



**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:

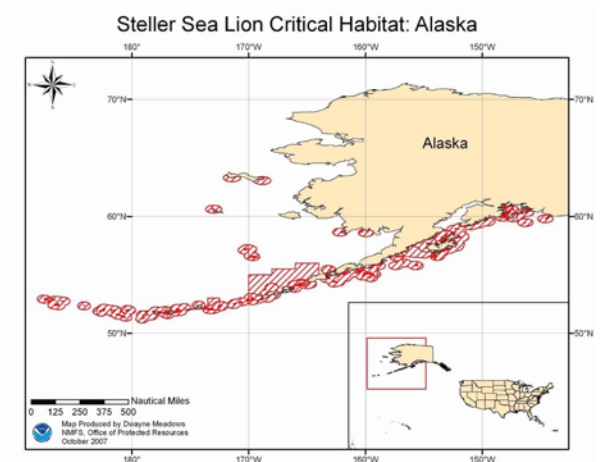


- Explain why we care about NEPA.
- Explain the requirements for EISs.
- State when an EA/FONSI is appropriate.
- Describe NEPA's effect on the MSA process.
- Locate guidance.

# Why do we need to know about NEPA?

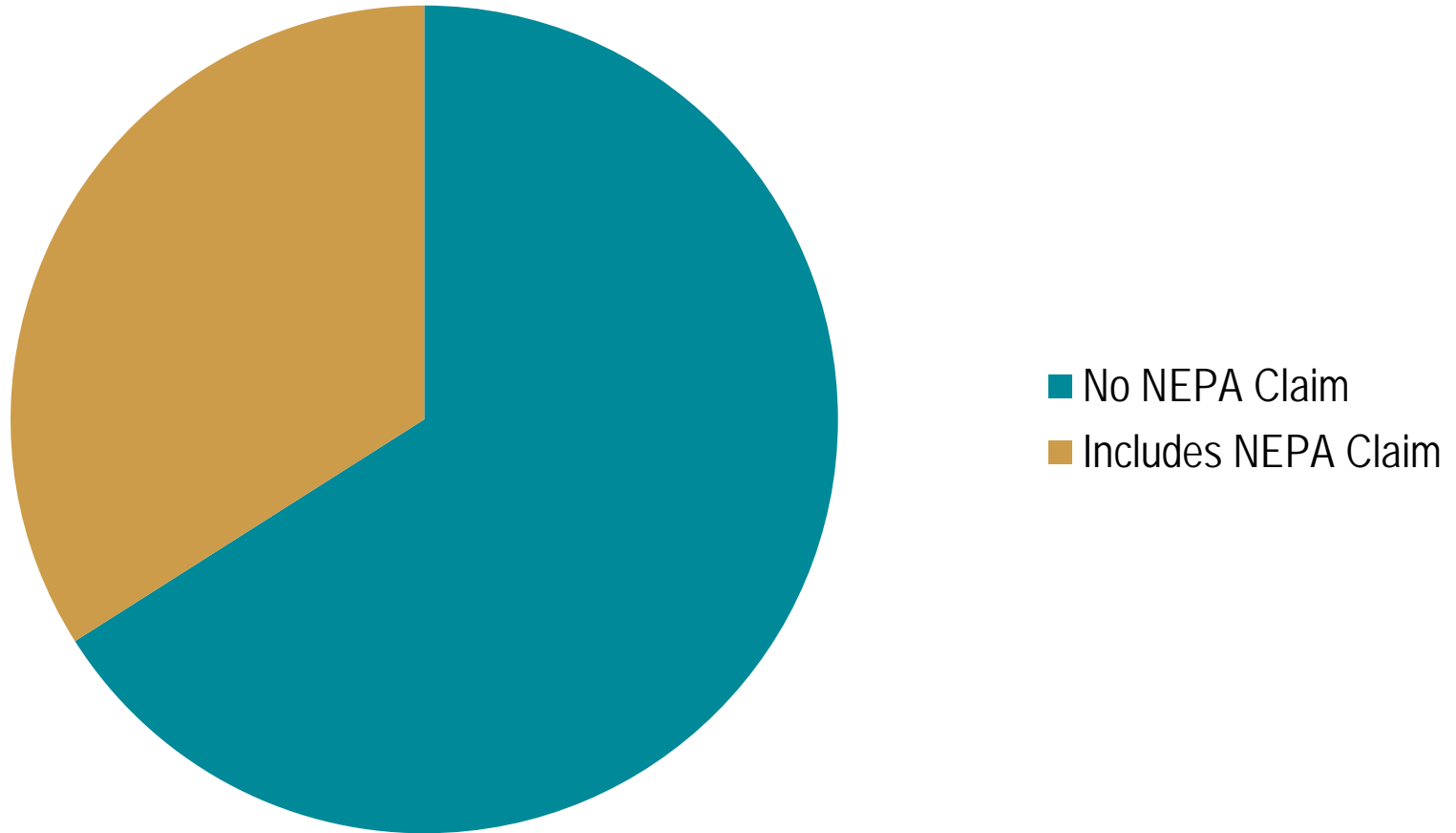
Good Decision-Making  
Public Involvement  
Timely Approval of  
MSA actions

Disapproval  
Litigation Loss  
-Remands  
-Closures

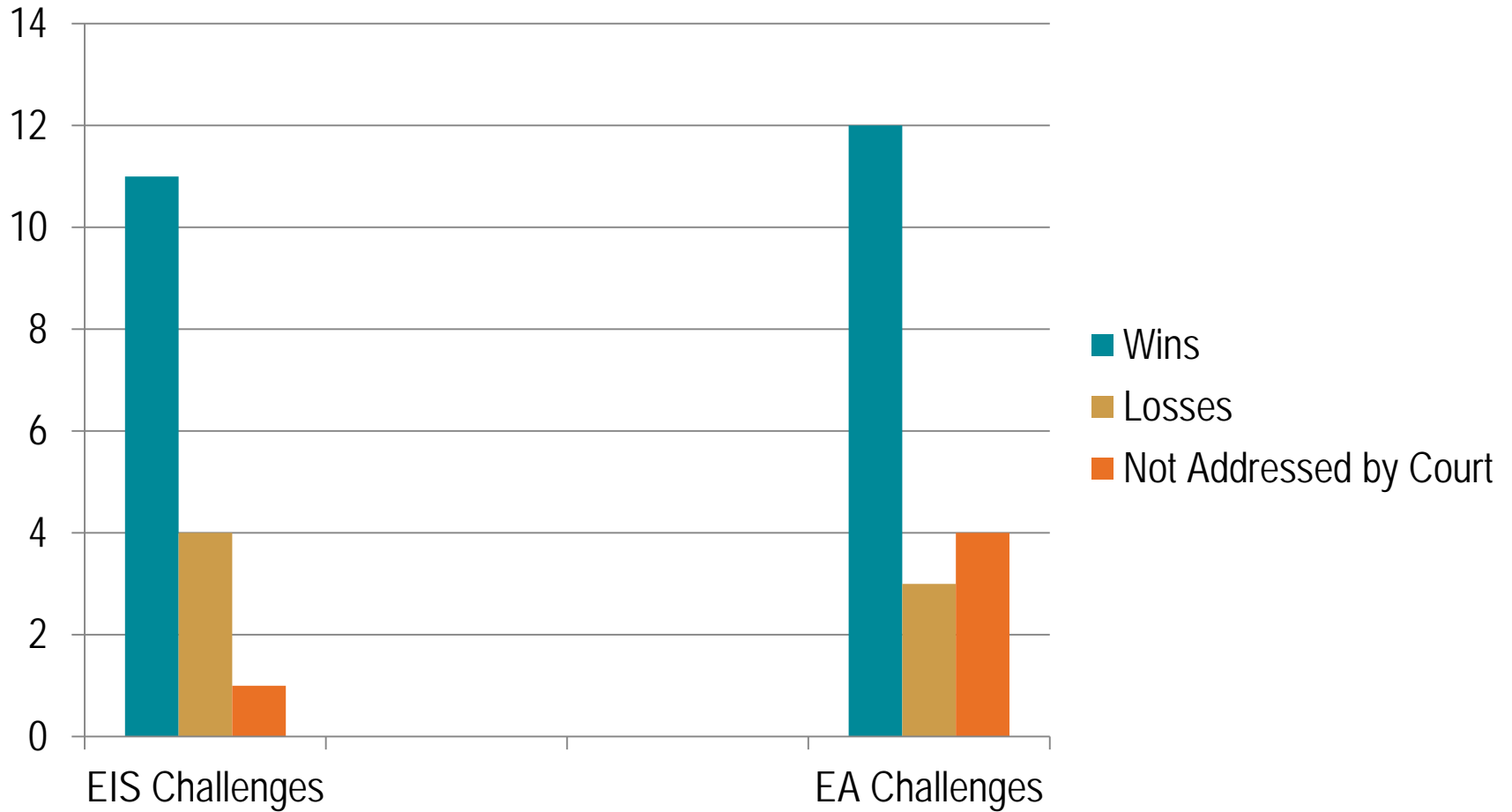


# MSA/NEPA Litigation Facts 2008-2018

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 can living in productive harmony, fulfill stewardship responsibilities

Achieves this through required analysis and public process.

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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

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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.

		<b>SPINY DOGFISH FISHERY MANAGEMENT PLAN</b> (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 Final adopted by Councils: 27 January (NEFMC) and 3 February (MAFMC) 1999 Final approved by NOAA: 29 September 1999	
		 <i>A Publication of the Mid-Atlantic Fishery Management Council pursuant to National Oceanic and Atmospheric Administration Award No. NA57FC0002</i>	
		17 March 1999	
2.3.1 Commercial Fisheries 2.3.2 Recreational Fisheries 2.3.3 Foreign Fishing Activities 2.3.4 Economic Characteristics 3.0 ENVIRONMENTAL IMPACT ANALYSIS 3.1 MANAGEMENT ALTERNATIVES 3.1.1 Preferred Management Alternative 3.1.2 Alternatives to the Preferred Management Alternative 3.1.3 The FMP Relative to Alternatives 3.1.4 Analysis of the Preferred Management Alternative 4.0 REGULATORY IMPACT ANALYSIS 4.1 INTRODUCTION 4.2 PROBLEMS AND OBJECTIVES 4.3 METHODOLOGY AND FINDINGS 4.4 IMPACTS OF THE PREFERRED MANAGEMENT ALTERNATIVE 4.4.1 Summary of Impacts 4.4.2 Summary of Impacts 4.5 DETERMINATION OF SIGNIFICANCE 4.6 REVIEW OF IMPACTS RELATIVE TO APPLICABLE LAWS AND POLICIES 4.6.1 Introduction 4.6.2 Determination of Significance 4.6.3 Analysis of Economic Impacts 5.0 OTHER APPLICABLE LAWS AND POLICIES 5.1 RELATION OF RECOMMENDED MANAGEMENT ALTERNATIVES TO APPLICABLE LAWS AND POLICIES 5.1.1 FMPs 5.1.2 Treaties or International Agreements 5.1.3 Federal Law and Policies	COVER SHEET EXECUTIVE SUMMARY TABLE OF CONTENTS 1.0 INTRODUCTION 1.1 PURPOSE AND NEED FOR THE PLAN 1.1.1 History of FMP Development 1.1.2 Problems for Resolution 1.1.3 Management Objectives 1.1.4 Management Unit 1.1.5 Management Strategy 1.2 PROPOSED AND ALTERNATIVE MANAGEMENT STRATEGIES 1.2.1 Proposed Management Strategy 1.2.2 Alternatives to the Proposed Management Strategy 2.0 DESCRIPTION OF THE AFFECTED ENVIRONMENT 2.1 DESCRIPTION OF THE SPINY DOGFISH FISHERY 2.1.1 Species Description 2.1.2 Abundance and Production 2.1.3 Ecological Relationships 2.1.4 Maximum Sustainable Yield 2.1.5 Probable Future Conditions 2.2 DESCRIPTION OF HABITAT 2.2.1 Inventory of Environmental Resources 2.2.2 Description and Identification of Environmental Resources 2.2.3 Fishing Activities 2.2.4 Options for Management 2.2.5 Identification of Non-Fishing Activities and Associated Environmental Impacts 2.2.6 Prey Species 2.2.7 Research and Information Needs 2.2.8 Review and Revision of EFH Components of the FMP 2.3 DESCRIPTION OF FISHING ACTIVITIES 17 March 1999	47 92 92 94 95 7	8

# 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)

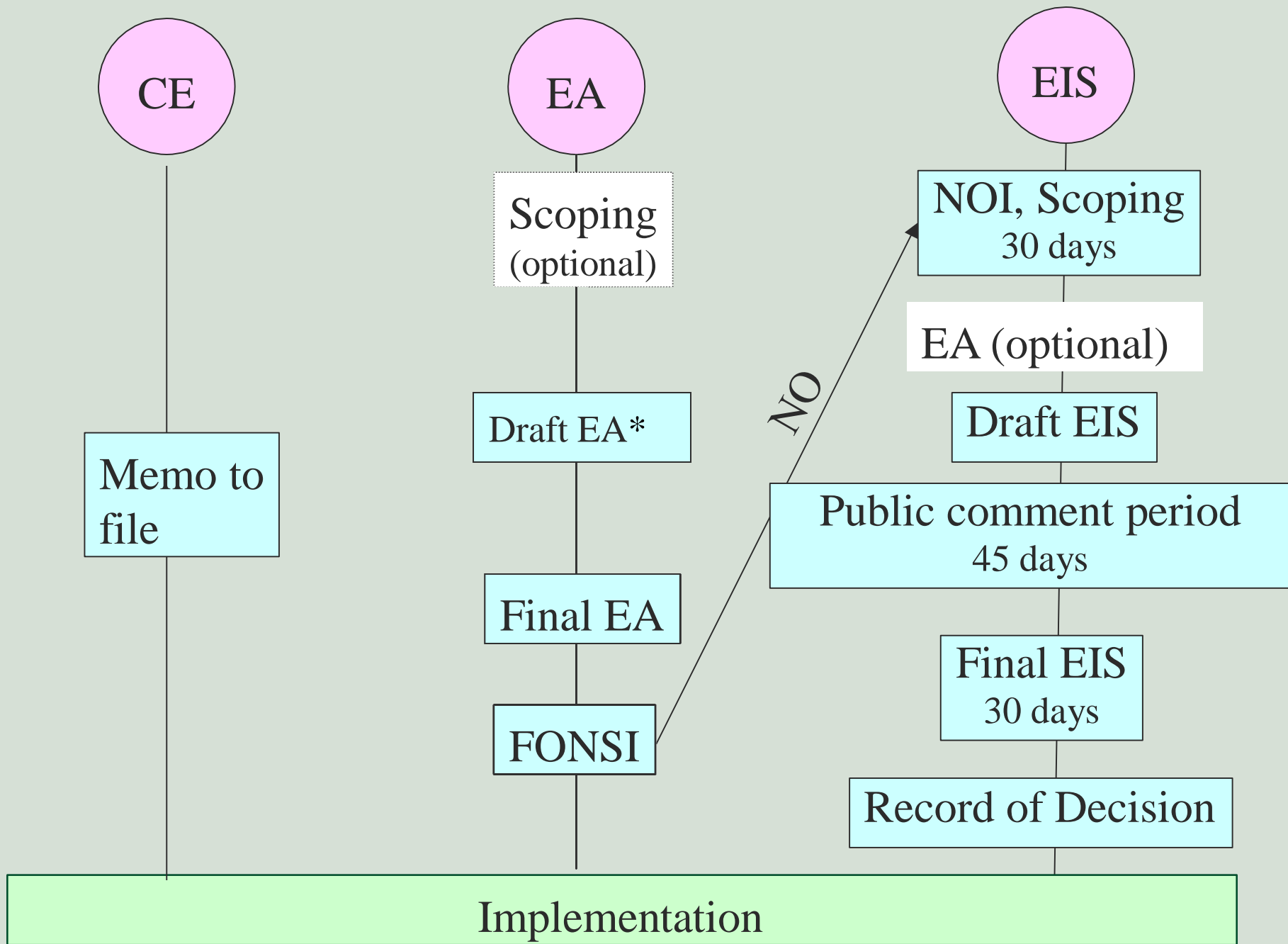
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**\*ALL ARE RECORD-BASED\***

# 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 Process

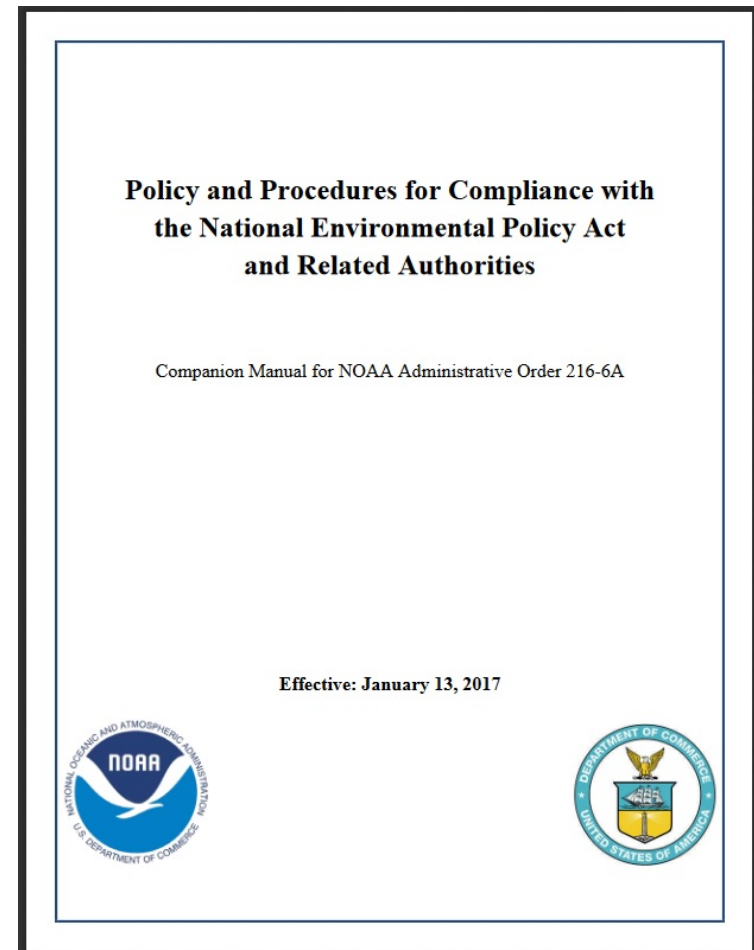
What is NEPA's effect on fishery management process procedures, etc?

How does it affect our MSA roles and responsibilities?

# 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?

# NEPA Coordinators

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