



THE  
**PEW**  
ENVIRONMENT GROUP

THE NEW NEPA PROPOSAL:  
**WILL THIS HELP OUR OCEANS?**

# THE NEW NEPA LABYRINTH

The National Marine Fisheries Service (NMFS) has proposed a convoluted new process for determining how the National Environmental Policy Act (NEPA), the nation's preeminent environmental law, will apply to the management of ocean fisheries. The proposal short-circuits the NEPA process by limiting the scope of environmental reviews and significantly narrowing opportunities for public participation.

You can help stop this threat by going to

[www.EndOverfishing.org](http://www.EndOverfishing.org)

and submitting your comments before the August 12 deadline.

## HOW IT "WORKS":

FMC or NMFS decides to develop fishery conservation and management measures and actions. <sup>1</sup>

Proposal meets requirements for categorical exclusion. <sup>1a</sup>

Proposal meets requirements for environmental assessment. <sup>1b</sup>

Proposed action is significant enough to require preparation of IFEMS. <sup>\*1c</sup>

NOA/DIFEMS\*\* published concurrent with FMC agenda notice maximum 45 days public comment. <sup>6</sup>

Publish scoping notice as soon as practicable with FMC meeting agenda. <sup>2</sup>

FMC or agency drafting, preparation of measure and DIFEMS. No time limit. <sup>5</sup>

FMC or agency staff develops alternatives. <sup>3</sup>

Scoping occurs at council meeting, public hearing, scoping hearing. <sup>4</sup>

Supplemental IFEMS. <sup>12a</sup>

Cooling off period reduced by 15 days

\* Integrated Fishery and Environmental Management Statement

\*\* Draft Integrated Fishery and Environmental Management Statement

Council chooses alternative from those analyzed in DIFEMS, revises document to reflect comment.<sup>7a</sup>

Transmit to Secretary; MSA clock starts Day 1.<sup>8</sup>

Day 5: Secretary publishes notice that final IFEMS available, publishes proposed rule, requests comments.<sup>9</sup>

Comment period reduced to 30 days.

MSA 60-day comment period begins.<sup>10</sup>

Comment period waived.

Council chooses alternative substantially different from those analyzed in DIFEMS.<sup>7b</sup>

Fishery management emergency.<sup>11</sup>

Prepare supplement. Go back to NOAA/DIFEMS.

Final regulation effective.<sup>14</sup>

Day 95: Final decision by Secretary - no earlier than 90 days after NOAA/DIFEMS or 30 days after NOAA/FIFEMS.<sup>12</sup>

Final rules & ROD published 15 days after transmittal with 15-60 day comment period.<sup>13</sup>

TELL NMFS:

**THROW  
IT BACK!**

[www.EndOverfishing.org](http://www.EndOverfishing.org)

## NOTES:

(All citations are to 73 Fed. Reg. 27998, May 14, 2008.)

1. There is no change in the time allowed for internal planning by either the agency or council. Neither NEPA nor the CEQ regs specifies any timing for this activity. MSA requires planning action within a period following designation of an overfished stock, but does not specify timing for other actions.
  - 1a. Description of the requirements for a categorical exclusion is provided in 700.105 and 700.702.
  - 1b. Description of the requirements for preparing an environmental assessment is provided in 700.102.
  - 1c. Determination of when to prepare an IFEMS is described in 700.103. This new document is described as comparable to an EIS in its analysis and is proposed to be a new form of environmental document. The proposed rule states the agency will use four documents: the IFEMS, the EA/FONSI, the CE and the Memorandum of Framework Compliance. Proposed changes to existing NEPA review procedures. III. A. 1at 28004.
2. The CEQ regs and NAO 216-6 call for a notice of intent that environmental documents are to be prepared "as soon as possible" after the agency begins planning an action. There is a 30-day period in which the public may comment on the notice of intent. This notice is absent from the proposed rule, which calls for drafting the IFEMS soon after developing fishery management measures and actions, but no notice is given until the scoping/meeting agenda notice. 700.203(a), and the comment period is eliminated.
3. The proposed rule anticipates that NMFS or the councils will develop alternatives and narrow the issues to be discussed in the document. This appears to occur prior to public scoping, a change from the existing process. 700.108(b)(2)-(3). "Scoping meetings should adequately inform interested parties of the proposed action and alternatives." Timing and process. III. C. 1 at 28006.
4. Scoping in the existing process incorporated both CEQ and MSA scoping. NAO 216-6 and NMFS procedures provided an integrated means of applying both processes. The proposed rule moves away from the type of scoping called for in the CEQ regs, and goes with an exclusively MSA-council based process. 700.108. Any "public" meeting may include scoping. 700.108(a)(1). No time limit is set on this process in existing or proposed procedure.
5. There is no time period specified for drafting of the IFEMS, though preparation is to commence "as close as possible to the time that NMFS or an FMC is developing fishery conservation and management measures and actions and considering alternatives." 700.203(a). This is comparable to existing procedure. The change from existing procedure is that the drafting would not be informed by suggested alternatives from the public during scoping.
6. Publication of a notice of availability of the Draft IFEMS shall occur no later than publication of the FMC's meeting agenda notice, at least 45 days in advance of the meeting. 700.203(b). However, the notice period may be as little as 14 days before the meeting at which the council may take action. Existing procedure requires a minimum 45-day comment period.
7. The proposal provides for council action to be informed by the IFEMS and public comment, which is to be provided at the meeting at which the council votes, or in writing to the council. 700.203(b)(2). Details on how the council will review environmental documents, take public comment on them, consider public comment and take an informed vote are yet to be developed. 700.501.
  - 7a. If the council votes to recommend an alternative, parts or combinations of alternatives that have been analyzed in the draft IFEMS, it prepares a final IFEMS in which it must address public comments and modifications of the recommended action. This final IFEMS is submitted with the proposed action. 700.203(b)(5).
  - 7b. If the council modifies a proposed action and votes to recommend an alternative not within the range of alternatives analyzed in the draft IFEMS, the amended portions have to be analyzed and a supplemental IFEMS prepared, noticed, and provided for public comment in the same manner as the draft IFEMS. 700.207(c)(4),(6).
8. Transmittal of the package with recommended action and final IFEMS starts the MSA clock. No change over current procedure.
9. Five days after receipt of the package, NMFS publishes a notice of availability of a final IFEMS and proposed rule. The final IFEMS is to address responses to public comment, council deliberations, other modifications.
10. MSA existing process calls for a 60-day comment period, CEQ regs call for a minimum 30-day comment period. The proposed process specifies the earliest time the agency can make a decision, but does not specify the length of the comment period. 700.302(b); 700.604(c).
11. In the case of emergency rulemaking, the agency can waive the comment period. 700.604(c)(2)(i).
12. See 700.604(c)(1). If a supplemental IFEMS has been published and there is not time to receive comment, complete the final IFEMS and provide the cooling off period, the agency may reduce the cooling off period by 15 days. 700.604(c)(2)(ii).
13. The Record of Decision is to contain NMFS's responses to comments received on the final IFEMS. Responses may be limited to issues raised at the draft level.
14. Time periods for final decision may be reduced or enlarged commensurate with the comment period. 700.604(c)(3).

## For more information, contact:

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