

**NOAA  
FISHERIES**

**Alaska  
Region**

# **Changing Landscape of the National Environmental Policy Act (NEPA)**

## **Implications for the MSA Fishery Management Process**

**NPFMC Meeting  
October 2023**

# Changes to NEPA Since 2020

- Regulatory Changes
  - 2020 Rule – agencies given 1 year to comply
  - 2021 Interim Final Rule – extended compliance to 2 years
  - 2022 Phase I Revisions
  - 2023 Phase II Revisions – includes FRA changes
- Fiscal Responsibility Act (FRA) of 2023
  - amends NEPA statute
  - effective June 3, 2023 (PL 118-5)
  - changes incorporated in implementing regulations w Phase II rulemaking

# Fiscal Responsibility Act: Key Changes

Amends NEPA language related to:

- Alternatives
- Threshold Determination
- Page & Time Limits
- Some regulatory concepts put into statute with slight wording changes, some new statutory definitions
- NEPA Electronic portal for action tracking



# Fiscal Responsibility Act: Details

## Page Limits

- **EIS: 150 pp / 300 pp** (complex); excludes appendices & citations
- **EAs: 75 pp**; excludes appendices & citations

## Time Limits

- **EA: 1 Year**
- **EIS: 2 Years**
  - *Start*: determination of need; applicant notification; or NOI (EIS)
  - *End*: EA - FONSI; EIS – ROD signed
  - Other: court-ordered schedules & annual Report to Congress

*\*NOAA waivers for time limits for MSA actions are no longer valid*

# Fiscal Responsibility Act: Details

## Alternatives

- Reasonable “range”
- Technologically and economically feasible
- Meet purpose and need of action

“a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal”

# Fiscal Responsibility Act: Details

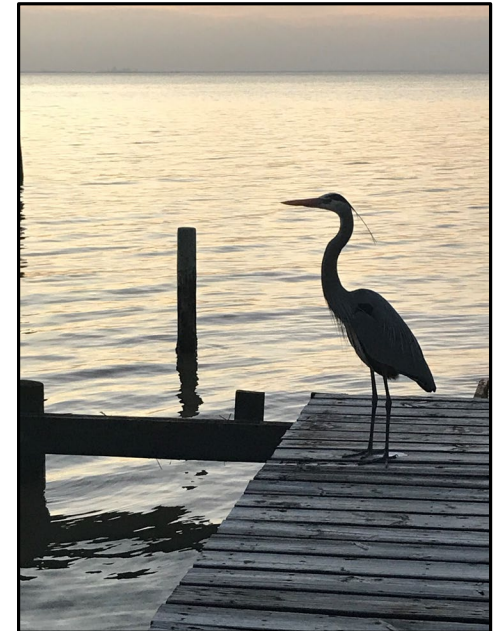
Regulatory concepts moved to statute with wording changes & some new statutory definitions:

## Programmatic EIS and EAs

- Best Practices
- 5 year review

## Definitions:

- Categorical Exclusion
- FONSI
- Major Federal Action
- Proposal (v. “proposed action.”)



# 2023 Phase-II Proposed Rule

## Status:

- Revised for consistency with FRA. Proposed rule published 7/31/23, 88 FR 49924; End of Comment period: 9/29/23.

## Contents:

- Changes to process and content for EAs and EISs
- Time limits - deadlines / schedules for EAs and EISs
- Page limits for EAs and EISs
- Removes requirement for EIS cost-estimate on cover page
- Additional guidance on using programmatic analyses
- Removes Functional Equivalency & Exhaustion of Remedies provisions
- Deadline for agency compliance

# Addl Phase II Regulatory Changes

## Process and Content for EAs

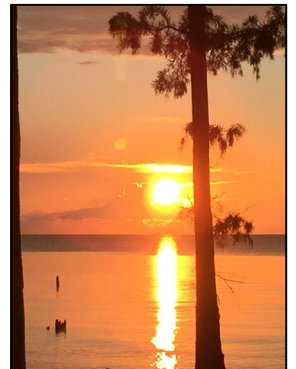
- Would require inviting and responding to comments on a draft EA when the agency publishes one
- Would extend certain EIS requirements to EAs (incomplete information, scientific accuracy, same range of alternatives as for EIS)



# Addl Phase II Regulatory Changes

## Process and Content for EISs

- “May” include reasonable alternatives not within the lead agency’s jurisdiction
- Clarifies “reasonable range” of alternatives
- Identify the environmentally preferable alternative in the EIS (rather than in the ROD)
- Where possible, identify effects deemed “significant.”
- Require publication of the decision not to do an EIS



# Addl Phase II Regulatory Changes

## Schedules and Page Limits: EA & EIS

- Publish schedules and milestones for EISs, publish notice of changes and with explanations.
- Page Limits - consistent with FRA (EA 75 pp; EIS 150/300 pp)
  - technical analyses may be included in appendices with plain language summaries in the EIS body.
  - Visual aids (maps, charts, graphs, tables) and citations excluded from page count

# Deadline for Agency Compliance

- FRA requirements went in effect upon signing: 6/3/23
- Phase II requirements will be applicable to documents initiated upon and after the Final Rule effective date
- Agencies will have 1 year to revise procedures
- NMFS will be assessing the process that integrates NEPA requirements with MSA actions