

# ONMS ENVIRONMENTAL COMPLIANCE HANDBOOK



**June 30, 2017**

National Oceanic and  
Atmospheric Administration

U.S. Secretary of Commerce  
Wilbur Ross

Benjamin Friedman  
Deputy Under Secretary for Operations  
Performing the duties of Under Secretary  
Of Commerce for Oceans and Atmosphere and NOAA Administrator

Assistant Administrator for  
Ocean Services and Coastal Zone  
Management, National Ocean Service  
Dr. W. Russell Callender

Office of National Marine Sanctuaries  
John Armor, Director  
Matt Brookhart, Acting Deputy Director  
Vicki Wedell, Acting Division Chief for Policy and Planning

Cover Photo

Description: a Hawaiian monk seal and green sea turtle cuddle up in Papahānaumokuākea Marine National Monument

Photo: Mark Sullivan/NOAA



# Table of Contents

<b>Chapter 1: Who We Are &amp; What We Do.....</b>	<b>1</b>
A. About the Office of National Marine Sanctuaries.....	1
B. National Marine Sanctuaries Act.....	2
C. Implementing Regulations.....	2
D. What We Do.....	3
<b>Chapter 2: About this Handbook.....</b>	<b>4</b>
A. Background on the ONMS Environmental Compliance Program.....	4
B. Purpose and Need.....	4
C. This version.....	5
<b>Chapter 3: ONMS Approach for Integrating Environmental Compliance into the Decision-Making Process .....</b>	<b>6</b>
A. What is NEPA and Environmental Compliance? .....	6
B. NEPA Steps for Analysis .....	6
C. Levels of NEPA Analysis .....	8
<i>Categorical Exclusions.....</i>	<i>8</i>
<i>Environmental Assessments.....</i>	<i>12</i>
<i>Environmental Impact Statements.....</i>	<i>13</i>
D. Process for Determining Appropriate Level of NEPA Analysis.....	14
E. NEPA Tools .....	15
F. Additional Environmental Statutes Compliance Requirements .....	17
<i>Endangered Species Act (ESA).....</i>	<i>17</i>
<i>Marine Mammal Protection Act (MMPA).....</i>	<i>19</i>
<i>Magnuson Stevens Act (MSA).....</i>	<i>20</i>
<i>Coastal Zone Management Act (CZMA).....</i>	<i>20</i>
<i>National Historic Preservation Act (NHPA).....</i>	<i>21</i>
<i>Executive Order on Tribal Consultations (E.O. 13175).....</i>	<i>21</i>
E. Requirements Integration .....	21
<b>Chapter 4: ONMS Federal Actions.....</b>	<b>23</b>
A. National Marine Sanctuary Designations .....	23
B. National Marine Sanctuary Expansions.....	25
C. Changes to Existing Regulations.....	25
D. Permit Issuance .....	26
E. NMSA Section 304(d) Consultation.....	30
F. Sanctuary Nomination Process .....	31
G. Management Plan Review.....	31
H. Financial Assistance .....	33
I. Agreements and Memorandum of Understanding (MOUs) .....	34
J. Education and Outreach.....	35

K. Field Operations .....	36
L. Construction.....	38
M. Natural Resource Damage Assessment.....	39
N. Emergency Response .....	40
<i>Emergency Procedures for Federal Actions</i> .....	42
<b>Chapter 5: Environmental Compliance Documentation and Administrative Record Keeping .....</b>	<b>48</b>
<b>Chapter 6: Tracking and Reporting .....</b>	<b>53</b>
A. NOS Reporting Requirements .....	53
B. ONMS Internal Reporting .....	54
<b>Appendices .....</b>	<b>55</b>
<b>A. Language for use in Consultation Requirements Chapter of an         EA or EIS .....</b>	<b>56</b>
<i>Magnuson-Stevens Act</i> .....	56
<i>Marine Mammal Protection Act</i> .....	57
<i>Endangered Species Act</i> .....	58
<i>National Historic Preservation Act</i> .....	60
<i>Tribal Consultation</i> .....	62
<i>Coastal Zone Management Act</i> .....	63
<b>B. Additional Statutory Summaries .....</b>	<b>66</b>
<i>Clean Water Act Section 404-Wetlands</i> .....	66
<i>Migratory Bird Treaty Act of 1918</i> .....	66
<i>National Marine Sanctuary Act</i> .....	67
<i>Marine National Monuments</i> .....	68
<i>Executive Orders</i> .....	68
<b>C. National Environmental Policy Act .....</b>	<b>70</b>
<i>CE Checklist</i> .....	70
<i>CE Memo Template</i> .....	71
<i>FONSI Template</i> .....	72
<i>EA/EIS Example Outline</i> .....	75
<b>D. Endangered Species Act.....</b>	<b>80</b>
<i>Biological Assessment Template</i> .....	80
<b>E. Magnuson-Stevens Act .....</b>	<b>86</b>
<i>EFH Assessment Outline</i> .....	86
<i>Example EFH Assessment</i> .....	86
<b>F. National Historic Preservation Act .....</b>	<b>92</b>
<i>NHPA Process Flow for SNP</i> .....	92
<i>NHPA Process Flow for SDP</i> .....	93
<i>NHPA Consultation timing flow with NEPA CEs and EAs</i> .....	94
<i>NHPA Checklist</i> .....	95
<i>SHPO Letter Example</i> .....	96
<i>E.O. on Tribal Consultation Example Letter</i> .....	98
<b>G. Coastal Zone Management Act .....</b>	<b>102</b>
<i>CZMA Example Letter</i> .....	102

<b>H. Summary Table of Signature Authorities .....</b>	<b>104</b>
<b>I. EA/EIS Clearance Process for ONMS Actions.....</b>	<b>105</b>
<b>J. EA/EIS Clearance Process for Permit-Related Actions .....</b>	<b>106</b>
<b>K. EIS Process for Public Involvement.....</b>	<b>107</b>
<b>L. Best Management Practices for Vessel Operations.....</b>	<b>108</b>

## Acknowledgments

*The Office of National Marine Sanctuaries would like to thank the subject area experts for their contribution to this handbook and for providing responses to questions that guided the drafting of this ONMS Environmental Compliance Handbook. The handbook benefited significantly from a preliminary review, and we are grateful for comments received from the Policy and Planning Division, the Education and Outreach Division, as well as the Facilities Division. Our sincere thanks are also extended to the external reviewers of this document from GCOC: Jonelle Smith and Martha McCoy.*



# Chapter 1

## WHO WE ARE AND WHAT WE DO

Figure 1: National Marine Sanctuary System Map



### A. About the Office of National Marine Sanctuaries

The National Oceanic and Atmospheric Administration’s (NOAA) Office of National Marine Sanctuaries (ONMS) serves as the trustee for the thirteen national marine sanctuaries that make up the National Marine Sanctuary System, as well as for two marine national monuments (see Figure 1). Together these protected areas encompass more than 600,000 square miles of ocean and Great Lakes waters from Washington State to the Florida Keys, and from New England to American Samoa. National marine sanctuaries are special areas set aside for long-term protection, conservation and management, and

are part of our nation's legacy to future generations. National marine sanctuaries are an essential part of this country's collective environmental and cultural riches. They contain deep ocean habitats of resplendent marine life, kelp forests, coral reefs, whale migration corridors, deep-sea canyons, historically significant shipwrecks, and other underwater archaeological sites. Each national marine sanctuary is a unique place worthy of special protection. National marine sanctuaries serve as natural classrooms, cherished recreational spots and places for valuable commercial activities which makes them valuable to people in many ways. Organizationally, the sanctuaries are divided into four regions: Northeast and Great Lakes; Southeast, Gulf of Mexico and Caribbean; West Coast; and Pacific Islands.

The mission of ONMS is to identify, protect, conserve, and enhance the natural and maritime heritage resources, values, and qualities of the National Marine Sanctuary System for this and future generations. ONMS operations and activities are authorized and driven by the National Marine Sanctuaries Act. An overview of the statute is offered below. Following the discussion of the statute will be a description of the ONMS approach of integrating environmental compliance in our decision-making process, and then detailed descriptions of this integration in each major action ONMS executes (see Section III).

## **B. National Marine Sanctuaries Act**

The [National Marine Sanctuaries Act](#) (NMSA) (16 U.S.C. § 1431 et seq.) is the statute governing National Marine Sanctuaries. The NMSA authorizes the Secretary of Commerce to identify and designate as national marine sanctuaries areas of the marine environment or Great Lakes with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational or aesthetic qualities, and to manage these areas as the National Marine Sanctuary System. A primary objective of the NMSA is to protect and manage sanctuary resources that span diverse geographic, administrative, political and economic boundaries, through comprehensive and coordinated conservation and management, education, public outreach and research.

## **C. Implementing Regulations**

The Office of National Marine Sanctuaries (ONMS) regulations are codified at [15 CFR Part 922](#). ONMS develops management plans, regulations, and non-regulatory program plans for each national marine sanctuary to implement management of each area under the NMSA. ONMS regulations prohibit specific kinds of activities, describe and define the boundaries of the designated national marine sanctuaries and establish a system of permits, authorizations, and certifications to allow the conduct of certain and types of activities that would otherwise not be allowed. ONMS regulations are divided into two

main groups, nation-wide regulations (subparts A through E) and site-specific regulations (subparts F-T<sup>1</sup>).

The regulations implementing Papahānaumokuākea Marine National Monument are codified at [50 CFR Part 404](#). Marine National Monuments are established under the Antiquities Act of 1906 (54 U.S.C. § 320301–320303). The Antiquities Act of 1906 authorizes the President to declare as National Monuments "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States." On June 15, 2006, Presidential Proclamation 8031 designated Papahānaumokuākea Marine National Monument and Presidential Proclamation 8112 expanded the monument's boundaries on August 26, 2016. Presidential Proclamation 8337 designated Rose Atoll Marine National Monument on January 6, 2009. The proclamation included direction for NOAA to add the monument to the existing Fagatele Bay National Marine Sanctuary. NOAA completed that action in 2012 and the monument is now managed under the regulations for national marine sanctuary, renamed the National Marine Sanctuary of American Samoa.

#### **D. What We Do**

We work to protect the health, productivity and value of the marine resources of our nation's special places. We do this through our various functions across the sanctuary system and headquarters, which include sanctuary designations, expansions, management, permitting, research, education, and outreach in furtherance of the purposes of the National Marine Sanctuaries Act. Each one of these functions requires environmental compliance, which enables us to make informed decisions and include the public in the decision making process. For these reasons, environmental compliance is a priority for NOAA, the National Ocean Service, and the Office of National Marine Sanctuaries.

---

<sup>1</sup> Subparts S and T have been proposed for Wisconsin-Lake Michigan and Mallow's Bay – Potomac River National Marine Sanctuaries, and would be codified in the regulations once these proposed designations are finalized, if applicable.



## Chapter 2

---

### ABOUT THIS HANDBOOK

#### A. Background on the ONMS Environmental Compliance Program

The Office of National Marine Sanctuaries (ONMS or Sanctuaries) is responsible for ensuring that all activities it conducts, permits, directs or funds are carried out in accordance with all applicable federal, state, and local laws and regulations and Executive Orders (EOs).

This handbook assists ONMS staff and leadership to ensure that:

- ONMS considers environmental effects in all decision making.
- ONMS identifies actions that could have the potential for significant effects on the human environment early in the planning process to avoid delays in decision-making.
- Alternatives and analysis of potential impacts are available to decision makers before decisions are made.
- Accurate, scientific information, to the extent practicable, supports ONMS actions.
- ONMS incorporates, to the extent practicable, Best Management Practices (BMPs)<sup>2</sup> in project instructions and communicates them to field staff.
- ONMS actions meet the requirements of the NMSA, NEPA, and other environmental statutes.

#### B. Purpose and Need

This handbook builds on the [NOAA Companion Manual for NOAA Administrative Order 216-6A](#) and two policies: the National Ocean Service (NOS) Environmental Compliance Program Policy ([NOS EC Policy](#)) 0300-01 (signed on May 4, 2016) and the ONMS Environmental Compliance Policy ([ONMS EC Policy](#)) (signed on October 25, 2016). The NOS EC Policy establishes key program requirements and milestones for each NOS program office. Generally, the key program requirements are:

1. Establishment of a staff training program.

---

<sup>2</sup> Best Management Practices (BMPs) are defined as the physical, structural and/or managerial practices that when used singly or in combination, prevent or minimize adverse impacts to the human environment, including sanctuary resources, resulting from ONMS activities. Conservation measures include actions that avoid, minimize, and/or mitigate adverse effects to environmental resources.

2. Establishment of business practices for administrative record keeping, routine audits that include environmental compliance documentation, permits, mitigation measures and reporting,
3. Implementation of BMPs and conservation measures in the field.
4. Ensuring comprehensive environmental reviews of all activities early in the decision making process before funds are released.

The second is the ONMS EC Policy that establishes the required roles and responsibilities for ONMS staff to meet the NOS key program requirement objectives. The purpose of this handbook is to communicate the specific steps that ONMS staff will follow to ensure adherence to the NOS EC Policy requirements, and how to implement the ONMS EC Policy. This handbook establishes the scope, processes and procedures necessary to fulfill these requirements.

Specifically, this handbook:

- Defines NEPA and Environmental Compliance.
- Establishes the process and procedures for how ONMS will ensure environmental compliance reviews for activities that ONMS conducts, directs, authorizes, or funds.
- Provides guidance for emergency or event response activities.
- Provides guidance on approach for required permits and interagency consultations (e.g., ESA section 7 consultation with NMFS and USFWS, MMPA incidental take authorizations with NMFS, etc.).
- Provides guidance on tracking and auditing environmental compliance.
- Provides a list of BMPs.

### **C. This Version**

This handbook is a living document and will be updated as often as needed or as new policy dictates, but a minimum of once a year, to ensure that ONMS staff have the most relevant, accurate, up-to-date information to assist in daily operations. This version is the first edition of the handbook and was finalized on June 30, 2017.

## Chapter 3

---

# ONMS APPROACH FOR INTEGRATING ENVIRONMENTAL COMPLIANCE INTO THE DECISION-MAKING PROCESS

### A. What is NEPA and Environmental Compliance?

As stated in the NOAA NEPA Companion Manual, the [National Environmental Policy Act](#) of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, implemented by the Council on Environmental Quality (CEQ) and its associated Regulations ( 40 CFR §1500 – 1508), requires that Federal agencies include in their decision-making processes appropriate and careful consideration of all environmental effects of proposed actions, analyze potential environmental effects of proposed actions and their alternatives, avoid or minimize adverse effects of proposed actions, and restore and enhance environmental quality to the extent practicable. Additionally, the NEPA process is intended to encourage and facilitate public involvement in decisions that affect the quality of the human environment (40 CFR §1500.2(d)).

Environmental Compliance is defined as adequately addressing and appropriately documenting adherence to all applicable Executive Orders (EOs), federal, state, and local environmental and cultural resource laws and regulations. This includes, but is not limited to NEPA, the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), the Magnuson-Stevens Act (MSA) Essential Fish Habitat (EFH) provisions, the Coastal Zone Management Act (CZMA), the National Historic Preservation Act (NHPA), and E.O. 13175 on Tribal Consultations.

### B. NEPA Steps for Analysis

1. **Identify the proposed federal action.** For ONMS this includes anything we do ourselves - (e.g., regulations, construction, restoration, research, etc.); fund (grants, cooperative agreements, contracts); and authorize (issuance of regulations, permits, authorizations).

- 2. Determine whether the federal action qualifies for a Categorical Exclusion (CE).**  
The steps outlined in Figure 2 of page 10 of this handbook provide a summary of this process.

**Consideration of Avoidance, Minimization or Mitigation Measures in Determining CE Qualification**

- 3. Describe the purpose and need for the proposed federal action.** The purpose of the action is typically tied to a statute or regulation. For ONMS, our actions are tied to the NMSA and a specific section of our regulations. The need addresses a resource threat or an information gap (e.g., conserve maritime heritage resources at the Monitor National Marine Sanctuary). Describing the purpose and need sets the parameters for the range alternatives that we consider to ensure informed, transparent decision-making.

ONMS considers avoidance, minimization and mitigation measures in assessing the potential impact on extraordinary circumstances.

Avoidance, minimization and mitigation measures are also considered when assessing the context and degree of impact on resource elements and determining the appropriate level of NEPA analysis.

- 4. Describe Alternatives.** After identifying the proposed action (e.g., national marine sanctuary designation), we describe different options for carrying out this proposed action (varying the size of the physical footprint, varying the prohibitions, and/or conservation measures contained in the management plan). In addition to describing the preferred alternative, we identify alternatives that would result in a meaningful different effect on the resource elements that may be affected by our proposed action directly or indirectly, and represent a reasonable range of options. We also describe the no action alternative as a basis for comparison with the other options. In developing our environmental analyses, we consider all reasonable alternatives, and for alternatives that were considered but eliminated from detailed study, we explain why. Typically, environmental assessments should have a minimum of two action alternatives in addition to the no action; and environmental impact statements should have a minimum of three action alternatives in addition to the no action.
- 5. Describe Environmental Setting/Affected Environment.** This enables us to assess the current health, state, and threats of the resources that should be considered (e.g., physical (geology, air quality, water quality); biological (protected resources, habitats, fisheries, etc.); cultural and maritime heritage (tribal resources, shipwrecks, etc.), and socioeconomic (pertinent community

demographics, recreation activities, commercial activities, local or regional economies, etc.). This information on the areas to be affected by the alternatives under consideration serves as a baseline for analysis.

- 6. Analyze Environmental Consequences.** This step helps ONMS assess the varying degrees of impact (both positive and negative) of the proposed action implemented through the identified alternatives on the resource elements affected directly or indirectly. This step can help us assess what level of NEPA analysis and documentation is necessary (*see* Levels of NEPA Analysis below). Ultimately, this step will help us identify the environmentally preferred alternatives as well as the best option that fits the stated purpose and need.

### C. Levels of NEPA Analysis

The analysis of effects is documented in a Categorical Exclusion memorandum (CE memo), an Environmental Assessment (EA), or an Environmental Impact Statement (EIS), depending on the anticipated level of impact on the human environment<sup>3</sup>. The type of analysis is determined based on the level of significance<sup>4</sup> of the direct, indirect, and cumulative impacts of our proposed actions on the human environment.

#### Categorical Exclusions

Categorical Exclusions (CEs) are categories of actions which do not have a significant effect on the environment and for which, neither an environmental assessment nor an environmental impact statement is required. NOAA revised its list of CEs in January 2017, which can be found in the NOAA [Companion Manual](#). Activities on this list are considered to only result in negligible<sup>5</sup> or very minor effects (based on context, scope, and intensity).

In all cases, NOAA must consider the "extraordinary circumstances" which are set out in the NOAA Companion Manual, and can preclude the use of a Categorical Exclusion.

---

<sup>3</sup> "**Human environment**" is defined in the NEPA regulations to "include the natural and physical environment and the relationship of people with that environment" (40 CFR § 1508.14). ONMS consider "human environment" to encompass physical (e.g., geologic, water), biologic (e.g., plant, fish, and wildlife, and the habitats upon which they depend), atmospheric (e.g., climate change, air quality), socio-economic resources (local public demographics, economy, recreation), and cultural resources (e.g., historic, maritime, Native American, etc.)

<sup>4</sup> **Significance** is defined by NEPA regulations (§1508.27) and requires that both context and intensity are considered. **(a) Context.** This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

**(b) Intensity.** This refers to the severity of impact. The NEPA regulations (40 CFR § 1508.27) include a number of factors to consider in assessing intensity of impacts.

<sup>5</sup> **Negligible** is defined as a level of impact that is below minor to the point of being barely detectable and therefore discountable. (NOAA NAO 216-6A Companion Manual Appendix A).



Extraordinary circumstances are situations for which NOAA has determined further NEPA analysis may be required because they are circumstances in which a normally excluded action may have significant effects. Extraordinary circumstances include potential effects to environmentally sensitive areas or resources, and public controversy over the environmental effects of the agency's proposed action. If a review of the extraordinary circumstances disclosed no potential environmental impacts, then NOAA may apply the Categorical Exclusion and proceed with the action. However, the mere presence of one or more extraordinary circumstances does not preclude the use of a CE. A determination of whether an action that is normally excluded requires additional evaluation because of extraordinary circumstances focuses on the action's potential effects and considers the significance of those effects in terms of both context (consideration of the affected region, interests, and resources) and intensity (severity of impacts).<sup>6</sup> See **Appendix B.1.i** for NOAA's list of extraordinary circumstances.

CE Memos serve as the decision document.

A CE may only be applied to a proposed action when<sup>7</sup>:

- a) the proposed action falls within one of the CE categories listed in Appendix F of the NOAA Companion Manual;
- b) the proposed action is not part of a larger action, and can therefore be reviewed independently from other actions under NEPA; and
- c) there are no extraordinary circumstances that may require further analysis in an EA or EIS.

Some proposed actions may fit within more than one CE. In determining the appropriate CE to use, select the CE that most closely matches the objectives of the proposed action and is the most specific.

When considering whether a proposed action to provide a financial assistance award could be categorically excluded, the decision maker should look at whether the activity to be funded falls within one of the established CEs. Some awards bundle distinct tasks together with independent utility. As such, each task (federal action) can have its own CE category assigned to it. These CEs may be documented in a single evaluation document prepared for the entire financial assistance award, as long as individual tasks are similar, but not connected, actions as defined by 40 C.F.R. § 1508.25, and the tasks within the award do not have cumulatively significant impacts.<sup>8</sup>

In summary, we must consider the following when determining if an ONMS action qualifies for a CE:

---

<sup>6</sup> NOAA NAO 216-6A Companion Manual at 4.

<sup>7</sup> Final NOAA NAO 216-6A Companion Manual at 4.

<sup>8</sup> NOAA NEPA Companion Manual (p. 4)

- Does the activity fit into a NOAA CE category? If not, a CE cannot be used. If so, proceed to the next point. If it fits into more than one CE category, pick the category that best describes the activity.
- Is the proposed action part of a larger action that cannot be reviewed independently? If not, proceed to the next point. If so, then the entire action must be analyzed as a unit and a CE cannot be used.
- Does the proposed action, when considering its context and scope, trigger an extraordinary circumstance that requires further evaluation (see pp. 4-5 of the NOAA NEPA Companion Manual)? Note: Any avoidance, minimization or mitigation measures (if applicable) should be presented as part of the proposed action and included in the consideration of effects on extraordinary circumstances.<sup>9</sup> If not, the action can be categorically excluded from further NEPA analysis and a CE memo should be prepared to document our decision. If so, a CE cannot be used.

Once a determination is made that a CE is an appropriate level of NEPA analysis, be sure to include the following in your documentation for the administrative record. See Appendix B for a CE Memo Template.

#### The CE Record includes:

- a) a description of the proposed action;
- b) the CE category number, title, and CE text that applies to the action (Appendix E) and why the proposed action qualifies for said category; and
- c) a brief summary of the review conducted to determine whether extraordinary circumstances exist

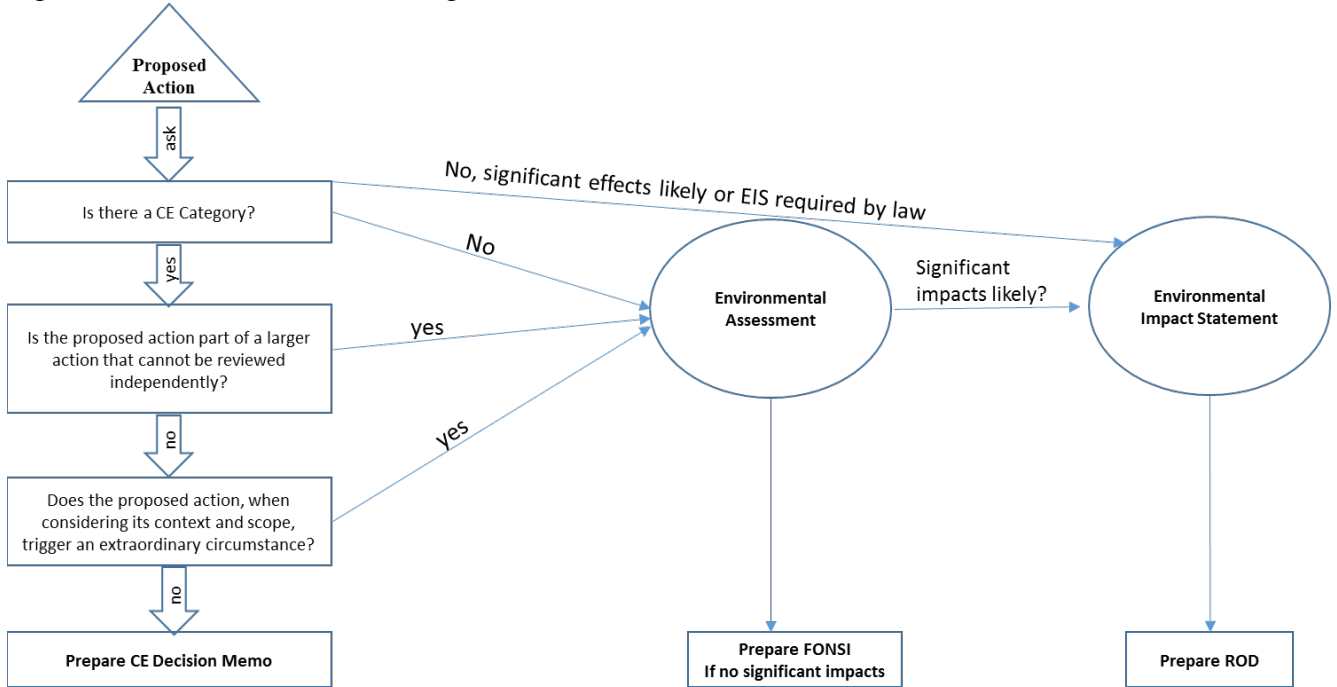
The Council on Environmental Quality (CEQ) gives federal agencies discretion when developing their NEPA procedures to determine whether additional documentation is required when the agency decides to use a CE. Under the NOAA NEPA Companion Manual, a decision maker may proceed without preparing documentation of the decision to use a CE only in those limited circumstances where the action clearly fits within a CE and is more in the nature of “housekeeping matters;” i.e., is the action carries no risk of significant environmental impacts and there is little or no benefit from additional documentation. Thus, in cases where an administrative activity covered by a CE has no potential to cause impacts to the human environment, no documentation is required. Examples of such activities include those covered by CE G1, routine administrative actions; CE G4, office-based basic environmental services and monitoring; CE E1,

---

<sup>9</sup> NOAA does not have a categorical exclusion called “mitigated CEs”. Therefore, we cannot mitigate a significant effect to a discountable level and have that action qualify for a CE. If you have questions, please reach out to the ONMS ECC.

database development and maintenance; and CE E2, collection of information for social science projects and programs.

Figure 2. Decision Tree for a Categorical Exclusion



Extraordinary Circumstances Check List Questions

<b>List of Extraordinary Circumstances (NOAA NAO 216-6A)</b>	No	Yes	Explanation
a) Would there be adverse effects on human health or safety that are not negligible or discountable?			
b) Would there be adverse effects on an area with unique environmental characteristics (e.g., wetlands and floodplains, national marine sanctuaries, or marine national monuments) that are not negligible or discountable?			
c) Would there be adverse effects on species or habitats protected by the ESA, the MMPA, the MSA, NMSA, or the Migratory Bird Treaty Act that are not negligible or discountable?			
d) Would there be the potential to generate, use, store, transport, or dispose of hazardous or toxic substances, in a manner that may have a significant effect on the environment?			
e) Would there be adverse effects on properties listed or eligible for listing on the National Register of Historic Places authorized by the National Historic Preservation Act of 1966, National Historic Landmarks designated by the Secretary of the Interior, or National Monuments designated through the Antiquities Act of 1906; Federally recognized Tribal and Native Alaskan lands, cultural or natural resources, or religious or cultural sites that cannot be resolved through applicable regulatory processes?			

f) Would there be a disproportionately high and adverse effect on the health or the environment of minority or low-income communities, compared to the impacts on other communities (EO 12898)?			
g) Would there be contribution to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species?			
h) Would there be a potential violation of Federal, State, or local law or requirements imposed for protection of the environment?			
i) Would there be highly controversial environmental effects?			
j) Would there be the potential to establish a precedent for future action or an action that represents a decision in principle about future actions with potentially significant environmental effects?			
k) Would there be environmental effects that are uncertain, unique, or unknown?			
l) Would there be the potential for significant cumulative impacts when the proposed action is combined with other past, present and reasonably foreseeable future actions, even though the impacts of the proposed action may not be significant by themselves?			

Environmental Assessments

The purpose of an EA is to determine if a proposed action or its alternatives have potentially significant environmental effects. An EA does three things: (1) provides evidence and analysis for determining whether to prepare an EIS; (2) aids agency compliance with NEPA when no EIS is necessary; and (3) facilitates preparation of an EIS when one is necessary. Often, the EA will also identify ways the agency can modify their proposed action to minimize environmental effects.

It is NOAA policy that decision makers provide the public with as much environmental information as is practicable under the circumstances and allow an opportunity for the public to offer their views and inform the decision-making process. Although it is not required, ONMS has a practice of sharing draft EAs with the public through the site’s website, the ONMS national website or both. Depending on the proposed action, ONMS may choose to post the draft in the Federal Register, accompanied by a Notice of Availability (NOA) (see NOAA NEPA Companion Manual p. 13). ONMS should post their draft documents for a minimum of 14 days, but are encouraged to post them for at least 30 days.

The EA process concludes with either a Finding of No Significant Impact (FONSI) or a determination to prepare an Environmental Impact Statement. The FONSI is treated as a decision document in that it identifies the preferred alternative and it documents the determination that further environmental analysis is not required. The FONSI should contain a summary justification for why there would be no significant impacts (directly, indirectly, and cumulatively) from implementing the proposed action. See Appendix B for more information and the FONSI Template.

### Environmental Impact Statements

An Environmental Impact Statement (EIS) is a detailed written statement for proposed federal actions that have, or are likely to have, a significant impact on the human environment. The most rigorous level of NEPA compliance, an EIS has more regulatory requirements than an EA.

There is a formal process in place to involve the public. First, the agency files a Notice of Intent (NOI) in the Federal Register to announce scoping, informing the public of the upcoming environmental analysis and describing how they can become involved in EIS preparation. The public is invited to raise potential issues of environmental concern related to the proposed action and they may also offer additional information to inform the development of alternatives and analysis of effects. A scoping period of at least 30 days is recommended to provide an adequate opportunity for interested parties to comment.

The public is then given an opportunity to comment on the draft EIS after being notified by a publication of the Notice of Availability (NOA) in the Federal register. Public comment periods are for a minimum of 45 days, but may often be for 60 or 90 days, depending on the complexity and controversy of related to the issues addressed in the document. After close of the comment period on the draft EIS, the decision maker must assess and consider all comments received. The EIS is revised to address individual substantive comments, as appropriate. At a minimum, the final EIS must include a summary of comments received and identification of the changes made between draft and final and/or explanation of why the comments do not warrant further agency response. Should the agency determine to provide detailed public comments and agency responses, this information may be included as an appendix.

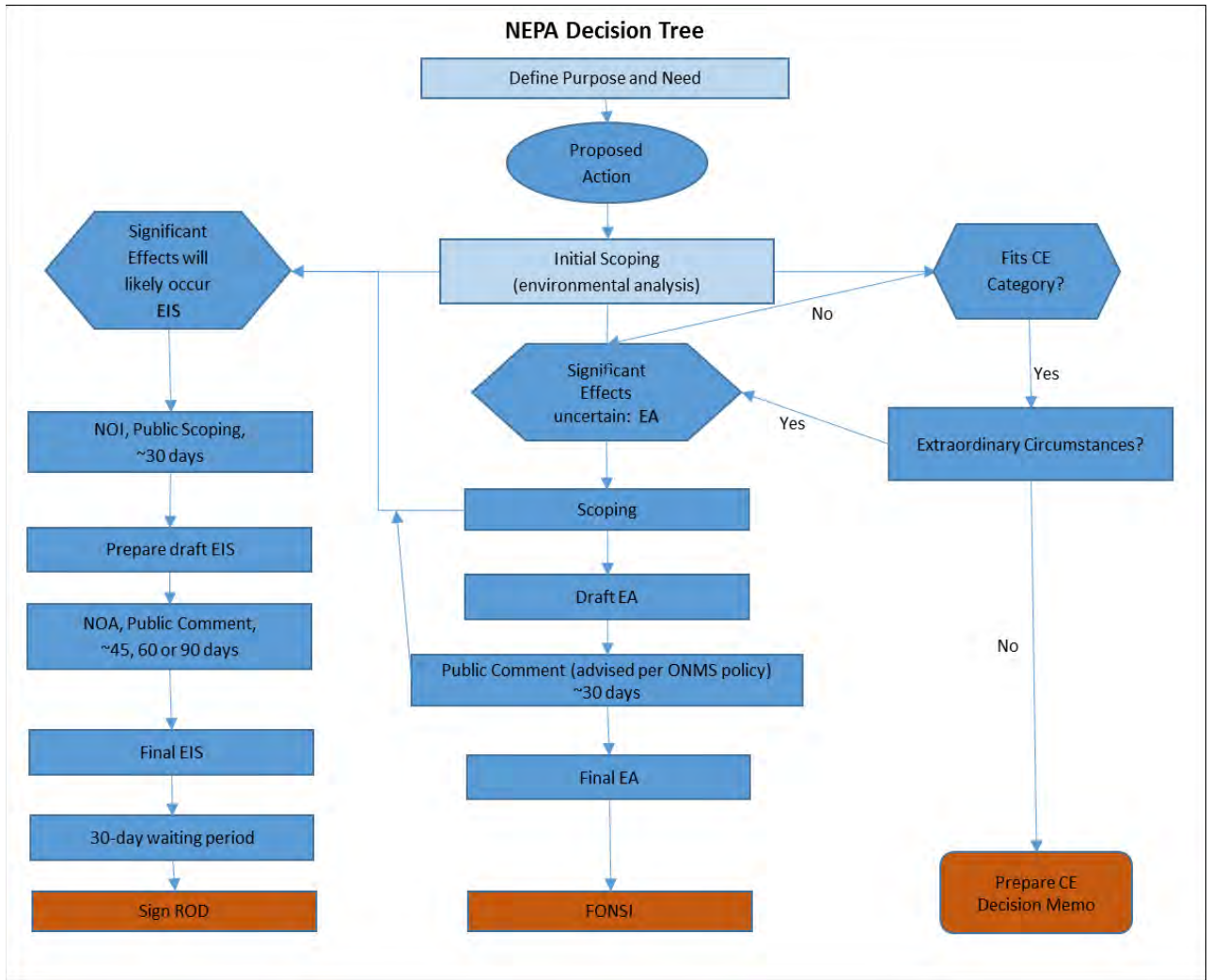
After filing the NOA for the FEIS, the decision maker may prepare the Record of Decision (ROD). However, the ROD may not be signed until 30 days after the publication of the NOA for the FEIS (known as “cooling off period”) or until 90 days after the publication of the notice for a draft EIS—whichever is greater (40 CFR 1506.10). This is not a formal public comment period. A draft ROD could be published with the finalized EIS, but the decision cannot be finalized and implemented until after the “cooling off” period.

The ROD explains the agency’s decision, describes the alternatives the agency considered (including the environmentally preferred alternative), identifies and discusses all factors that were balanced by the agency in making the decision, and discusses plans for mitigating potential environmental effects and monitoring those commitments. By continuing to monitor mitigation commitments, agencies implement NEPA requirements well after the environmental impact analysis is completed.

The Following NEPA Decision Tree is a quick guide to help you make the correct decision on which type of NEPA analysis to use.



Figure 3. NEPA Decision Tree



The steps outlined above can be integrated in decisions that ONMS makes, as described further below.

**D. Process for Determining Appropriate Level of NEPA Analysis**

The individual responsible for determining the appropriate level of the NEPA analysis, coordinating with the ONMS ECC, and preparing the draft NEPA document is typically the project lead at the site (more information is provided in the ONMS Environmental Compliance Policy).

The project lead at the site may first refer to the NOAA Companion Manual to see if the action fits within a categorical exclusion, including relevant stipulations (see Appendix E of the Manual). Signature authority for CE memos or permit decision memos containing

CE memo language is delegated to the Superintendent. All CE memos are reviewed by the memo signatory. All CE memos related to funding actions are also reviewed by the ONMS ECC through Grants Online.

A site's project lead should consult and coordinate with the ONMS ECC when determining whether an EA or an EIS is an appropriate level of NEPA analysis for ONMS actions. Decision-making and signature authority for EAs and EISs are described in the ONMS Environmental Compliance Policy and summarized in Appendix C. When appropriate, an existing environmental analysis may be used to analyze effects in the proposed action (see NOAA NEPA Companion Manual pp. 6-8). Under such circumstances, the project lead at the site may prepare a memorandum for the record (MFR) or inclusion memo documenting the use of the existing analysis. The ONMS ECC must review MFRs and inclusion memos.

#### **E. NEPA Tools**

There are various tools available to build in efficiencies in environmental reviews. The [Companion Manual](#) and section 4.02 of the NOS Environmental Compliance Policy discusses these in greater detail.

##### *Memos for the Record (MFRs)*

In the NEPA context, this refers to a document signed by a decision maker commemorating action is included/addressed by a referenced NEPA document. MFRs are not NEPA documents, but may be used to document compliance.

##### *Inclusion Memos*

An Inclusion Memo is a specific type of MFR that documents the proposed action as being part of an action that has already been analyzed in a final EA or EIS. The inclusion memo should document consideration of the following questions:

- a) Is the new proposed action a feature of, or essentially similar to, the prior proposed action or an alternative analyzed in the existing NEPA document? Is the project within the same analysis area, or if the project location is different, are the geographic and resource conditions sufficiently similar to those analyzed in the existing NEPA document? If there are differences, can the decision maker explain why those differences are not substantial?
- b) Is the range of alternatives analyzed in the existing NEPA document appropriate with respect to the new proposed action, given the environmental concerns, interests, and resource values relevant to the proposed action?
- c) Is the existing analysis valid in light of any new information or circumstances?
- d) Are the direct, indirect, and cumulative effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document?

e) Is the public involvement and interagency review associated with the existing EA or EIS adequate for the new proposed action?

Based on consideration of these questions, the decision maker can determine whether additional environmental analysis is necessary for the proposed action. If the new proposed action is an alternative analyzed, but not selected, in the prior analysis, a new FONSI or ROD would need to be prepared and signed. For more information, see pages 6-7 of the Companion Manual.

#### *Adoption*

NEPA regulations at 40 CFR 1506.3 describe requirements for adoption of EISs, and guidance from CEQ and NOAA also describe requirements for adoption of EAs. NOAA may adopt all or portions of an EA or EIS prepared by another federal agency, if the action addressed in the adopted document or portion is substantially the same as that being considered by NOAA and if NOAA determines that the adopted analysis meets all NEPA requirements. Generally, a cooperating agency may adopt a lead agency's NEPA document without recirculating it if it concludes that its NEPA requirements and its comments and suggestions have been satisfied. Section 1506.3(a) [This only applies to other NEPA documents.] However, if NOAA alters or adds to a partially adopted document, then circulation for public comment, interagency consultation, and a new FONSI or ROD may be necessary.

#### *Incorporation by Reference*

This refers to an inclusion of all or part of another document in the document being prepared. [This is not limited to NEPA documents.] Note: A summary of the document incorporated by reference is necessary, and the material incorporated by reference must be reasonably available for inspection by potentially interested parties. 40 C.F.R. 1502.21.

#### *Tiering*

Tiering refers to the coverage of general matters in broader environmental impact statements with subsequent narrower statements or environmental analyses incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. (40 C.F.R. 1502.20). Tiering is appropriate when the analysis for the proposed action will be a more site-specific or project-specific refinement or extension of the existing, broader NEPA document.

## **F. Additional Environmental Statutes Compliance Requirements**

After identifying the proposed ONMS action, and assessing the environmental setting, the following statutory and executive order requirements can help inform the types of impacts on relevant physical, biological, and cultural resource elements. For detailed information on the statutes referenced below, see Appendix A and B. Requests for

technical assistance and interagency or tribal consultations that would occur pursuant to these requirements should be coordinated through the ONMS ECC.

**Endangered Species Act (ESA).** Are threatened or endangered species, or critical habitat, present in the study area? Could they be directly or indirectly affected<sup>10</sup> by the proposed ONMS action? If not certain, or if so, ONMS will need to consult with NMFS (marine resources) and/or USFWS (fresh water and terrestrial species) pursuant to section 7 of the Endangered Species Act.

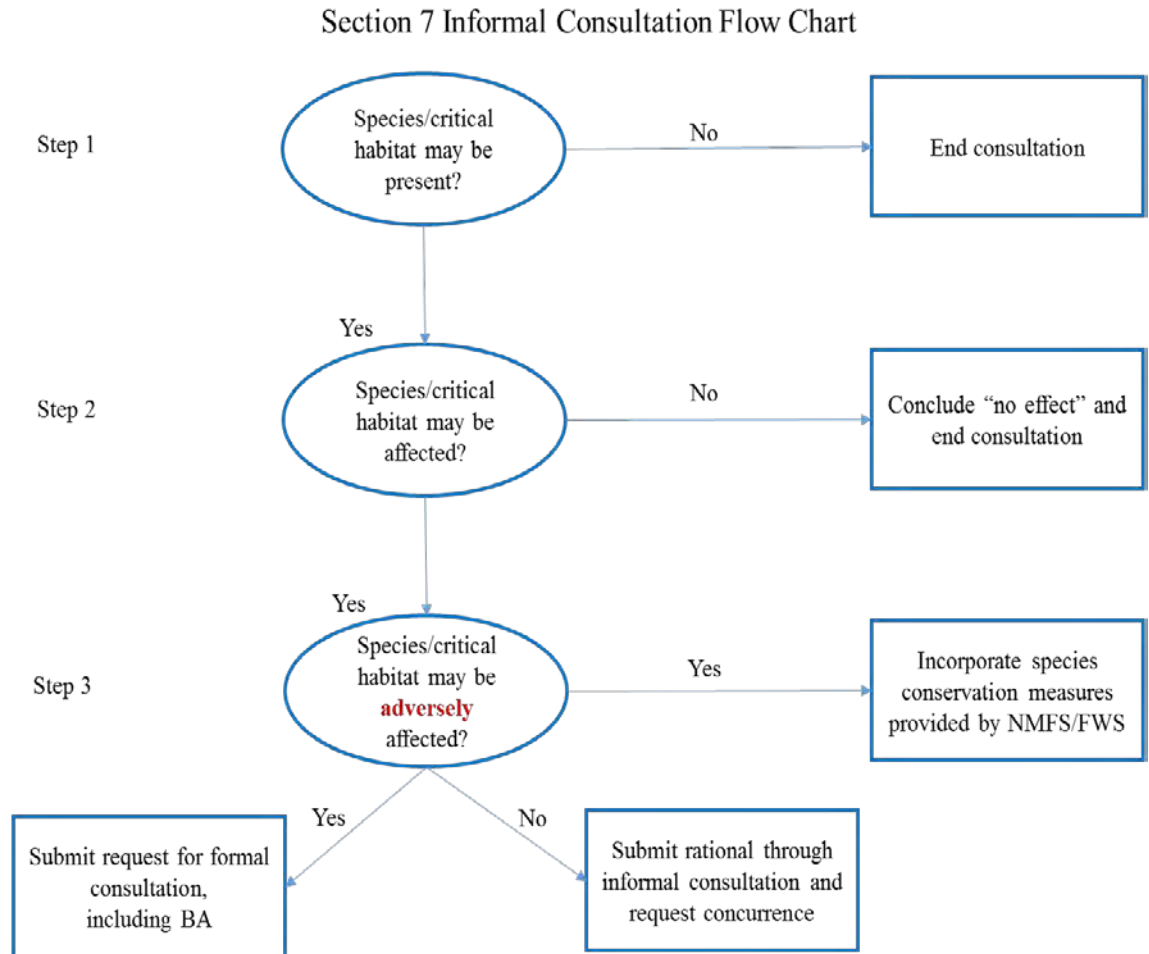
The formal consultation begins when NMFS and/or FWS receives a request for formal consultation that includes complete information from the action agency. Within 90 days from receipt of complete information, NMFS/FWS formulates a biological opinion and incidental take statement in conjunction with the action agency. As an action agency, we then have an opportunity to review a draft of the biological opinion before it is finalized within an additional 45 days.

The following links provide more information: species over which NMFS has jurisdiction (<http://www.nmfs.noaa.gov/pr/species/esa/listed.htm>); species over which FWS has jurisdiction (<https://www.fws.gov/endangered/>); Environmental Response Management Application (ERMA) for site or region-specific resource maps (<http://response.restoration.noaa.gov/maps-and-spatial-data/environmental-response-management-application-erma>), and the joint FWS-NMFS ESA Section 7 Handbook: ([https://www.fws.gov/endangered/esa-library/pdf/esa\\_section7\\_handbook.pdf](https://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf)).

---

<sup>10</sup> In consultations, "take" in the legal sense is not used until late in the process, after the "effect" question is out of the way. At the *effect* stage, it is like NEPA-- you count all effects, bad or good. "May affect" does not *necessarily* equal "take" within the meaning of section 9; that's why you go through the analysis, to find out whether it's serious enough to be called a legal "take." If the action agency thinks it is not likely to *adversely* affect (NLAA), the action agency lets NMFS PR know this. At this stage, your analysis of effects, in relation to the section 9 take prohibition, is based on the perceived likelihood of *adverse* effects only.

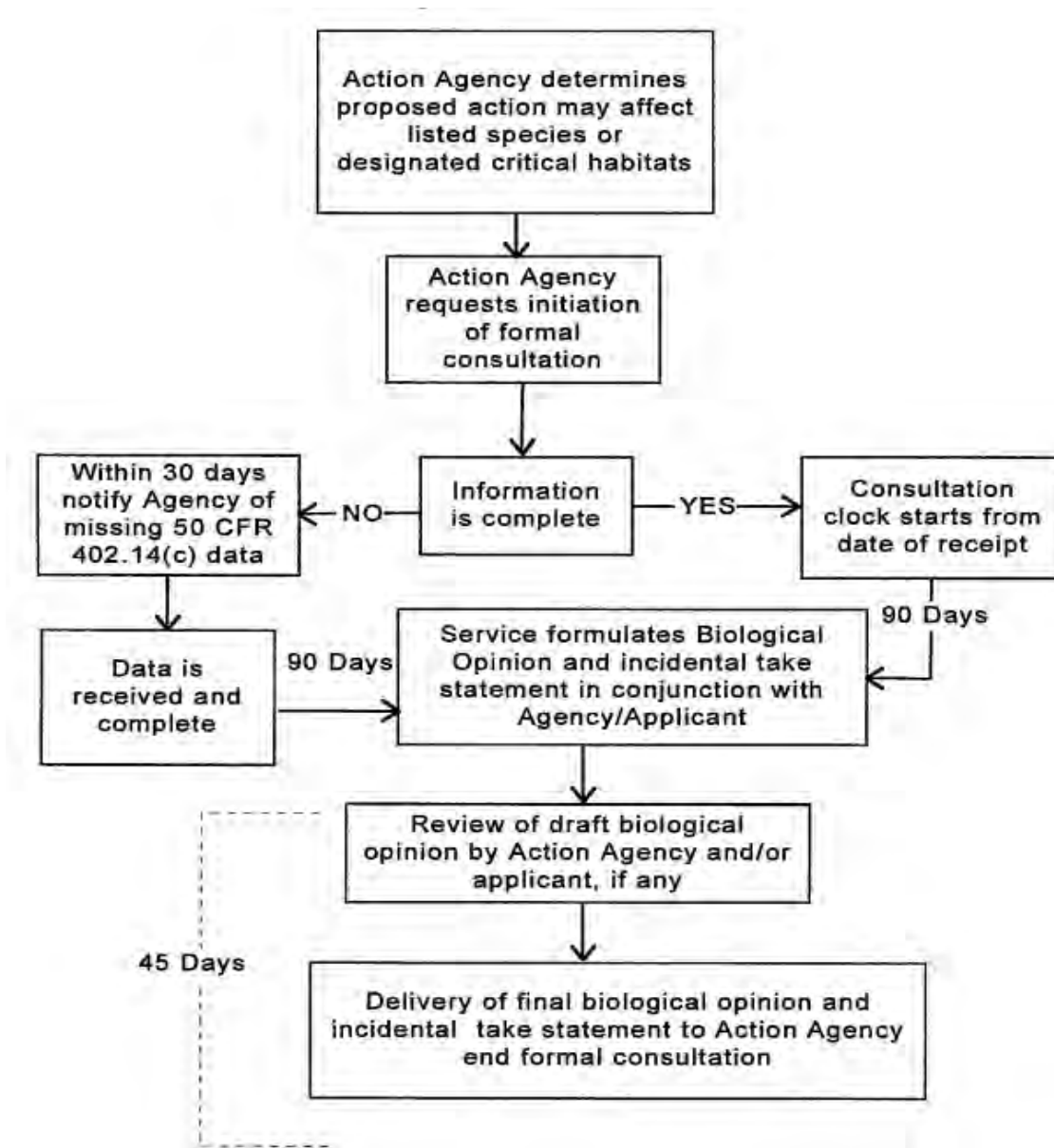
Figure 4. Informal ESA Section 7 Consultation Involves Three Steps.<sup>11</sup>



<sup>11</sup> <https://www.fws.gov/midwest/endangered/section7/s7process/s7stepxstep.html> accessed on June 13, 2017.



Figure 5. Formal ESA Section 7 Consultation Process<sup>12</sup>



**Marine Mammal Protection Act (MMPA).** Are marine mammals in the area? Could they be directly or indirectly affected by the proposed federal action? If uncertain, ONMS should seek technical assistance from the Office of Protected Resources under NMFS. If the proposed action has the potential to cause take of marine mammals: ONMS will need to seek authorization pursuant to the Marine Mammal Protection Act

<sup>12</sup> [https://www.fws.gov/endangered/esa-library/pdf/esa\\_section7\\_handbook.pdf](https://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf) accessed on June 13, 2017.

(MMPA) from NMFS. NMFS may authorize, upon request, the take of small numbers of marine mammals.

Additional information, timelines, and application resources are available here:

<http://www.nmfs.noaa.gov/pr/permits/incidental/>;

<http://www.nmfs.noaa.gov/pr/permits/incidental/instructions.htm>.

**Magnuson Stevens Act (MSA).** Is any essential fish habitat (EFH) in the proposed action area? May the proposed action adversely affect EFH? If not certain, or if so: ONMS will need to consult with the NMFS Office of Habitat Conservation pursuant to the Magnuson Stevens Act Essential Fish Habitat Provisions. If adverse effects are anticipated, then we would need to develop an Essential Fish Habitat Assessment (see Appendix E). NMFS may include additional conservation measures with their concurrence.

Additional information is available in the NOAA Fisheries EFH Consultation Guidance ([http://www.habitat.noaa.gov/pdf/efh\\_consultation\\_guidance\\_v1\\_1.pdf](http://www.habitat.noaa.gov/pdf/efh_consultation_guidance_v1_1.pdf)). The NOAA Fisheries EFH Mapper Tool is available at <http://www.habitat.noaa.gov/protection/efh/habitatmapper.html>.

**Coastal Zone Management Act (CZMA).** Could the proposed federal action have reasonably foreseeable effects (including direct and indirect effects) on any land or water use or natural resource of the coastal zone of a state? If so, federal consistency applies.

First we determine which subpart of 15 CFR Part 922 applies. If NOAA is doing the activity itself, Subpart C applies. For NOAA development projects occurring inside a state's coastal zone, NOAA must submit a consistency determination to the state. For all other NOAA activities inside or outside the coastal zone, if NOAA determines the action may have reasonably foreseeable effects, then NOAA must submit a consistency determination to the state stating that the action is consistent with the enforceable policies in the state's coastal management program. If there are no reasonably foreseeable effects, NOAA may need to submit a negative determination to the state (*see* 15 CFR 930.35). To view state federal consistency lists, visit <https://coast.noaa.gov/czm/consistency/states/>.

If a non-federal entity applies for an ONMS permit, Subpart D applies. Check the state's federal consistency list and, if ONMS permits are included on the list, then the applicant must submit a consistency certification to the state. In addition, if the proposed activity has reasonably foreseeable effects on a state's coastal uses or resources, then the applicant must submit a consistency certification to the state. ONMS cannot issue its permit until the state concurs or concurrence is presumed. Note that activities occurring outside state waters/coastal zone can still trigger federal consistency if there are reasonably foreseeable effects to the state's coastal uses or resources

**National Historic Preservation Act (Section 106, NHPA)** Is the federal undertaking (action) a type that might affect historic properties? See Appendices A & F of this document for more information.

If ONMS determines that it has no undertaking or that its undertaking is a type of activity that has no potential to affect historic properties, the agency has no further Section 106 obligations. If the federal undertaking could affect historic properties, then determine whether there are any historic properties in the area of potential effects. Historic properties are properties that are included in the [National Register of Historic Places](#) or that meet the [criteria for the National Register](#). Seek information from consulting parties, the State Historic Preservation Officer (SHPO), the [Tribal Historic Preservation Officer \(THPO\)](#), [Indian tribes](#), or Native Hawaiian organizations.

If you determine that historic properties are present, then proceed to assess whether the undertaking could cause adverse effects to the historic properties. The assessment of adverse effects is in consultation with the SHPO/THPO. If not, provide documentation to SHPO/THPO and notify consulting parties of finding of no adverse effects. If there is a finding of adverse effects, or if the parties cannot agree as to whether there are adverse effects, then initiate consultation with the SHPO and THPO to resolve (avoid, minimize, or mitigate) adverse effects. NHPA consultations should be coordinated with the ONMS ECC. More information is available at <http://www.achp.gov/106summary.html>.

**Executive Order on Tribal Consultations (E.O. 13175).** Is there a reasonable anticipation that the proposed action may have tribal implications<sup>13</sup> on a federally recognized Tribe? If so, or if unsure, a letter inviting the affected Tribe(s) to consult should be sent to the governing body of the Tribe at the earliest practicable time. See Appendices A & F of this document and NOAA's 13175 Policy for more information.

## **E. Requirements Integration**

Requirement integration refers to using the NEPA approach in not only informing ONMS decisions, but also ensuring compliance with key statutes that are triggered by our actions. In addition, relevant information contained in specific interagency consultations should also be consistent with information provided in the appropriate sections of the NEPA document. For example, species information and potential impact descriptions that are included in a Biological Assessment (prepared by ONMS to support an Endangered Species Act section 7 consultation) should be consistent with information about the species in the environmental setting and impacts described in the environmental consequences section of the EA or EIS for NEPA compliance.

---

<sup>13</sup> "Tribal implications" are defined as "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Tribes, or on the distribution of power and responsibilities between the Federal government and Tribes." EO 13175. Note that such effects may be triggered by Agency actions occurring outside of Tribal lands if the action substantially affects Tribal interests (e.g., actions that may affect a Tribe's exercise of treaty rights in usual and accustomed harvest areas).

Integrating requirements should describe the decision point ONMS makes regarding compliance with environmental statutes and document them in a clearly designated section of the NEPA document. For example, a good practice is to include a compliance chapter that follows the environmental consequences section of an EA or an EIS. This section should briefly summarize the statute requirements, how ONMS plans to meet them, what determinations ONMS has made, and how said determinations will be documented. For actions subject to CEs, any consultation (e.g., letter of concurrence for not likely to adversely affected ESA listed species) should be appended to CE decision memo. Using this approach early in the planning and decision-making process will enable ONMS to make sound decisions supported by analysis in an efficient, legally defensible manner.

## Chapter 4

---

### ONMS FEDERAL ACTIONS

This section describes activities that ONMS implements that are subject to environmental compliance. We use the criteria defined by NEPA to determine whether an ONMS action is a federal action subject to the National Environmental Policy Act (NEPA).

Under NEPA, environmental analysis is typically required for federal actions over which an agency exercises discretion or control. NEPA may not be required for certain statutorily mandated actions for which the agency retains no discretion<sup>14</sup>. NEPA requires federal agencies to “include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment” a statement on the environmental impacts of and proposed alternatives to the proposed action (42 U.S.C. § 4332(2)(C)). Examples of “actions” include: “new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures ...” (40 C.F.R. § 1508.18(a)). Actions include the circumstance where responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action (40 C.F.R. § 1508.18(a)).

#### **A. National Marine Sanctuary Designations**

Sanctuary designations can be done administratively or through actions by Congress. NMSA sections 303 and 304 establish designation standards and administrative procedures for designation and implementation. The NMSA authorizes the Secretary to designate any discrete area of the marine environment as a national marine sanctuary and promulgate regulations implementing the designation if the Secretary makes the findings and determinations required in the NMSA. The NMSA also requires NOAA to prepared designation documents including an EIS level of NEPA analysis, even in the absence of significant effects. The NMSA authority to designate a national marine sanctuary has

---

<sup>14</sup> If you have a question about this, first contact the ONMS ECC.

been delegated from the Secretary of Commerce to the NOS Assistant Administrator. The NOAA Office of General Counsel reviews regulations associated with the designation through the NOAA clearance process.

The process for NOAA designating a new national marine sanctuary has four steps:

1. **Scoping:** NOAA announces its intent to designate a new national marine sanctuary and asks the public for input on potential boundaries, resources that could be protected, issues NOAA should consider and any information that should be included in the resource analysis. This is done by issuing a Notice of Intent (NOI) in the Federal Register and hosting public meetings in the local area of the proposed designation.
2. **Sanctuary Proposal:** NOAA prepares draft designation documents including a draft management plan, draft environmental impact statement that analyzes a range of alternatives, proposed regulations and proposed boundaries. NOAA may also form an advisory council to help inform the proposal, focus stakeholder participation, and advise on designation and management of the proposed sanctuary.
3. **Public Review:** The public, agency partners, tribes and other stakeholders provide input on the draft documents. The length of public review varies, and is contingent on the situation and level of controversy from a minimum of 45 days to 90 days. NOAA also consults with Congress and other federal agencies as described in Section 303(b)(2) of the NMSA<sup>15</sup>. NOAA considers all input and determines appropriate changes.
4. **Sanctuary Designation:** NOAA makes a final decision and prepares final documents. The final documents consist of a rule, EIS, ROD, and management plan. Before the designation becomes effective, the Governor reviews the documents. Congress also has the opportunity to review the documents.

Congressional designations are enacted through a passage of a law, signed by the President, to designate an area as a national marine sanctuary. NOAA would still prepare accompanying regulations, a management plan, and environmental compliance documentation.

The process of designating a national marine sanctuary is closely integrated with the NEPA process. By NMSA requirement, any national marine sanctuary designation, or change to terms of designation of an existing national marine sanctuary must have an EIS level of analysis under NEPA, regardless of the context and intensity of the anticipated impacts to relevant resources. Development of the EIS enables ONMS to fully analyze alternatives and potential impacts to make an informed decision.

---

<sup>15</sup> Consultation with Congressional members and Governors typically is through letters vetted by OLIA and the NOS AA.



Section 303(b) of the NMSA outlines the required consultations and notifications in addition to consultations required under the relevant environmental statutes.

In practice, ONMS sends a letter to the Coast Guard, EPA appropriate region, as well as letters to congressional members and governors.

### **B. National Marine Sanctuary Expansions**

Expanding a national marine sanctuary boundary is a change in terms of designation. Under the NMSA, the terms of designation of a sanctuary may be modified only by the same procedures by which the original designation is made. Accordingly, the NMSA requires an EIS level of analysis when the terms of designation are modified, regardless of the level of significant effects on the human environment. The same procedures apply as the ones relevant for a designation (see above).

### **C. Changes to Existing Regulations**

ONMS may decide to consider changes to regulations during a management plan review process or at other times the agency determines necessary. The Administrative Procedures Act (APA) codified at 5 U.S.C. Subchapter II establishes specific requirements and procedures for rulemakings. Any proposed changes to ONMS regulations are published in the *Federal Register* in a "notice of proposed rulemaking" (NPRM or "proposed rule"). Before the proposed rule is published, ONMS should initiate applicable environmental compliance consultations (see Chapter 3) based on the nature of the proposed rulemaking. Between proposed and final rules the consultations are completed.

Proposed rules provide the public an overview of the purpose and need for the proposed regulatory change, the legal authority for the proposed regulatory change, a description of subjects and issues involved, and the proposed revised regulatory text. The NPRM provides information on compliance with NEPA, applicable legal authorities (e.g., Regulatory Flexibility Act and Paperwork Reduction Act), and environmental compliance requirements in the "Classifications" section. The notice explicitly solicits public comments on the proposal, sets a deadline for public comments, and may announce public meeting dates and locations as well. Regulatory changes generally allow for 30 to 90 days of public comment depending on the complexity and significance of the changes. The notice provides instructions on how the public may provide comments through a federal web-based system at [regulations.gov](http://regulations.gov).

Once ONMS has reviewed and analyzed all comments, we will make any appropriate changes to the proposed rule including summarizing the changes from proposed to final, describe the reason for those changes, and publish the final regulatory text in a "final rule" in the *Federal Register*. The *Federal Register* document may also include specific response to the comments received on the proposed rule. The final rules typically

become effective 30 days after publication in the *Federal Register*, although there are some exceptions.

Rulemakings that designate new national marine sanctuaries or that change the terms of designation for an existing sanctuary (e.g. boundary changes or altering the activities subject to potential regulation) must follow the same procedures described in the NMSA for sanctuary designations (see above). At the final stage, in those cases, the rule will “take effect and become final after the close of a review period of forty-five days of continuous session of Congress beginning on the day on which such notice is published unless, in the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any State, the Governor affected certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the State.” (NMSA Section 304(b)). In some cases, ONMS publishes a separate “notice of effective date” in the *Federal Register* specifying the date of effectiveness of the final rule.

Nearing the publication of a final rule, ONMS may prepare letters informing the relevant Congressional members (if the affected national marine sanctuary falls within the member’s representative district), and relevant House and Senate committees. These letters, and copies of the final rule and any associated documents (e.g. final management plans, environmental impact statements, etc.), would be provided to the Congressional members the day the final rule is published.

The Congressional Review Act (CRA) also requires that all final rules be sent, accompanied by a specified [CRA form](#), to each house of Congress and to the Government Accountability Office (via [email](#)) within 30 days of publication in the *Federal Register*.

#### **D. Permit Issuance**

The NMSA provides the Secretary of Commerce with the authority to comprehensively manage the uses of the National Marine Sanctuary System. An important mechanism to accomplish this is through the issuance of permits that allow otherwise prohibited activities or special uses pursuant to NMSA. Permit authority is delegated to the NOAA’s Office of National Marine Sanctuaries.

There are four mechanisms by which ONMS may approve or authorize otherwise prohibited actions within national marine sanctuaries: general permits, authorizations, certifications, and special use permits, as further described below.

General Permits. General permits allow activities that are included in specified categories and are otherwise prohibited in a national marine sanctuary. All national

marine sanctuaries, with the exception of HIIHWNMS and TBNMS, have the ability to issue general permits for certain activities otherwise prohibited by sanctuary regulations (15 C.F.R Part 922), provided the activity meets two regulatory requirements. First, an activity must qualify for an established general permit category (e.g., research, education, or management), where the project is intended to further the goals of a national marine sanctuary. Second, an activity determined by ONMS to fit one of the permit categories must also meet regulatory permit review criteria.

A superintendent's permit is a type of general permit for management purposes that ONMS issues to itself to allow the implementation of routine activities that further the management of the sanctuary. Superintendents' permits are issued for 5 years. The act of issuing a superintendent permit is categorically excluded; however, all actions authorized by it need independent environmental compliance (including with NEPA, and other relevant statutes). ONMS can issue a letter of authorization (LOA) to itself or a third party that is conducting a management activity on ONMS' behalf. When LOAs are issued, all environmental compliance responsibilities apply.

Authorizations. Authorizations provide a sanctuary with the power to “authorize” another applicable federal, regional, state, local, or tribal government lease, permit, license, or other approval to allow an activity otherwise prohibited by sanctuary (e.g., FKNMS authorizes USCG marine event permit for temporary buoy placement). ONMS considers the general permit regulatory review criteria when deciding whether to issue an authorization. ONMS may add terms and conditions to the authorization, as necessary. Only six sites currently have the ability to issue authorizations<sup>16</sup>.

Certifications. Newly designated sites, or new portions of recently expanded sites, may use certifications to allow otherwise prohibited activities that are in existence on the date of designation or expansion of a sanctuary and that are authorized by a valid lease, permit, license, approval, or other authorization in existence of the effective date of sanctuary designation or expansion. An applicant must present a valid federal, regional, state, local, or tribal government lease, permit, license, or other approval to the sanctuary of designation or expansion to be considered. The sanctuary cannot terminate pre-existing rights, but the director may regulate said activities consistent with the purposes for which a sanctuary was designated<sup>17</sup>. For the purposes of environmental compliance for issuance of certifications, ONMS would analyze the potential environmental effects of any terms and conditions ONMS finds necessary.

Special use permits (SUPs). Under the authority of section 310 of the NMSA,<sup>18</sup> ONMS may issue a special use permit for a limited number of activities that ONMS determines

---

<sup>16</sup> As of March 2017, the following six sanctuaries have authorization authority: FKNMS, FGBNMS, MBNMS, OCNMS, SBNMS, and TBNMS.

<sup>17</sup> 15 C.F.R. §922.47(a)

<sup>18</sup> 16 U.S.C. § 1441

are needed to “establish conditions of access to and use of any sanctuary resource”<sup>19</sup> or “promote public use and understanding of a sanctuary resource.”<sup>20</sup> Pursuant to the NMSA, each site has the authority to issue SUPs and to assess and collect fees for the conduct of any activity conducted under an SUP. SUPs may cover activities whether or not they are prohibited by sanctuary regulations. Section 310(c) of the NMSA specifies criteria applicable to SUPs generally, including that an activity that qualifies for a special use permit cannot destroy, cause the loss of, or injure sanctuary resources. As of April 2017, there are seven categories of activities that have been determined that when conducted under certain conditions may meet the no injury threshold and could be eligible for an SUP:

1. The placement and recovery of objects associated with public or private events on non-living substrate of the submerged lands.
2. The placement and recovery of objects related to commercial filming.
3. The continued presence of commercial submarine cables on or within the submerged lands.
4. The disposal of cremated human remains.
5. Recreational diving near the USS *Monitor*.
6. Fireworks displays.
7. The operation of aircraft below the minimum altitude in restricted zones of national marine sanctuaries

NMSA section 310 gives ONMS the authority to assess certain fees associated with SUPs. SUP fees may include administrative costs, and implementation and monitoring costs, and must be calculated at the fair market value of the use of sanctuary resources. Methods for assessing SUP fees are published in the *Federal Register* (80 FR 72415).

Below are several issues to consider in addressing environmental compliance for permit issuance decisions:

- Determine the scope of our federal action. Are there multiple ONMS permits or authorizations required? Is the permit action linked to other ONMS actions, such as field operations or financial assistance? This helps determine the scope of activities that need to be analyzed in a NEPA or consultation context.
- Determine the extent that our federal action is related to those of other federal, state, or local entities that may have their own compliance requirements. This will help assess opportunities for cooperating agency status, integrating environmental analyses, and defining consultation responsibilities.
- Consider ONMS permit CE categories, but conduct a thorough evaluation of whether extraordinary circumstances are triggered and whether there is a potential for significant effects. Answers to these questions will dictate the type of NEPA analysis necessary.

---

<sup>19</sup> 16 U.S.C. § 1441(a)(1)

<sup>20</sup> 16 U.S.C. § 1441(a)(2)

- Permit decision memos serve as the CE memo and may document other environmental compliance requirements. Permit actions that qualify for a CE must still be evaluated for other applicable environmental compliance requirements.
- Environmental compliance documentation should be included in the permit record in the OSPREY permit database for a complete administrative record.
- Contact the National Permit Coordinator and the ONMS Environmental Compliance Coordinator early in the process as needed, especially when an application is received that would not likely qualify for a CE, when a permit decision is tightly linked with other ONMS actions or federal/state/local authorities, or for other issues related to uncertainty, complexity, or potential controversy.

*Specific CEs for ONMS and Papahānaumokuākea Permits:*

- **Categorical Exclusion B5 for GENERAL PERMITS:**  
Issuance of, or amendments to, general permits for activities that are included in established permit categories at 15 C.F.R. pt. 922 and that meet the regulatory review criteria at 15 C.F.R. pt. 922, that limit any potential impacts so that the proposed activity will be conducted in a manner compatible with the National Marine Sanctuaries Act's primary objective of resource protection.
- **Categorical Exclusion B6 for SPECIAL USE PERMITS:**  
Issuance of, or amendments to, special use permits for activities in a national marine sanctuary that are necessary to either establish conditions of access to and use of any sanctuary resource or promote public use and understanding of a sanctuary resource and must be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources in accordance with the National Marine Sanctuaries Act.
- **Categorical Exclusion B7 for AUTHORIZATIONS:**  
Issuance of, or amendments to, authorizations for activities allowed by a valid federal, regional, state, local, or tribal government approval (e.g., leases, permits, and licenses) issued after the effective date of sanctuary designation or expansion, so long as such authorizations are based upon a consideration of the regulatory review criteria at 15 C.F.R. pt. 922, and will only result in negligible effects to sanctuary resources.
- **Categorical Exclusion B8 for CERTIFICATIONS:**  
Issuance of, or amendments to, certifications for pre-existing activities authorized by a valid federal, regional, state, local, or tribal government approval (e.g., leases, permits, and licenses) or rights of subsistence use or access in existence on the date of the designation or expansion of any national marine sanctuary where the Office of National Marine Sanctuaries issues terms and conditions that are

either ministerial or prescribe avoidance, minimization, or mitigation measures designed to ensure negligible effects to sanctuary resources.

- **Categorical Exclusion B9 for PAPAHĀNAUMOKUĀKEA MARINE NATIONAL MONUMENT PERMITS** (i.e., all monument permits, except special ocean use permits):  
Issuance of, or amendments to, Papahānaumokuākea Marine National Monument (as originally established by Presidential Proclamation 8031, and named Papahānaumokuākea by Presidential Proclamation 8112) permits for activities that are included in established permit categories at 50 C.F.R. pt. 404 and that meet the regulatory review criteria at 50 C.F.R. § 404.11, that limit any potential impacts so that the proposed activity will be conducted in a manner compatible with the monument’s primary objective of resource protection.

#### *Recommended Language for Documentation of a Categorical Exclusion*

##### Categorical Exclusion:

*After reviewing NOAA Administrative Order (NAO) 216-6A, including the criteria used to determine significance, ONMS has determined that the issuance of this permit would not have a significant effect, individually or cumulatively, on the human environment. We have determined that the proposed action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement in accordance with NAO 216-6A Companion Manual (January 13, 2017).*

«CE Citation (*Example: B5*)», specifically:

«Describe Referenced CE». *Example: Issuance of, or amendments to, general permits for activities that are included in established permit categories at 15 C.F.R. pt. 922 and that meet the regulatory review criteria at 15 C.F.R. pt. 922, that limit any potential impacts so that the proposed activity will be conducted in a manner compatible with the National Marine Sanctuaries Act’s primary objective of resource protection.*

*Furthermore, the proposed action does not trigger any extraordinary circumstances listed in the NOAA NAO 216-6A Companion Manual. Based on this, ONMS has determined that further environmental analysis pursuant to NEPA is not warranted for the issuance of this permit.*

### **E. NMSA Section 304(d) Consultation**

Section 304(d) of the NMSA provides that “Federal agency actions internal or external to a national marine sanctuary, including private activities authorized by licenses, leases, or permits, that are likely to destroy, cause the loss of, or injure any sanctuary resource are subject to consultation” with ONMS<sup>21</sup>. It is incumbent that the other federal agencies fulfill all environmental compliance responsibilities related to their proposed action. It is important to note that ONMS has two different legal authorities to affect federal actions: permits and NMSA section 304(d) consultations. Each ground is distinct and one

<sup>21</sup> The standard for Stellwagen is “may affect” sanctuary resources.



does not displace the need for the other; an independent determination must be made for each ground. Accordingly, a single federal action could require a permit and a consultation or any combination thereof (i.e., one, both, or neither). If both a permit and a consultation are applicable, environmental compliance would be required for the former and not the latter<sup>22</sup>, although both are affecting/working on/pertinent to the same external action.

#### **F. Sanctuary Nomination Process**

On June 13, 2014, NOAA issued the [final rule establishing the Sanctuary Nomination Process](#), which provides a mechanism for communities to submit nominations of areas of the marine and Great Lakes environments for NOAA to consider designating as national marine sanctuaries. The final rule contains the criteria and considerations NOAA will use to evaluate national marine sanctuary nominations, describes the process for submitting national marine sanctuary nominations, and promulgates the regulations necessary to implement this action.

The Sanctuary Nomination Process is categorically excluded from the requirements to prepare an EA or EIS based on two NOAA CEs: 1) G1 for routine administrative actions and 2) G7 for preparation of policy directives, rules, and guidelines for which the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process. Given that this is a purely administrative action, no CE documentation is required.

If NOAA determines a nomination adequately meets the final criteria and considerations, it may place that nomination into an inventory of areas that NOAA could consider for designation as a national marine sanctuary. As such, NOAA is not designating any new national marine sanctuaries with this action. Since no federal action is taken during each nomination review process, no NEPA action is necessary. NEPA and other environmental compliance actions would be needed if NOAA decided to initiate the designation process described in earlier sections.

NOAA issues a Federal Register Notice documenting all sites that were accepted on the inventory on a periodic basis and completes a categorical exclusion with this administrative update to the list.

#### **G. Management Plan Review**

The NMSA requires that ONMS develop and implement a management plan for each national marine sanctuary upon designation (Sec. 304 (a)(1)(A) and (a)(2)(C)).

---

<sup>22</sup> If, however, the head of a Federal agency takes an action other than an alternative recommended by the Secretary and such action results in the destruction of, loss of, or injury to a sanctuary resource, the head of the agency shall promptly prevent and mitigate further damage and restore or replace the sanctuary resource in a manner approved by the Secretary. At his stage, different or additional environmental compliance requirements might be triggered. (§304(d)(4))

Management plans are required to be periodically reviewed and updated at intervals not exceeding five years (Sec. 304(e)). During management plan review periods, input from the public, government agencies, and other interested parties is taken into consideration through the NEPA process as ONMS drafts and finalizes the new plan. A management plan typically contains a variety of action plans organized along functional areas (e.g., resource protection, research, education) or issues (e.g., wildlife disturbance, water quality). Each action plan contains strategies and activities nested under an overarching goal, but there is considerable variation on the level of detail included in the action plan. Since the development and revision of a management plan is considered a federal action, ONMS typically conducts a public process and analyzes the consequences of various alternatives to the management plan as required under NEPA. The draft management plan (or draft revisions to an existing management plan) and draft NEPA document are published at the same time, and ONMS solicits public comments on both documents. The final documents are then published together as well.

In some cases, the strategies and activities within the completed management plan are too broad to lend themselves to a detailed environmental impacts analysis. In those cases, further environmental compliance may be required at the time of implementation of the action plan. ONMS has developed four regional programmatic EAs for field operations that analyze the effects of management plan implementation. However, ONMS intends to integrate environmental analysis of field operations in environmental analyses more thoroughly in management plan review processes in the future, as new management plans are developed.

Some management plan review processes may also call changes to site or national regulations. Regulatory changes may be proposed concurrently with the management plan review, or addressed in a separate process as part of implementing the final management plan. If the regulatory changes are made concurrently, the public process required under NEPA is combined with the public process required under APA for rulemakings, and the draft management plan is published at the same time as the draft NEPA document and proposed rule. The final documents are also published concurrently with each other. If the regulatory changes are made subsequent to the management plan review, the environmental compliance for the rulemaking will follow the procedures outlined under “changes to existing regulations” above.

During this process, ONMS also fulfills its requirements under a variety of statutes (see page 9), which may include formal consultation if the analysis indicates that resource impacts warrant such consultation. The most common statutes requiring consultation are MMPA, ESA, MSA, CZMA, and NHPA. These consultation requirements are fulfilled according to the process provided in Chapter 3 of this Handbook for integrating NEPA with other environmental compliance requirements.

## H. Financial Assistance

### *Grant Programs*

ONMS coordinates three grant programs- the Nancy Foster Scholarship Program, the California, Great Lakes and Pacific Northwest Bay Watershed and Education (B-WET) Program and the Ocean Guardian School Program (in partnership with the National Marine Sanctuary Foundation). These programs have been determined to be educational in nature and do not impact the environment in a significant manner. Accordingly, financial assistance awards administered under these programs may qualify for the CEs listed below, unless a specific financial assistance award may have potential effects on an extraordinary circumstance that would require further review. Under the NOAA NEPA Companion Manual, individual CEs may be applied to individual tasks (federal actions) within a bundled financial assistance award if applicable requirements are met (see page 4 of the Companion Manual). NEPA documentation for grants must be cleared by the ONMS ECC as part of the NOAA Grants Online process, prior to the release of funds.

The Nancy Foster Scholarship Program provides support for master's and doctoral studies in oceanography, marine biology, maritime archaeology and all other science, engineering, social science and resource management disciplines involving ocean and coastal areas. Funding is to support the tuition and expenses of this degree, not for the research conducted during this time. Scholars may also complete a research collaboration that is conducted at a field office of the National Marine Sanctuary System or other NOAA program offices. The research that is conducted during this collaboration is managed by the field office and not covered under the terms of this grant program. Given that this financial assistance supports tuitions rather than project specific work, the federal action typically qualifies for G8, E4, or E5 categorical exclusions, barring any extraordinary circumstances.

The CA, Great Lakes and Pacific Northwest B-WET Program supports environmental and marine education within the formal K-12 classroom setting. Funds support environment-based education and watershed educational experiences to students, teachers, and communities. Some stewardship activities may take place in support of a watershed experience, but they are small in nature and may qualify for a categorical exclusion under NEPA (B9, E3, or G8 categorical exclusions) due to the low impact on the environment.

ONMS supports and works closely with the National Marine Sanctuary Foundation. ONMS issues an annual grant to the foundation that supports a wide range of education and outreach activities/programs (e.g., Ocean Guardian School Program, MERiTO, Earth is Blue). Environmental compliance is done before that grant is awarded and it typically qualifies for categorical exclusion(s) under C1, E2, or G8, barring any extraordinary circumstances.

The Ocean Guardian School Program provides funds to schools to conduct stewardship activities on campus or in the community. Funds are provided to the National Marine Sanctuary Foundation to conduct these small grants. The stewardship activities can fall under five environmental pathways- restoration, reduce/reuse/recycle, marine debris, schoolyard habitat, and reduction in carbon footprint. Environmental compliance for these grants is completed when issuing the award to the National Marine Sanctuary Foundation and typically qualifies for categories C1, E2, or G8 unless there is an extraordinary circumstance.

### **I. Agreements and Memorandum of Understanding (MOUs)**

An “agreement” is a signed legal instrument between two parties to provide goods and services to, or to engage in, collaborative activities. It does not include procurement contracts or financial assistance awards (grants, cooperative agreements, loans, or loan guarantees). An agreement may be between a NOAA Program Office or Line Office, federal agency, or non-federal entity, such as a foreign government or an academic institution. An agreement may be referred to a Memorandum of Agreement (MOA), Memorandum of Understanding (MOU), Interagency Agreement, or Intra-Agency Agreement (IAA).

Environmental compliance requirements should be identified, and a plan for meeting those applicable requirements should be in place, prior to signing any agreement. Agreements should not include any language that precludes a party from complying with environmental compliance requirements. For instance, the terms of the agreement should not prevent the parties from considering or adopting mitigation measures developed through environmental compliance when performing their duties under the agreement. The parties to the agreement should determine whether or not signing such an agreement prior to completing its obligations under applicable environmental laws is permissible.

ONMS is encouraged to incorporate language found below in agreements to address environmental compliance responsibilities. This proposed language recommends allocating the responsibility for environmental compliance to the primary actor or party conducting the activities related to potential environmental effects. But ONMS may choose to allocate environmental compliance responsibilities as they see appropriate, as long as ONMS can ensure that all of its environmental compliance responsibilities are met.

#### ONMS is the Primary Actor:

In executing the terms and conditions of this agreement, ONMS shall comply with all applicable federal, state, and local environmental laws, statutes, regulations, executive orders, and permits.

#### ONMS is a Technical Advisor and is not the Primary Actor:

In executing the terms and conditions of this agreement, [Partner(s)] shall comply with all

applicable federal, state, and local environmental laws, statutes, regulations, executive orders, and permits.

ONMS is Funding the Action but a Non-federal Agency Partner is the Primary Actor:

In executing the terms and conditions of this agreement, ONMS shall comply with all applicable federal environmental laws, statutes, and regulations related to ONMS funding action. [Non-federal Agency Partner] agrees to provide any information requested by ONMS that is needed to meet its environmental compliance obligations. Non-federal Agency Partner] shall comply with all applicable federal, state, and local environmental laws, statutes, and regulations related to Partner's activities.

ONMS is Funding the Action but Another Federal Agency is the Primary Actor:

In executing the terms and conditions of this agreement, both agencies shall cooperate to comply with all applicable federal, state, and local environmental laws, statutes, regulations, executive orders, and permits. [ONMS or Partner Federal Agency] agrees to be the lead federal agency. ONMS and Partner agree to provide any information requested by the other party that is needed to meet its environmental compliance obligations.

## **J. Education and Outreach**

### *Education Programs*

ONMS conducts educational programming at all 14 of our sites as well as from the headquarters office. The mission of ONMS education is to inspire ocean and climate literacy and conservation through national marine sanctuaries. National marine sanctuaries are living classrooms where people can see, touch and learn about the nation's spectacular marine life and rich maritime heritage. ONMS is charged with conserving and managing special ocean areas deemed to be of irreplaceable national significance. Education plays a key role in fulfilling this mandate. Education programs may occur in our visitor centers, on beaches or vessels, or in schools and classrooms and reach almost 50,000 K-12 students each year and almost 20,000 additional lifelong learners. Over the past decade, sanctuary education programs have been a powerful force in building stewardship for these unique places and in stimulating marine education. Implementation of these programs typically qualify for B9, E3, E4, E5, or G8 categorical exclusion categories, unless an extraordinary circumstance is triggered.

### *Volunteers Programs*

Volunteers that support ONMS help to ensure that the American public and other visitors learn about these underwater treasures to safeguard their protection now and for future generations. National marine sanctuary volunteers participate in a wide variety of activities including diving, water quality monitoring, beach cleanups, whale identification, collecting field observations and surveys, visitor center docents and wildlife monitoring. Some of the data collection programs are considered citizen science programs, where volunteers partner with scientists to answer real-world questions. These

citizen science volunteers help to identify research questions, collect and analyze data, interpret results, make new discoveries, develop technologies and applications, as well as solve complex problems. For a listing of citizen science programs, visit <http://sanctuaries.noaa.gov/involved/citizen-science.html>. Volunteers and citizen scientists are part of our team making a difference in ocean conservation through their service. Implementation of these programs typically qualify for B5, B9, E3, E4, or E5 categorical exclusion categories, unless an extraordinary circumstance is triggered.

Education and volunteers program activities may be reviewed for environmental compliance during the management plan process, through the grant process or in field operation assessments done by the sites.

#### *Categorical exclusions that relate to grants, education and volunteer programs*

- B5 - citizen science monitoring of water quality
- B9 - education programs at PMNM on invasive algae removal
- C1 - habitat restoration projects like ones conducted by Ocean Guardian schools
- E2 - socioeconomic study of Ocean Guardian School program
- E3 - data collection or sampling for educational programs - such as water quality monitoring, plankton samples, etc. with K-12 students and BWET programs
- E4- wildlife monitoring done by citizen science programs (Beach Watch, naturalist on whale vessels, Team Ocean)
- E5 - LiMPETS monitoring of sandy and rocky intertidal
- G8 - education programs which provide education to the general public and students - the majority of our education programs fit here. Interpretive programs, Ocean Guardian, naturalist programs, school programs, visitor center programs, BWET, etc.

#### **K. Field Operations**

ONMS field operations include a variety of actions that include management, education, and research purposes – and focus on biological, ecological, and/or maritime heritage resources. As discussed above, ONMS has developed four regional programmatic EAs for field operations. The programmatic EAs are designed to analyze specific field operations that are mentioned broadly in the individual site management plans (see Table 1 for categories of field operations). These documents are intended to cover in detail both routine operations and certain strategies that were not developed enough for full NEPA analysis at the time of publication of the management plan.

ONMS intends to more thoroughly include field operations in environmental analyses focused on management plan revision in the future. In that case, the environmental analysis that accompanies that action will likely incorporate by reference portions of the field operations PEAs. In the interim, ONMS may address additional field operations through tiering. Consult the ONMS ECC when considering how to address compliance with specific field operations that may tier off the PEAs.



When preparing documentation for environmental compliance for field operations, whether as part of the management plan review or as part of a separate mechanism such as the current ONMS Field Operations Programmatic EAs, consideration should also be given to the requirements of the other environmental statutes, through the same process described earlier in this Handbook (see page 9).

**Table 1.** ONMS Field Operations

<b>Categories of Field Operations</b>	<b>Definition</b>
<b>Vessel Operations</b>	<p>Vessel operations include all activities conducted on the water from an ONMS small boat or sponsored mission such as, but not limited to, research, education, outreach, resource and habitat assessments, marine mammal disentanglement, and law enforcement. All ONMS vessels must comply with the operational protocols and procedures in the NOAA Small Boats Policy (NAO 209-125).</p> <p>This category applies to all personnel, including crew, staff, visitors, volunteers, and students who may use or work upon any ONMS vessel, regardless of mission sponsor whether directly or indirectly involved. It includes vessel transiting to/from port, where to go, how long to stay there, what is needed to accomplish cruise purpose.</p>
<b>Vessel Maintenance</b>	<p>Regular activities are determined by the program engineer, vessel's crew and operations staff and performed on each vessel to ensure safety, compliance, and reduced risk. Includes vessel maintenance, disposal of waste, general ship operations and any standing orders that improve safety or reduce the potential for resource impacts.</p>
<b>Aircraft Operations</b>	<p>Activities include the use of motorized aircraft including unmanned aerial systems (UAS) for research and surveillance purposes.</p>
<b>Non-Motorized Craft</b>	<p>Activities include the use of any non-motorized craft, such as kayaks and canoes.</p>
<b>SCUBA or Snorkel Operations</b>	<p>Activities include any field work where personnel will be in the water. Includes numbers of divers, time underwater and location of dives.</p>

<b>Onshore Fieldwork</b>	Activities include onshore or intertidal field work where personnel will be walking on shoreline. May include emergency response activities to address marine mammal strandings, vessel groundings, oil or chemical spill response, Shoreline Cleanup Assessment Team protocols, cultural resource assessments or natural resource damage assessments.
<b>Deployment of AUVs/ROVs/gliders/drifters</b>	Activities include equipment deployed from a vessel such as autonomous underwater vehicles, remotely operated vehicles, tow-boards, drifters and gliders.
<b>Deployment of Remote Sensing Equipment</b>	Activities include the deployment from a vessel of towed and hull mounted sensor arrays and the use of acoustic survey systems.
<b>Deployment of Equipment on Seafloor</b>	Activities include the deployment and maintenance of stationary buoys, moorings, anchored or weighted instrumentation, buoyed sensor arrays, and small marker buoys that are used for safe and efficient dive operations.
<b>Other Sampling Activities</b>	Activities include extractive sampling, placement and retrieval of sampling devices (e.g., constructed arrays, equipment, and traps), capturing, tagging and collection of animals, and other sampling protocols such as those associated with injury assessments.

Note: Vessel support for field operations includes ONMS-owned and -contracted vessels. Vessel maintenance includes only ONMS vessels. Aircraft operations include ONMS-contracted aircraft. Deployment of equipment includes ONMS-owned and -contracted equipment. Best Management practices for vessel operations can be found in Appendix G.

When preparing documentation for environmental compliance for field operations, whether as part of the management plan review or as part of a separate mechanism such as the current ONMS Field Operations Programmatic EAs, consideration should also be given to the requirements of the other environmental statutes, through the same process described earlier in this Handbook (see page 9). The ONMS ECC must review environmental documentation that tiers off the programmatic EAs for field operations.

## L. Construction

With more than 30 facilities across 14 sites, ONMS carries out a broad range of construction projects including facility maintenance and renovation, exhibit installations, pier and dock construction, and new construction projects as resources allow. The integration of environmental compliance into the development and implementation of design plans can help ONMS make informed decisions on what options have the least environmental impact and financial cost.

ONMS construction projects typically follow the following planning and work schedule:

- Initiation Phase

- Sites/Regions submit project proposal through annual procurement, acquisition and construction budget planning process.
- Projects are evaluated and ranked based on merit, feasibility, alignment with the ONMS strategic plan and resource availability
- Projects are reviewed by ONMS leadership and selected for funding based on the above criteria and to ensure a balance of investments across the system
- Planning Phase
  - For capital construction projects, ONMS staff will work with NOAA’s Project Planning and Management Division (PPMD) to complete initial design, scope of work and independent government estimate
  - At this stage of the project, ONMS staff will also consult with the Policy and Planning Division for environmental compliance review. Preparation of NEPA documentation can be used to assist with other compliance requirements under NHPA, ESA, CZMA, etc.
  - For environmental compliance questions related to project engineering, design or construction, ONMS staff should also consult with NOAA’s Safety and Environmental Compliance Office (SECO)<sup>23</sup>
- Execution Phase
  - Any EC analyses should occur before, or concurrently with, the planning and design phase of a capital construction project. Construction should not begin until all relevant environmental compliance has been completed and documented.

Most ONMS construction projects will fall under F-Series of NOAA CEs, “Real Property Improvements, Maintenance and Construction Actions,” as identified in the [NOAA Companion Manual](#) (pg. E-11), if there are no extraordinary circumstances requiring further review.

The design plans should also take into consideration potential triggers for consultation and/or further review under additional environmental and cultural resource statutes and EOs, as described in Chapter 3 and Appendix A of this Handbook.

### **M. Natural Resource Damage Assessment (NRDA)**

The natural resource damage assessment and restoration process takes place in three phases: (1) damage assessment, (2) restoration and (3) monitoring.

1. **Damage Assessment** takes place immediately after an incident occurs. Trained sanctuary field staff use standard protocols to assess the size, type and area of injuries to sanctuary resources. Dependent on the extent of injury and the time

---

<sup>23</sup> Points of Contact as of March 2017: Jennifer Melton ([Jennifer.Melton@noaa.gov](mailto:Jennifer.Melton@noaa.gov)) and Mark George ([Mark.George@noaa.gov](mailto:Mark.George@noaa.gov))



horizon for recovery, damages are assessed to compensate the public for the interim loss of the resources until restoration or natural recovery is complete.

2. **Restoration** is a crucial component in reversing the effects of human environmental harm. The goal of natural resource trustee agencies after an incident is to achieve primary and compensatory restoration. Primary restoration is aimed at accelerating the recovery of an injured resource to its pre-injury or baseline condition. Compensatory restoration compensates the public for the interim loss of the resource from the time the injury occurred until restoration is complete. While the resource is impaired, it is unable to carry out the complete suite of functions on which the ecosystem relies. Compensatory restoration replaces these interim losses by enhancing productivity or access or by providing replacement resources.
3. **Monitoring** of both primary and compensatory restoration projects is performed to determine whether the restoration goals are being achieved and the site is recovering as anticipated. The restoration monitoring effort allows resource managers to detect and respond to significant changes in the expected rate of recovery, to identify damage to restoration components as a result of external events, such as major storms or vandalism, and to determine how the restoration is recovering in comparison to the surrounding habitat.

Each assessment and restoration phase involves some level of environmental compliance review. A NOAA categorical exclusion, such as E3 (Activities to collect aquatic, terrestrial, and atmospheric data in a nondestructive manner) may be applicable to damage assessment activities. Environmental compliance for assessment activities that are part of an emergency response action are subject to the procedures outlined in the emergency response section, below. With respect to restoration activities, ONMS has an existing Programmatic Environmental Impact Statement (Final Programmatic Environmental Impact Statement for Coral Restoration in the Florida Keys and Flower Garden Banks National Marine Sanctuaries, July 15, 2010) for coral and seagrass restoration activities, and these methodologies are referenced in the NMFS Restoration Center’s 2015 Final Primary Restoration Plan and Environmental Assessment for the T/V Margara Grounding in Puerto Rico<sup>24</sup>.

## N. Emergency Response

Emergency response and restoration (collectively, ‘emergency operations’) are critical resource protection steps for ONMS to ensure resources are maintained for future generations. Section 1506.11 of the CEQ regulations provides:

---

<sup>24</sup> Final Primary Restoration Plan and Environmental Assessment for the 2006 T?V Margara Grounding in Guayanilla, Puerto Rico. NOAA, April 2015. [Link](#)

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

Alternative Arrangements can be issued by CEQ, in consultation with the agency, when agency action is necessary to protect human health or safety or to protect natural resources or both; and likely to result in significant environmental impacts. Under such circumstances, the agency should notify CEQ as quickly as practicable to consult in determining the most appropriate alternative arrangements that will take the place of the normal EIS process.

The [NOAA Companion Manual](#) (pg. 27) also requires coordination with the NOAA NEPA Coordinator regarding alternative arrangements for emergency response actions with significant environmental impacts.

Where the proposed emergency response action will have less than significant impacts, you may apply a CE or an inclusion memo, if available and applicable, or may prepare a concise, focused EA. A CEQ template for preparing concise, focused EAs is available at [https://ceq.doe.gov/docs/nepa-practice/Emergencies\\_and\\_NEPA.pdf](https://ceq.doe.gov/docs/nepa-practice/Emergencies_and_NEPA.pdf) and is available in in the following section under “Emergency Procedures for Federal Actions.”

Emergency operations in sanctuaries may include the following types of activities:

- Aerial Observations (manned and unmanned)
- Hydro acoustic surveys
- Oil spill cleanup assessment
- Marine debris removal
- Salvage operations after a ship grounding
- Coral reef or sea grass restoration
- Wetland restoration after an oil spill

In the case of an emergency response or assessment action in a sanctuary, the Responsible Official determines whether an emergency exists. For emergency actions that would normally require an EA or EIS, the Responsible Official is the Regional Director. For emergency actions that typically would be covered by a CE, the Responsible Official is the Sanctuary Superintendent. The Responsible Official is required to document in writing that an emergency exists and describe the actions taken in response to the emergency. He or she is required to ensure compliance with any of the consultation statutes listed below. The Responsible Official shall also consult with the ONMS PPD Chief and Environmental Compliance Coordinator, as appropriate.

## Emergency Procedures for Federal Actions

### NEPA

In the case of an emergency<sup>25</sup>:

1. Do not delay immediate actions necessary to secure lives and safety of citizens or to protect valuable resources. Consult with CEQ as soon as feasible – Please coordinate any communications with your agency Federal NEPA contacts. (see [http://ceq.doe.gov/nepa\\_contacts/federal.html](http://ceq.doe.gov/nepa_contacts/federal.html)).
2. Determine if NEPA is triggered, and the appropriate level of NEPA analysis:
  - a. Determine if the proposed action is being taken by a Federal agency (e.g., city or state action does not trigger NEPA; Federal decisions to fund city or state action do trigger NEPA) or is statutorily exempt from NEPA (certain FEMA response actions under the Stafford Act are exempt from NEPA, information is available at: [http://www.fema.gov/media-librarydata/20130726-1748-25045-1063/stafford\\_act\\_nepa\\_fact\\_sheet\\_072409.pdf](http://www.fema.gov/media-librarydata/20130726-1748-25045-1063/stafford_act_nepa_fact_sheet_072409.pdf)).
  - b. If the Federal agency proposed emergency response activity is not statutorily exempt from NEPA and the agency has a categorical exclusion (CE) that includes that type of activity, then apply the CE, unless there are extraordinary circumstances that indicate using the CE in this particular case is not appropriate. Agency NEPA personnel should be contacted regarding agency-specific definitions of actions that are “categorically excluded.”
  - c. If the proposed Federal agency emergency response activity is not statutorily exempt from NEPA a categorical exclusion is not available, and the potential impacts of the proposed response activity are not expected to be “significant” environmental impacts, then an Environmental Assessment (EA) is appropriate. Prepare a focused, concise EA as described in Attachment 2. Alternative arrangements as outlined at 40 C.F.R. §1506.11 do not apply because the environmental impacts are not expected to be significant. Agency NEPA personnel should be contacted regarding agency-specific definitions of “significant” actions.
  - d. If the proposed emergency response activity is not statutorily exempt from NEPA, is expected to have “significant” environmental impacts, the agency should determine whether it is covered by an existing NEPA analysis. (e.g., implementing pre-existing spill response plans).
  - e. If the proposed emergency response activity is not statutorily exempt from NEPA and is expected to have “significant” environmental impacts, and is not already covered by an existing NEPA analysis, then the agency should consult with CEQ to determine whether “alternative arrangements” can take the place of an Environmental Impact Statement.

---

<sup>25</sup> Copied directly from: [https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Emergencies\\_and\\_NEPA.pdf](https://ceq.doe.gov/docs/ceq-regulations-and-guidance/Emergencies_and_NEPA.pdf)



Contact Ted Boling, Associate Director, 202-395-0827, eboling@ceq.eop.gov to develop alternative arrangements under 40 C.F.R.§1506.11.

Factors to address when requesting and crafting “alternative arrangements” include:

- nature and scope of the emergency;
- actions necessary to control the immediate impacts of the emergency;
- potential adverse effects of the proposed action;
- components of the NEPA process that can be followed and provide value to
- decision making (e.g., coordination with affected agencies and the public);
- duration of the emergency; and
- potential mitigation measures.

#### *NMSA*

Section 922.44 of Title 15, Code of Federal Regulations, provides:

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank, Florida Keys, Hawaiian Islands Humpback Whale, and Thunder Bay National Marine Sanctuaries. See §§922.111(c), 922.165, and 922.186, 922.196, respectively, for the authority to issue emergency regulations with respect to those sanctuaries. [65 FR 39055, June 22, 2000] Please check the [site specific regulations for each NMS](#).

#### *ESA*

Section 7 regulations recognize that an emergency (natural disaster or other calamity) may require expedited consultation (50 CFR §402.05). The responding official can follow these 4 basic steps for Emergency Response for compliance under ESA.

##### STEP 1 (Initial Contact by the Action Agency)

During any emergency response, the Federal agency will contact the Fish and Wildlife Service (Service) by telephone or facsimile (as quickly as possible following the onset of the emergency). The Federal agency will provide the Service the project location, a description of the emergency response action and timelines.

##### STEP 2 (Service Recommendations)

During this initial contact, or soon thereafter, the Services' role is to offer recommendations to minimize the effects of the emergency response action on listed species or their critical habitat (the informal consultation phase). The emergency response agency will proceed with all necessary actions to stop the imminent threat to human life or property. At the same time, the Service will provide the agency, within 48 hours, a letter to explain the protective procedures that were identified during the initial contact.

##### STEP 3 (Initiating Formal Consultation)

As soon as practicable after the emergency is under control, the action agency

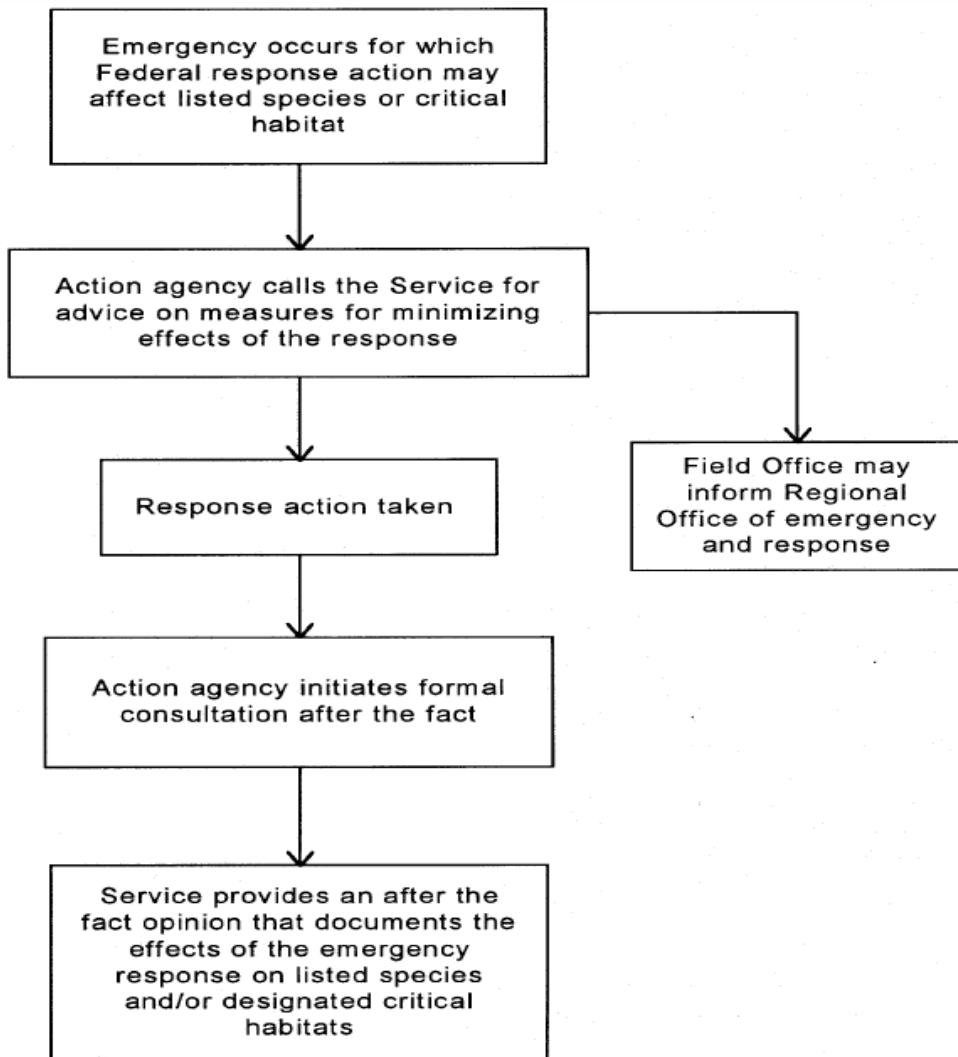
initiates formal consultation with the Services if listed species or critical habitat have been adversely affected. Although formal consultation occurs after the response to the emergency, procedurally it is treated like any other formal consultation. However, the action agency has to provide additional information to initiate a formal consultation following an emergency:

- o a description of the emergency;
- o a justification for the expedited consultation; and
- o an evaluation of the response to and the impacts of the emergency on affected species and their habitats, including documentation of how the Services' recommendations were implemented, and the results of implementation in minimizing take.

**STEP 4 (Consultation Completed)**

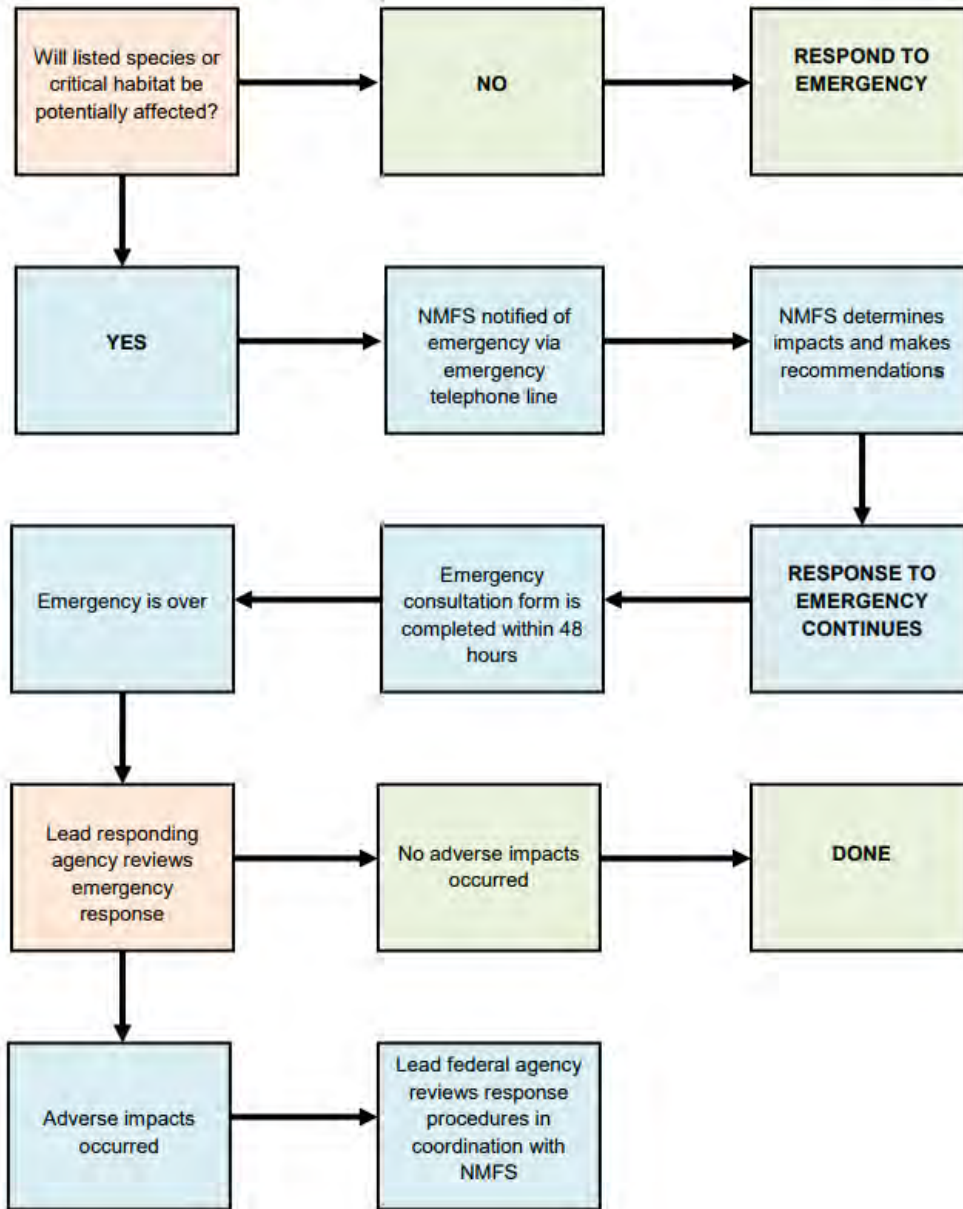
After concluding formal consultation on an emergency, the Services issue an emergency biological opinion. The "effects of the action" section, documents the recommendations provided by the Services to the action agency and the results of agency implementation of the recommendations on listed species. The timeframe, format and contents are the same as for formal consultation. With the finalization of the biological opinion, the action agency has completed their compliance with the ESA.

Figure 5. Summary of Emergency Consultation Process for ESA Compliance<sup>26</sup>



<sup>26</sup> Source: Final ESA Section 7 Consultation Handbook, March 1998

Figure 6. For Oil spill response/ emergency consultation<sup>27</sup>



*NHPA*

The Advisory Council on Historic Preservation (ACHP) has prepared “Frequently Asked Questions” to assist State Historic Preservation Officers (SHPOs), Tribal Historic

<sup>27</sup>[http://sero.nmfs.noaa.gov/protected\\_resources/section\\_7/emergency\\_consultation/documents/noaa\\_emergency\\_consultation\\_flow\\_chart-spill\\_response-1.pdf](http://sero.nmfs.noaa.gov/protected_resources/section_7/emergency_consultation/documents/noaa_emergency_consultation_flow_chart-spill_response-1.pdf)

Preservation Officers (THPOs), federal agencies, and other historic preservation partners in addressing Section 106 requirements during disaster response efforts. These [FAQs](#) explain the Section 106 process in the context of disaster and emergency response as defined in 36 CFR § 800.12. (<http://www.achp.gov/regs-rev04.pdf>) In that context, these FAQs also describe the coordination and timing of compliance actions in the immediate aftermath of an event, and clarify the roles and responsibilities of relevant agencies and consulting parties under Section 106. In responding to a disaster or emergency, the ACHP encourages all parties to be flexible and to consider the broader public interest when looking for ways to protect historic properties.

#### *MSA*

Consultation is required for emergency Federal actions that may adversely affect EFH, such as hazardous material clean-up, response to natural disasters, or actions to protect public safety. Federal agencies should contact NOAA Fisheries early in emergency response planning, but may consult after-the-fact if consultation on an expedited basis is not practicable before taking the actions (pg. 1.2 from EFH Consultation Guidance 2004).<sup>28</sup>

By going through these steps, you have effectively addressed the key statutes that need consideration before we make a decision. Further, using the NEPA process, you have considered alternatives for the proposed action, assessed potential impacts and made an informed decision that is supported by well-thought out analysis.

---

<sup>28</sup> [EFH Consultation Guidance April 2004](#)

## Chapter 5

---

# ENVIRONMENTAL COMPLIANCE DOCUMENTATION AND ADMINISTRATIVE RECORD KEEPING

Keeping a complete administrative record of your environmental compliance is not only a NOAA, NOS, and ONMS requirement, it will assist you in future planning and in any potential legal challenges.

The Administrative Record is the record of the agency's decision-making process for a final agency decision. In this context, the Administrative Record will document the decision to proceed or not proceed with ONMS's proposed action after considering the environmental impacts of the action under NEPA, and complying with all applicable environmental laws, regulations, executive orders, and guidance. The Administrative Record consists of all documents considered directly and indirectly by the decision maker. Documents considered "directly" would include any decision documents signed or reviewed by the decision maker, such as a FONSI, ROD, MFR, or CE memoranda. Documents considered "indirectly" would include materials prepared by, reviewed, or relied on by program staff, such as questionnaires or checklists, informal or formal consultation documents and communications, permits, interagency correspondence, scientific literature, substantive intra-agency emails, cruise plans, standard operating procedures, and public comments. The Administrative Record ideally should be compiled contemporaneously with the environmental compliance process, but must be completed shortly after the final decision documents are signed. The Administrative Record should be retained by ONMS in accordance with any litigation holds and/or applicable NOAA Record Retention Schedule. For additional guidance, see NOAA's 2012 Administrative Guidelines for Compiling an Agency Administrative Record found in (pages 11-14) [http://www.gc.noaa.gov/documents/2012/AR\\_Guidelines\\_122112-Final.pdf](http://www.gc.noaa.gov/documents/2012/AR_Guidelines_122112-Final.pdf) and [http://www.corporateservices.noaa.gov/audit/records\\_management/schedules/](http://www.corporateservices.noaa.gov/audit/records_management/schedules/).

### **Environmental Compliance Documentation**

Environmental compliance documentation includes a minimum of the following (where applicable):



- Final NEPA analysis (CE checklist, EA, or EIS) and associated decision document (CE decision memo, FONSI, or ROD)
- Informal or formal consultation with NMFS and/or FWS under section 7 of the ESA, the biological assessment prepared by ONMS, and the biological opinion (BiOp) issued by NMFS and/or FWS
- Written technical assistance request and response between ONMS and NMFS, MMPA permit application prepared by ONMS, and letter of concurrence (LOC) or incidental harassment authorization (IHA) issued by NMFS (if applicable).
- Essential Fish Habitat (EFH) assessment prepared by ONMS and the letter of concurrence from NMFS (if applicable)
- Consultation letters sent to SHPO(s), and responses from them
- Consultation letters sent to THPO(s), and responses from them
- ONMS negative determination or consistency determination with state's approved coastal management program (if applicable), and state's response

The ONMS Environmental Compliance Policy establishes that the ECC “manage and maintain the ONMS administrative records for environmental compliance efforts to include all informal and formal communications related to consultations.”

While the environmental review of an action is in process, environmental documents must be accessible to the ECC. The location of the documents will be consulted with the respective project lead. However, the administrative record repository for:

- a. Permits and their associated administrative record are maintained in the OSPREY permit database;
- b. Sanctuary regulations including designations and expansions are included on the federal docket management system (FDMS);
- c. Financial Assistance (i.e., grants and cooperative agreements) are included as part of NOAA Grants Online (<https://grantsonline.rdc.noaa.gov/flows/home/Login/LoginController.jpf>);
- d. Other EAs and EISs are published on the ONMS website under Publications; and for all federal actions that qualify for a categorical exclusion, the site is responsible for maintaining the CE checklist and CE Decision Memo, and be able to make it available to the ONMS ECC upon request.

The administrative record repository for all other actions will be identified in accordance with NOAA's Guidelines for Compiling an Agency Administrative Record. Remember, the final environmental compliance documents must be signed by the decision maker prior to implementing the action. The original signed document must be maintained in the record for the action (NAO 216-6A).

## Keeping Administrative Records

In addition to the administrative records requirements described above, the Federal Records Act (FRA) requires agencies to maintain records management programs and to preserve records in accordance with approved records retention schedules. The destruction or disposition of federal records is prohibited except as provided in the FRA or allowed in an approved records schedule. The FRA defines “records” as follows:

*Records include all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of the data in them (44 U.S.C. 3301).*

The form or format of the information or the platform used to create or store the information does not affect whether it is a record. 36 C.F.R. § 1222.10(b)(2), (3). A record is “received” by an agency if it is accepted or collected by or on behalf of an agency or agency personnel in the course of official duties. 36 C.F.R. § 1222.10(b)(4). Materials are “appropriate for preservation” if, “in the judgment of the agency, [t]hey should be filed, stored, or otherwise systematically maintained . . . because of the evidence of agency activities or information they contain.” 36 C.F.R. § 1222.10(b)(6).

The FRA regulations require agencies to create and maintain records that:

- (a) Document the persons, places, things, or matters dealt with by the agency.
- (b) Facilitate action by agency officials and their successors in office.
- (c) Make possible a proper scrutiny by the Congress or other duly authorized agencies of the Government.
- (d) Protect the financial, legal, and other rights of the Government and of persons directly affected by the Government's actions.
- (e) Document the formulation and execution of basic policies and decisions and the taking of necessary actions, including all substantive decisions and commitments reached orally (person-to-person, by telecommunications, or in conference) or electronically.
- (f) Document important board, committee, or staff meetings.

36 C.F.R. § 1222.22.

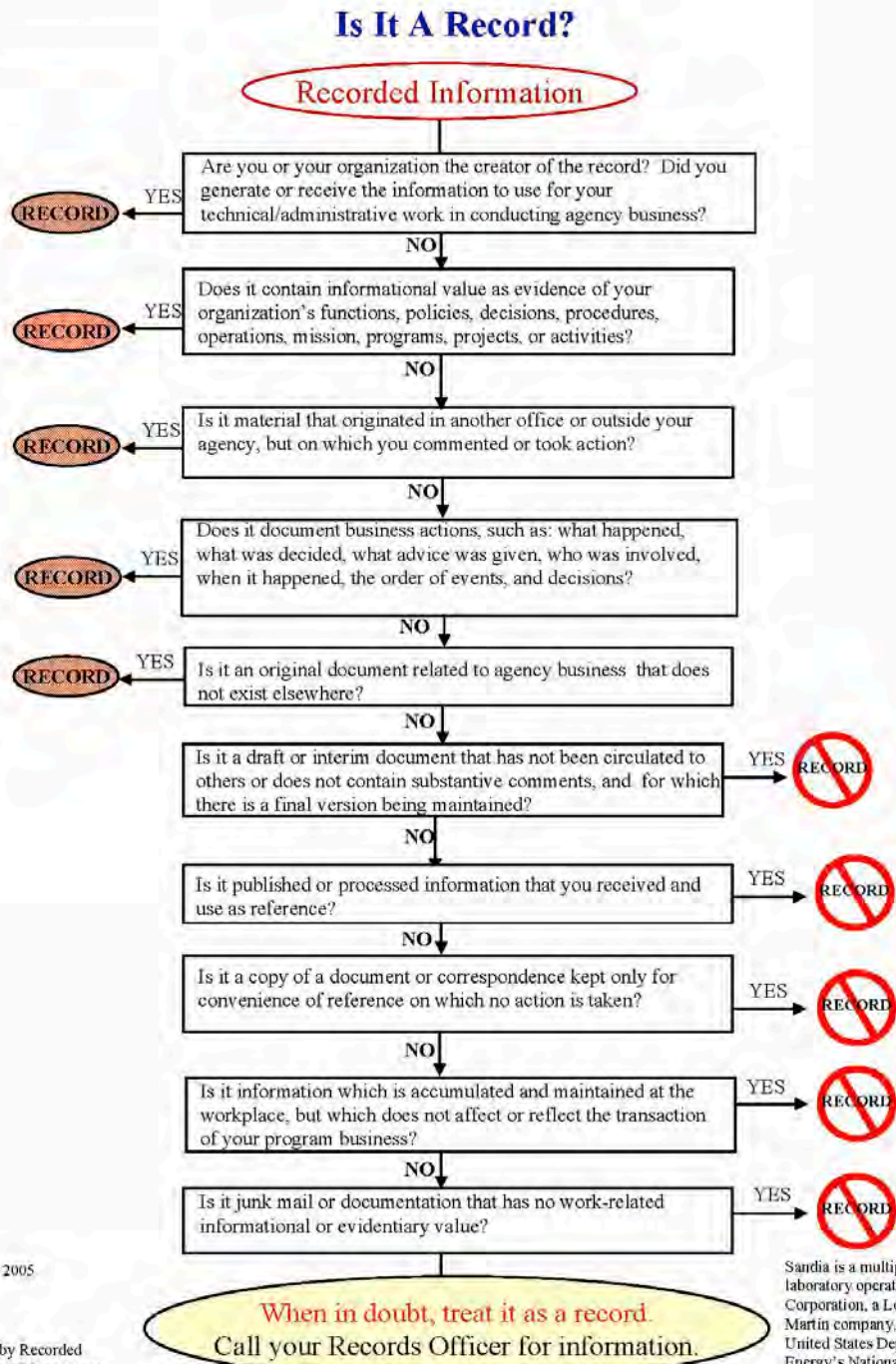
### **Benefits of Administrative Record Keeping**

Effective records management provides ONMS with adequate and proper documentation of agency business; timely response to requests for information; protection of permanently valuable historic and scientific assets; and regular disposal of records of temporary value. As a Federal employee or contractor, it is required that you adhere to these records management procedures. Compliance with established records management practices also allows NOAA to pass scrutiny by Congress and oversight agencies, such as the National Archives and Records Administration (NARA), the Government Accountability Office (GAO) and NOAA auditors and inspectors.

For assistance determining whether the material in question should be included in the record, refer to the *Is it a Record?* Refer to the flowchart below, consult the ONMS ECC, PPD staff or with a member of the ONMS Records Management Team. The National Archives and Records Administration also makes records management guidance available on its website: <https://www.archives.gov/records-mgmt/policy/guidance-regulations.html>. The records retention schedules for NOS are located here: [http://www.corporateservices.noaa.gov/audit/records\\_management/schedules/chapter-1600-ocean-programs.pdf](http://www.corporateservices.noaa.gov/audit/records_management/schedules/chapter-1600-ocean-programs.pdf).

Figure 7 below provides general steps for determining what a record consists of. Please note: (1) the flowchart should be used as a general guide only, (2) if there is doubt about whether something is a record, the agency personnel is required to treat it as a record per the FRA regulations, and (3) if you have doubt or questions about a particular document, contact your records manager or GC.

Figure 7. Suggested Methodology for Determining a Record.



July 28, 2005

Prepared by Recorded Information Management Program of Sandia National Laboratories.

Sandia is a multiprogram laboratory operated by Sandia Corporation, a Lockheed Martin company, for the United States Department of Energy's National Nuclear Security Administration under contract DE-AC04-94AL85000.

## Chapter 6

---

### TRACKING AND REPORTING

#### A. NOS reporting requirements

- Annual NOS Audit

NOS conducts an annual audit of environmental compliance for each one of its programs. The audit is intended to track progress in closing gaps and deficiencies in environmental compliance, as well as adherence to the [NOS Environmental Compliance Policy](#). The ONMS ECC coordinates and prepares responses to the NOS annual environmental compliance audit.

- Quarterly CE Report

Each fiscal quarter, NOS program offices report the number of CEs issued per CE category. The data call is relayed by the ONMS ECC to the ONMS points of contact. Approximately a week prior to the end of a quarter.

- Annual Cooperative Agencies Report

Each federal agency is required to report to CEQ on the status of cooperating agencies involved in the implementation of NEPA at NOAA. CEQ issued guidance on these reporting requirements on December 23, 2004.

The annual fiscal report covers NOAA NEPA actions between October 1, 201X and September 30, 201X+1. Each NOS program is asked to report on:

- all new environmental impact statements (EIS) ***initiated*** (by publication of a Notice of Intent in the *Federal Register*) during this time period, and
- all environmental assessments (EA) ***completed*** during this period.

- Annual CEQ Report on Conflict Resolution

NOAA is required to submit an annual Environmental Collaboration and Conflict Resolution (ECCR) report to OMB and CEQ. This reports on any environmental compliance disputes that have been elevated to CEQ for arbitration. Although it may be rare for such issues to be elevated to the CEQ level, each Line Office is asked to collect input for the ECCR report.

**B. ONMS Internal Reporting**

- **Policy and Planning Division Monthly Update**  
The PPD tracks and reports on environmental compliance actions that will require ONMS leadership clearance and/or signature. The monthly report is compiled by PPD staff and reported to ONMS leadership by the PPD Division Chief.
- **Biannual Report on Status of Environmental Compliance (cumulative and comprehensive)**  
The ONMS ECC will track all environmental compliance related to ONMS actions and report to the PPD Division chief twice a year. The report will reveal that status and completeness of environmental compliance documentation in a spreadsheet. This effort will help ONMS progress towards full environmental compliance for all of its federal actions.

Example entry:

Name of Project:	Description of status/determination of statute compliance
FGBNMS Expansion	NEPA: ...Completed? What level? If does not apply, state reason...
	ESA: ...
	MMPA: ...
	MSA for EFH: ...
	NHPA: ...
	CZMA: ...

- **Annual EC Training Report (number of trainings delivered)**  
ONMS will provide in-house training to staff to address specific environmental compliance needs. ONMS ECCs and Leadership must attend NOS training annually.



## Appendices

---

### LIST OF APPENDICES

- A. Language that can be used to facilitate the drafting of the Consultation Requirements Chapter of an EA or EIS.
    - Magnuson-Stevens Act
    - Marine Mammal Protection Act
    - Endangered Species Act
    - National Historic Preservation Act
    - Tribal Consultation
    - Coastal Zone Management Act
  - B. Additional Statutory Summaries
    - Clean Water Act Section 404-Wetlands
    - Migratory Bird Treaty Act of 1918
    - National Marine Sanctuaries Act and Marine National Monuments
    - Executive Orders
  - C. National Environmental Policy Act
    - List of Extraordinary Circumstances
    - CE Memo Template
    - Template for FONSI
    - EA/EIS Template
  - D. Endangered Species Act
    - BA Template
  - E. Magnuson-Stevens Act
    - EFH Assessment Outline
    - Examples of an EFH Assessment
  - F. National Historic Preservation Act
    - Process flow for NHPA Section 106 and Tribal Consultation in SNP
    - Process flow for NHPA Section 106 and Tribal Consultation in SDP
    - Timing and flow of NHPA consultation with NEPA CEs and EAs
    - NHPA Checklist
    - Example of a SHPO letter
    - E.O. on Tribal Consultation Example Letter
  - G. Coastal Zone Management Act
    - CZMA Example Letter
  - H. Summary Table of Signature Authorities
  - I. EA/EIS Clearance Process for ONMS Actions
  - J. EA/EIS Clearance Process for Permit Actions
  - K. EIS Process for Public Involvement
  - L. Best Management Practices for Vessel Operations
-

## APPENDIX A: STATUTE RESOURCES

**1.** Language that can be used to facilitate the drafting of the Consultation Requirements Chapter of an EA or EIS.

This section contains the statutes that ONMS most frequently consults on. You may use text in this section to partially complete your environmental consultation chapter of your EA or EIS. There are prompts for each statute for you to fill in information specific to the proposed action you are working with.

### **Magnuson-Stevens Act**

In 1976, Congress passed the Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1801, et seq.). The MSA fosters long-term biological and economic sustainability of the nation's marine fisheries out to 200 nautical miles from shore. Key objectives of the MSA are to prevent overfishing, rebuild overfished stocks, increase long-term economic and social benefits, and ensure a safe and sustainable supply of seafood. The MSA promotes domestic commercial and recreational fishing under sound conservation and management principles and provides for the preparation and implementation, in accordance with national standards, of fishery management plans (FMPs).

Essential fish habitat (EFH) describes all waters and substrate necessary for fish for spawning, breeding, feeding, or growth to maturity. The consultation requirements of Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1855(b)) provide that:

- Federal agencies must consult with the Secretary on all actions, or proposed actions, authorized, funded, or undertaken by the agency, that may adversely affect essential fish habitat (EFH);
- the Secretary shall provide recommendations (which may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH) to conserve EFH to Federal or state agencies for activities that would adversely affect EFH.
- the Federal action agency must provide a detailed response in writing to the National Marine Fisheries Service (NMFS) and to any Council commenting under §305(b)(3) of the MSA within 30 days after receiving an EFH Conservation Recommendation.

“Adverse effect” is defined in the regulations as: “any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality and/or quantity of EFH. Adverse effects to EFH may result from actions occurring within EFH or outside of EFH and may include site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.” 50 CFR 600.910.

The trigger for EFH consultation is a Federal action agency's determination that an action or proposed action, funded, authorized or undertaken by that agency may adversely affect EFH. If a Federal agency makes such a determination, then EFH consultation is required. If a Federal action agency determines that an action does not meet the may adversely affect EFH test (i.e., the action will not adversely affect EFH), no consultation is required.

The Department of Commerce’s guidelines for implementing the EFH coordination and consultation provisions of the MSA are at 50 CFR 600.905 - 930. These guidelines provide definitions and procedures for satisfying the EFH consultation requirements, that include the use of existing environmental review processes, General Concurrences, programmatic consultations or individual EFH consultations (i.e., abbreviated, expanded) when an existing process is not available. The EFH guidelines also address coordination with the Fishery Management Councils (Councils), NOAA Fisheries EFH Conservation Recommendations to Federal and state agencies, and Council comments and recommendations to Federal and state agencies.

*[You may copy and paste the text above, and then follow it with a brief discussion of ONMS’ determination related to compliance for this statute, relative to the proposed federal action. Describe how our compliance will be documented and next steps that will be taken.]*

#### Resources:

Additional information is available in the NOAA Fisheries EFH Consultation Guidance ([http://www.habitat.noaa.gov/pdf/efh\\_consultation\\_guidance\\_v1\\_1.pdf](http://www.habitat.noaa.gov/pdf/efh_consultation_guidance_v1_1.pdf)). The NOAA Fisheries EFH Mapper Tool is available at <http://www.habitat.noaa.gov/protection/efh/habitatmapper.html>.

### **Marine Mammal Protection Act**

The Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361 et seq.), as amended, prohibits, with certain exceptions, the “take” of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the U.S. The MMPA defines “take” as: “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal.” 16 U.S.C. § 1362. Harassment means any act of pursuit, torment, or annoyance that has the *potential to injure* a marine mammal or marine mammal stock in the wild (Level A harassment); or that has the *potential to disturb* a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering, but does not have the potential to injure a marine mammal or marine mammal stock in the wild (Level B harassment). 16 U.S.C. § 1362<sup>29</sup> 16 U.S.C. § 1362<sup>30</sup>.

Section 101(a)(5)(A-D) of the MMPA provides a mechanism for allowing, upon request, the "incidental," but not intentional, taking, of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing or directed research on marine mammals) within a specified geographic region. The NMFS Office of Protected Resources (OPR) processes applications for incidental takes of small numbers of marine mammals. Authorization for incidental takes may be granted if NMFS finds that the taking would be of small numbers, have no more than a "negligible impact" on those marine mammal species or stocks, and not have an "unmitigable adverse impact" on the availability of the species or stock for "subsistence" uses. NMFS’ issuance of an incidental take authorization also requires NMFS to make determinations under NEPA and Section 7 of the ESA<sup>31</sup>.

<sup>29</sup> “Harassment” is defined by Level A Harassment, which has the potential to injure a marine mammal or marine mammal stock in the wild; and Level B Harassment which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering

<sup>30</sup> Source: <http://www.nmfs.noaa.gov/pr/dontfeedorharass.htm>

<sup>31</sup> [http://www.westcoast.fisheries.noaa.gov/protected\\_species/marine\\_mammals/mmpa\\_esa.html](http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/mmpa_esa.html)

The purpose of issuing incidental take authorizations (ITAs) is to provide an exemption to the take prohibition in the MMPA, and to ensure that the action complies with the MMPA and NMFS's implementing regulations. ITAs may be issued as either: 1) regulations and associated Letters of Authorization (LOAs); or 2) Incidental Harassment Authorizations (IHAs). An IHA can only be valid for 1 year and LOAs can be valid for up to 5 consecutive years. An IHA may be issued when the action has the potential to result in harassment only (Level B Harassment, i.e., injury or disturbance). If the action has the potential to result in serious injury or mortality, or to result in harassment only and is planned for multiple years, then an IHA may not be issued, but an LOA and regulations may be issued if NMFS makes the required findings.

In addition, NMFS can in some circumstances authorize directed take of marine mammals through the following types of permits:

- Scientific Research Permit
- General Authorization for Scientific Research
- Public Display Permit
- Commercial or Educational Photography Permit

*[You may copy and paste the text above, and then follow it with a brief discussion of ONMS' determination related to compliance for this statute, relative to the proposed federal action. Describe how our compliance will be documented and next steps that will be taken.]*

Resources:

Additional information, estimated timelines, and application resources are available here:

<http://www.nmfs.noaa.gov/pr/permits/incidental/> ;  
<http://www.nmfs.noaa.gov/pr/permits/incidental/instructions.htm>;  
[http://www.nmfs.noaa.gov/pr/permits/mmpa\\_permits.html](http://www.nmfs.noaa.gov/pr/permits/mmpa_permits.html);  
[http://www.nmfs.noaa.gov/pr/permits/faq\\_mmppermits.html](http://www.nmfs.noaa.gov/pr/permits/faq_mmppermits.html).

Additional information and application resources are available here:

<http://www.nmfs.noaa.gov/pr/permits/incidental/>;  
<http://www.nmfs.noaa.gov/pr/permits/incidental/instructions.htm>.

## **Endangered Species Act**

The Endangered Species Act (ESA) of 1973 as amended (16 U.S.C. § 1531, et seq.), provides for the conservation of species that are endangered or threatened throughout all or a significant portion of their range, and the conservation of the ecosystems on which they depend. The ESA directs all Federal agencies to work to conserve endangered and threatened species and to use their authorities to further the purposes of the Act. NMFS works with U.S. Fish and Wildlife Service (USFWS) to manage ESA-listed species. Generally, NMFS manages marine species, while USFWS manages land and freshwater species.

A species is considered endangered if it is in danger of extinction throughout all or a significant portion of its range. A species is considered threatened if it is likely to become an endangered species within the foreseeable future. When listing a species as threatened or endangered, NMFS or FWS also designate critical habitat for the species to the maximum extent prudent and determinable. 16 USC § 1533(a)(3).

Section 7(a)(2) of the ESA states that each Federal agency shall, in consultation with the Secretary, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. In fulfilling these requirements, each agency must use the best scientific and commercial data available. The consultation process is further developed in regulations promulgated at 50 CFR §402.

The ESA requires action agencies to consult or confer with the Services when there is discretionary Federal involvement or control over the action. When a Federal agency's action "may affect" a protected species, that agency is required to consult formally with NMFS or FWS, depending upon the endangered species, threatened species, or designated critical habitat that may be affected by the action (50 CFR §402.14 (a)). Federal agencies are exempt from this general requirement if they have concluded that an action "may affect, but is not likely to adversely affect" endangered species, threatened species, or designated critical habitat and NMFS or the USFWS concurs with that conclusion (50 CFR §402.14 (b)). This is commonly referred to as "informal consultation". This finding can be made only if ALL of the reasonably expected effects of the proposed action will be beneficial, insignificant, or discountable. An action agency shall confer with the Services if the action is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat.

Most consultations are conducted informally with the Federal agency or a designated non-Federal representative. When the biological assessment or other information indicates that the action has no likelihood of adverse effect (including evaluation of effects that may be beneficial, insignificant, or discountable), the Services provide a letter of concurrence, which completes informal consultation. The agency is not required to prepare a biological assessment for actions that are not major construction activities, but, if a listed species or critical habitat is likely to be affected, the agency must provide the Services with an account of the basis for evaluating the likely effects of the action.

Action agencies initiate formal consultation through a written request to the Services. To comply with the section 7 regulations, the initiation package is submitted with the request for formal consultation and must include the materials listed in 50 CFR §402.14(c). If a biological assessment is required, formal consultation cannot be initiated until the biological assessment is completed. The contents of biological assessments prepared pursuant to the Act are largely at the discretion of the action agency although the regulations provide recommended contents (50 CFR §402.12(f)). Formal consultations determine whether a proposed agency action(s) is likely to jeopardize the continued existence of a listed species (jeopardy) or destroy or adversely modify critical habitat (adverse modification), and they are documented by a biological opinion (BiOp). They also determine and authorize the amount or extent of anticipated incidental take in an incidental take statement, identify reasonable and prudent alternatives, if any, when an action is likely to result in jeopardy or adverse modification, and identify ways the action agencies can help conserve listed species or critical habitat when they undertake an action.

In addition, ESA Section 10(a)(1)(A) authorizes the NMFS and FWS to issue permits for scientific purposes or to enhance the propagation or survival of listed species. The permitted activity must not operate to the disadvantage of the species and must be consistent with the purposes and policy set forth in section 2 of the Act. Section 10(a)(1)(A) permits are also required:

- when a reasonable and prudent alternative calls for scientific research that will result in take of the species (this includes scientific research carried out by the Services);
- when the agency, applicant or contractor plans to carry out additional research not required by an incidental take statement that would involve direct take (if this is part of the action and direct take is contemplated, a permit is not needed); and
- for species surveys associated with biological assessments (usually developed during informal consultation) that result in take, including harassment.

*[You may copy and paste the text above, and then follow it with a brief discussion of ONMS' determination related to compliance for this statute, relative to the proposed federal action. Describe how our compliance will be documented and next steps that will be taken.]*

#### Resources:

The following links provide more information: species over which NMFS has jurisdiction (<http://www.nmfs.noaa.gov/pr/species/esa/listed.htm>); species over which FWS has jurisdiction (<https://www.fws.gov/endangered/>); the joint FWS-NMFS ESA Section 7 Handbook: ([https://www.fws.gov/endangered/esa-library/pdf/esa\\_section7\\_handbook.pdf](https://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf)).

#### **National Historic Preservation Act**

Section 106 of the National Historic Preservation Act of 1966 (NHPA) (54 U.S.C. § 300101 et. seq.) requires federal agencies to take into account the effects of their undertakings on historic properties in accordance with regulations issued by the Advisory Council on Historic Preservation (ACHP) at 36 C.F.R. Part 800. The regulations require that federal agencies consult with states, tribes, and other interested parties (consulting parties) when making their effect determinations.

The regulations establish four basic steps in the NHPA 106 process: determine if the undertaking is the type of activity that could affect historic properties, identify historic properties in the area of potential effects, assess potential adverse effects, and resolve adverse effects.

The first step in the process is for the responsible federal agency to determine whether the undertaking is a type of activity that could affect historic properties. Undertakings consist of any project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency, including those carried out by or on behalf of a federal agency; those carried out with federal financial assistance; those requiring a federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a federal agency. Historic properties are properties that are included in the National Register of Historic Places or that meet the criteria for the National Register. If so, the agency must identify the appropriate State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO) to consult with during the process. <http://www.achp.gov/shpo.html>. It should also plan to involve the public, and identify other potential consulting parties. Consulting parties may include Indian tribes and Native Hawaiian organizations,



local governments, permit or license applicants, and interested members of the public. If it determines that it has no undertaking, or that its undertaking is a type of activity that has no potential to affect historic properties, the agency has no further Section 106 obligations.

If the agency's undertaking could affect historic properties, the agency must identify historic properties in the area of potential effects. If the agency finds that no historic properties are present or affected, it provides documentation to the appropriate State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO) and, barring any objection in 30 days, proceeds with its undertaking.

If the agency finds that historic properties are present, it proceeds to assess possible adverse effects, in consultation with the SHPO/THPO. If the parties agree that there will be no adverse effect, the agency proceeds with the undertaking and any agreed-upon conditions. If a) they find that there is an adverse effect, or if the parties cannot agree and ACHP determines within 15 days that there is an adverse effect, the agency begins consultation to seek ways to avoid, minimize, or mitigate the adverse effects.

The agency consults to resolve adverse effects with the SHPO/THPO and others, who may include Indian tribes and Native Hawaiian organizations, local governments, permit or license applicants, and members of the public. ACHP may participate in consultation when there are substantial impacts to important historic properties, when a case presents important questions of policy or interpretation, when there is a potential for procedural problems, or when there are issues of concern to Indian tribes or Native Hawaiian organizations.

Consultation usually results in a Memorandum of Agreement (MOA), which outlines agreed-upon measures that the agency will take to avoid, minimize, or mitigate the adverse effects. In some cases, the consulting parties may agree that no such measures are possible, but that the adverse effects must be accepted in the public interest. The ACHP provides helpful checklists on its website for drafting and reviewing agreements.

If consultation proves unproductive, the agency or the SHPO/THPO, or ACHP itself, may terminate consultation. If a SHPO terminates consultation, the agency and ACHP may conclude an MOA without SHPO involvement. However, if a THPO terminates consultation and the undertaking is on or affecting historic properties on tribal lands, ACHP must provide its comments. The agency head must take into account ACHP's written comments in deciding how to proceed.

*[You may copy and paste the text above, and then follow it with a brief discussion of ONMS' determination related to compliance for this statute, relative to the proposed federal action. Describe how our compliance will be documented and next steps that will be taken.]*

**Resources:**

A user's guide and flowcharts can be found online from the ACHP at <http://www.achp.gov/usersguide.html> and Department of the Interior at <https://www.nps.gov/history/tribes/Documents/106.pdf>.

[Consultation with Indian Tribes in the Section 106 Review Process: A Handbook](#)

## E.O. 13175 Tribal Consultation

Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments” requires federal agencies to establish procedures for meaningful consultation and coordination with tribal officials in the development of federal policies that have tribal implications. NOAA implements EO 13175 through the “NOAA 13175 Policy.” Pursuant to the Policy, NOAA offers affected federally-recognized tribes government-to-government consultation at the earliest practicable time it can reasonably anticipate that a proposed policy or initiative may have tribal implications. “Proposed policies” that may have tribal implications include regulations, legislative comments, proposed legislation and other policy statements or actions. The Policy provides guidance and procedures designed to ensure that NOAA effectively and consistently conducts required government-to-government consultations with federally-recognized tribes. If a proposed action may have tribal implications, the office proposing the action should, at the earliest time practicable, review the NOAA 13175 Policy to determine whether tribal consultation should be initiated. The NOAA 13175 Policy is available here:

<http://www.legislative.noaa.gov/policybriefs/NOAATribalconsultationhandbook2016.pdf>.

Information on federally-recognized tribes is provided by the Department of Interior and available here: [https://www.bia.gov/tribalmapping/DataDotGovSamples/tld\\_map.htm](https://www.bia.gov/tribalmapping/DataDotGovSamples/tld_map.htm)

E.O. 13175 provides the following policymaking criteria:

- (a) *Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.*
- (b) *With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.*
- (c) *When undertaking to formulate and implement policies that have tribal implications, agencies shall:*
  - (1) *encourage Indian tribes to develop their own policies to achieve program objectives;*
  - (2) *where possible, defer to Indian tribes to establish standards; and*
  - (3) *in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.*

In consulting with tribes, the executive order requires that:

- (a) *Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.*
- (b) *To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:*
  - (1) *funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or*
  - (2) *the agency, prior to the formal promulgation of the regulation:*
    - (A) *consulted with tribal officials early in the process of developing the proposed regulation;*
    - (B) *in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency’s prior*

*consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and*  
*(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.*

*(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation:*

- (1) consulted with tribal officials early in the process of developing the proposed regulation;*
- (2) in a separately identified portion of the preamble to the regulation as it is to be issued in the **Federal Register**, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and*
- (3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.*

*(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.*

*[You may copy and paste the text above, and then follow it with a brief discussion of ONMS' determination related to compliance for this statute, relative to the proposed federal action. Describe how our compliance will be documented and next steps that will be taken.]*

Resources:

[NOAA Procedures for Government-to-Government Consultation With Federally Recognized Indian Tribes and Alaska Native Corporations](#)  
[Tribal Consultation and Coordination Policy of the U.S. Department of Commerce](#)

## **Coastal Zone Management Act**

*CZMA has three subparts that pertain to ONMS activities, Subparts C, D, and F. CZMA subpart C has to do with activities implemented by ONMS. Subpart D has to do with permits issued by ONMS. Subpart F has to do with Financial Assistance to State and local governments.*

*Each state publishes a federal consistency list of activities. More information is provided below.*

The Coastal Zone Management Act (CZMA, 16 U.S.C. § 1451) was enacted in 1972 to encourage coastal states, Great Lake states, and U.S. Territories and Commonwealths (collectively referred to as "coastal states" or "states") to preserve, protect, develop, and where possible, to restore or enhance the resources of the nation's coastal zone. The CZMA is a voluntary program for states; currently, thirty-four coastal states have a federally approved coastal management program except Alaska, which voluntarily withdrew from the program in 2011. Section 307 of the CZMA is known as the "federal consistency" provision.

The federal consistency provision requires federal actions (inside or outside a state's [coastal zone](#)) that affect any land or water use or natural resource of a state's coastal zone, to be consistent with the enforceable policies of the state coastal management program (CMP). The term "effect on any coastal use or resource" means any reasonably foreseeable effect on any coastal use or resource resulting from the activity, including direct and indirect (cumulative and secondary) effects. The federal consistency regulations at [15 C.F.R. part 930](#) set forth detailed timeframes and procedures that must be followed carefully.

The two types of federal actions addressed in the federal consistency regulations that NOAA programs most frequently encounter are federal agency activities (15 C.F.R. part 930, subpart C), and federal license or permit activities (subpart D). In addition, subpart E of the regulations addresses outer continental shelf plans and subpart F applies to federal financial assistance provided to state and local governments. A federal action that will have reasonably foreseeable coastal effects, but which does not fall under 15 C.F.R. subpart D, subpart E, or subpart F should be treated as a federal agency activity under subpart C.

**Federal agency activities (subpart C)** are activities and development projects performed by a federal agency, or a contractor for the benefit of a federal agency. For federal agency development projects occurring inside a state's coastal zone, the federal agency must submit a Consistency Determination to the state. For all other federal agency activities, inside or outside the coastal zone, the federal agency must submit a Consistency Determination to the state if the federal agency determines the activity may have reasonably foreseeable effects on the state's coastal uses or resources. Federal agencies need only prepare one Consistency Determination for the proposed action and not for individual authorizations or reviews associated with the proposed action, such as NEPA documents, Endangered Species Act consultations, federal permits the agency may need, etc. Federal agency activities must be consistent to the maximum practicable with the enforceable policies of the state's Coastal Zone Management Plan (CMP). If there are no reasonably foreseeable effects, the federal agency may be required to provide a Negative Determination to the state. *See* 15 C.F.R. § 930.35.

**Federal license or permit activities (subpart D)** are activities conducted by a non-federal entity that require a federal license, permit, or other type of authorization. If the proposed activity has reasonably foreseeable effects on a state's coastal uses or resources, then the permit applicant must submit a Consistency Certification to the state CMP. All federal license or permit activities occurring in the coastal zone are deemed to affect coastal uses or resources if the state CMP has listed the particular federal license, permit or authorization in the state CMP "[federal consistency list](#)" approved by NOAA, available at <https://coast.noaa.gov/czm/consistency/states/>. The federal consistency regulations also identify situations in which an applicant may need to submit a Consistency Certification to the state even if the proposed license or permit activity is not included on the state's federal consistency list. If an applicant is required to submit a Consistency Certification to a state, then the federal agency cannot authorize the proposed activity unless and until the state has concurred with the applicant's Consistency Certification. If a state fails to respond within the required timeframe then concurrence is presumed.

**Federal assistance activities (subpart F)** occur when a state agency or local government applies for federal financial assistance. States list in their CMPs the federal assistance activities subject to federal consistency review. Like subpart D, if an applicant is required to submit a Consistency Certification to

a state, then the federal agency cannot issue the federal assistance unless and until the state has concurred with the applicant's Consistency Certification or concurrence is presumed.

*[You may copy and paste the text above, and then follow it with a brief discussion of ONMS' determination related to compliance for this statute, relative to the proposed federal action. Describe how our compliance will be documented and next steps that will be taken.]*

Resources:

The "[Federal Consistency Overview](https://coast.noaa.gov/czm/consistency/media/federal-consistency-overview.pdf)" (<https://coast.noaa.gov/czm/consistency/media/federal-consistency-overview.pdf>) and the NOAA "[Federal Consistency Regulations](#)" (15 C.F.R. part 930) provide detailed information on federal consistency and the consistency process. For the state boundaries, see <https://coast.noaa.gov/czm/media/StateCZBoundaries.pdf>.

[States with NMSA Permits included in their list](#)

*American Samoa, Florida, Hawaii, Louisiana, Massachusetts, and Washington*

*Note: Example of when an activity occurring outside of a state's waters/ coastal zone can trigger federal consistency: If there is proposed project to conduct seismic surveys outside of the state's coastal zone, and the surveys happen to be where Florida's fisherman go to fish, there would need to be a federal consistency because its affecting a listed "use"—fishing, and resources (landings and profits for them occur in FL).*

## APPENDIX B. ADDITIONAL STATUTE SUMMARIES

### Clean Water Act Section 404 – Wetlands

Any person or agency (including federal, state, and local government agencies) planning to work in jurisdictional waters of the United States, or discharge (dump, place, deposit) dredged or fill material in waters of the United States, including wetlands, must first obtain a permit from the U.S. Army Corps of Engineers (USACE), under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899. A proposed project's impacts to these areas will determine what permit type is required. An individual or standard permit is issued when projects have more than minimal individual or cumulative impacts, are evaluated using additional environmental criteria, and involve a more comprehensive public interest review. A general permit is issued for structures, work or discharges that will result in only minimal adverse effects. There are three types of general permits – Nationwide Permits, Regional General Permits, and Programmatic General Permits.

USACE division or district engineers may revoke a nationwide permit in a state or other geographic region, or add regional conditions to nationwide permits. Some NWP require project proponents to notify district engineers prior to commencing NWP activities. These notifications are called pre-construction notification (PCNs), and they provide district engineers with opportunities to confirm whether or not the proposed activities qualify for NWP authorization. For most NWPs, the district engineer has to respond to a notification within 45 days of receipt of a complete PCN (see General Condition 31). If, after reviewing the PCN, the district engineer determines that the proposed activity qualifies for NWP authorization, the district engineer issues an NWP verification letter to the project proponent. The NWP verification may contain special conditions to ensure that the NWP activity results in minimal individual and cumulative effects on the aquatic environment and the USACE public interest review factors.

A full listing of districts is found at <http://www.usace.army.mil/Locations/>. Visit the appropriate district website for a listing of available general permits and application instructions.

### Migratory Bird Treaty Act of 1918

The Migratory Bird Treaty Act of 1918 (16 U.S.C. §§ 701- 719c; MBTA) implements the United States' commitment to bilateral treaties, or conventions, with Great Britain, Canada, Japan, Russia, and Mexico for the protection of shared migratory bird resources. The MBTA establishes that it is unlawful to pursue, hunt, take, capture, kill, possess, sell, purchase, barter, import, export, or transport any migratory bird, or any part, nest, or egg or any such bird, unless authorized under a permit issued by the Secretary of the Interior. Take is defined in regulations as: "pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect." The MBTA protects over 800 species of birds that occur in the United States, and the list of migratory bird species protected by the MBTA are set forth in 50 CFR § 10.13. U.S. Fish and Wildlife Service issues permits for scientific collecting, banding and marking, falconry, raptor propagation, depredation, import, export, taxidermy, waterfowl sale and disposal, and special purposes. The Service has also developed, and continues to develop, voluntary guidance that help project proponents reduce incidental take of migratory birds. <https://www.fws.gov/birds/management/project-assessment-tools-and-guidance/guidance-documents.php>



## National Marine Sanctuaries Act

The National Marine Sanctuaries Act (16 U.S.C. § 1431 et seq.; NMSA) authorizes the Secretary of Commerce to designate and manage areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities as national marine sanctuaries. The NOAA Office of National Marine Sanctuaries (ONMS) has authority to comprehensively manage uses of the National Marine Sanctuary System (System), and protect its resources through regulations, permitting, enforcement, research, monitoring, education and outreach.

Section 304(d) of the NMSA requires interagency consultation between ONMS and federal agencies proposing actions, including issuing authorizations, which are “likely to destroy, cause the loss of, or injure a sanctuary resource.” In addition, federal agencies are required to consult on proposed actions that “may affect” the resources of Stellwagen Bank National Marine Sanctuary. Section 304(d) outlines the procedures for interagency sanctuary consultation. If a federal agency finds that a proposed action is likely to injure a sanctuary resource, the agency is required to submit a Sanctuary Resource Statement (SRS) to ONMS initiating sanctuary consultation. The SRS describes the proposed agency activity, alternatives considered, and the potential effects of the activity on any sanctuary resource. The federal agency submits the SRS to ONMS at the earliest practicable time, but in no case later than 45 days before final approval of the action, unless another schedule is agreed to. If ONMS finds that the proposed action is likely to injure a sanctuary resource, it must develop “recommended alternatives” that would further protect sanctuary resources. ONMS provides the recommended alternatives to the federal agency within 45 days of receipt of complete SRS information. Upon receipt of the recommended alternatives, the agency is required to consult with ONMS regarding plans for incorporating these recommendations into the proposed action. The agency should provide a written response to ONMS identifying whether it accepts a recommendation and providing an explanation for any decisions to decline a recommendation. If the agency takes an action other than a recommended alternative provided by ONMS and the action results in the destruction of, loss of, or injury to a sanctuary resource, the head of the agency must promptly prevent and mitigate further damage and restore or replace the sanctuary resource in a manner approved by the ONMS.

In addition to consultation, a permit or other approval is required from ONMS when any entity wants to conduct an otherwise prohibited activity within a sanctuary. There are three mechanisms for approval of otherwise prohibited activities: general permits, authorizations, and certifications. A general permit may be issued for otherwise prohibited activities, if the activity would be conducted for certain purposes established in regulations (e.g., research, education, or management) and if it would meet regulatory permit review criteria. An authorization may allow the conduct of an activity prohibited by sanctuary regulations if such activity is specifically authorized by any valid federal, state, or local lease, permit, license, approval, or other authorization issued after the effective date of sanctuary regulation (15 CFR § 922.49). ONMS may use certifications to regulate otherwise prohibited activities previously occurring in a newly designated or expanded sanctuary and that are authorized by a valid form of approval in existence prior to the effective date of sanctuary designation or expansion (16 USC § 1434(c), 15 CFR § 922.47). A special use permit (SUP) may be issued for an activity that is necessary (1) to establish conditions of access to and use of any sanctuary resource or (2) to promote public use and understanding of a sanctuary resource (NMSA section 310, 16 USC § 1441). SUPs cannot be issued for activities that injure sanctuary resources. Currently there are seven

categories of activities that qualify for a SUP that were published in the *Federal Register* (78 FR 25957; May 3, 2013).

For additional information on 304(d) consultation, see *Overview of Conducting Consultation Pursuant to Section 304(d) of the National Marine Sanctuaries Act* (September 2009) at:

<http://sanctuaries.noaa.gov/management/pdfs/304d.pdf>. For additional information on permits, see <http://sanctuaries.noaa.gov/management/permits/>


## Marine National Monuments

Under the Antiquities Act of 1906, the President is authorized to reserve lands and waters of the United States as National Monuments. Marine national monuments and national marine sanctuaries are both types of marine protected areas. The main difference between national marine sanctuaries and marine national monuments is the designation process and the laws under which they are established.

Sanctuaries are designated by NOAA or Congress and are managed by NOAA's National Ocean Service (NOS) pursuant to the National Marine Sanctuaries Act (NMSA). Marine national monuments are established by Presidential Proclamation and are frequently co-managed by various federal agencies and NOAA line offices. There are presently five marine national monuments, only one of which has permitting requirements, Papahānaumokuākea Marine National Monument. For more information on the NMFS Marine National Monument Program, see [http://www.fpir.noaa.gov/MNM/mnm\\_index.html](http://www.fpir.noaa.gov/MNM/mnm_index.html) and

## Executive Orders:

**Executive Orders 11988, Floodplain Management; 13690, Federal Flood Risk Management Standard; and 11990, Protection of Wetlands** direct federal agencies to avoid, to the extent possible, adverse impacts associated with occupying or modifying floodplains and wetlands. They also require federal agencies to avoid floodplain or wetland development whenever there is a practical alternative. The Federal Flood Risk Management Standard (FFRMS) further requires that federally funded projects—those federal actions that involve construction, substantial improvement, or repair of substantial damage of structures and facilities—to be resilient to both current and future flood risk. These EOs apply to any proposed actions in or affecting floodplains and wetlands that involve acquiring, managing, and disposing of federal lands and facilities; providing federally undertaken, financed or assisted construction and improvements; and conducting federal activities and programs affecting land use such as water and related land use resource planning, regulating, and licensing activities. If a proposed action will occur within a wetland or a floodplain (as further defined in the EO 13690), the agency must notify and involve the public in the decision-making process, identify and evaluate practicable alternatives to locating the action in the wetland or floodplain, identify impacts, and evaluate measures to reduce any adverse impacts on the wetland or floodplain. These steps should be integrated into the NEPA analysis for the proposed action. For more information, see NOAA's floodplain guidance, "Executive Order 11988-Floodplain Management, Executive Order 11990-Protection of Wetlands Guidance, December 2012." <http://www.seco.noaa.gov/> For information on defining a floodplain under the FFRMS, see <https://www.fema.gov/federal-flood-risk-management-standard-ffrms>.



**Executive Order 12114, “Environmental Effects Abroad of Major Federal Actions”** requires that federal agencies provide for environmental review for major federal agency actions significantly effecting the environment that occur outside of the United States. Determinations on the appropriate level of environmental review must be made in consultation with the NOAA NEPA Coordinator, NOS ECC, and [Program] ECC. Additional information may be found in the NOAA Companion Manual at Sec. 10.C.

**Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”** requires a federal agency to analyze the effects of proposed programs, policies, and activities on minority and low-income populations, including Indian Tribes. Section 1-101 of this EO provides that “to the greatest extent practicable and permitted by law, . . . each federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority and low-income populations...” NOAA has taken steps to integrate environmental justice considerations into its programs, policies, and activities when required by NEPA. Additional guidance on incorporating environmental justice into the NEPA process may be found at [https://www.epa.gov/sites/production/files/2015-02/documents/ej\\_guidance\\_nepa\\_ceq1297.pdf](https://www.epa.gov/sites/production/files/2015-02/documents/ej_guidance_nepa_ceq1297.pdf).

See also U.S. Department of Commerce Environmental Justice Strategy (rev. 2011):

[http://www.osec.doc.gov/opog/OG/Archive/sites/default/files/DOC\\_Environmental\\_Justice\\_Strategy.pdf](http://www.osec.doc.gov/opog/OG/Archive/sites/default/files/DOC_Environmental_Justice_Strategy.pdf)

## APPENDIX C: NATIONAL ENVIRONMENTAL POLICY ACT

### CE Checklist and CE Memo Template

#### Categorical Exclusion Checklist

Title of Project: (insert example)

Proposed Action: (e.g., issuance of a general permit)

Categorical Exclusion Category # and Title: (e.g., B5 for general permits]

Brief Summary of proposed action relative to project:

Does the proposed action trigger any extraordinary circumstances as described below?

List of Extraordinary Circumstances (NOAA NAO 216-6A Companion Manual)	No	Yes	Explanation
a) Would there be adverse effects on human health or safety that are not negligible or discountable?			
b) Would there be adverse effects on an area with unique environmental characteristics (e.g., wetlands and floodplains, national marine sanctuaries, or marine national monuments) that are not negligible or discountable?			
c) Would there be adverse effects on species or habitats protected by the ESA, the MMPA, the MSA, NMSA, or the Migratory Bird Treaty Act that are not negligible or discountable?			
d) Would there be the potential to generate, use, store, transport, or dispose of hazardous or toxic substances, in a manner that may have a significant effect on the environment?			
e) Would there be adverse effects on properties listed or eligible for listing on the National Register of Historic Places authorized by the National Historic Preservation Act of 1966, National Historic Landmarks designated by the Secretary of the Interior, or National Monuments designated through the Antiquities Act of 1906; Federally recognized Tribal and Native Alaskan lands, cultural or natural resources, or religious or cultural sites that cannot be resolved through applicable regulatory processes?			
f) Would there be a disproportionately high and adverse effect on the health or the environment of minority or low-income communities, compared to the impacts on other communities (EO 12898)?			
g) Would there be contribution to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species?			
h) Would there be a potential violation of Federal, State, or local law or requirements imposed for protection of the environment?			
i) Would there be highly controversial environmental effects?			
j) Would there be the potential to establish a precedent for future action or an action that represents a decision in principle about future actions with potentially significant environmental effects?			
k) Would there be environmental effects that are uncertain, unique, or unknown?			
l) Would there be the potential for significant cumulative impacts when the proposed action is combined with other past, present and reasonably foreseeable future actions, even though the impacts of the proposed action may not be significant by themselves?			

**TEMPLATE FOR CATEGORICAL EXCLUSION MEMORANDUM**

MEMORANDUM FOR: The Record

FROM: **[Insert name and title of appropriate Assistant Administrator, Program Office Director, or Staff Office Director]**

SUBJECT: Categorical Exclusion (CE) for the **[Insert subject of the CE]**

The National Environmental Policy Act, its implementing regulations, and NAO 216-6A require all NOAA proposed actions to be reviewed with respect to environmental consequences on the human environment. This memorandum summarizes the Office of National Marine Sanctuaries determination that a **[Insert subject of the Categorical Exclusion]** qualifies to be categorically excluded from further NEPA review.

Description of the Action(s)

This proposed action is to **[Insert a concise description of the proposed action(s)]**.

Effects of the Action(s)

**[Insert information regarding the lack of effects of the proposed action(s). This should be a concise paragraph.]**

Categorical Exclusion

This action would not result in any significant effects to the human environment. As defined in Appendix E of the NOAA Companion Manual **[insert appropriate specific categorical exclusion citation – refer to NAO 216-6A Companion Manual for the list of categories]** of NAO 216-6A, the proposed work is **[Insert appropriate language to describe the specific categorical exclusion]**. **[Explain why the action fits this category]**, as such any possible direct, indirect, and cumulative effects will be negligible. In considering the list of extraordinary circumstances, ONMS has determined that none would be triggered by the proposed action. **[If any extraordinary circumstances are present, insert explanation of why the presence of the extraordinary circumstance(s) does not preclude the use of the CE (i.e., why any adverse effect on the extraordinary circumstance is negligible or discountable. See pp. 4-5 of the NOAA NEPA Companion Manual]** For these reasons, the action is categorically excluded from the need to prepare an Environmental Assessment.

**[TEMPLATE]****FINDING OF NO SIGNIFICANT IMPACT**

The Council on Environmental Quality (CEQ) Regulations state that the determination of significance using an analysis of effects requires examination of both context and intensity, and lists ten criteria for intensity (40 CFR 1508.27). In addition, the National Oceanic and Atmospheric Administration believes it is appropriate to also consider whether the proposed actions have the potential to result in the introduction or spread of a nonindigenous species.

Each criterion is discussed below with respect to the proposed action and considered individually as well as in combination with the others. Additional information to support this finding of no significant impact can be found in the Environmental Assessment for [INSERT DESCRIPTIVE TITLE OF EA] (hereafter “EA”).

*1. Can the proposed action using the preferred alternative reasonably be expected to cause both beneficial and adverse impacts that overall may result in a significant effect, even if the effect will be beneficial?*

[RESPOND “YES’ OR “NO”]. [INCLUDE RATIONAL FOR FINDING BASED ON CONCLUSION AND ANALYSIS IN THE EA.] (see EA pages **X**)

*2. Can the proposed action reasonably be expected to significantly affect public health or safety?*

[RESPOND “YES’ OR “NO”]. [INCLUDE RATIONAL FOR FINDING BASED ON CONCLUSION AND ANALYSIS IN THE EA.] (see EA pages **X**).

*3. Can the proposed action reasonably be expected to result in significant impacts to unique characteristics of the geographic area, such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas?*

[RESPOND “YES’ OR “NO”]. [INCLUDE RATIONAL FOR FINDING BASED ON CONCLUSION AND ANALYSIS IN THE EA.] (see EA pages **X**).

*4. Are the proposed action’s effects on the quality of the human environment likely to be highly controversial?*

[RESPOND “YES’ OR “NO”]. [INCLUDE RATIONAL FOR FINDING BASED ON CONCLUSION AND ANALYSIS IN THE EA.] (see EA pages **X**).

*5. Are the proposed action’s effects on the human environment likely to be highly uncertain or involve unique or unknown risks?*

[RESPOND “YES’ OR “NO”]. [INCLUDE RATIONAL FOR FINDING BASED ON CONCLUSION AND ANALYSIS IN THE EA.] (see EA pages **X**).

6. *Can the proposed action reasonably be expected to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?*

[RESPOND “YES’ OR “NO”]. [INCLUDE RATIONAL FOR FINDING BASED ON CONCLUSION AND ANALYSIS IN THE EA.] (see EA pages X).

7. *Is the proposed action related to other actions that when considered together will have individually insignificant but cumulatively significant impacts?*

[RESPOND “YES’ OR “NO”]. [INCLUDE RATIONAL FOR FINDING BASED ON CONCLUSION AND ANALYSIS IN THE EA.] (see EA pages X).

8. *Can the proposed action reasonably be expected to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources?*

[RESPOND “YES’ OR “NO”]. [INCLUDE RATIONAL FOR FINDING BASED ON CONCLUSION AND ANALYSIS IN THE EA.] (see EA pages X).

9. *Can the proposed action reasonably be expected to have a significant impact on endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973?*

[RESPOND “YES’ OR “NO”]. [INCLUDE RATIONAL FOR FINDING BASED ON CONCLUSION AND ANALYSIS IN THE EA.] (see EA pages X).

10. *Can the proposed action reasonably be expected to threaten a violation of Federal, state, or local law or requirements imposed for environmental protection?*

[RESPOND “YES’ OR “NO”]. [INCLUDE RATIONAL FOR FINDING BASED ON CONCLUSION AND ANALYSIS IN THE EA.] (see EA pages X).

11. *Can the proposed action reasonably be expected to result in the introduction or spread of a nonindigenous species?*

[RESPOND “YES’ OR “NO”]. [INCLUDE RATIONAL FOR FINDING BASED ON CONCLUSION AND ANALYSIS IN THE EA.] (see EA pages X).



DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting EA prepared for [INSERT PROPOSED ACTION], and associated consultations under the Endangered Species Act and Essential Fish Habitat under the Magnuson Stevens Act, it is hereby determined that authorization of the [INSERT ACTIVITY ASSOCIATED WITH PROPOSED ACTION] will not significantly impact the quality of the human environment as described above and in the supporting EA. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an environmental impact statement for this action is not necessary.

\_\_\_\_\_  
John Armor [FOR NMSA PERMIT ACTIONS]  
Director  
Office of National Marine Sanctuaries  
National Ocean Service  
National Oceanic and Atmospheric Administration

\_\_\_\_\_  
Date

OR:  
Dr. Russell Callender  
Assistant Administrator  
National Ocean Service  
National Oceanic and Atmospheric Administration

## EA/EIS Example Outline

### Executive Summary

### Chapter 1: Introduction and Background

- 1.1 Background
- 1.2 Description of Proposed Action
- 1.3 Purpose for the Proposed Action
- 1.4 Need for the Proposed Action
- 1.5 Regulatory Setting
- 1.6 Public Scoping

### Chapter 2: Alternatives

- 2.1 Alternative 1 (Preferred)
- 2.2 Alternative 2
- 2.3 Alternative 3
- 2.4 Alternative 4 (No Action)
- Etc...
- 2.5 Alternatives Considered but Rejected from further Analysis

### Chapter 3: Environmental Setting

- 3.1 Scope
- 3.2 Air Quality (can include GHG Emissions)
- 3.3 Water Resource and Quality (include groundwater, surface water, hydrology, water quality & quantity)
- 3.4 Biological Resources
  - 3.4.1 Habitats (Can include description of existing critical habitat and EFH)
  - 3.4.2 Fisheries
  - 3.4.3 Protected Resources (should include ESA listed species and impacts on Marine Mammals)
- 3.5 Socio-Economic Resources (Can include social justice here, population, housing, local economy)
- 3.6 Public Services and Utilities
- 3.7 Cultural Resources
- 3.8 Noise
- 3.9 Land Use (include planning and recreation)
- 3.10 Geology and Soils
- 3.11 Aesthetic Resources

### Chapter 4: Environmental Consequences

- 4.1 Scope, definitions, analytical approach (define direct, indirect, cumulative)
- 4.2 Air Quality (can include GHG Emissions)
  - 4.2.1 Alternative 1 (Preferred)
  - 4.2.2 Alternative 2
  - 4.2.3 Alternative 3
  - 4.2.4 Alternative 4 (No Action)



- 4.3 Water Resource and Quality (include groundwater, surface water, hydrology, water quality & quantity)
  - 4.3.1 Alternative 1 (Preferred)
  - 4.3.2 Alternative 2
  - 4.3.3 Alternative 3
  - 4.3.4 Alternative 4 (No Action)
- 4.4 Biological Resources
  - 4.3.1 Alternative 1 (Preferred)
    - 4.3.1.1 Habitats (Can include description of existing critical habitat and EFH)
    - 4.3.2.1 Fisheries
    - 4.3.3.1 Protected Resources (should include ESA listed species and impacts on Marine Mammals)
  - 4.3.2 Alternative 2
    - 4.3.2.1 Habitats (Can include description of existing critical habitat and EFH)
    - 4.3.2.1 Fisheries
    - 4.3.2.1 Protected Resources (should include ESA listed species and impacts on Marine Mammals)
  - 4.3.3 Alternative 3
    - 4.3.3.1 Habitats (Can include description of existing critical habitat and EFH)
    - 4.3.3.2 Fisheries
    - 4.3.3.3 Protected Resources (should include ESA listed species and impacts on Marine Mammals)
  - 4.3.4 Alternative 4 (No Action)
    - 4.3.4.1 Habitats (Can include description of existing critical habitat and EFH)
    - 4.3.4.2 Fisheries
    - 4.3.4.3 Protected Resources (should include ESA listed species and impacts on Marine Mammals)
- 4.5 Socio-Economic Resources (Can include social justice here, population, housing, local economy)
  - 4.5.1 Alternative 1 (Preferred)
  - 4.5.2 Alternative 2
  - 4.5.3 Alternative 3
  - 4.5.4 Alternative 4 (No Action)
- 4.6 Public Services and Utilities
  - 4.6.1 Alternative 1 (Preferred)
  - 4.6.2 Alternative 2
  - 4.6.3 Alternative 3
  - 4.6.4 Alternative 4 (No Action)
- 4.7 Cultural Resources
  - 4.7.1 Alternative 1 (Preferred)
  - 4.7.2 Alternative 2



- 4.7.3 Alternative 3
- 4.7.4 Alternative 4 (No Action)
- 4.8 Noise
  - 4.8.1 Alternative 1 (Preferred)
  - 4.8.2 Alternative 2
  - 4.8.3 Alternative 3
  - 4.8.4 Alternative 4 (No Action)
- 4.9 Land Use (include planning and recreation)
  - 4.9.1 Alternative 1 (Preferred)
  - 4.9.2 Alternative 2
  - 4.9.3 Alternative 3
  - 4.9.4 Alternative 4 (No Action)
- 4.10 Geology and Soils
  - 4.10.1 Alternative 1 (Preferred)
  - 4.10.2 Alternative 2
  - 4.10.3 Alternative 3
  - 4.10.4 Alternative 4 (No Action)
- 4.11 Aesthetic Resources
  - 4.11.1 Alternative 1 (Preferred)
  - 4.11.2 Alternative 2
  - 4.11.3 Alternative 3
  - 4.11.4 Alternative 4 (No Action)
- 4.12 Summary of Impacts

Chapter 5: Other Considerations

- 5.1 Significant Unavoidable Environmental Effects
- 5.2 Irreversible or Irrecoverable Commitment of Resources
- 5.3 Relationship of Short-term Uses to Long-Term Productivity

Chapter 6: Agency Consultations

- 6.1 Endangered Species
- 6.2 Marine Mammal Protection Act
- 6.3 Magnuson Stevens Fishery Conservation and Management Act (Essential Fish Habitat)
- 6.4 National Historic Preservation Act
- 6.5 Coastal Zone Management Act Federal Consistency Review
- 6.6 CEQA...

Chapter 5: Acknowledgements

- 5.1 List of Preparers
- 5.2 Agencies/Personnel Consulted

Chapter 6: Literature Cited

Chapter 7: Appendices

## **APPENDIX D. ENDANGERED SPECIES ACT**

BA Template to be prepared by ONMS to support a NMFS and/or FWS Biological Opinion

### **BIOLOGICAL ASSESSMENT TEMPLATE<sup>32</sup>**

Provided by NMFS Pacific Island Regional Office, Protected Resources Division  
Revision Date: May 2008

#### **INSTRUCTIONS**

The following document is intended to serve as a template for Biological Assessments (BA) and Biological Evaluations (BE) submitted by Federal action agencies or their non-Federal representatives to the National Marine Fisheries Service (NMFS) for consultation as required by Section 7 of the Endangered Species Act (ESA). The purpose of the BA-BE is to describe proposed actions and their effects on ESA-listed species.

#### **COLOR KEY**

Text coloring schemes:

- Black font (boilerplate)
- Blue font (*guidance & examples*)
- Red font (*places to insert information*)

As you finalize sections you should delete *blue* and *red* text.

---

<sup>32</sup>Please note that the contents of a BA/BE may vary by NMFS Region, but this is one you can start with.

**[BIOLOGICAL ASSESSMENT OR BIOLOGICAL EVALUATION]**

*[use one term or the other, as explained below]*

**[Project Name]**

**[ACTION AGENCY TRACKING NUMBER, IF APPROPRIATE]**

*[A Biological Assessment (BA) is prepared for “major construction activities” considered to be Federal actions significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act of 1969 (NEPA). A BA is required if listed species or critical habitat may be present in the action area, and the contents for a BA are described in 50 CFR 402.12(f). “Biological Evaluation” (BE) is a generic term for all other types of analyses.*

*Although agencies are not required to prepare a BA for non-construction activities, **if a listed species or critical habitat is likely to be affected, the agency must provide NMFS with an evaluation on the likely effects of the action.** Often this information is referred to as a BE. NMFS uses this documentation along with any other available information to decide if concurrence with the agency’s determination is warranted. Recommended contents are the same as for a BA, as referenced above. The BAs and BEs should not be confused with Environmental Assessments (EA) or Environmental Impact Statements (EIS) which may be required for NEPA projects. These EAs and EISs are designed to provide an analysis of multiple possible alternative actions on a variety of environmental, cultural, and social resources, and often use different definitions or standards. However, if an EA or EIS contains the information otherwise found in a BE or BA regarding the project and the potential impacts to listed species, it may be used in lieu of a BE or BA.]*

Prepared for:

**[Federal action agency]**

**[Address of above agency]**

Prepared by:

**[insert your name and title]**

**[insert date]**

## 1.0 BACKGROUND/HISTORY

The purpose of this [Biological Assessment/Biological Evaluation (BA/BE)] is to address the effect of the [insert project name] Project on ESA-listed species, listed as endangered or threatened under the Endangered Species Act (ESA), or their designated critical habitat. [name the Federal action agency, the Federal nexus for the proposed action, and the governing statute – i.e. Federal action agency X intends to authorize, permit, fund, or carry out the action described above, under section X of the Governing Act].

*If there are multiple federal action agencies involved, list each and identify which is the lead federal action agency for the consultation.*

The project involves [insert project primary function] in [location]. Because work will occur [adjacent to, or in, the ocean], it has the potential to impact the following ESA-listed marine species that occur in the area: [insert common and scientific names of each species] and/or its/their habitat. [If the project area encompasses monk seal critical habitat (NWHI only), mention that the project also has the potential to affect that].

Early coordination and pre-consultation with NMFS was conducted during a series of site visits, meetings, and phone conversation including: [Insert list of pre-consultation coordination and dates here].

This [BA/BE], prepared by the [Federal action agency, non-fed rep, or consultant], addresses the proposed action in compliance with Section 7(c) of the ESA of 1973, as amended. Section 7 of the ESA assures that, through consultation (or conferencing for proposed species) with the National Marine Fisheries Service (NMFS) and/or the U.S. Fish and Wildlife Service (USFWS), federal actions do not jeopardize the continued existence of any threatened, endangered or proposed species, or result in the destruction or adverse modification of critical habitat.

The purpose of the proposed action is to [insert purpose and need].

*The project purpose and need statement should provide a clear purpose for the proposed project, as well as a brief description of proposed actions in relation to the needs discussed.*

## 2.0 DESCRIPTION OF THE ACTION & ACTION AREA

The proposed action includes [list project components here in a logical order].

*Include a detailed description of what work will be done, and how it will be accomplished, particularly for components that are reasonably likely to have impacts on protected species and/or their habitats. Also include measures to be taken to reduce or eliminate potential impacts from the action, as well as any proposed beneficial components of the project*



*intended as offsetting actions for unavoidable potential adverse effects or as enhancement opportunities; e.g, habitat protection, wetland creation, restoration or enhancements, etc.*

The action area includes [describe the action area in terms of the geographic extent of all the project’s potential effects – see definition below, and refer to attached maps or figures as appropriate].

*Definitions from 50 CFR §402-02:*

**Action Area:** *All areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.*

**Direct Effects:** *Direct or immediate effects of the project on the species or its habitat. Direct effects include those resulting from interdependent or interrelated actions.*

**Indirect Effects:** *Those effects that are caused by or will result from the proposed action and are later in time, but still reasonably certain to occur.*

### **3.0 LISTED SPECIES & CRITICAL HABITAT IN THE ACTION AREA**

*A large number of ESA-listed species occur in the Pacific Islands Region (Hawaii, Guam, Northern Marianas, American Samoa, and Pacific Remote Island Area), including many widely-distributed marine species. NMFS has ESA jurisdiction over marine species – see <http://www.fpir.noaa.gov/> and click on ‘ESA Consultation’ for a list of marine species protected under the ESA in the Pacific Islands Region. USFWS has ESA jurisdiction over terrestrial and freshwater species, including the terrestrial life history stages of sea turtles – see <http://www.fws.gov/pacificislands/wesa/endspindex.html> for a list of terrestrial and freshwater species protected under the ESA in the Pacific Islands.*

*Species lists of ESA-listed marine species occurring in each archipelago in the Pacific Region (Hawaii, Marianas, American Samoa) may be obtained from the NMFS website above, or species lists requests for proposed project areas may be submitted to NMFS. However, because all ESA-listed marine species in the Pacific Region are widely distributed, a species list for a project area is the same a species list for an archipelago, thus it is much quicker to obtain the species list from the NMFS website.*

*ESA consultation is only necessary if ESA-listed species may be affected by the proposed project. However, the “not known to occur here” approach is a common but flawed way of arguing that a proposed project will not affect ESA-listed species. The operative word here is “known.” Unless adequate surveys have been conducted or adequate information sources have been referenced, this statement is difficult to interpret. It begs the questions “Has anyone looked?” and “How did they look?” Remember that your evaluation of potential project effects does not end if ESA-listed are not found in the project area. You must still evaluate the effects of the proposed action on potential habitat for the species, even if it is not known to be occupied.*

*Once the listed species/critical habitat occurring in the action area have been identified, then this section should describe human activities and natural events that have led to the current status of the listed species/critical habitat. This section can rely extensively on cross-referencing existing documents, such as recent status reviews, recovery plans, biological opinions, federal register notices, NEPA documents, etc. This section presents the biological or ecological information relevant to completing the biological assessment. Appropriate information on the species' life history, its habitat and distribution, and other data on factors necessary to its survival should be included to provide background for analyses in later sections. When designated critical habitat is affected, a companion analysis should be done for that habitat.*

The following ESA-listed marine species occur within the action area, or may be affected by the proposed action: **[insert species names]**. **[also describe any designated critical habitat that may be affected by the proposed action]**.

#### **4.0 ENVIRONMENTAL BASELINE CONDITIONS**

*This section identifies and describes all known human-induced sources of impact to the listed species in the Action Area, except those caused by the proposed action. The purpose of the environmental baseline is to provide the context for the impacts of the proposed action with regard to the impacts of all the other human activities that are also affecting the listed species. Although the impacts described in this section are limited to those in the Action Area, it should be noted that additional impacts outside the Action Area often affect the same individuals and populations that are affected in the Action Area. E.g., for sea turtles, additional sources of impacts outside the action area may include pelagic fisheries, nearshore fisheries, directed harvest (of turtles and eggs) and various sources of nesting beach degradation.*

#### **5.0 EFFECTS OF THE ACTION**

*This section includes an analysis of the direct and indirect effects (defined above) of the proposed action, and any interrelated and interdependent actions (see definition below), on the species and/or critical habitat. Factors to be considered in the analysis include: proximity of the action, distribution, timing, nature of the effect, duration, disturbance frequency, disturbance intensity, and disturbance severity. A sufficiently detailed description of the proposed action should be provided in the Proposed Action and Action Area Section above so that the scope of the action and the subsequent analysis of its potential effects are clear.*

*Definition: **Interrelated or Interdependent Activity:** An interrelated activity is an activity*

*that is part of the proposed action and depends on the proposed action for its justification. An interdependent activity is an activity that has no independent utility apart from the action under consultation.*

## **6.0 CUMULATIVE EFFECTS (Formal consultation only)**

*Describe all “non-Federal” actions reasonably certain to occur in the foreseeable future. Includes state, local, private, and tribal actions (e.g. residential developments, watershed enhancement, etc.). Section 7 regulations require the Federal action agency to provide an analysis of cumulative effects, along with other information, when requesting initiation of formal consultation. Note that ‘cumulative effects’ under the ESA is defined more narrowly than under NEPA.<sup>33</sup>*

## **7.0 CONCLUSIONS**

*An effects determination should be made for the proposed action with regard to each listed species and designated critical habitat. Effects determinations by the action agency are summarized in the May 2008 “Action Agency Guide to ESA Consultation w/ NMFS” and “Effects Determination Guidance” accompanying this template, and also found at <http://www.fpir.noaa.gov/> (click on ‘ESA Consultation’). As described in those documents, the 3 possible effects determinations for each species are: 1) No Effect (NE); 2) May Affect but Not Likely to Adversely Affect (NLAA); and 3) May Affect, and Likely to Adversely Affect (LAA).*

**In conclusion, we have determined that the proposed action [will have no effect on/may affect, but is not likely to adversely affect/may affect, and is likely to adversely affect] [each listed species/designated critical habitat].**

*As described in the May 2008 “Action Agency Guide to ESA Consultation w/ NMFS” and “Effects Determination Guidance” accompanying this template, and also found at <http://www.fpir.noaa.gov/> (click on ‘ESA Consultation’): A NE effects determination requires no consultation with NMFS, a NLAA effects determination requires a request for concurrence from NMFS (informal consultation), and a LAA effects determination requires initiation of formal consultation with NMFS.*

## **8.0 LITERATURE CITED**

*Include all scientific papers, agency reports, other literature, and personal communications.*

---

<sup>33</sup> “Cumulative impacts”, as defined by NEPA [40 C.F.R. §1508.7], are the impacts on the environment which result from the incremental impacts of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts are distinct from “cumulative effects”, as defined by the ESA [50 C.F.R. § 402.02], which are those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area.

## **APPENDIX E. MAGNUSON-STEVENS ACT**

EFH Consultation Template Outline:

1.0 Introduction

2.0 Program Description

3.0 Essential Fish Habitat in the Region

4.0 Assessment of Effects on Essential Fish Habitat

5.0 Proposed Mitigation Measures

6.0 Conclusion

7.0 Revision, Tracking, and Review

Example of an EFH Assessment:<sup>34</sup>

### **Office of National Marine Sanctuaries**

May 2016

Essential Fish Habitat Assessment

#### 1.0 Introduction

The consultation requirements of §305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 15 U.S.C. 1855(b)) provide that:

- Federal agencies must consult with the Secretary on all actions, or proposed actions, authorized, funded, or undertaken by the agency, that may adversely affect essential fish habitat (EFH);
- the Secretary shall provide recommendations (which may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH) to conserve EFH to Federal or state agencies for activities that would adversely affect EFH;
- the Federal action agency must provide a detailed response in writing to the National Marine Fisheries Service (NOAA Fisheries) and to any Council

---

<sup>34</sup> Please refer to the NMFS Office of Habitat Conservation Guide to preparing essential fish habitat assessments for further information: <http://www.habitat.noaa.gov/pdf/preparingefhassessments.pdf>

commenting under §305(b)(3) of the MSA within 30 days after receiving an EFH Conservation Recommendation.

## 2.0 Program Description

The Programmatic Environmental Assessment of Field Operations in the Southeast and Gulf of Mexico National Marine Sanctuaries developed by NOAA's Office of National Marine Sanctuaries (ONMS) describes current and ongoing activities for research and management in three sites: Gray's Reef National Marine Sanctuary, Florida Keys National Marine Sanctuary, and Flower Garden Banks National Marine Sanctuary.

Section 2 of this document, the *Description of Proposed Action and Alternatives*, describes the activities ONMS undertakes as part of its field operations in these sites.

## 3.0 Essential Fish Habitat in the Region

Gray's Reef National Marine Sanctuary, Flower Garden Banks National Marine Sanctuary and Florida Keys National Marine Sanctuary overlap with EFH in the South Atlantic and Gulf of Mexico for Red Drum, Reef Fish (Snapper/Grouper Fishery Management Unit), Coastal Migratory Pelagics, Shrimp, Stone Crab, Spiny Lobster and Coral. A complete description of the EFH designations and the criteria used to determine them is available in the Gulf of Mexico Fishery Management Council's *Final Gulf Council EFH Amendment* (March 2005) and in the South Atlantic Fishery Management Council's *Habitat Plan*.

- Red Drum EFH: all estuaries, including Vermilion Bay, Louisiana, to the eastern edge of Mobile Bay, Alabama; Crystal River, Florida, to Naples, Florida, and Cape Sable, Florida; and mangroves, unconsolidated sediments and artificial reefs up the east coast of the southeastern U.S. to the boundary between the areas covered by the SAFMC and the Mid Atlantic Fishery Management Council (MAFMC). In addition to all estuaries, this includes: tidal freshwater (palustrine), marine emergent wetlands (e.g., intertidal marshes), estuarine scrub/shrub (mangroves and mangrove fringe), marine submerged aquatic vegetation (e.g., seagrass), oyster reefs and shell banks, unconsolidated bottom, ocean high salinity surf zones, and artificial reefs.
- Reef Fish and Coastal Migratory Pelagics EFH: all estuaries; the US/Mexico border to the boundary between the areas covered by the SAFMC and the MAFMC from estuarine waters out to depths of 100 fathoms.
- Snapper grouper EFH: Estuarine and marine emergent wetlands (e.g., intertidal marshes), estuarine scrub/shrub (mangroves and mangrove fringe), estuarine and marine submerged aquatic vegetation (e.g., seagrass), oyster reefs and shell banks, unconsolidated bottom, Gulf stream, artificial reefs, coral reefs, live/hard bottom, medium to high profile outcroppings on and around the shelf break zone from shore to at least 600 feet (but to at least 2000 feet for wreckfish) where the annual water

- temperature range is sufficiently warm to maintain adult populations of members of this largely tropical complex, spawning area in the water column above the adult habitat and the additional pelagic environment, including *Sargassum*.
- Shrimp EFH: all estuaries; the US/Mexico border to the boundary between the areas covered by the SAFMC and the MAFMC including offshore marine habitats used for spawning and growth to maturity. In addition to all estuaries, this includes: tidal freshwater (palustrine), marine emergent wetlands (e.g., intertidal marshes), tidal palustrine forested areas, marine submerged aquatic vegetation (e.g., seagrass), subtidal and intertidal non-vegetated flats, off-shore marine habitats used for spawning and growth to maturity, all interconnecting water bodies, offshore terrigenous and biogenic sand bottom habitats from 18-182 meters, shelf current systems near Cape Canaveral Florida, Gulf stream, Upper regions of the continental slope from 180 meters (590 feet) to about 730 meters (2,395 feet) over blue/black mud, sand, muddy sand, or white calcareous mud.
  - Golden crab EFH: Gulf stream and U.S. Continental Shelf from Chesapeake Bay south through the Florida Straits (and into the Gulf of Mexico).
  - Spiny Lobster EFH: from Tarpon Springs, Florida, to Naples, Florida, between depths of 5 and 10 fathoms; and Cape Sable, Florida, to the boundary between the areas covered by the GMFMC and the SAFMC out to depths of 15 fathoms. In the South Atlantic, EFH includes estuarine scrub/shrub (mangroves and mangrove fringe), estuarine and marine submerged aquatic vegetation (e.g., seagrass), the Gulf Stream, coral reefs and live bottom reefs, nearshore shelf/oceanic waters, shallow subtidal bottom, sponges, algal communities (Laurencia), and Gulf stream.
  - Coral EFH: the total distribution of coral species and life stages throughout the Gulf of Mexico and South Atlantic including: coral reefs in the North and South Tortugas Ecological Reserves, East and West Flower Garden Banks, McGrail Bank, and the southern portion of Pulley Ridge; hard bottom areas scattered along the pinnacles and banks from Texas to Mississippi, at the shelf edge and at the Florida Middle Grounds, the southwest tip of the Florida reef tract, and predominant patchy hard bottom offshore of Florida from approximately Crystal River south to and including the Florida Keys. Coral and live bottom areas of SAFMC jurisdiction, including The Ten-Fathom Ledge, Big Rock, and The Point; Hurl Rocks and The Charleston Bump; Gray's Reef National Marine Sanctuary; the Phragmatopoma (worm reefs) reefs off the central east coast of Florida; nearshore (0-4 meters; 0-12 feet) hard bottom off the east coast of Florida from Cape Canaveral to Broward County); offshore (5-30 meter; 15-90 feet) hard bottom off the east coast of Florida from Palm Beach County to Fowey Rocks; Biscayne Bay, Florida; Biscayne National Park, Florida; and the Florida Keys National Marine Sanctuary, Oculina Banks off the east coast of Florida from Ft. Pierce to Cape Canaveral.

- Coastal migratory pelagic EFH: sandy shoals of capes and offshore bars, High profile rocky bottom and barrier island ocean-side waters, from the surf to the shelf break zone, but from the Gulf stream shoreward, including *Sargassum*, all coastal inlets, All state-designated nursery habitats of particular importance (for example, in North Carolina this would include all Primary Nursery Areas and all Secondary Nursery Areas), high salinity bays, estuaries, and seagrass habitat.
- Dofin wahoo EFH: Gulf stream, Charleston Gyre, Florida current, and pelagic *Sargassum*.

#### 4.0 Assessment of Effects on Essential Fish Habitat

NOAA Fisheries' Office of Habitat Conservation has identified the following ONMS activities as those that may adversely affect Essential Fish Habitat (all activities are described in detail in Section 2, the *Description of Proposed Action and Alternatives*, of the Environmental Assessment).

General ONMS Field Operations across the Southeast and Gulf of Mexico Region:

- Vessel operations  
Potential impacts may include anchor damage and risk of vessel grounding, which may adversely affect bottom habitat. Pollutant discharge from vessels may adversely affect pelagic habitat in the water column.
- SCUBA or snorkel operations  
Potential impacts may include divers kicking bottom, which may adversely affect bottom habitat. Diving gear acting as vectors for invasive species spread may adversely affect both bottom habitat and pelagic habitat.
- Deployment of AUVs/ROVs/Gliders/Drifters  
Potential impacts may include unintentional contact with coral on bottom and grounding risk from either the survey equipment or the main vessel from which it is deployed.
- Deployment of Equipment on the Seafloor (e.g., buoys; instrumentation; permanent anchors)  
Potential impacts may include contact with coral or seagrass on bottom during installation of such equipment or in the event that such equipment breaks free from its moorings.
- Other Sampling Activities

Specific Projects in Gray's Reef National Marine Sanctuary:

- Gliders and ROVs are occasionally (once a year or less) deployed at GRNMS.

Specific Projects in Florida Keys National Marine Sanctuary:



- None

Specific Projects in Flower Garden Banks National Marine Sanctuary:

- ROVs are deployed annually during monitoring surveys at FGBNMS.

### 5.0 Proposed Mitigation Measures

Great care is taken to avoid bottom contact with survey vehicles, as such contact has the potential to damage the vehicle and the habitat. ONMS staff and contractors follow a set of best management practices (BMP) to minimize any potential damage to bottom habitat or the water column to the greatest extent possible. Across all three sites in the region, managers limit activities in accordance with the following BMPs:

Operate vessels during daylight hours

- Due to the increased risk of collision at night, all vessel operations should take place between ½ hour before sunrise and ½ hour after sunset.

Operation of vessels during night hours

- Standing Order for Nighttime Operations – This order encourages that all operations occur during daylight; however, if operations are essential and integral to the mission the principal investigator must discuss mitigations for avoiding whales and other objects within the vessel operation corridor and incorporate them into the cruise plan.
- If night operations need to occur, the most experienced operator should take the helm, the speed should not exceed 15 knots, a minimum of two lookouts should be posted, and the operator should use all means to enhance visibility (e.g., spotlights, electronics, night vision, FLIR, etc.).

Anchoring and deployment of instruments

- Anchoring will be limited to sandy-bottom substrates to avoid damage to seagrasses and coral habitat.
- Limit interaction with *Sargassum* as much as is reasonable feasible, to prevent impact on sea turtle hatchling habitat.
- Instruments are deployed and lowered onto sandy substrate whenever possible; deployment of instruments occurs slowly and under constant supervision to minimize risk and mitigate impacts if a collision or entanglement occurs; and while vehicles or personnel are deployed, spotters monitor the activities at all times.

Safety

- Safety Briefings: The vessel captain includes information on managed species and their essential habitats during pre-cruise briefings for staff and volunteers.

- All divers working on ONMS vessels are NOAA certified.

#### 6.0 Conclusion

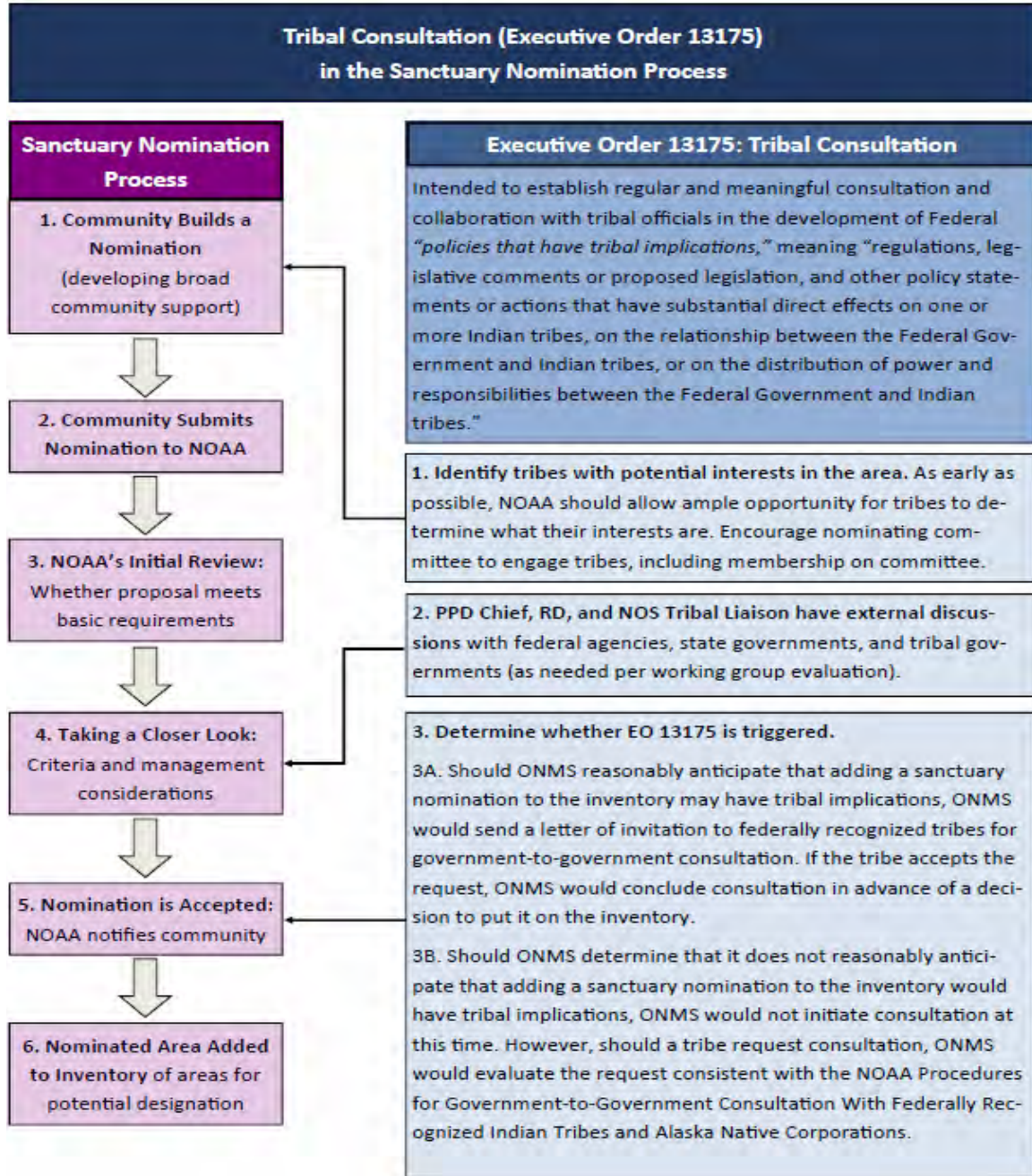
ONMS expects the adverse effects on EFH from the field operations described above to be minimal. This conclusion is based on the relatively small number of days at sea, divers and equipment deployments conducted annually, as well as the rigorous best management practices and training protocols in place for ONMS staff and contractors, specifically as they pertain to anchoring and deployment of instruments on the seafloor, which may be designated as EFH.

#### 7.0 Revision, Tracking, and Review

If any changes are made to the ONMS Southeast and Gulf of Mexico field operations such that there may be different adverse effects on EFH, ONMS will notify NOAA Fisheries and the agencies will discuss whether the programmatic Conservation Recommendations should be revised. ONMS will provide NOAA Fisheries with an annual report of all field operations undertaken under the PEA. Every five years, NOAA Fisheries will review these programmatic EFH Conservation Recommendations and determine whether they should be updated to account for new information or new technology.

## APPENDIX F. NATIONAL HISTORIC PRESERVATION ACT

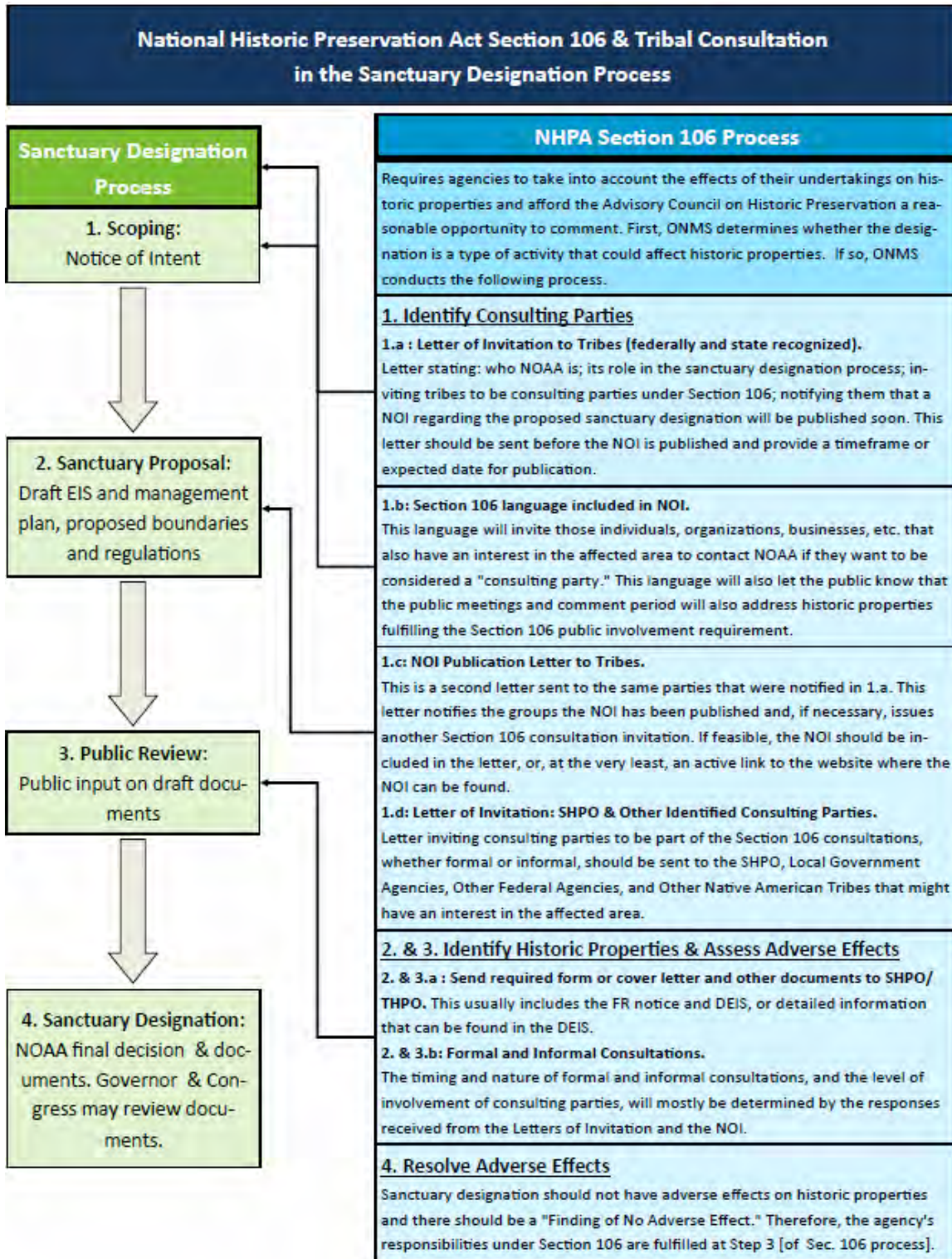
Process flow for NHPA Section 106 and Tribal Consultation in SNP



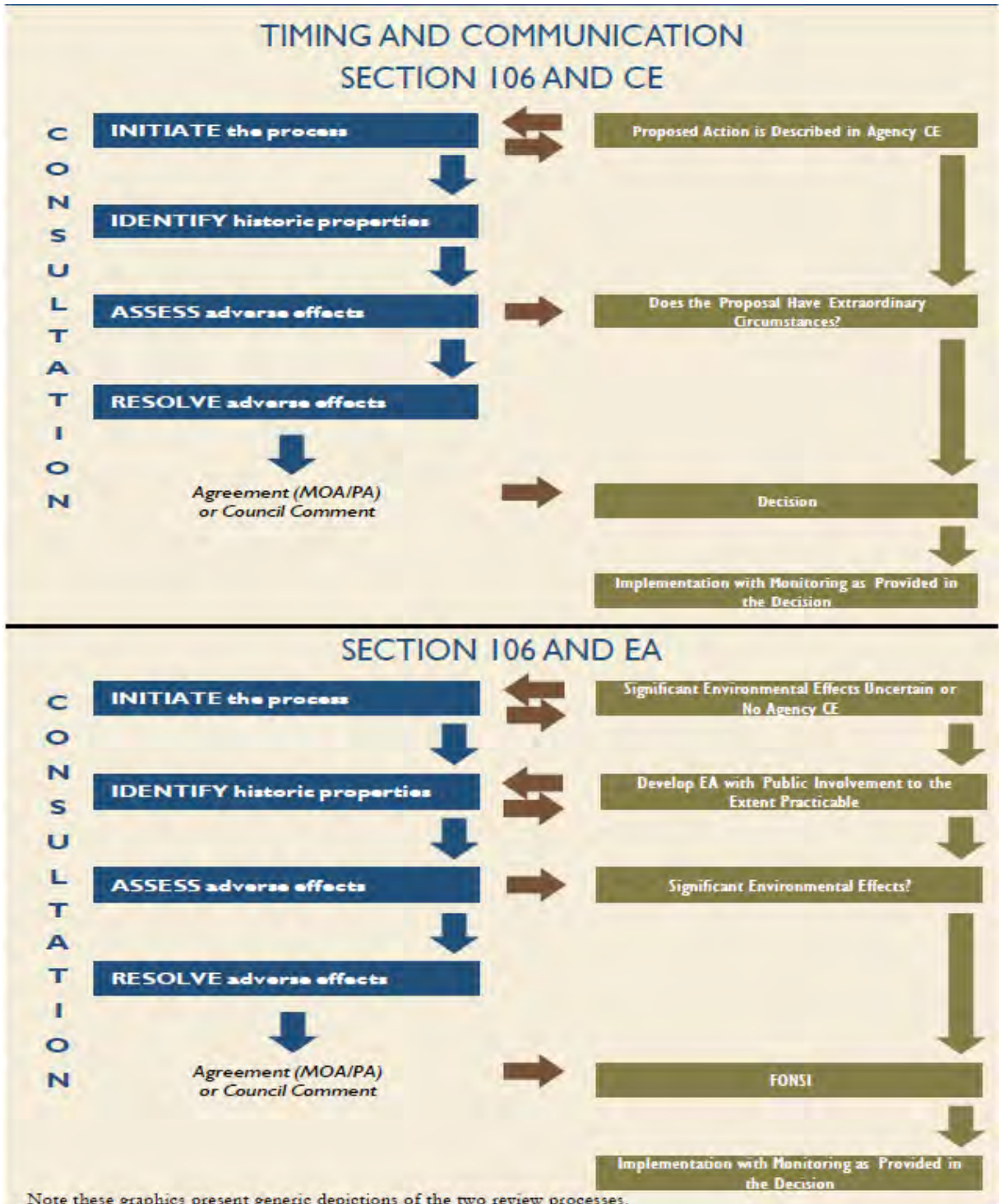
**Note: if at any point in the nomination/designation process, NOAA reasonably anticipates there may be tribal implications, NOAA will offer government-to-government consultation with tribes.**



Process flow for NHPA Section 106 and Tribal Consultation in SDP



NHPA Consultation timing and flow with NEPA CEs and EAs



Source: CEQ and ACHP. March 2013. NEPA and NHPA: A Handbook for Integrating NEPA and Section 106.



### NHPA Checklist

To access the fillable form and instructions, visit:

<http://www.wisconsinhistory.org/pdfs/hp/HPR-WI-SHPO-FederalReview-106-form.pdf>

Submit one copy with each undertaking for which our comment is requested. Please print or type. Return to:

Wisconsin Historical Society, Division of Historic Preservation, Office of Preservation Planning, 816 State Street, Madison, WI 53706

Please Check All Boxes and Include All of the Following Information, as Applicable:

#### I. GENERAL INFORMATION

- This is a new submittal.
- This is supplemental information relating to Case #: \_\_\_\_\_ and title: \_\_\_\_\_
- This project is being undertaken pursuant to the terms and conditions of a programmatic or other interagency agreement. The title of the agreement is \_\_\_\_\_
- a. Federal Agency Jurisdiction (Agency providing funds, assistance, license, permit): \_\_\_\_\_
- b. Federal Agency Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_
- c. Project Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_
- d. Return Address: \_\_\_\_\_ Zip Code: \_\_\_\_\_
- e. Email Address: \_\_\_\_\_
- f. Project Name: \_\_\_\_\_
- g. Project Street Address: \_\_\_\_\_
- h. County: \_\_\_\_\_ City: \_\_\_\_\_ Zip Code: \_\_\_\_\_
- i. Project Location: Township \_\_\_\_\_, Range \_\_\_\_\_, E/W (circle one), Section \_\_\_\_\_, Quarter Sections \_\_\_\_\_
- j. Project Narrative Description—Attach Information as Necessary.
- k. Area of Potential Effect (APE). Attach Copy of U.S.G.S. 7.5 Minute Topographic Quadrangle Showing APE.

#### II. IDENTIFICATION OF HISTORIC PROPERTIES

- Historic Properties are located within the project APE per 36 CFR 800.4. Attach supporting materials.
- Historic Properties are not located within the project APE per 36 CFR 800.4. Attach supporting materials.

#### III. FINDINGS

- No historic properties will be affected (i.e., none is present or there are historic properties present but the project will have no effect upon them). Attach necessary documentation, as described at 36 CFR 800.11.
- The proposed undertaking will have no adverse effect on one or more historic properties located within the project APE under 36 CFR 800.5. Attach necessary documentation, as described at 36 CFR 800.11.
- The proposed undertaking will result in an adverse effect to one or more historic properties and the applicant, or other federally authorized representative, will consult with the SHPO and other consulting parties to resolve the adverse effect per 36 CFR 800.6. Attach necessary documentation, as described at 36 CFR 800.11, with a proposed plan to resolve adverse effect(s).

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Type or print name: \_\_\_\_\_

#### IV. STATE HISTORIC PRESERVATION OFFICE COMMENTS

- Agree with the finding in section III above.
- Object to the finding for reasons indicated in attached letter.
- Cannot review until information is sent as follows: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Example of a SHPO letter:

April 28, 2017

Jim Draeger  
State Historic Preservation Officer  
c/o Chip Brown  
Wisconsin Historical Society  
Division of Historic Preservation  
Office of Preservation Planning  
816 State Street  
Madison, WI 53706

Dear Mr. Draeger:

The National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries (ONMS) is providing notice of a proposal to designate Wisconsin – Lake Michigan National Marine Sanctuary (NMS). The proposed sanctuary would encompass approximately 1,075-square-mile area of Lake Michigan adjacent to Manitowoc, Sheboygan, and Ozaukee Counties and would protect and interpret a nationally significant collection of underwater cultural resources, including 37 known shipwrecks and numerous other historic maritime-related features.

On October 7, 2015, NOAA began the sanctuary designation process with the publication of a notice of intent (NOI; 80 FR 60631) to prepare a DEIS and the initiation of a public process, as required under the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*) and the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). The NOI also announced NOAA’s intent to fulfill its responsibilities under the requirements of the National Historic Preservation Act (NHPA; 54 U.S.C. 300101 *et seq.*). The sanctuary designation proposal includes a draft management plan, proposed regulations, and draft environmental impact statement (DEIS), which are available at <http://sanctuaries.noaa.gov/wisconsin/> and the proposed rule can be found in the *Federal Register* at <https://www.federalregister.gov/documents/2017/01/09/2016-31741/wisconsin-lake-michigan-national-marine-sanctuary-notice-of-proposed-rulemaking-and-availability-of>

Pursuant to NHPA section 106, and as part of the NEPA compliance process, NOAA submits the proposed undertaking for your review, requesting concurrence on a finding of “No Adverse Effect” to historic properties as a result of any of the alternatives presented in this DEIS.

The purpose of this action is to supplement current Wisconsin state regulations and resource protection efforts in a way that will ensure long-term protection of this



nationally significant collection of historic shipwrecks and other maritime heritage resources. NOAA's vision is to protect, study, interpret, and manage the area's unique resources, including by building on existing local, county, and state efforts to manage the area for the protection of shipwrecks. NOAA held public scoping from October 7, 2015 to January 15, 2016, and published the designation proposal on January 9, 2017. NOAA held public meetings from March 13-16, 2017. The public was invited to comment on NOAA's proposal until March 31, 2017.

Due to Native American interest in this area and pursuant to Section 106 of the NHPA, NOAA has invited the 11 federally recognized tribes in Wisconsin, 12 federally recognized tribes in Michigan, and an additional two state recognized tribes in Michigan to be consulting parties in this review process. The Menominee Indian Tribe of Wisconsin has accepted our offer. For millennia before European contact, the Great Lakes and their tributaries served as important lines of trade and communication for Native Americans. Over the past 300 years, these waters have been further exploited by Euro-Americans and have greatly contributed to the growth of the North American interior. Marine transport on the Great Lakes played a crucial role in the exploration, settlement, and industrialization of the region. The area considered for Wisconsin – Lake Michigan NMS contains an impressive collection of underwater cultural resources demonstrated by the listing of 19 shipwrecks on the National Register of Historic Places.

Upon receipt of this letter initiating consultation and thereafter a thirty-day review (May 1 – May 30, 2017), Section 106 review has been satisfied and we will be in concurrence with a finding of “No Adverse Effect” on historic properties for the proposed undertaking. If you have any questions contact Reed Bohne, Northeast and Great Lakes Regional Director, at (912) 598-2437 or [Reed.Bohne@noaa.gov](mailto:Reed.Bohne@noaa.gov). We value your assistance and look forward to collaborating with the State of Wisconsin. Thank you for your attention to this matter.

Sincerely,

John Armor  
Director

Cc: Reed Bohne, Northeast and Great Lakes Regional Director

[The attachment includes 21 pages that describe: the project, area of potential effects (APE), identified historic properties, underwater cultural resources, known shipwrecks, findings, and analysis of environmental consequences of alternatives.

[E.O. on Tribal Consultation](#)

Letter of initial invitation:

Chairwoman Joan Delabreau  
Menominee Indian Tribe of Wisconsin  
P.O. Box 910  
Keshena, WI 54135

January 3, 2017

Dear Chairwoman Delabreau:

The National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries (ONMS) is providing notice of a proposal to designate Wisconsin - Lake Michigan National Marine Sanctuary (NMS). The proposed sanctuary would encompass 1,075 square miles of Wisconsin state waters and would protect historical, archaeological, or cultural resources of national significance.

On October 7, 2015, NOAA began the sanctuary designation process with the publication of a notice of intent (NOI; 80 FR 60634) to prepare a DEIS and the initiation of a public process, as required under the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*) and the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). The NOI also announced NOAA's intent to fulfill its responsibilities under the requirements of the National Historic Preservation Act (NHPA; 54 U.S.C. 300101 *et seq.*). The sanctuary designation proposal includes a draft management plan, proposed regulations, and draft environmental impact statement (DEIS), which will be available at <http://sanctuaries.noaa.gov/wisconsin/> once the proposed rule publishes in the *Federal Register*.

NOAA invites the Menominee Indian Tribe of Wisconsin to participate in government-to-government consultation, in accordance with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" and NOAA's Tribal Consultation Policy, intended to ensure that tribes are given the opportunity to provide meaningful and timely input regarding proposed NOAA actions that could affect tribal interests.

The area considered for Wisconsin – Lake Michigan NMS contains an extraordinary collection of shipwrecks, as demonstrated by the listing of 18 shipwrecks on the National Register of Historic Places. Fourteen of the known shipwrecks are intact with a high degree of hull integrity. Three vessels possess standing masts (a rarity in the Great Lakes) and Wisconsin's two oldest shipwrecks discovered to date are in this area. Due to possible Native American interest in the proposed sanctuary area, and pursuant to Section

106 of the NHPA, NOAA also invites the Menominee Indian Tribe of Wisconsin to be a consulting party in this review process.

If you have any questions contact Reed Bohne, Northeast and Great Lakes Regional Director, at (912) 598-2437 or [Reed.Bohne@noaa.gov](mailto:Reed.Bohne@noaa.gov). If you wish to consult, please provide the name and contact information for the tribe's principal representative for the consultation. If, however, you do not wish to be a consulting party, please also inform NOAA. We value your assistance and look forward to consulting and collaborating with the Menominee Indian Tribe of Wisconsin. Thank you for your attention to this matter.

Sincerely,

John Armor  
Director

Cc: David Grignon, Tribal Historic Preservation Officer  
Reed Bohne, Northeast and Great Lakes Regional Director

Once invitation was received, ONMS sent a follow-up letter:

March 1, 2017

Chairman Gary Besaw  
Menominee Indian Tribe of Wisconsin  
P.O. Box 910  
Keshena, WI 54135

Dear Chairman Besaw:

Congratulations on your election to the Chairmanship of the Menominee Indian Tribe of Wisconsin. In response to my letter of January 3, 2017, previous Chairwoman Joan Delabreau indicated that the Tribe would like to be a consulting party under Section 106 of the National Historic Preservation Act regarding the proposal to designate Wisconsin-Lake Michigan National Marine Sanctuary, detailed below. We value your assistance and look forward to consulting and collaborating with the Menominee Indian Tribe of Wisconsin.

The National Oceanic and Atmospheric Administration (NOAA) Office of National Marine Sanctuaries (ONMS) is providing notice of a proposal to designate Wisconsin-Lake Michigan National Marine Sanctuary (NMS). The proposed sanctuary would encompass 1,075 square miles of Wisconsin state waters and would protect historical, archaeological, or cultural resources of national significance.

On October 7, 2015, NOAA began the sanctuary designation process with the publication of a notice of intent (NOI; 80 FR 60634) to prepare a DEIS and the initiation of a public process, as required under the National Marine Sanctuaries Act (NMSA; 16 U.S.C. §§ 1431 *et seq.*) and the National Environmental Policy Act (NEPA; 42 U.S.C. §§ 4321 *et seq.*). The NOI also announced NOAA’s intent to fulfill its responsibilities under the requirements of the National Historic Preservation Act (NHPA; 54 U.S.C. §§ 300101 *et seq.*). The sanctuary designation proposal includes a draft management plan, proposed regulations, and draft environmental impact statement (DEIS), which is available at <http://sanctuaries.noaa.gov/wisconsin/> and the proposed rule can be found in the *Federal Register* at <https://www.federalregister.gov/documents/2017/01/09/2016-31741/wisconsin-lake-michigan-national-marine-sanctuary-notice-of-proposed-rulemaking-and-availability-of>.

Public meetings will be held as detailed below:

Algoma, WI  
 Date: March 13, 2017  
 Location: Knudson Hall  
 Address: 620 Lake Street, Algoma, WI  
 Time: 6:30 – 8:30 pm

Sheboygan, WI  
 Date: March 15, 2017  
 Location: University of Wisconsin-Sheboygan,  
 Main Bldg, Wombat Room (Room 2114)  
 Address: 1 University Dr., Sheboygan, WI  
 Time: 6:30 – 8:30 pm

Manitowoc, WI  
 Date: March 14, 2017  
 Location: Wisconsin Maritime Museum  
 Address: 75 Maritime Dr., Manitowoc, WI  
 Time: 6:30 – 8:30 pm

Port Washington, WI  
 Date: March 16, 2017  
 Location: Wilson House  
 Address: 200 N. Franklin St.,  
 Port Washington, WI  
 Time: 6:30 – 8:30 pm

The public is invited to comment on NOAA’s proposal until March 31, 2017.

In our initial letter on January 3, 2017, we invited the Tribe to participate in consultation under NHPA Section 106, which the Tribe accepted. We also offered government-to-government consultation, in accordance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Given the transition of Tribal leadership,

we reiterate the latter offer, and inquire how you would like to proceed with one or both of these consultations.

The DEIS, management plan, and proposed rule contain background information about the project and an overview of potential environmental and socioeconomic impacts of the proposed undertaking. While the public process and meetings could provide the Tribe the opportunity to comment on the proposal, please let us know if you prefer to engage in the NHPA Section 106 and possibly the government-to-government consultation process in a different manner.

Please provide the name and contact information for the Tribe's principal representative for the consultation to Reed Bohne, Northeast and Great Lakes Regional Director, at (912) 598-2437 or [Reed.Bohne@noaa.gov](mailto:Reed.Bohne@noaa.gov). We recognize the sovereign status of the Menominee Indian Tribe of Wisconsin, and wish to respect any sensitive information regarding the Tribe's interests in the proposed area. Thank you for your attention to this matter.

Sincerely,

John Armor  
Director

Cc: David Grignon, Tribal Historic Preservation Officer  
Reed Bohne, Northeast and Great Lakes Regional Director

## **APPENDIX G. COASTAL ZONE MANAGEMENT ACT**

### Example Letter to State Coastal Zone Management Program

July 11, 2016

Ms. Becky Prado Interim Coastal Program Administrator  
Florida Coastal Office Department of Environmental Protection  
3900 Commonwealth Boulevard Douglas Building, Mail Station 47  
Tallahassee, FL 32399-3000

Ms. Ann Lazar Environmental Administrator  
Florida Coastal Office Department of Environmental Protection  
3900 Commonwealth Boulevard Douglas Building, Mail Station 47  
Tallahassee, FL 32399-3000

Reference: Flower Garden Banks National Marine Sanctuary Proposed Boundary Expansion and  
Draft Environmental Impact Statement – CZMA Consistency Determination Information  
Request

Dear Ms. Prado and Ms. Lazar,

The purpose of this letter is to ensure compliance with the requirements of Section 307 of the Coastal Zone Management Act (CZMA, 16 U.S.C. 1456) related to the Draft Environmental Impact Statement (DEIS) for the proposed Flower Garden Banks National Marine Sanctuary (FGBNMS) boundary expansion and application of existing regulations and management plan actions in these areas. In order to prepare a consistency determination for this action, I am requesting information on reasonably foreseeable effects of this action on the uses and resources of your state's coastal zone, and the relevant enforceable policies of your coastal management program that may pertain to this action.

The proposed actions are to expand, as appropriate, the network of protected areas within the sanctuary and to apply existing sanctuary regulations and management actions to the newly expanded areas. The DEIS for this action can be found at <http://flowergarden.noaa.gov/management/expansiondeis.html>. The DEIS includes sanctuary goals and objectives, and analyzes five alternatives for implementing the proposed actions. The five alternatives range in size from 56 square miles to 935 square miles, including a no action alternative representing the current size of the sanctuary. The alternatives are a series of discrete banks and reef areas located 70 to 115 miles off the coasts of Texas and Louisiana. NOAA's preferred alternative (Alternative 3) is the expansion of the existing boundaries from ~56 square miles to an area that encompasses ~383 square miles of waters in the northwestern Gulf of Mexico, including additional important and sensitive marine habitat areas outside the current sanctuary boundary. The existing FGBNMS regulations are summarized in Table 1.1 of the DEIS. The existing FGBNMS regulations may also be found in the enclosed "Flower Gardens Bank National Marine Sanctuary Boundary Expansion: Draft Environmental Impact Statement" (DEIS) Appendix F, and at 15 CFR, Subpart L, 922.122.

The need for the proposed actions is based on widespread acute and chronic threats to marine habitat in the north central Gulf of Mexico. These threats can most effectively be addressed through NOAA's evaluation and implementation of the comprehensive suite of habitat conservation and management actions made possible by FGBNMS expansion. The proposed actions would ensure that valuable natural resources are

available to future generations of Americans. Protecting additional nationally significant habitat in the northwestern Gulf of Mexico emerged as one of the highest priority issues for the sanctuary during the FGBNMS management plan review. Accordingly, a Sanctuary Expansion Action Plan was incorporated into the revised management plan published in April 2012.

Sanctuary expansion would also extend the comprehensive conservation and management capacities authorized by the National Marine Sanctuaries Act to new areas, providing a mechanism for implementation of specific restoration, monitoring and research activities for important marine resources. These types of activities could overlap with potential restoration activities associated with the Deepwater Horizon (DWH) oil spill. For example, protecting and managing mesophotic and deep benthic coral communities was identified as a restoration approach in the Final Programmatic Damage Assessment and Restoration Plan for the DWH Oil Spill (2016).

The northern Gulf of Mexico is a heavily utilized and industrialized region, and there is significant concern about impacts from bottom-disturbing activities on the sensitive biological resources and geological features associated with many reefs and banks in the area (e.g., activities related to oil and gas exploration and production, fishing with bottom-tending gear, infrequent but damaging large ship anchoring on shelf-edge features near shipping fairways, frequent anchoring by smaller commercial or recreational vessels, and salvage activities).

Although the alternatives evaluated in the DEIS would occur outside the coastal zone of the states bordering the Gulf of Mexico, Section 1456 of the CZMA requires that any federal action inside or outside of the coastal zone that affects any land or water use or natural resources of the coastal zone shall be consistent to the maximum extent practicable with the enforceable policies of approved state management programs. If you believe that the proposed action may have reasonably foreseeable effects on the uses or resources of the state's coastal zone, please describe those effects for our consideration as well as the enforceable policies that pertain to those effects.

Please do not hesitate to contact me if additional information or assistance is needed for your review.

Sincerely,

G. P. Schmahl  
Sanctuary Superintendent  
Flower Garden Banks National Marine Sanctuary  
4700 Avenue U, Bldg. 216  
Galveston, TX 77551  
Phone: 409-621-5151 X 102  
E-mail: [george.schmahl@noaa.gov](mailto:george.schmahl@noaa.gov)

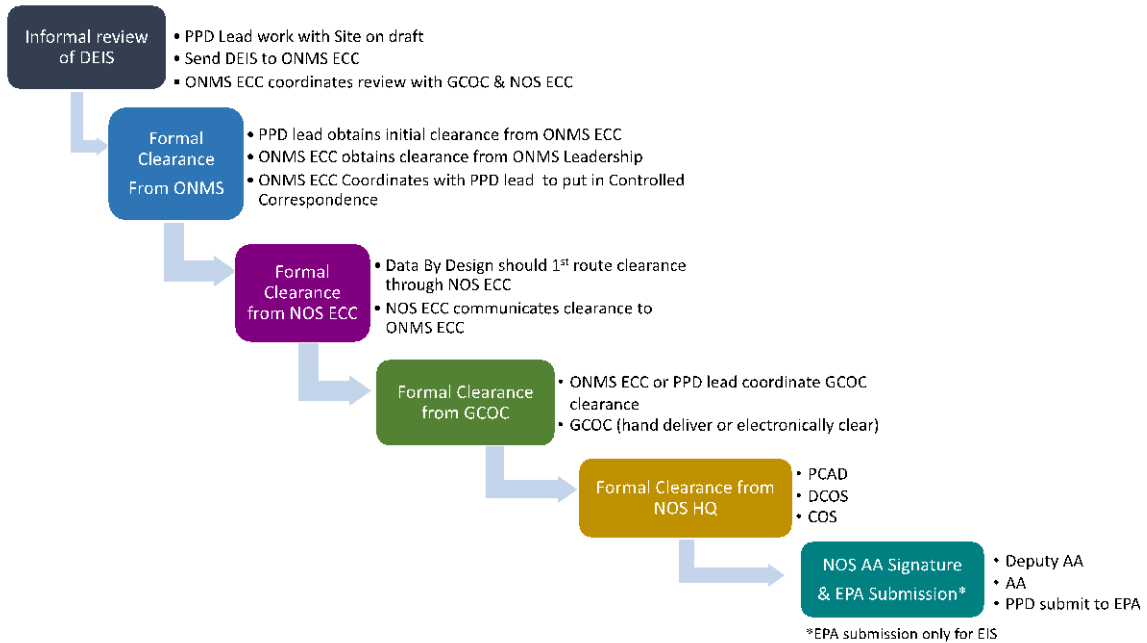


**APPENDIX H. SUMMARY TABLE OF SIGNATURE AUTHORITIES**

	<b>NOS AA</b>	<b>ONMS Director</b>	<b>ONMS Deputy Director</b>	<b>ONMS Superintendent</b>
<b>Document</b>	<b>Sign</b>	<b>Sign</b>	<b>Sign</b>	<b>Sign</b>
CE Memo	N	Y	Y	Y
EA/FONSI [for permit actions]	N	Y	N	N
EIS/ROD [for nonregulatory + permit actions]	Y	N	N	N
EA/FONSI [Regulatory]	Y	N	N	N
EIS/ROD [Regulatory]	Y	N	N	N
FRN: NOI & NOA [nonregulatory]	N	Y	N	N
FRN: NOI & NOA [Regulatory]	Y	N	N	N
NMSA Permit	N	Y	N	Y
NMSA Permit Decision Memos	N	Y	N	Y
Interagency Consultation Requests	N	Y	Y	Y
To All Interested Parties/ Dear Reviewer Letters	N	Y	N	N
Memos for the Record	N	Y	Y	Y
NMSA Permit Appeals	Y	N	N	N

## APPENDIX I: EA/EIS CLEARANCE PROCESS FOR ONMS ACTIONS

### EA/EIS Clearance Process for ONMS Actions

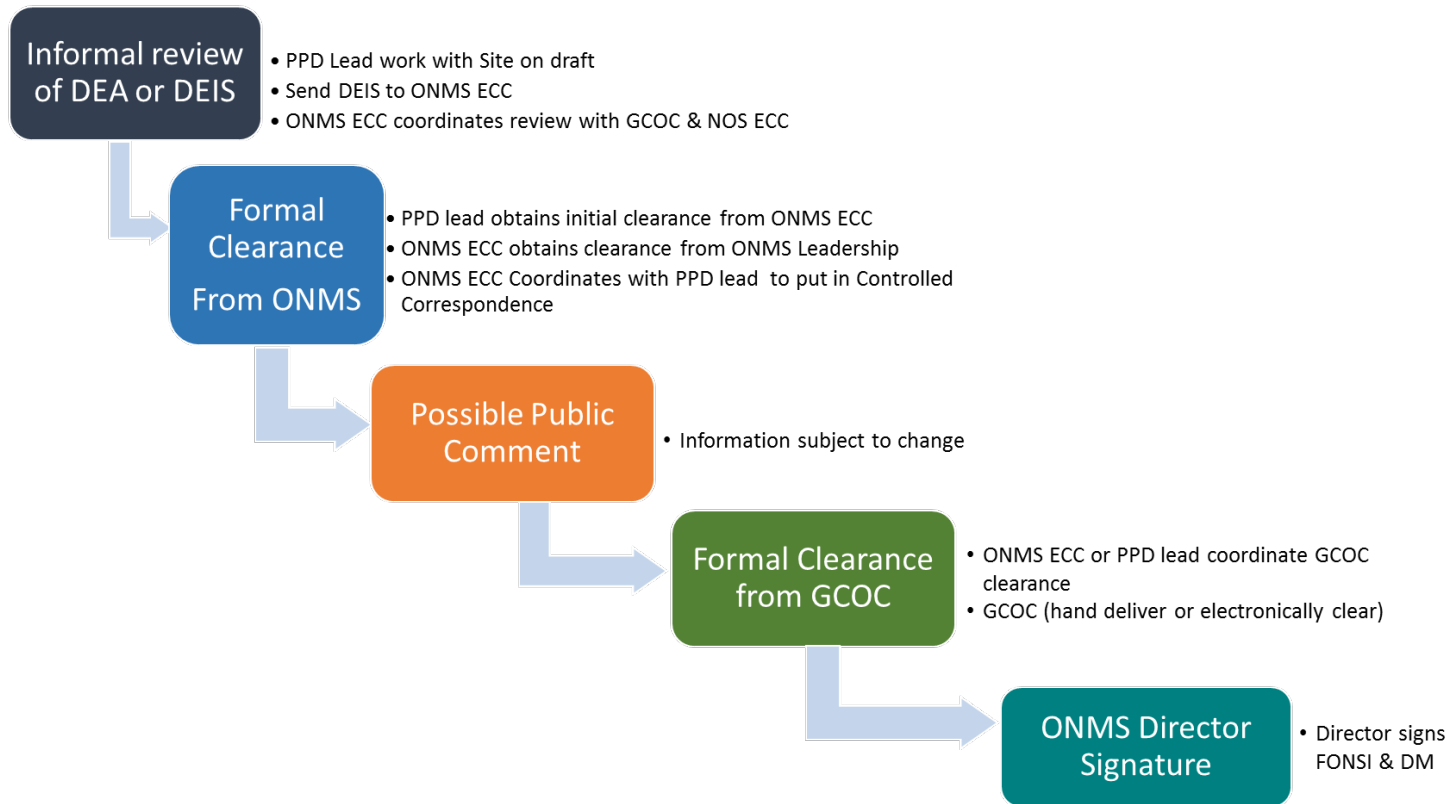


#### Notable Tips:

- During the drafting of the NEPA document (before informal review), the ONMS ECC should be consulted early enough in the process to advise on the level of NEPA analysis need based on the context and intensity of impacts.
- The site and PPD lead may want to consult with GCOC on the action itself (permit issues, language for a rulemaking, etc.) early in the process, which may have implications in the NEPA analysis—such as in the development of alternatives. This initial coordination should have a focus on the action itself.
- It is the discretion of the PPD lead when the document has enough information for ONMS ECC review.
- After ONMS ECC review, or depending on the situation—during ONMS ECC review, GCOC and the ONMS ECC would review the draft for compliance adequacy.
- Early coordination and frequent communication will pay off!

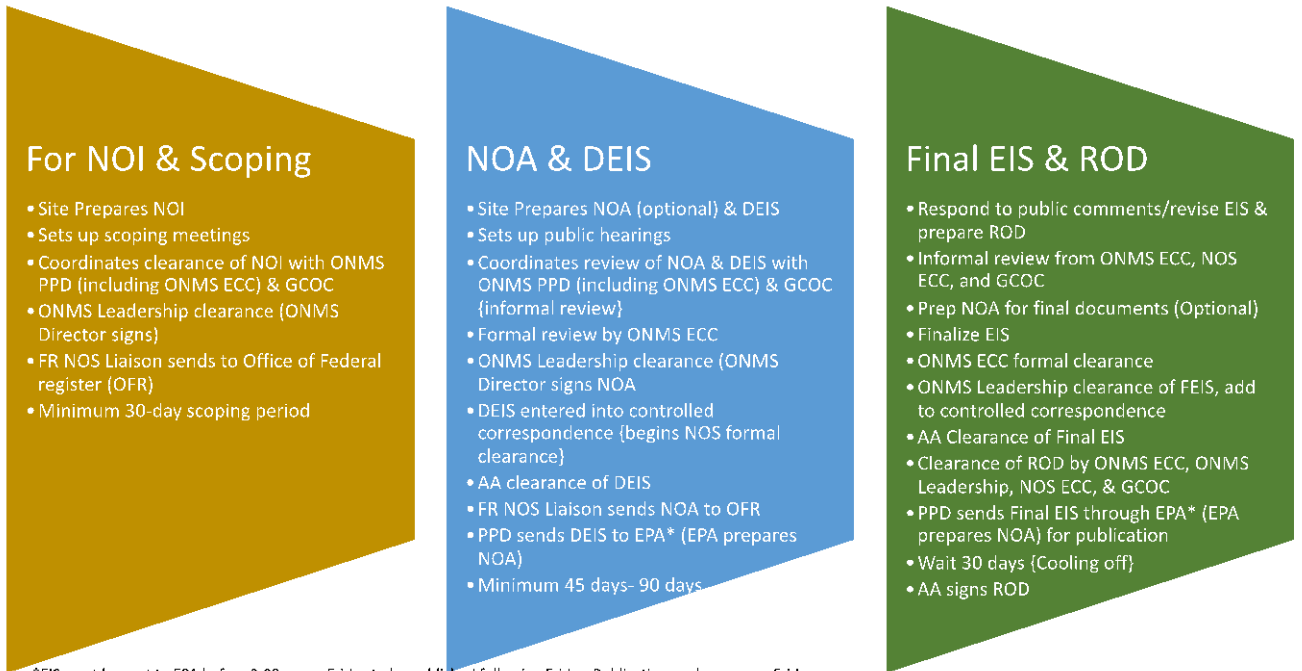
## APPENDIX J: EA/EIS CLEARANCE PROCESS FOR PERMIT-RELATED ACTIONS

### Clearance Process for Permit-Related EAs



## APPENDIX K: EIS PROCESS FOR PUBLIC INVOLVEMENT

### EIS Processes for Public Involvement



## **APPENDIX L. BEST MANAGEMENT PRACTICES FOR VESSEL OPERATIONS**

### Lookouts/Staying at the helm

- While underway, vessel operators should always stay alert for marine mammals, sea turtles, and other collision hazards.
- While transiting in areas where marine mammals and sea turtles are likely to occur, vessel operators should post a minimum of one dedicated lookout and operators should remain vigilant at the helm controls (keeping hands on the wheel and throttle at all times) and be ready to take action immediately to avoid an animal in their path.
- When operating in areas where marine mammals and sea turtles are present, a dedicated lookout is required in addition to the operator. A second lookout may be posted in circumstances where visibility is restricted.
- When marine mammals are riding the bow wake, or porpoising nearby, operators should exercise caution and take actions that avoid possible contact or collisions.
- When operating within visual range of whales, vessel operators should follow NOAA National Marine Fisheries Service (NMFS) Whale Watching guidelines unless otherwise covered by a NMFS permit, and only then with extreme caution.

### Vessel Speed

- All vessels must reduce to prudent speed when marine mammals and sea turtles are visible within 1 nautical mile (nm) of the vessel and should not exceed 10 knots.

### Maintaining Distance

- Once large whales are sighted, vessel operators should stay at least 100 yards away, 200 yards away from killer whales and 50 yards away from sea turtles.
- If large whales surface within 100 yards, vessel operators should stop immediately and use prudent seamanship to decide to either move away slowly or wait for the animal to move away on its own.
- In the case of northern right whales, a distance of at least 500 yards should be maintained per [NMFS regulations](#).

### Towing Divers

- Divers will be towed at approximately 3 kts/hour.

### Operation of vessels during daylight hours

- Due to the increased risk of collision at night, vessel operations, whenever possible, should be planned for daylight hours (*i.e.*, between ½ hour before sunrise and ½ hour after sunset when possible).
- Restricted visibility can hinder an operator's ability to see and respond to marine mammals and sea turtles. Prudent seamanship should be applied, including posting an additional lookout when there is the potential for marine animals in the vicinity.

#### Operation of vessels during night hours

- Standing Order for Nighttime Operations – If night time operations are essential and integral to the mission, the principal investigator must discuss mitigations for avoiding whales and other objects within the vessel operation corridor and incorporate them into the cruise plan. Mitigation measures could include: speed restrictions, additional lookouts, use of navigation lights, and use of sound signals, etc.

#### Standing Order for Operations around Marine Mammals

- This order requires several precautionary measures such as: incorporating whale sighting information in cruise planning, slowing to 10 kts in a Seasonal or Dynamic Management Area, following the Whale Watching Guidelines, maintaining a constant lookout for whales, and following specific procedures if a whale is struck.

#### Anchoring and deployment of instruments

- In the Southeast and Gulf of Mexico region, anchoring will be limited to sandy-bottom substrates to avoid damage to seagrasses and coral habitat.
- In the Southeast and Gulf of Mexico region, sargassum interaction is limited, as much as is reasonably feasible, to prevent impact on sea turtle hatchling habitat.
- In general, instruments are deployed and lowered onto sandy substrate whenever possible; deployment of instruments occurs slowly and under constant supervision to minimize risk and mitigate impacts if a collision or entanglement occurs; and while vehicles or personnel are deployed, spotters monitor the activities at all times.

#### Safety

- Safety Briefings: All ONMS vessel captains include safety information during pre-cruise briefings for staff and volunteers.
- All divers working on ONMS vessels are diver-certified.





AMERICA'S UNDERWATER TREASURES