

# National Environmental Policy Act

## I. Introduction

This chapter describes the procedural, substantive, and timing requirements of NEPA as they pertain to fishery management actions. It begins with an overview of NEPA's overarching policy mandates, and then reviews specific requirements relating to environmental analyses.

There are several sources of requirements and standards governing our compliance with NEPA. They include:

- The Statute (42 U.S.C. 4331 et seq.)
- CEQ Regulations: The Council on Environmental Quality (CEQ) has special status under NEPA for administering and interpreting the law. CEQ has issued regulations interpreting NEPA at 40 CFR 1501 et seq. CEQ has published additional guidance on various aspects of NEPA that can be accessed via their website.
- NOAA's Administrative Order 216-6: NOAA has issued internal guidance on how to apply NEPA in a fisheries management context.
- We are also guided by case law.

## II. Policies and Goals

National Policy Directive: As set forth in section 101(a), a chief purpose of NEPA is to declare a national environmental policy, which directs Federal agencies to use all practicable means to maintain conditions in which man and nature can live in productive harmony (i.e., fulfilling the social, economic, and other requirements of present and future generations of Americans).

Specifically, the statute directs the Federal government to use all practicable means and measures in:

- Cooperating with State and local governments and other concerned public and private organizations;
- Providing financial and technical assistance; and
- Fostering and promoting the general welfare.

For the purposes of creating and maintaining conditions under which man and nature can exist in productive harmony (i.e., fulfilling the social, economic, and other requirements of present and future generations of Americans) (Section 101(a)).

NEPA is as much a philosophy or ethic for the nation and its people, as it is a procedural requirement for Federal agencies to follow. NEPA provides the Federal government and all U.S. citizens some lofty goals, which go much beyond the procedural requirement to produce EISs.

Mandate to Improve and Coordinate: In section 101(b), Congress directs the Federal government to use all practicable means to improve and coordinate Federal plans, functions, programs, and resources to:

- Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- Assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- Preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
- Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources. (Section 101(b)).

### III. Linkages to the MSA

In addition to the environmental policy goals set forth in section 101(a) and (b), NEPA includes specific analytical and procedural requirements applicable to rulemakers. It includes basic requirements for federal agencies to consider the effects of their actions on the environment and to consider alternatives during the decisionmaking process. Although people sometimes assume the acronym, "NEPA," stands for the National Environmental PROTECTION Act, this is not the case. NEPA does not require the selection of the most environmentally preferable alternative. It does require decision makers to explain their rationale for selecting a less environmentally preferable alternative.

The law states that Federal agencies shall:

- "Include in every major Federal action significantly affecting the quality of the human environment, a detailed statement on:
  - The environmental impact of the proposed action,
  - Any adverse environmental effects which cannot be avoided should the proposal be implemented,
  - Alternatives to the proposed action,
  - The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
  - Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."
- "Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources..." (42 U.S.C. 4332(2)).

When Does NEPA Apply?: NEPA's analytical and procedural requirements apply to "major Federal actions" – this term has been defined through regulations and case law over the years to be extremely widely encompassing. Generally, all fishery management actions are considered major Federal actions.

What Does NEPA Require?: Once triggered, NEPA requires agencies to consider the environmental impacts of their actions, analyze alternatives, and document the final decision in a “Record of Decision” (ROD). If a full-blown analysis is not prepared, then a substantive determination (i.e., FONSI or Categorical Exclusion (CE)) must be supported by facts in the record. These requirements are discussed in greater details below.

How Did the Magnuson-Stevens Reauthorization Act (MSRA) of 2006 Impact NEPA Requirements?:

NEPA’s comprehensive analytical approach and mandatory public process provides a good venue for addressing the various required considerations applicable to the fishery management process. However, some of the analytical and timing requirements of NEPA and the MSA are viewed as unnecessarily duplicative. To better integrate these requirements, the MSRA requires the Secretary, in consultation with the regional fishery management councils and CEQ, to revise and update NOAA’s NEPA procedures, with the two-part goal of:

- Conforming to the time lines for review and approval of fishery management plans (FMPs) and FMP amendments; and
- Integrating applicable environmental analytical procedures, including the time frames for public input, with the procedure for the preparation and dissemination of FMPs, FMP amendments, and other MSA actions taken or approved in order to provide for timely, clear and concise analysis that is useful to decision makers and the public, reduce extraneous paperwork, and effectively involve the public.

The resulting environmental review procedure is to be the sole procedure used to analyze the environmental impacts of fishery management proposals. The MSRA directs the Secretary to propose the new procedures by July 12, 2007, and to finalize the procedures no later than December 12, 2007. We will discuss the status of that rulemaking activity during the NEPA module.

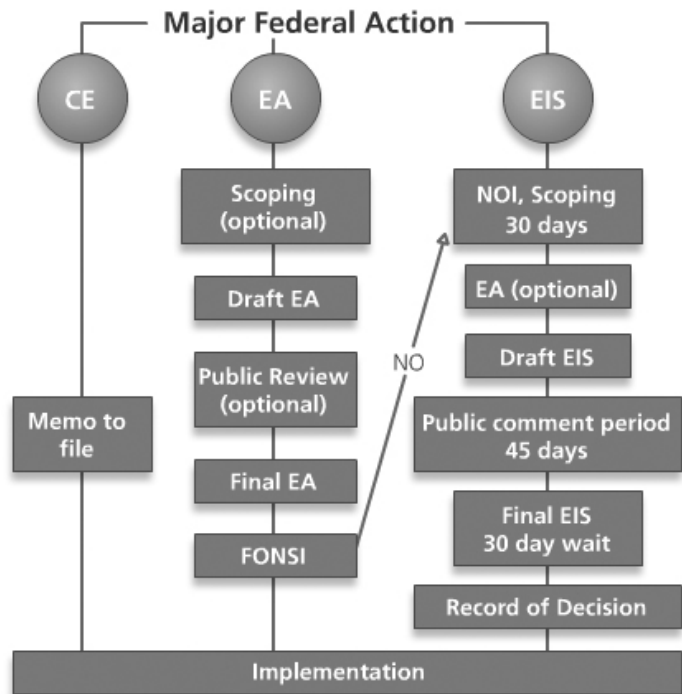
**A. EIS is default requirement**

NEPA requires an EIS to be prepared on all major Federal actions significantly affecting the quality of the human environment. The Environmental Assessment (EA) is an analytical tool that can help determine whether an EIS is necessary and, if so, that can serve as a foundation for developing the EIS. This chapter first describes the requirements related to developing an EIS, then those related to developing EAs.

1. EIS – Content

EISs are required to evaluate:

- The environmental effects of the proposed action and alternatives on the quality of the human environment;
- Any adverse environmental effects which cannot be avoided should the proposal be implemented;



- The relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and
- Any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented (NEPA section 102(2)(C)(i) – (v); and 40 C.F.R. 1502.14, 1502.16)).

NEPA requires federal agencies evaluate the impacts of all major Federal actions significantly affecting the quality of the human environment in EISs.

CEQ defines "human environment" to include the natural and physical environment and the relationship of people with that environment. This definition is not intended to require us to prepare an EIS solely based on economic or social effects. However, when economic or social and natural or physical environmental effects are interrelated, then we must discuss all these effects in the EIS (40 CFR 1508.14).

In addition, EO 12898 (Environmental Justice) and CEQs accompanying guidance encourage agencies to specifically consider potential impacts on minority and low-income communities.

CEQ regulations use the words "effects" and "impacts" synonymously. According to the regulations, "effects" include: "Direct effects, which are caused by the action and occur at the same time and place; and

Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems" (40 CFR 1508.8).

The range of effects to be considered is broad and includes: "ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." Effects may be "both beneficial and detrimental..., even if on balance the agency believes that the effect will be beneficial" (40 CFR 1508.8).

The CEQ regulations define "cumulative impacts" as: "The impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time" (40 CFR 1508.7).

Thus, when analyzing the environmental effects of a proposed action, NEPA requires us to look beyond the immediate effects of our action in isolation, and to consider how the action in question may interact with other activities – even with activities undertaken by different parties or agencies. It is important to consider the big picture view of how our proposed action may affect the environment when combined with other actions. For example, a proposed fishery management action to open a very small area of previously closed fishing grounds might on its own seem insignificant. However, if there has been a steady history of opening a new small area each month, and we can anticipate additional openings in the future, then the assessment of significance might be different.

Identifying alternatives to the proposed action is among the most important and challenging NEPA requirements. There is no set numeric answer as to how many alternatives are enough. The number of alternatives that must be considered will vary according to the scope of the problem being addressed and the objective of the proposed action, both of which should be outlined in the statement of purpose and need. The key consideration in identifying alternatives is to include a "reasonable range." Reasonable alternatives may include alternatives that are not within the power of the action agency to implement if such alternatives would otherwise be considered reasonable. The range of alternatives also must always include a "no action" alternative (40 CFR 1502.14).

## Case Law Examples

- A *Greenpeace v. NMFS* (1999) case exemplifies a situation where we did not consider a reasonable range of alternatives. That case involved an EIS on the Alaska groundfish FMP. Although we characterized the scope of the analysis as supporting the entire FMP, we only considered alternatives for various ranges of total allowable catch levels. The Court struck down our analysis, concluding the range of alternatives was not co-extensive with the scope of the problem.
- On the other hand, in an opinion on the Atlantic sea scallop fishery (*Oceana v. Evans* (2005)), the Court stated, “While it is true that agencies have a duty to consider “significant and viable alternatives” identified through public comments, *City of Brookings Mun. Tel. Co. v. FCC*, 262 U.S. App. D.C. 91, 822 F.2d 1153, 1169 (D.C. Cir. 1987), and that “the failure of an agency to consider obvious alternatives has led uniformly to reversal,” *Yakima Valley Cablevision, Inc. v. FCC*, 254 U.S. App. D.C. 28, 794 F.2d 737, 746 n.36 (D.C. Cir. 1986), the duty to consider all such alternatives does not extend to situations where the possibilities are so numerous and the goals of the action so complex that the agency cannot possibly consider every significant alternative in a reasonable time period. Rather, in these circumstances, the agency has discretion to choose a manageable number of alternatives to present a reasonable spectrum of policy choices [\*\*103] that meet the goals of the action.
- And in *Oceana v. Evans* (2005), the Court supported the range of alternatives we considered in a Northeast multispecies amendment, stating, “Moreover, in constructing a regulatory action governing fishing for 23 species in an area covering hundreds of thousands of square nautical miles, virtually limitless alternatives could theoretically be evaluated, but such an undertaking is not demanded by the rule of reason (Tongass, 924 F. 2d at 1140). The Secretary properly identified the regulatory purpose, and considered the impacts of his decision, including giving a “hard look” at a reasonable range of practicable alternatives in light of that purpose. [\*122] This is all that NEPA demands” (*NRDC v. Hodel*, 865 F. 2d 288, 294 (D.C. Cir. 1988). n 31)

## 2. EIS – Timing and Procedure

The CEQ regulations outline the process we are to follow in preparing EISs. Specifically, they require us to:

- Publish a notice of intent (NOI) to prepare an EIS (40 CFR 1501.7);
- Provide for a public scoping process (40 CFR 1501.7);
- File draft EISs (DEIS) and final EISs (FEIS) with the EPA (40 CFR 1506.9);
- Solicit public comment on the DEIS (40 CFR 1506.10); and
- Prepare a ROD at the time of our final decision (40 CFR 1505.2).

These regulations also provide specific timing requirements for a number of these actions, which are discussed in greater detail below.

### *Scoping and NOI*

**Scoping:** When an EIS will be prepared, NEPA requires “an early and open process for determining the scope of issues to be addressed and identifying the significant issues.” This is known as the scoping process (40 CFR 1501.7).

Also, EO 12898 requires agencies to address environmental justice in minority populations and low income populations. If we expect any such populations to be affected by the proposed action, then we should use the scoping process to encourage their involvement.

NOI: Agencies must initiate the scoping process with a public NOI to prepare an EIS and solicitation of public input. The NOI must:

- Describe the proposed action and possible alternatives;
- Describe the proposed scoping process; and
- Provide the name and address of an agency contact person (40 CFR 1508.22).

NAO 216-06 requires the scoping period noticed in the NOI to be at least 30 days in length to provide an adequate opportunity for public comment (NAO 216-6, Section 5.02(d)(2)).

### *DEIS*

Timing: CEQ regulations provide two timing requirements related to the DEIS. First, they require us to allow at least 45 days for public comment on the DEIS (40 CFR 1506.10). The 45-day clock starts when EPA publishes a notice of availability in the *Federal Register*. Each Friday EPA publishes notice of all the DEISs and EISs received during the previous week (40 CFR 1506.10.) Second, the regulations prohibit agencies from making a final decision on the proposed action sooner than 90 days after this notice is published.

Contents: DEISs must fulfill to the fullest extent possible the requirements of FEISs, including disclosing and discussing all major points of view on the environmental impacts of the proposed action and alternatives. If a DEIS is so inadequate as to preclude meaningful analysis, CEQ regulations require agencies to prepare and circulate a revised draft of the appropriate portion (40 CFR 1502.9).

Supplements: Supplemental DEISs must be prepared and circulated for public comment if:

- The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or
- There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9).

### Case Law Examples

- A supplemental DEIS may not be required if the preferred alternative changes after the DEIS is circulated for public comment as long as the new preferred alternative was considered in the DEIS. For example, the use of 16/0 circle hooks was one alternative for avoiding sea turtle takes described in a DEIS prepared in association with an amendment to the HMS Pelagic Longline FMP. The DEIS indicated that 16/0 circle hooks on their own were not capable of reducing takes to ESA-compliant levels. However, after considering public comments on the DEIS and a BO issued after the DEIS was made available for public comment, NMFS determined that 16/0 hooks were preferred for certain areas. Plaintiffs alleged that NMFS should have supplemented the DEIS in light of the revised preferred alternative. But the Court wrote, “In the final analysis, the [CEQ] regulation simply does not require NMFS to “rework its draft if it later realizes an alternative it preliminarily rejected should be more fully developed.” *Id.* Accordingly, the Court concludes that the [FEIS] allowed for adequate public comment and, thus, it does not violate NEPA (*Ocean Conservancy and Oceana v. Gutierrez*, 394 F. Supp. 2d 147; 2005 U.S. Dist. LEXIS 23388; 35 ELR20208, Oct. 6, 2005, p. 37).

### *FEIS*

Content: FEISs must respond to public comments and discuss any responsible opposing views that were not adequately discussed in the DEIS. If agencies make substantial changes to the proposed action or if new

information relevant to environmental impacts becomes available after an FEIS is published, then a supplemental FEIS must be prepared and circulated for public comment (40 CFR 1502.9(b)).

Timing: Agencies may not make a final decision on the proposed action prior to 30 days after EPA notices the availability of the FEIS in the *Federal Register*. The 90-day wait period triggered by publication of the DEIS notice may run concurrently with this 30-day wait period (40 CFR 1506.10).

### *ROD*

Timing: At the time of the final decision (at least 30 days after the EIS is noticed and at least 90 days after the DEIS is noticed), agencies must prepare a ROD.

Content: The ROD must:

- State the decision;
- Describe all alternatives considered;
- Identify the environmentally preferable alternatives;
- Describe the factors considered during decision-making; and
- State whether all practicable means to avoid environmental harm were taken and, if not, explain why not (40 CFR 1505.2).

Additionally, agencies must adopt and summarize in the ROD “[a] monitoring and enforcement program ... where applicable for any mitigation” (40 CFR 1505.2(c)).

### *Interaction with other Laws*

It is important to be aware of the interaction of NEPA and MSA timing requirements. For example, Day 95 (decision day) under the MSA should not occur prior to signing the ROD on the NEPA EIS. The ROD on the EIS may not be signed sooner than 30 days after noticing the availability of the FEIS.

Also, the FEIS should not be filed prior to signing any Biological Opinion (BO) prepared under the ESA. Because the FEIS should not differ substantively from the DEIS, the BO should be generally complete before the DEIS is noticed for public comment to minimize the likelihood of having to prepare and circulate a supplemental DEIS.

## **B. EIS Trigger**

As noted in Section III(A) above, agencies must prepare EISs for major Federal actions significantly affecting the quality of the human environment.

The terms “major Federal action” and “human environment” have been interpreted very broadly through case law and the CEQ regulations. Generally, most fishery management actions meet those two criteria. However, not all fishery management actions meet the “significance” criteria. Agencies that are uncertain about the significance of a proposed action may prepare an EA to better evaluate the action’s potential significance.

EA: An EA is a less extensive analysis that may be completed prior to preparing an EIS in order to determine whether an EIS is necessary. If the analysis of facts in the record supports a “Finding of No Significant Impact” (FONSI), then the EA/FONSI will satisfy NEPA. The EA must analyze impacts on the human environment and must assess the significance of those impacts – both phrases are defined in the CEQ regulations.

Significance: CEQ regulations specify criteria to evaluate in determining whether the EA supports a FONSI: Context. Significance varies with the setting of the proposed action and must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. 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.

Intensity. The following criteria should be considered in evaluating the intensity, or severity of an impact:

- A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
- The degree to which the proposed action affects public health or safety.
- 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.
- The degree to which the effects on the quality of the human environment are likely to be highly controversial.
- The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
- The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
- Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
- The degree to which the action may 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.
- The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
- Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Additionally, NMFS guidance (NMFS Service Instruction 30-124-1) suggests we consider the significance criteria specific to fishery management actions provided in NOAA's Administrative Order 216-6. These additional criteria include:

- The proposed action may be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action.
- The proposed action may be reasonably expected to jeopardize the sustainability of any non-target species.
- The proposed action may be reasonably expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the MSA and identified in FMPs.
- The proposed action may be reasonably expected to have a substantial adverse impact on public health or safety.
- The proposed action may be reasonably expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species.
- The proposed action may be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species.
- The proposed action may be expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc).
- If significant social or economic impacts are interrelated with significant natural or physical environmental effects, then an EIS should discuss all of the effects on the human environment.



- A final factor to be considered in any determination of significance is the degree to which the effects on the quality of the human environment are likely to be highly controversial. Although no action should be deemed to be significant based solely on its controversial nature, this aspect should be used in weighing the decision on the proper type of environmental review needed to ensure full compliance with NEPA. Socio-economic factors related to users of the resource should also be considered in determining controversy and significance.

Ultimately, the determination as to whether a FONSI is appropriate must be based on an assessment of the significance criteria set forth above as they apply to the facts of the individual action. That determination also will be subject to the APA's reasonableness requirements.

Case law demonstrates that courts will apply the significance criteria.

- In *Pacific Marine Conservation Council v. Evans* (N.D. Cal., April 12, 2002), NMFS prepared an EA/FONSI to support its decision to implement Amendment 13 to the Pacific Groundfish FMP. Amendment 13 was intended to bring the FMP into compliance with the MSA's new bycatch requirements. The Court found the EA inadequate because it adequately addressed only one of the ten "significance" criteria set forth at 40 CFR 1508.27(b). References to the remaining criteria were conclusory, and either not explained in the EA or contradicted by facts in the record. For example, the EA stated the proposed actions were not expected to have significant effects on the environment that were highly uncertain or involved unknown risks. The Court found this statement "directly contradicted" the agency's record "which show[ed] that the amount of bycatch occurring in the fishery is indeed highly uncertain... [and] involves highly unknown (but potentially grave) risks." Also, the Court found inadequate support for the EA's statement that the action was not expected to have "cumulatively significant adverse effects" given the record showing the serious decline in groundfish populations, the contribution of bycatch to that decline, and the failure to take action to minimize that bycatch. The Court also found inadequate support for the EA's conclusion that the action would have generally positive impacts on the environment because the only action being taken to reduce bycatch was a voluntary program.
- This does not mean EAs must be exhaustively long. In *Conservation Law Foundation v. Mineta*, 131 F. Supp. 2d 19, 2001 U.S. Dist. LEXIS 1261 (D.D.C., Feb. 1, 2001), NMFS prepared an EA/FONSI to support a proposed action to open to scallop fishing certain areas which had previously been closed in order to provide habitat for other fish species. Plaintiffs alleged NMFS' assessment of the impacts of the proposed action on EFH was overly cursory, consisting of two sentences: one acknowledging risk; the other, finding the risk acceptable. The Court found the agency's conclusion was reasonable in light of the record, and highlighted relevant portions of the analysis in the opinion, including NMFS's conclusion that the net effect of opening the closed areas would allow the fishery to be more efficient and spend less time fishing in sensitive areas.

#### *EA - Contents and Procedure*

The CEQ Regulations set forth additional guidance on the preparation of EAs (40 CFR 1508.9). EAs are defined as concise public documents that serve to:

- Briefly provide sufficient evidence and analysis for determining whether to prepare an EIS or a FONSI;
- Aid an agency's compliance with NEPA when no EIS is necessary; and
- Facilitate preparation of an EIS when one is necessary.

EAs are described as brief informative documents. If you find that your EA is becoming overly analytical and complex, consider whether it would be more appropriate to proceed with an EIS.

Contents: EAs must include brief discussions of:

- The need for the proposal;
- Alternatives to the proposed action when there are unresolved conflicts concerning alternatives uses of available resources;
- The environmental impacts of the proposed action and alternatives; and
- A listing of agencies and persons consulted.

Alternatives: Must an EA contain the same number of alternatives as an EIS? It depends. In some cases, it may be reasonable to evaluate a smaller number of alternatives in an EA than you would in an EIS. However, a broader range of alternatives may be necessary if there are unresolved conflicts about how available resources should be used. This is a fact specific inquiry. If your EA covers complex issues, be careful not to overlook obvious and/or controversial alternatives, even if they go beyond what the regional fishery management council prefers to do.

#### Case Law Examples

- In *Pacific Marine Conservation Council, Inc. et al., v. Evans* (N.D. Cal., April 12, 2002) (No. C 01-2506 JL) (Order granting Plaintiffs Motion for Summary Judgment), the Court found the EA developed to support Amendment 13 to the Pacific Groundfish FMP had failed to consider a reasonable range of alternatives for a bycatch reduction program. Specifically, the Court found the EA should have considered immediate implementation of an adequate observer program and bycatch reduction measures for the non-whiting fishery. The Court stated the effects of such alternatives could be easily ascertained and the implementation of these alternatives was neither remote, speculative, nor infeasible, ineffective, or inconsistent with the basic policy objectives for the management of the area.
- In *Natural Resources Defense Council, Inc. v. Evans* 168 F. Supp. 2d 1149 (N.D. Cal., Aug. 20, 2001) (NO. C 01-0421 JL, C 01-0637 JL), plaintiffs alleged the EAs prepared for both Amendment 12 to the Pacific Groundfish FMP and the annual specifications were inadequate. The Court agreed. The EA for the specifications considered only two alternatives for setting bycatch mortality rates: zero and 16-20%. The Court found this range of alternatives to be inadequate, noting the agency had evidence indicating both alternatives were inaccurate. Likewise, the EA supporting Amendment 12 considered only two alternatives for a rebuilding plan: the status quo (i.e., no plan); and NMFS' preferred approach. The EA did not analyze four additional alternatives offered by the plaintiffs, and did not explain why it failed to do so.

CE: If an action falls within the scope of actions the agency has officially determined do not "individually or cumulatively have a significant effect on the human environment," then a CE may be asserted and no further analysis is required. NOAA has described the applicability of categorical exclusions in NAO 216-06. If a CE is asserted, then a memo to the file should be prepared describing the basis for the CE.