rebuilding of depleted populations of commercially valuable fish.

Even though it does not mandate environmental protection, NEPA has fostered good environmental choices by informing managers, engaging the public and giving decision makers a thoughtful framework in which to compare actions and possible outcomes on human communities and the surrounding natural world. Nowhere is this analysis of alternatives and consequences more important than in decisions about commercial use of the public's natural resources. Management of ocean fisheries occurs under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Scientists and managers of the National Marine Fisheries Service (NMFS) and advisors in the eight regional fishery management councils prescribe plans and measures that govern fisheries for hundreds of species on every coast. The rules they set are a federal action affecting the environment—action that triggers consideration under NEPA.

NEPA Analysis Compares a Range of Alternatives and Possible Consequences

The purpose of environmental analysis under NEPA is to provide decision makers and the public with a full exposition of the alternatives and consequences of authorizing fishing in the proposed measure, while the purpose of a fishery management plan is simply to authorize fishing.

Beyond the information gathered for fishery management, such as potential effects of a management proposal on the target stock, NEPA's environmental assessment provides information on related fish species, other animals in the ecosystem, the market, participating user groups and communities. NEPA adds value to the process through the analysis of alternatives that forms the heart of a well-prepared Environmental Impact Statement (EIS). This framework for comparison gives decision makers and the public a means to evaluate an array of alternatives and their consequences.

NEPA Keeps the Public Informed about Management of America's Fisheries

NEPA expands the audience for fishery management decisions beyond those who participate in council and agency meetings by providing a national venue outside the region in which an action is proposed. Through "scoping", the earliest step in the environmental analysis process, interested stakeholders can offer ideas on actions and approaches in addition to proposals that emerge from the councils and user groups. The scoping process invites managers and the public to think broadly about possible effects of a proposed action that may go beyond a specific fishery management objective, but that are nonetheless of concern to the public and affected communities.

NEPA Can Contribute to Protection of Marine Ecosystems

NEPA analysis encourages examination of the environment and resources beyond the target fishery or species by providing a framework to examine ecosystem effects such as changes to associated species and habitats, as well as long-term and cumulative effects of a proposed action.

Environmental analysis under NEPA also directs decision makers to consider not only direct effects, such as the increase or decline of a target stock, but also indirect and cumulative effects: how will the proposal affect other species? What will be the effects over time and in combination with other actions? How is this action related to other fishery management measures?

The Record Shows that Effective NEPA Process Protects Ocean Ecosystems

Over the past decade, analyses of fishery management actions under NEPA have provided safeguards for unique habitats such as corals, canyons and reefs, as well as protected important fish habitat from the effects of fishing operations and gear. Adherence to the NEPA process has expanded options to improve the chances of recovery for overfished stocks such as swordfish, sharks and Pacific rockfish species, and reduced incidental capture of protected species such as sea turtles and marine mammals in fishing gear. Examples of better decision making through thoughtful comparison of alternatives can be found in many regions and ecosystems.

NEPA Success Stories

North Pacific Aleutian Corals

In the case of the North Pacific, regulations that followed from an analysis of essential fish habitat resulted in closure of more than 370,000 square miles of the Aleutians to bottom trawling in order to protect the six known coral gardens of the Aleutians (126 square miles) from all bottom contact by commercial fishing gear.[1] The first large-scale closure adopted to protect habitat, the action protected slope habitat in the Gulf of Alaska and several known seamounts, as well as deep sea corals. In a similar action, the Pacific Fishery Management Council approved—and NMFS implemented—a 135,000 square mile closure in the federal waters off Washington, Oregon and California.[2] In addition to reducing incidental catch of overfished rockfish species, the closure protected at least 100 different species of coral, including red tree and black corals. These living bottom formations, which provide shelter for sea life such as shrimp, crabs and snails, are vulnerable to damage from bottom trawl gear.

Photo: NOAA

West Coast Groundfish

Not only has improved environmental analysis protected ocean ecosystems, NEPA documents have provided managers a more complete exploration of alternatives for rebuilding depleted stocks of important fish species. In several instances related to West Coast groundfish, challenges to the array of alternatives examined in environmental assessments led to further analysis of more than just the status quo and "no action" alternatives.[3] Subsequent proposals and council action have been aimed at reducing bycatch of bocaccio, ling cod and other recovering rockfish species, as part of the overall effort to reduce mortality on groundfish.

Atlantic Ocean Habitat

In the Atlantic, the revised EIS created opportunities to protect corals, sea fans, canyons and shelf habitat that provide shelter for commercially valuable species such as tilefish. Offshore waters of the coast from Georges Bank to North Carolina are home to submarine canyons, fragile cold-water corals, productive fish and crustacean habitat. Options to protect these ocean floor features came about through the improved alternatives analysis and have since become part of several fishery management plans and provide a backdrop of ecosystem consideration by managers.[4] For example, the New England Fishery Management Council banned fishing for monkfish by bottom trawling and gillnetting in canyons where marine scientists have identified and studied large deep-sea coral communities. The amendment also limited the size of gear that may be used in mid-Atlantic submarine canyon areas. The Mid-Atlantic Fishery Management Council subsequently adopted the same rules.

Atlantic Highly Migratory Species

Another example in which NEPA analysis provided an array of alternatives is the fishery management plan for highly migratory species in the Atlantic. As a result of extensive scoping with fishery stakeholders, NMFS developed an EIS that examined numerous alternatives to revise commercial and recreational shark management measures, update designations of essential fish habitat for sharks, develop plans to rebuild large coastal shark species, and prevent overfishing of several species of sharks. In addition to the influence the public had during scoping, the agency reported that it changed some of the selected alternatives based on public comments. The plan measures were implemented without challenge, in sharp contrast to the preceding seven-year history of litigation related to Atlantic shark management.[5]

Western Pacific Sea Turtles

NEPA provided a means to protect endangered marine turtles from bycatch on swordfish longlines in the West Pacific. Following a full exploration of alternatives to protect sea turtles and albatrosses in a supplemental EIS, changes from "J" to circle hooks and modified bait techniques enabled the resumption of the swordfish fishery[6] that had been closed by court injunction.[7] Managers praised the collaboration of industry, government and environmental groups which produced the alternatives that incorporated protection for turtles and seabirds.[8]