

Opportunities for Public Comment during the Council-initiated Fishery Management Plan Rulemaking Process

This document provides an overview of public scoping and comment periods utilized by the New England Fishery Management Council through various management actions. These opportunities are required by the National Environmental Policy Act, Magnuson-Stevens Act, and Administration Procedures Act (Part I). There are opportunities for public comment utilized by the NEFMC that are not required by law, which are specified throughout this document. Part II of this document demonstrates how these regulations are applied through the three primary types of NEFMC management actions: Framework Adjustment, Amendment, and Specifications.

Part I. Legislation and Implementing Regulations and Guidance

This section provides an overview of requirements for public involvement through the primary legislation and implementing regulations governing public participation in fisheries management through the rulemaking and NEPA processes.

1. National Environmental Policy Act (NEPA)/Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA/NOAA Administrative Order (NAO) 216-6A 'Environmental Review Procedures for Implementing NEPA' (2016) & Companion Manual for NAO 216-6A

- **Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS): 30-day comment period.** This requirement alerts the public to the Council's intent to prepare an EIS. The NOI provides a description of the proposed action, possible alternatives, and the scoping process, including a list of scheduled meetings and how the public can get involved. This is a requirement under NEPA and not the MSA.
 - Scoping: "There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent in the *Federal Register*..." (40 CFR (§1501.7))
 - Scoping may be satisfied by many mechanisms, including: planning meetings and public hearings; workshops; request for written public comment on public hearing documents or the NOI; and providing discussion papers, and other versions of decision and background environmental documents. A scoping period of at least 30 days is recommended.
 - Written and verbal comments must be accepted during the comment period published in the NOI.

- Holding public scoping *meetings* is not required by NEPA, though the NEFMC typically does hold scoping meetings for actions requiring an EIS.
 - Scoping is not required for an environmental assessment (EA).
- **Notice of Availability (NOA) for a draft EIS (DEIS): 45-day comment period (minimum)**, and at least 90-days between publication of the DEIS and record of decision (ROD). An NOA is only required for an action that is supported by an EIS. The Council, however, typically announces a formal comment period on all amendments whether supported by an EIS or EA.
 - Public hearings may be held during this time. With FMP actions, these are sometimes held during Council meetings, but in many cases separate meetings are also planned. The number of hearings ranges based on the scope of the action, but generally the Council hosts three to eight in-person public hearings in various locations, and often a webinar is used as a hearing as well.
 - The NEFMC will respond to comments on the DEIS when preparing the FEIS for a final Council vote and submission to NMFS.
 - Publishing an NOA for a draft EA is not required but NOAA encourages the release of a draft EA for public review through the Federal Register or other means for a comment period of at least 30 days (NAO 216-6A Companion Manual).
- **Publication of the NOA for the final EIS (FEIS): 30-day comment period.** This comment period occurs after the Council submits the action to NMFS for review and approval. This is the minimum amount of time required before the agency issues the ROD. A 30-day comment period begins when the agency issues the FEIS.
- NMFS responds to comments on the FEIS in the final rule.

2. Administrative Procedure Act (APA)

- **Proposed Rule:** public comment period is required, though the APA doesn't specify the amount of time, and instead refers to a 'reasonable opportunity for comment'. The amount of time is imposed by the Magnuson-Stevens Act, and has to be a minimum of 15 days and a maximum of 30 days (304(b), 16 U.S.C §1854(b)).
- **Final Rule:** 30-day delayed effectiveness for final rule (unless an exception or good cause waiver is applicable). This is typically referred to as the 'cooling off period'.

3. Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) and National Marine Fisheries Service (NMFS) Operational Guidelines for the MSRA Fishery Management Process (NMFS PD #01-101-03)

- The MSRA does not have specific scoping requirements.

- **NOA for an FMP or FMP Amendment: 60-day comment period.** This starts when the Secretary of Commerce/NMFS publishes the NOA of the NEPA document. The agency attempts to coordinate this requirement with the NEPA requirement so that the comment periods coincide.
- **Proposed Rule: 15 to 60-day public comment period.** There is typically a 30-day comment period for frameworks and specification packages, and 45-days for amendments. This can overlap with the NOA comment period.
- **Emergency Rulemaking or Interim Measures:** public comment is required unless there is an exception or good cause waiver. There is no minimum amount of time for a public comment period for these actions. However, these actions can only be extended for a period of 186 days if the public has an opportunity to comment.

Part II. Specific Examples of Public Involvement During NEFMC Management Actions

This section provides key opportunities for public involvement in several different types of Council actions. This is not intended to be an exhaustive list. *For more information, review Appendix F of the Tiger Team Final Report in the PDF subfolder.*

General procedures for public comments are similar at all Committee and Council meetings. While the meeting Chair has discretion to control comments, the public is typically given an opportunity to ask clarifying questions after every formal presentation. Comments are accepted on every motion. Comments at Council meetings are limited to three minutes. In addition, written documents received at least three business days before a meeting are distributed to Committee/Council members and are available to the public. Public comments are also accepted at Scientific and Statistical Committee meetings and Advisory Panel meetings. Public comments are usually limited at Plan Development Team meetings, though those meetings are open to the public.

A. Framework Adjustment: The procedure for framework adjustments is specified in the regulations. When first developed, these procedures established requirements for number of meetings, availability of documents, etc. If these requirements were met, NMFS was authorized to publish a final rule without the step of a proposed rule. While these regulations are still in place as a result of a court ruling NMFS never goes straight to final rule, but always publishes a proposed rule on any framework action.

- Number of Council meetings: at least two meetings are required (initiation, then final action)
- Type of NEPA document: In general EAs are prepared to support frameworks, though on rare occasion an EIS could be prepared.
- Public comment periods: The number and length of public comment periods differ depending on whether an EA or EIS is being prepared. Generally speaking, comments are accepted at the Council meetings, and any separate

public hearings, as well as official comment periods announced in the *Federal Register*. The table below provides a summary comparison of this information for both Frameworks and Amendments.

B. Amendment

- Number of Council meetings: at least three meetings are usually used. These typically include a meeting to approve the range of alternatives, a meeting to approve the draft amendment for public hearings, and a final meeting to select the proposed action.
- Type of NEPA document: EA or EIS
- Public comment periods: The number and length of public comment periods differ depending on whether an EA or EIS is being prepared. Generally speaking, comments are accepted at the Council meetings, and any separate public hearings, as well as official comment periods announced in the *Federal Register*.

C. Specifications

- Number of Council meetings: at least one meeting (final action)
- Type of NEPA document: EA or Supplemental Information Report (SIR)
- Public comment periods: The number and length of public comment periods differ depending on whether an EA or SIR.

	Framework	Amendment
EA	<ul style="list-style-type: none"> • <u>Council time</u>: At least 2 Council meetings (which can include a Committee meeting) • <u>Magnuson</u>: No additional requirements. • <u>NEPA</u>: Agency review following submission. 	<ul style="list-style-type: none"> • <u>Council time</u>: Usually At least 3 Council meetings • <u>Magnuson (and APA)</u>: At least one public hearing after the draft Amendment has been approved; required 60-day comment period on the amendment NOA; 45 day comment period on the proposed rule (overlapped with NOA comment period) • <u>NEPA</u>: Agency review after submission
EIS	<ul style="list-style-type: none"> • <u>Council time</u>: At least 2 Council meetings. Council can't take final action until after the 45-day NEPA comment period on the EIS has expired and comments considered. • <u>Magnuson</u>: No additional requirements. • <u>NEPA</u>: 45 day public comment period on DEIS; 30 day public 	<ul style="list-style-type: none"> • <u>Council time</u>: At least 3 Council meetings; Council can't take final action until after the 45-day NEPA comment period on the EIS has expired and comments considered. • <u>Magnuson</u>: At least one public hearing after the DEIS has been approved (overlapped with 45-day DEIS public comment

	comment period on FEIS	period); 60-day comment period on the amendment NOA; 45-day comment period on proposed rule (overlapped with NOA comment period). <ul style="list-style-type: none"> • <u>NEPA</u>: 45 day public comment period on DEIS; 30 day public comment period on FEIS
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For more information, refer to:

NMFS Policy Directive #30-132 “National Environmental Policy Act Compliance for Fishery Management Actions under the Magnuson-Stevens Act.

<https://www.fisheries.noaa.gov/national/laws-and-policies/national-environmental-policy-act-directives>

NOAA Administration 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. April 22, 2016.

http://www.corporateservices.noaa.gov/ames/administrative_orders/chapter_216/216-6A.html

NOAA Fisheries. Get Involved in Federal Fisheries Management, Greater Atlantic Region. November 2016.

https://www.greateratlantic.fisheries.noaa.gov/educational_resources/getinvolved/fedfishmanagement.pdf

Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities. Companion Manual for NOAA Administration Order 216-6A. January 13, 2017. <http://www.nepa.noaa.gov/docs/NOAA-NAO-216-6A-Companion-Manual-01132017.pdf>