

| | |
|--|---|
| <i>NATIONAL MARINE FISHERIES SERVICE POLICY 09-101</i> Effective on: August 24, 2020 | |
| To be reviewed on: August 24, 2025 | |
| National Environmental Policy Act | |
| POLICY FOR NATIONAL ENVIRONMENTAL POLICY ACT COMPLIANCE | |
| NOTICE: This publication is available at: https://www.fisheries.noaa.gov/national/laws-and-policies/policy-directive-system | |
| Author name: Steve Leathery Office: Policy | Certified by: Sam Rauch Office: Deputy Assistant Administrator for Regulatory Programs |
| Type of Issuance: Revision | |
| SUMMARY OF REVISIONS: This policy supersedes Policy Directive 30-131 entitled <i>Delegation of Authorities for Completing NEPA Documents</i> , dated March 5, 2007. It has been renumbered from 30-131 to 09-101 to comply with new system requirements. This revised policy reflects changes implemented in the revision of NOAA Administrative Order (NAO) 216-6 to NAO 216-6A and its associated Companion Manual. Updates to the NMFS NEPA process that reflect efficiencies and process improvements developed through practice have been built into the policy. In revising this policy, Instruction 30-131-01, <i>Procedures for the Review and Clearance of Fishery Management NEPA Documents</i> , dated September 12, 2007, became largely obsolete and no longer necessary, and the remaining, relevant portions were incorporated into this document. | |

I. Introduction

This document articulates the policy of the National Marine Fisheries Service (NMFS) with regard to the implementation of National Oceanic and Atmospheric Administration (NOAA) Administrative Order (NAO) 216-6A: *Compliance with the National Environmental Policy Act, Executive Orders 12114, Environmental Effects Abroad of Major Federal Actions; 11988 and 13690, Floodplain Management; and 11990, Protection of Wetlands*, dated April 22, 2016, and NOAA Transmittal No. 101, dated August 13, 2019 (*Redelegation of Authority document delegating approval authority for certain National Environmental Policy Act (NEPA) actions from the NMFS Assistant Administrator*).¹ A glossary of terms is included in Attachment 2.

¹ For fishery management actions developed pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the procedures set forth in Appendix C to the NAO 216-6A Companion Manual provide the primary guidance with respect to compliance with NEPA. The policy and procedures in this PD should be applied in conjunction with that guidance. To the extent that anything in this PD conflicts with Appendix C, the provisions in Appendix C apply.

II. Objective

This policy discusses the process by which NMFS should produce, review, and approve the three levels of NEPA analysis and documentation,² as well as the roles and responsibilities of the decision maker,³ originating office technical staff, the NMFS NEPA Coordinators, and the NOAA Office of General Counsel (OGC).⁴ NEPA practices within each Region, Science Center, or Program Office of NMFS may use differing terminology to describe process and documentation, or the specifics of how and when coordination occurs. Regional, Center, and/or Program Office practices are not restricted to using only the procedures and terminology described below. This flexibility is necessary to account for Regional and Programmatic differences in the way NMFS coordinates with Fishery Management Councils, Tribal entities, and other stakeholders. Recognizing this flexibility, the below procedures reflect the general review and clearance procedures; each Regional, Center, and/or Program Office may have additional review and clearance steps.

Initial Determination of the Level of NEPA Analysis

The decision maker should ensure that the staff assigned the responsibilities for processing an action to which NEPA applies initiates the appropriate NEPA analysis early enough to allow sufficient time for document development, review, and clearance, and maximize the usefulness of the NEPA process within the overall decision making process for a proposed agency action.

The decision maker should consult with technical staff, the appropriate NMFS NEPA Coordinator, and OGC to preliminarily determine the appropriate NEPA approach for a proposed agency action.⁵ The initial determination includes whether a Categorical Exclusion (CE) applies, if an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is required, or if other options are appropriate, such as adopting another agency's EA or EIS, relying on an existing analysis, or preparing a supplemental analysis.⁶ The initial determination may be made on a case by case basis or the decision maker, advised by staff, and the appropriate NMFS NEPA

²The three levels of NEPA analysis are Categorical Exclusion (CE), Environmental Assessment (EA), and Environmental Impact Statement (EIS).

³ According to NOAA Transmittal Number 101, the decision maker role can be redelegated, in certain cases, therefore the term "decision maker" in this document should be read as "decision maker or delegate". The term "decision maker" is further described in the glossary.

⁴ NOAA's OGC has advised NMFS that its timely and effective review requires that the appropriate OGC staff be involved at the initial stages of determining the level of NEPA analysis (e.g., CE, EA, or EIS). Because resource constraints may limit full OGC involvement early in the process, the decision maker should consult with the Fisheries and Protected Resources Section (FPR) Section Chief or the appropriate OGC attorney prior to the development of the NEPA document.

⁵ The NMFS Office of Management & Budget (NMFS OMB) will also coordinate facilities and real property related actions with NOAA Office of the Chief Administrator (CAO) staff when making an initial determination as to the level of NEPA analysis required.

⁶ Section 5.C. of the Companion Manual for NAO 216-6A states that "In determining whether supplementation is necessary, decision makers may prepare a Supplemental Information Report (SIR). A SIR is a concise document that describes the decision maker's evaluation of new information, changed circumstances, or proposed changes to an action and assists the decision maker in determining and documenting whether a supplemental NEPA document is necessary. A SIR is a decision tool rather than a final NEPA document, and thus standing alone, a SIR cannot repair deficiencies in the original environmental analysis or documentation, nor can it change a decision to implement an action made pursuant to appropriate NEPA procedures."

Coordinator and OGC, may determine the level of analysis and documentation required for a class of agency actions.⁷

If it is initially determined, or if at any time during the processing of the action and/or NEPA documentation, that an EA or EIS level of NEPA analysis and documentation is required, the decision maker and their staff should coordinate as early as possible with other affected offices, the appropriate NMFS NEPA Coordinator and OGC, and the NOAA NEPA Coordinator⁸ to identify and resolve any issues.

The procedures for processing each of the levels of NEPA analysis and documentation are outlined below.

Categorical Exclusion Memoranda

The originating office's NMFS NEPA Coordinator should review proposed uses of a CE.⁹ Once their review is complete, the NMFS NEPA Coordinator should provide a written document, e-mail, or equivalent form of notification to the decision maker and technical staff acknowledging that their review has been completed. A copy of this document should be filed in the record for the proposed action. NMFS NEPA Coordinator review should occur subsequent to reviews by all other technical staff.

OGC review of CE memoranda for legal sufficiency is generally not required. However, OGC staff may request to review a CE memorandum that is part of a larger regulatory package being reviewed for legal sufficiency¹⁰ (e.g., an Exempted Fishing Permit). Additionally, a review for legal sufficiency is required if the decision maker, in consultation with the appropriate OGC, determines that one or more of the following conditions apply:

- (1) the agency action, which necessitated the NEPA analysis, and the associated environmental impacts are substantially dissimilar to previous actions reviewed by OGC for legal sufficiency;
- (2) the agency action is associated with existing litigation against NMFS;
- (3) the agency action is controversial and there exists a foreseeable significant probability that litigation will result; and
- (4) there are known Congressional interests relating to the agency action (beyond an inquiry as to timing).

If legal review of a CE memorandum is sought by the decision maker, the appropriate OGC, in

⁷ For class based determinations, there should be a precedent setting case where the determination in that case may be applied to the class as a whole. This precedent setting case "memorializes" the class. A policy memorandum which explains this class-based determination should be kept on file with the program office.

⁸ The NOAA NEPA "Report a Major Federal Action" Form should be completed when it is determined that an EA or EIS is required or if adopting another agency's EA or EIS.

⁹ In specific cases, streamlined procedures for the use of CEs may use memoranda that do not require NEPA coordinator review/decision maker signatures.

¹⁰ NMFS takes actions under a number of different statutes and NMFS must comply with the applicable statute(s) as well as NEPA. In determining legal sufficiency for an action taken under another statute (e.g., a Scientific Research Permit issued under the Magnuson-Stevens Fishery Conservation and Management Act), OGC will generally review an EA/FONSI or EIS/ROD created to inform that particular decision, and may review the NEPA analysis when a CE was utilized to comply with NEPA.

coordination with the appropriate NMFS NEPA Coordinator, shall advise whether the CE memorandum is legally sufficient. OGC review should occur subsequent to the reviews of the appropriate NMFS NEPA Coordinator and all other NMFS technical staff. If applicable, the appropriate OGC will provide the decision maker, technical staff, and the appropriate NMFS NEPA Coordinator, a Certification of Attorney Review (CAR) or a suitable alternative legal review memorandum,¹¹ indicating that the action has been found to be legally sufficient.

The decision maker shall make the final determination with regard to content and documentation.¹² The final determination should address disagreements and outline how the decision maker resolved those disagreements.

Environmental Assessments and Findings of No Significant Impact (FONSI)

The project lead should notify the NOAA NEPA Coordinator as soon as it is determined that an EA is intended to be initiated or adopted (notification is achieved by completing NOAA NEPA's "Report a Major Federal Action" Form).

The originating office's NMFS NEPA Coordinator should review the draft Notice of Intent (NOI) to Prepare an EA as well as the draft Notice of Availability (NOA) of an EA, if either is prepared.

The originating office's NMFS NEPA Coordinator should provide, for all draft EAs and final EA/FONSI packages, a signed review, email, or equivalent document, indicating that they have completed their review, to the decision maker, the technical staff, and the appropriate OGC office. A copy of this document should also be filed in the record for the proposed action. NMFS NEPA Coordinator review should occur subsequent to all other technical staff reviews.

OGC should review EAs and FONSI for legal sufficiency. In specific cases, at the written request of the decision maker, a review for legal sufficiency may be waived if it is determined by the appropriate OGC that all of the following conditions are met:

- (1) the agency action, which necessitated the NEPA analysis, and the associated environmental impacts, are substantially similar to previous actions reviewed by OGC for legal sufficiency; and
- (2) the action is not associated in any way with known existing litigation against NMFS; and
- (3) the action is not controversial, such that litigation over the NEPA analysis is not reasonably foreseeable, and
- (4) there are no known Congressional interests relating to the particular action (beyond inquiries as to timing).

¹¹ A CAR will be provided when the NEPA document is reviewed in the context of a rulemaking package. A single CAR will be prepared for the rulemaking package as a whole and covers all documents used in that rulemaking. No separate or additional CAR specifically covering the NEPA documents is required for a rulemaking. A CAR or a suitable alternative legal review memorandum will be prepared for NEPA documents that are reviewed for legal sufficiency apart from a rulemaking package.

¹² OGC should be informed of any changes made to the NEPA document after its review of the material has been completed so that if necessary the document may be reviewed again and a new CAR or alternative legal review memorandum may be prepared.

If OGC waives its review of a draft EA, final EA, and/or FONSI, it must do so in writing and provide a copy of the determination to both the decision maker and the appropriate NMFS NEPA Coordinator. If, however, legal review of a draft EA, final EA, and/or FONSI is not waived, the appropriate OGC shall determine whether the document(s) is (are) legally sufficient. OGC review of the document(s) should occur subsequent to the reviews of the appropriate NMFS NEPA Coordinator and all other NMFS technical staff.¹³ If applicable, the appropriate OGC will provide the decision maker, technical staff, and appropriate NMFS NEPA Coordinator a CAR, or a suitable alternative legal review memorandum, indicating that the document(s) has (have) been found to be legally sufficient.

The decision maker should ensure that all consultations have been completed prior to signing the FONSI and that final action is not taken until the FONSI is signed. The decision maker shall make the final determination with regard to content and documentation. The final determination should address disagreements and outline how the decision maker resolved those disagreements.

The completed EA/FONSI package¹⁴ should accompany the proposed agency action through existing NMFS review procedures so that the decision maker can review and use the EA and FONSI in making the final decision on the proposed agency action(s).

Environmental Impact Statements

The originating office's NMFS NEPA Coordinator should review the draft NOI to Prepare an EIS and draft NOA of an EIS, if one is prepared.

The originating office's NMFS NEPA Coordinator should provide, for all proposed draft and final EISs, a signed review, email, or equivalent document, indicating that they have completed their review, to the decision maker, technical staff, and the appropriate OGC office. This document should be included in the draft and final EIS packages to support a recommendation for the decision maker's action of releasing the draft EIS or final EIS, respectively. A copy of this document should also be filed in the record for the proposed action. NMFS NEPA Coordinator review should occur subsequent to all other technical staff reviews.

The appropriate OGC should review and determine whether all draft and final EISs are legally sufficient. The OGC review of the draft or final EIS should occur subsequent to the reviews of the appropriate NMFS NEPA Coordinator and all other NMFS technical staff.¹⁵ The appropriate OGC will provide the decision maker, technical staff, and appropriate NMFS NEPA Coordinator a CAR, or a suitable alternative legal review memorandum, indicating that

¹³ It is recognized that time does not always allow for this sequence and that sometimes concurrent reviews are necessary to meet regulatory and statutory deadlines. Concurrent reviews that are requested should be approved by both OGC and the appropriate NMFS NEPA Coordinator.

¹⁴ The clearance package for EA/FONSIs should contain a completed CAR, in addition to any other office or program-specific documents, memoranda, etc., that are required as part of the EA/FONSI package. A single CAR will be prepared for the rulemaking package as a whole and covers all documents used in that rulemaking. No separate or additional CAR specifically covering the NEPA documents is required for a rulemaking.

¹⁵ It is recognized that time does not always allow for this sequence and that sometimes concurrent reviews are necessary to meet regulatory and statutory deadlines. Concurrent reviews that are requested should be approved by both OGC and the appropriate NMFS NEPA Coordinator.

the action has been found to be legally sufficient.

The decision maker should ensure that all consultations have been completed prior to the publication of the NOA in the Federal Register. The decision maker shall make the final determination with regard to content and documentation. The final determination should address disagreements and outline how the decision maker resolved those disagreements.

The draft or final EIS should accompany the proposed action through all internal reviews so that agency officials can review and use the draft or final EIS in making the decision to publish the draft or final EIS.

Records of Decision (ROD)

The ROD should be a stand-alone document that contains all of the required elements in Section 1505.2 of the Council on Environmental Quality's (CEQ's) regulations (40 CFR 1505.2). NMFS shall not make a final decision on a proposed action (i.e., sign the ROD or implement the action) until the later of the following: (1) ninety days after the publication of the NOA for a draft EIS, or (2) thirty days after publication of the NOA for a final EIS, unless all or a portion of this thirty day period is waived after compliance with an applicable provision of the CEQ regulations for implementing NEPA (40 CFR 1506.10 or 40 CFR 1506.11).

For all RODs, the originating office's NMFS NEPA Coordinator should provide a signed review, email, or equivalent document indicating that they have completed their review, to the decision maker, the technical staff, and the appropriate OGC office. NMFS NEPA Coordinator review should occur subsequent to all other technical staff reviews. A copy of this document should also be filed in the record for the proposed action.

The appropriate OGC should review and determine whether the ROD is legally sufficient. The OGC review of the ROD should occur subsequent to the reviews of the appropriate NMFS NEPA Coordinator and all other technical staff.¹⁶ The appropriate OGC will provide the decision maker and technical staff a CAR, or a suitable alternative legal review memorandum, indicating that the ROD has been found to be legally sufficient.

The final EIS and the draft ROD should accompany the proposed final action through all internal reviews so that agency officials can review and use the EIS and its proposed ROD in making the decision on the proposed final agency action(s).

The decision maker should ensure that all consultations have been completed prior to the signing of the ROD and that final action is not taken until the ROD is signed. The ROD must be signed by the agency official having the NMFS approval authority for the proposed action.¹⁷ Once the ROD is signed, an announcement of its availability for public review may

¹⁶ It is recognized that time does not always allow for this sequence and that sometimes concurrent reviews are necessary to meet regulatory and statutory deadlines. Concurrent reviews that are requested should be approved by both OGC and the appropriate NMFS NEPA Coordinator.

¹⁷ In the case of actions that require concurrence by the Assistant Administrator (e.g., for a fishery management plan (FMP) or amendment, except for FMPs and amendments for Atlantic highly migratory species), the decision maker (e.g., Regional Administrator) will sign the ROD and the Assistant Administrator will sign a concurrence document (e.g., Decision Memorandum).

be made in the *Federal Register*.¹⁸ This announcement does not establish a review and comment period on the ROD.

III. Authorities and Responsibilities

Each Office Director, Regional Administrator, and Science Center Director delegated NEPA responsibilities and authorities¹⁹ may revise and implement a Quality Assurance Plan (QAP) that:

- (1) establishes procedures and protocols for the review and clearance of NEPA documents;
- (2) is consistent with the recommended elements for QAPs in Attachment 3 and NOAA and CEQ requirements; and
- (3) is consistent with the Quality Assurance/Quality Control procedures in place for the relevant agency actions that require NEPA documentation.²⁰

IV. Measuring Effectiveness

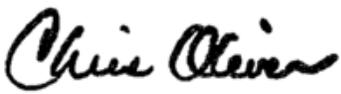
The NMFS National NEPA Coordinator will update and revise this policy directive and other NMFS NEPA guidance documents in response to changes in law and/or policy guidance from CEQ, DOC, NOAA, and/or NMFS. In addition, this policy will be evaluated every five years for its ability to continue to promote the effectiveness and consistency of the NEPA process across NMFS, taking into consideration the desire to allow for flexibility and collaboration within and among program offices, and revisions will be made if necessary.

V. Attachments

Attachment 1 – References

Attachment 2 – Glossary of Terms

Attachment 3 – National Subject Matter Criteria for NEPA Regional/Headquarters Office Quality Assurance Plans

| | | |
|--------|---|-----------|
| Signed |  | 8/24/2020 |
| | Chris Oliver | Date |
| | Assistant Administrator for Fisheries | |

¹⁸ An equivalent statement announcing the availability of the ROD for public review may be made as part of the *Federal Register* publication that announces the agency's final action.

¹⁹ The delegation is found in NOAA Transmittal No. 101, dated August 13, 2019 (Redelegation of Authority document delegating approval authority for certain National Environmental Policy Act (NEPA) actions from the NMFS Assistant Administrator).

²⁰ NMFS OMB's QAP will also conform to the relevant procedures and protocols established by the CAO Environmental Compliance staff with regard to facilities and real property related issues.

Attachment 1

References

Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of The National Environmental Policy Act (40 CFR Parts 1500-1508).

National Oceanic and Atmospheric Administration Administrative Order 216-6A: Compliance with the National Environmental Policy Act, Executive Orders 12114, Environmental Effects Abroad of Major Federal Actions; 11988 and 13690, Floodplain Management; and 11990, Protection of Wetlands, dated April 22, 2016.

National Oceanic and Atmospheric Administration Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities - Companion Manual for NOAA Administrative Order 216-6A, dated January 13, 2017.

National Oceanic and Atmospheric Administration Transmittal No. 101, dated August 13, 2019 (Redelegation of Authority document delegating approval authority for certain NEPA actions from the NMFS Assistant Administrator).

Attachment 2

Glossary of Terms

Certification of Attorney Review (CAR) – For the purposes of this policy directive, a certificate signed by an attorney from the appropriate NOAA OGC that both evidences that a pending NMFS Categorical Exclusion Memorandum (CE), Environmental Assessment (EA), Finding of No Significant Impact (FONSI), Environmental Impact Statement (EIS), or Record of Decision (ROD) has been reviewed by OGC for a determination of legal sufficiency and contains the comments of the reviewing attorney, if any, regarding the NEPA document. The CAR will accompany all rulemaking packages (which may contain a NEPA document) prepared by NMFS.

Decision maker – The decision maker for a matter is the individual who has the authority and responsibility to make the NOAA decision that is being informed by the NEPA process, and the decision maker is responsible for ensuring that the NEPA process is fully and effectively conducted to support that decision making (NAO 216-6A, Section 4.04). The decision maker is also responsible for determining the necessity for NEPA analysis; determining the level and type of NEPA document; documenting and preparing NMFS CEs, EAs, FONSI, adoption memoranda, notices of intent (NOIs) to prepare an EA or EIS, supplemental information reports (SIRs), NEPA Compliance Evaluation Memoranda, draft and final EISs, Notices of Availability (NOAs) of an EA or EIS, and RODs; ensuring the NEPA process is fully and effectively conducted; signing CEs, FONSI, and RODs.

Legally Sufficient – A NEPA document is legally sufficient if: (a) there is a credible basis to conclude that the agency has prepared the appropriate level of NEPA analysis, and the document addresses all required statutory and regulatory elements; (b) there is a credible basis to conclude that the agency has complied with all applicable procedural requirements; and (c) the agency has articulated a rational explanation for the decision to prepare a CE, FONSI, or ROD.

NEPA Documents – For the purposes of this policy directive and consistent with CEQ Regulations Implementing NEPA, NEPA documents include CEs; EAs and their FONSI; EISs and their RODs; NOIs to Prepare an EA/EIS; NOAs of an EA/EIS; and Supplements to any of these documents.

NMFS Headquarters NEPA Coordinator – This position serves the equivalent role in HQ as the NMFS Regional NEPA Coordinators (see below) do in the regions by advising NMFS Office Directors and their program staff preparing NEPA documentation throughout the Offices of Aquaculture, Sustainable Fisheries, Protected Resources, Habitat Conservation, Law Enforcement, Management & Budget, Science & Technology, and International Affairs & Seafood Inspection, and/or federal advisory councils, commissions, and boards.

NMFS National NEPA Coordinator – This position coordinates the overall NEPA program and assists with exchange of information among programs, General Counsel, Regional Fishery Management Councils, other NOAA Line Offices, and the Council on Environmental Quality.

The NMFS National NEPA Coordinator oversees the NMFS Headquarters NEPA Coordinator.

NMFS Office NEPA Coordinator – Where delegated (e.g., Office of Habitat Conservation) NMFS Office NEPA Coordinators may be established within an individual NMFS Office to facilitate coordination and exchange of NEPA information among divisions, General Counsel, and NMFS HQ NEPA. The NMFS Office NEPA Coordinators advise Office staff preparing NEPA documentation throughout their Office, and report to their respective NMFS Office Director and NEPA decision makers.

NMFS Regional NEPA Coordinator – The NMFS Regional NEPA Coordinators are established in each Regional Directorate to facilitate coordination and exchange of NEPA information among programs, General Counsel, Science Centers, and Regional Fishery Management Councils. The NMFS Regional NEPA Coordinators advise NMFS staff preparing NEPA documentation throughout their region, Center, and Regional Fishery Management Councils.

NOAA NEPA Coordinator – The NOAA NEPA Coordinator is a designated position responsible for ensuring NEPA compliance for NOAA (NAO 216-6A, Section 4.02). The NOAA NEPA Coordinator currently resides in NOAA's Office of General Counsel. The NOAA NEPA Coordinator is responsible for administering the NOAA NEPA program, including the following duties: (1) assist decision makers and their staff in a cooperative manner in applying NEPA; (2) develop, maintain, and revise agency-wide NEPA policy and procedures, including the Companion Manual; (3) collect best practices to share with all decision makers; (4) provide NEPA tools and training to Line and Staff Offices; (5) serve as the interface on NEPA issues with the Council on Environmental Quality, the Department of Commerce, and other federal agencies; (6) convene a working group of all Line Office and Staff Office NEPA leads to facilitate the sharing of ideas and gain efficiencies, where appropriate, by collectively addressing cross-line-office NEPA issues; and (7) coordinate NOAA-wide NEPA reporting and NOAA-wide comments on NEPA documents prepared by other agencies (NAO 216-6A, Section 4.04).

Originating Office NMFS NEPA Coordinator – For NEPA documents initiated by either a Science Center or a Regional Office, the NMFS Regional NEPA Coordinator is the designated NMFS NEPA Coordinator for purposes of this policy directive. For NEPA documents initiated by headquarters offices, the NMFS Headquarters NEPA Coordinator is the designated Coordinator, except in cases where the NMFS Headquarters NEPA Coordinator responsibilities have been delegated. In cases where the responsibilities have been delegated, the NMFS Office NEPA Coordinator is the designated NMFS NEPA Coordinator for that Office's NEPA compliance.

Attachment 3

National Subject Matter Criteria for NEPA Regional/Headquarters Office Quality Assurance Plans

The Office Directors (ODs), Regional Administrators (RAs), and Science Center Directors (SCDs), who are delegated authority for certain National Environmental Policy Act (NEPA) actions, under National Oceanic and Atmospheric Administration (NOAA) Transmittal 101,²¹ should maintain Quality Assurance Plans (QAPs) for the NEPA processes in their respective offices, regions, and science centers. This section specifically addresses QAP criteria regarding the NEPA review process, the development of the NEPA component of the record for the agency action, and the legal sufficiency of NEPA documentation. The technical aspects of the NEPA analysis are not covered in the criteria below.

Different levels of NEPA analysis and documentation may entail different levels of oversight and review. A QAP may define unique requirements for these different types of NEPA documents, bearing in mind there are nationally applicable procedures set by National Marine Fisheries Service (NMFS) Policy Directive 09-101 (09-101) and NOAA Transmittal No. 101. If different levels of quality assurance procedures are adopted for the different levels of NEPA analysis and documentation, a set of characteristics should be defined that indicate which level of quality assurance is required.

The QAP should outline the roles and responsibilities of the participants in the NEPA review process. The roles and responsibilities should be defined by the position held within the agency and should identify the technical and NEPA experience and training required to fulfill that role.

The QAP should prescribe tracking guidelines for the review of NEPA documentation. The tracking guidelines should:

- Include an outline of the specific documentation and record keeping requirements that complete the record and allow agency reviewers and the public to easily follow the steps taken in the development and decision making process that resulted in the Categorical Exclusion memorandum (CE), Finding of No Significant Impact (FONSI), or Record of Decision (ROD).
- Describe how to prepare for, and document decisions made in reference to, the “Initial Determination” for the required level of NEPA analysis described in 09-101.
- Take into consideration the critical nature of documentation requirements in determining the legal sufficiency of the NEPA documents. Therefore, the decision maker and appropriate NMFS NEPA Coordinator should consult with the appropriate Office of General Counsel (OGC) to determine the type of tracking and documentation requirements to include in the QAP.
- Contain information regarding the schedule for updating the information on the NEPA

²¹ National Oceanic and Atmospheric Administration Transmittal No. 101, dated August 13, 2019 (Redelegation of Authority document delegating approval authority for certain NEPA actions from the NMFS Assistant Administrator)

projects being tracked, who in the organization should maintain these records, what form the records should take, who should be permitted to edit these records, what type of security should be maintained, and who should be permitted to see the records (i.e., internal deliberative).

The QAP should outline the interactions between originating office staff, the decision maker, and other reviewers necessary to ensure frontloading of the review process, to avoid review-related delays or errors that need to be corrected at a later date in the timeline of the agency action. For example:

- The process for engaging other affected offices and parties in the NEPA analysis and review process should be discussed in the QAP.
- Stepwise or staged review processes that allow for review of completed analyses and documentation before the final draft CE memorandum, Environmental Assessment (EA), or Environmental Impact Statement (EIS) are reviewed in their totality should be utilized, increasing the interactions between staff and reviewers in the document development process.
- The number and types of reviews necessary should be determined within reasonably defined ranges. The timing of these reviews should also be defined, keeping in mind that the final NMFS NEPA Coordinator, OGC, and agency order of review is defined in Policy Directive 09-101.
- To facilitate further frontloading in the NEPA process, to the extent possible the QAP should outline the materials that are currently available and are going to be developed (e.g., training, checklists, etc.) that will help staff involved in the writing of NEPA documents understand the required technical, procedural, and legal requirements of the document. The QAP and these materials should be shared with those staff preparing and reviewing the NEPA documents.

The details of a biennial review of the operational effectiveness of the QAP should be developed along with criteria that would trigger changes to the current plan.