



**NOAA
FISHERIES**

SF3

The National Environmental Policy Act (NEPA) and the Fishery Management Process

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Council Member Training
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Learning Objectives

Objectives are for you to be able to:



- Explain why we care about NEPA.
- Explain the requirements for EISs.
- State when an EA/FONSI is appropriate.
- Describe NEPA's effect on the MSA process.
- Locate guidance.

History Lesson

Where did NEPA come from?

Why do we have it?

Who's in charge here? (CEQ)

Why do we need to know about NEPA?

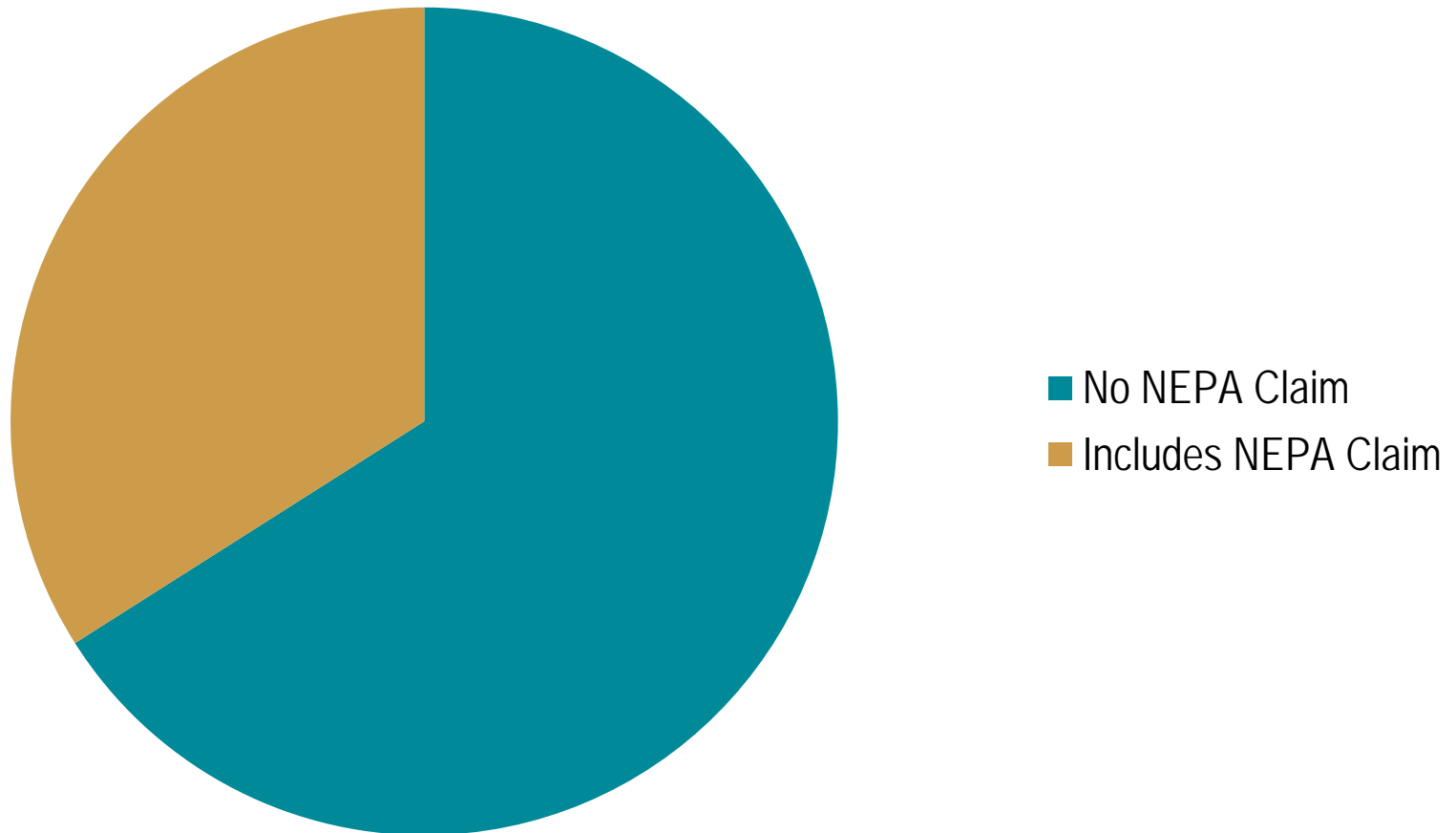
Good Decision-Making
Public Involvement
Timely Approval of
MSA actions

Disapproval
Litigation Loss
-Remands
-Closures

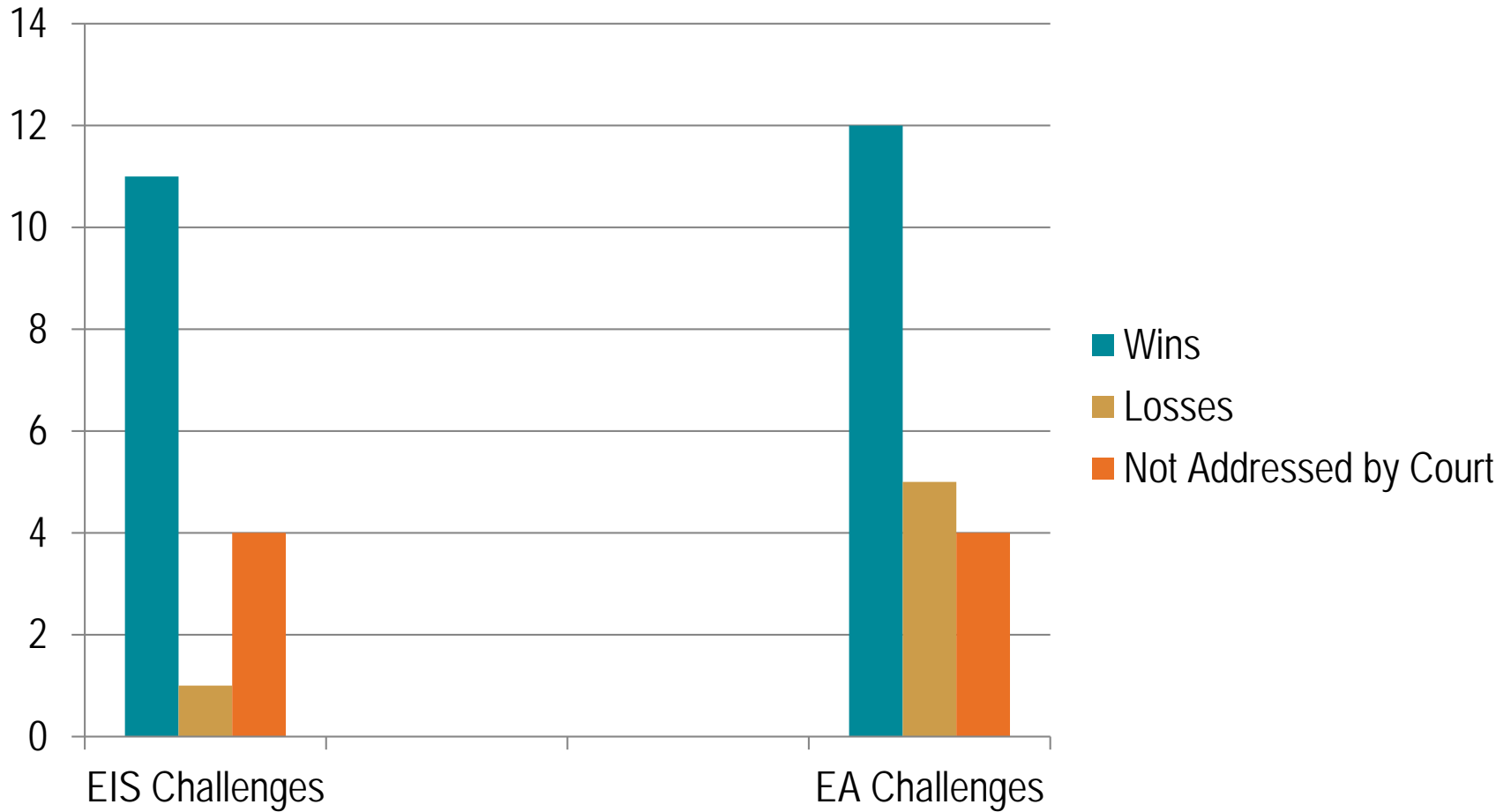


MSA/NEPA Litigation Facts 2008-2018

34% of MSA Lawsuits included NEPA Claims



MSA/NEPA Wins/Losses 2008-2018



Purpose of NEPA

National Policy for Federal agencies to promote man and nature living in productive harmony, fulfill stewardship responsibilities

Achieves this through required analysis and public process.

Think before you act.

What are the requirements?

EIS: NEPA's default requirement

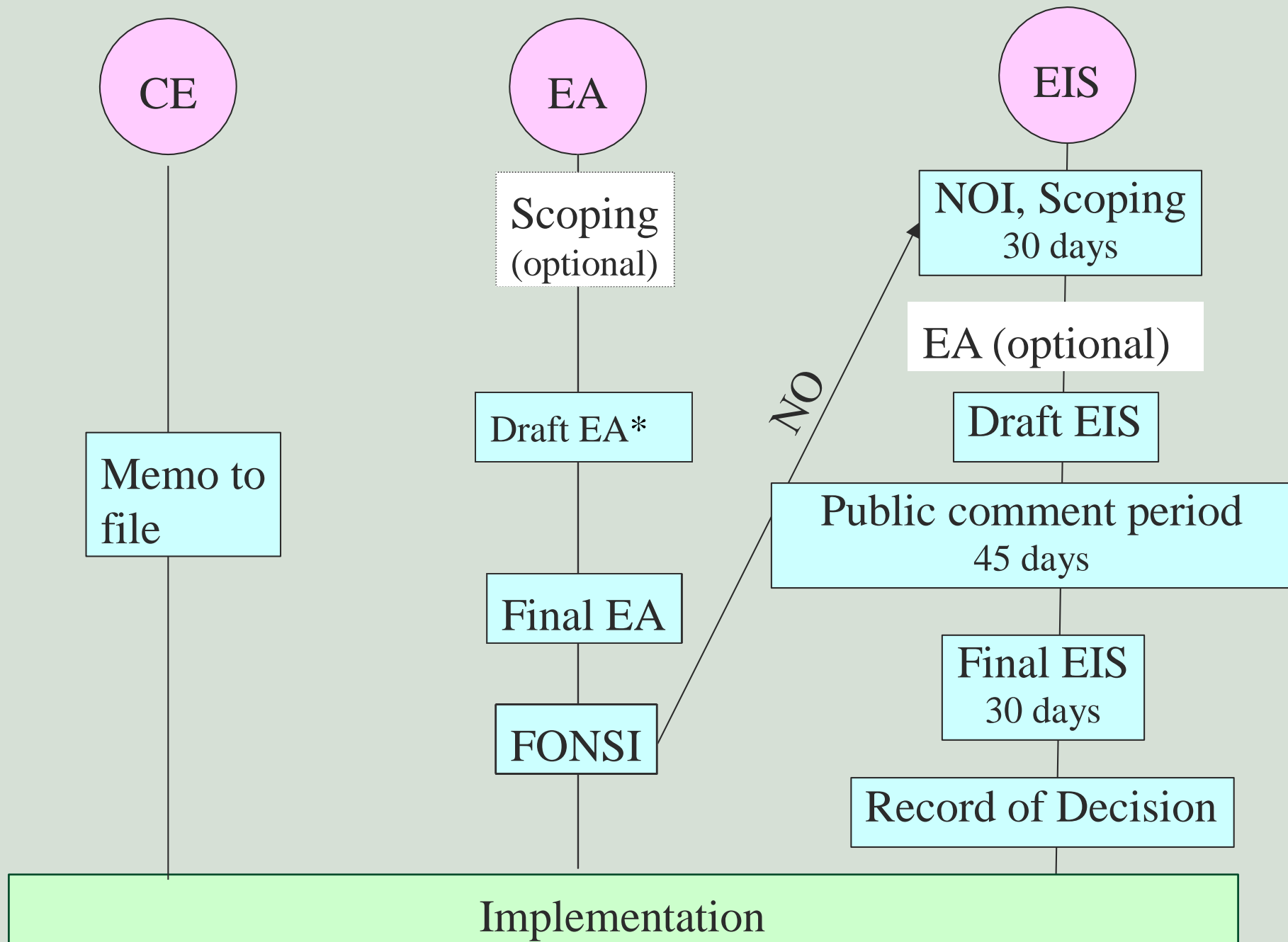
Content: Alternatives, Effects analysis

Procedure: Draft, Public Comment, Cooling off Period

EA/FONSI: Available shortcut if record supports

CE: Categories pre-determined not significant

NEPA does NOT require a particular outcome



EIS Requirements

Documentation

Federal agencies shall include:

For all major Federal actions, significantly affecting the quality of the human environment, a detailed statement (i.e., EIS)

Process

Notice of Intent, DEIS, Public Comment, FEIS, Cooling off period, ROD

Timing

*Minimum time periods (90 days after publication of DEIS).

EIS Contents

40 CFR § 1502.10

- Table of contents.
- Purpose and need.
- Alternatives.
- Affected environment.
- Environmental consequences.

Contents

SPINY DOGFISH FISHERY MANAGEMENT PLAN

(Includes Final Environmental Impact Statement and Regulatory Impact Review)

February 1999

Mid-Atlantic Fishery Management Council
and the
New England Fishery Management Council
in cooperation with the
National Marine Fisheries Service

Draft adopted by Councils: 11 August (NEFMC) and 17 August (MAFMC) 1998
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17 March 1999

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Purpose and Need

The purpose and need determines the range of alternatives.

- Cases lost when alternatives analyzed do not meet the purpose and need
- Or, where alternatives that do meet the purpose and need were not analyzed

Iterative process...

- Does the P & N yield a reasonable range of alternatives?
- Does the range of alternatives match the P & N?

Alternatives

- Reasonable: Fulfills the purpose and need; is technically and economically practical/feasible; makes common sense; may conflict with law
- No action alternative
- Alternatives found not to be feasible or reasonable should be presented briefly, along with the reasons why they were eliminated from further study

EIS Activity

Review Activity 1

NEPA Shortcuts and Efficiencies

- EA/FONSI
- Tiering
- Incorporation by Reference
- NAPP (NEPA Advanced Planning Process)
- SIR (Supplemental Information Report)

ALL ARE RECORD-BASED

Option to Start with an EA

A concise public document:

- Briefly provides basis for determining whether to prepare an EIS or a FONSI;
- Includes brief discussion of need, alternatives, and environmental impacts

CEQ Significance Criteria

Context. Significance varies with the setting. For a site-specific action versus world wide. Short- and long-term effects.

Intensity. Severity. Must consider:

1. Beneficial impacts may be significant.
2. Effects on public health/safety.
3. Unique characteristics of the geographic area (near historic or cultural resources, or ecologically critical areas).
4. Controversiality (refers to scientific agreement on impacts).
5. Highly uncertain or unique or unknown risks.
6. Precedent-setting.
7. Cumulatively significant impacts (related to other actions).
8. Adverse effects on National Register of Historic Places sites; or potential loss of significant scientific, cultural, or historical resources.
9. May adversely affect an endangered or threatened species or its habitat.
10. Violation of environmental protection laws.

Additional NOAA Significance Criteria

Degree of adverse effect on:

- marine mammals
- managed fish species;
- essential fish habitat;
- vulnerable marine or coastal ecosystems, including deep coral; or
- biodiversity or ecosystem functioning; and

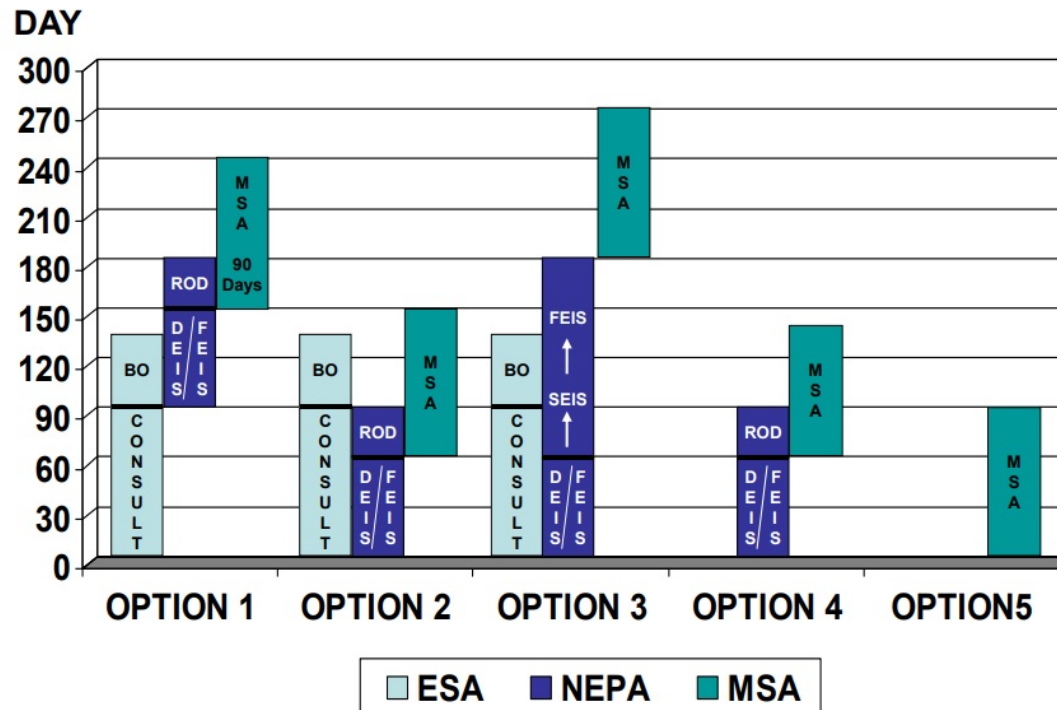
Potential introduction or spread of an invasive species.

Record-Based Determinations Activity

Review Activity 2

NEPA's effect on MSA Timeline and Process

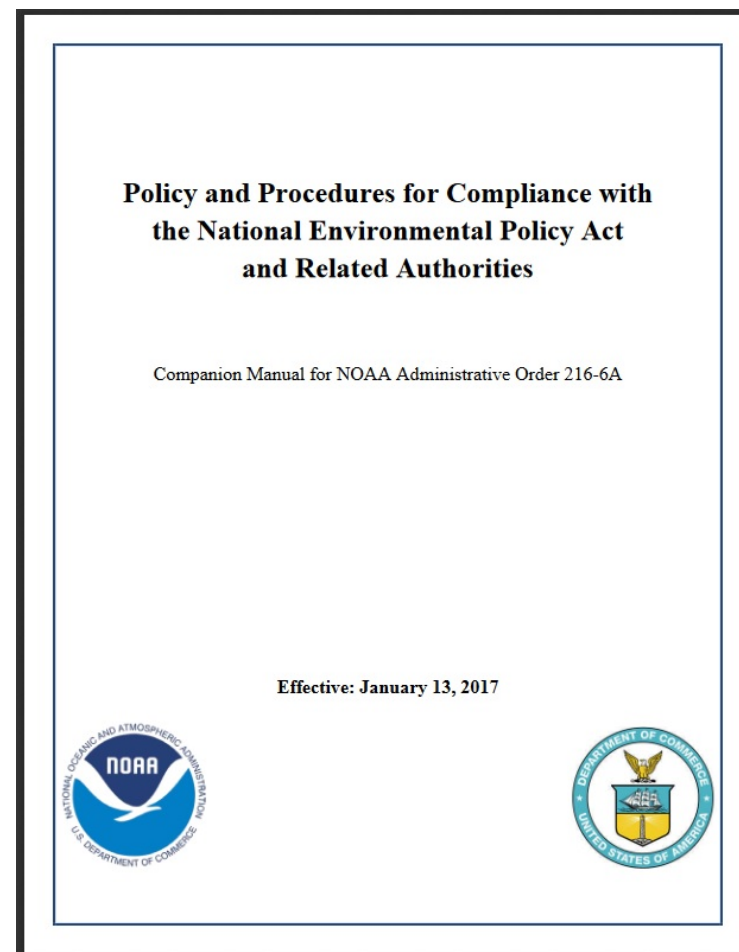
Fishery Management Timeline Options



NOAA NEPA Guidance

The Road to Current Guidance

- 2007 MSRA mandate for new MSA/NEPA procedures
- 2008 Proposed Rule (withdrawn 2013)
- 2013 NMFS Policy Directive on MSA/NEPA
- 2016 NOAA NAO 216-6A; 2017 Companion Manual, Appendix C and Appendix E (CEs)



Did we meet our objectives?

- Why do we care about NEPA?
- Name two key content requirements for EISs.
- How many alternatives are enough?
- True or False: NEPA requires Councils to select the most environmentally protective alternative.
- Is lack of time to prepare an EIS valid grounds to use an EA instead?
- Where can I find guidance on compliance with NEPA for MSA actions?

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