Pacific Fishery Management Council

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Donald K. Hansen, Chairman Donald O. McIsaac, Executive Director

August 12, 2008

Mr. Alan Risenhoover, Director
Office of Sustainable Fisheries
National Marine Fisheries Service
1315 East-West Highway, SSMC 3
Silver Spring, MD 20910

Re: Pacific Fishery Management Council Comments on National Marine Fisheries Service Proposed Revisions to Procedures for Complying with the National Environmental Policy Act.

Dear Mr. Risenhoover:

The Pacific Fishery Management Council (Pacific Council) appreciates the opportunity to review and comment on proposed rule (73 *FR* 27998) concerning National Marine Fisheries Service (NMFS) proposed revisions to procedures for complying with the National Environmental Policy Act (NEPA). Particularly, the Pacific Council would also like to thank Mr. Sam Rauch and Mr. Stephen Leathery for their participation at the June 2008 Pacific Council meeting, where the Pacific Council reviewed the proposed rule and tasked me with providing the enclosed comments of the Pacific Council. We are aware of the comment letter submitted by six of the Regional Fishery Management Councils and feel their letter presents numerous noteworthy comments, many of which align with these distinct comments of the Pacific Council.

The Pacific Council notes that continuing under status quo is not an option under Section 304(i)(1) of the reauthorized *Magnuson-Stevens Fishery Conservation and Management Act (MSA),* which states "The Secretary **shall**, in consultation with the Councils and the Council on Environmental Quality, **revise and update** agency procedures for compliance with the [NEPA]" (emphasis added). Therefore, the Pacific Council recommends NMFS proceed expeditiously with the goal of targeting the important MSA mandate to streamline fishery management rulemaking and make it more timely with regard to use of the best available science. We note the legal requirement for revisions to:

> *"(A) conform to the time lines for review and approval of fishery management plans and plan amendments under this section; and*
> *(B) integrate applicable environmental analytical procedures, including the time frames for public input, with the procedure for the preparation and dissemination of fishery management plans, plan amendments, and other actions taken or approved pursuant to this Act 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."*

In our recommendation that you proceed expeditiously to complete this action, we note the requirement in MSA Section 304(i)(3)(C) to promulgate final revisions by January 2008.

We wish to highlight a comment relative to the proposed 45-day comment period prior to final Pacific Council action. Strict adherence to this requirement would greatly impair some Pacific Council actions such as our groundfish biennial harvest specification process. We note exceptions are provided for in both existing NEPA procedures and the proposed revisions, however it is not clear they could fit our particular needs. We also note recent mischaracterizations published in the contemporary media claim that an intent of the proposed rule is to diminish public involvement and to reduce public comments to a period of 14 days. In our support of appropriate reductions in the comment period prior to final Pacific Council action to 14 days (see page 4 of the enclosed comments), we note the ample opportunities for public involvement during and after the environmental review process.

In the example of the Pacific Council's groundfish biennial harvest specification process, a fully transparent Pacific Council process provides for public input over an 11 month period encompassing four Pacific Council meetings in advance of Pacific Council final action. The public is afforded the opportunity for participation and comment at each step of this continual process of refining and adopting specific fishery regulatory details. Additionally, under the subsequent Federal rulemaking process and the authority of the Administrative Procedure Act, the public is afforded an additional 30 to 90 days to comment on final Pacific Council recommendations before they are implemented by the U.S. Secretary of Commerce. It is the position of the Pacific Council that this comprehensive environmental review and fishery regulatory process more than adequately addresses the mandate for "effectively involving the public" as called for in MSA Section 304(i).

If you or your staff should have any questions, please contact me or Mr. Mike Burner, the lead Pacific Council Staff Officer on this matter.

Sincerely,

D. O. McIsaac, Ph.D.
Executive Director

Enclosure

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Council Members
Council Executive Directors
Mr. Jim Balsiger
Mr. Sam Rauch
Mr. Stephen Leathery
Ms. Marian Macpherson
Dr. John Coon
Mr. Kit Dahl
Mr. Mike Burner

PACIFIC FISHERY MANAGEMENT COUNCIL (PACIFIC COUNCIL) COMMENTS ON REVISED MAGNUSON-STEVENS ACT NEPA PROCEDURES, PROPOSED RULE (50 CFR PART 700)

General Comments

Applicability of Council on Environmental Quality (CEQ) regulations, 40 CFR 1500-1508

Section 304(i)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) states that these agency procedures "shall be the sole environmental impact procedure for fishery management plans, amendments, regulations, or other action taken or approved pursuant to this Act." The preamble to the proposed rule (Summary at 73 FR 27998) states that "[t]hese regulations are modeled on the ... procedural provisions of [the National Environmental Policy Act (NEPA)], 40 CFR parts 1500-1508..." It seems apparent that these regulations would replace the CEQ regulations except where specifically referenced in Part 700 (e.g., see 700.3, definitions state that all terms defined in the CEQ regulations, part 1508, still apply where relevant). Furthermore, many parts of the proposed regulations are closely patterned on the language in CEQ regulations.

Pacific Council perspective: The proposed regulations do not explicitly state that the unreferenced parts of the CEQ regulations are not applicable and should not be referenced. This is important for practitioners to the degree that the different sets of regulations serve as a guide for document preparation. Confusion over applicable regulations could complicate effective compliance. **Pacific Council recommends that the new NEPA regulations (or National Marine Fisheries Service (NMFS) guidance) explicitly state that CEQ regulations are no longer applicable, except where referenced in the new NEPA regulations.**

Familiarization with the new procedures

Pacific Council perspective: NMFS has put considerable effort in training staff to better comply with NEPA under the current CEQ regulations. Regulatory streamlining has changed the relationship between the Regional Fishery Management Councils (FMCs) and the NMFS Regions in that that NMFS Regional Offices carry out many of the functions previously done at the NMFS Headquarters level. It will be important for NMFS to commit sufficient resources to develop detailed guidance documents and train staff on the new procedures. Although the specific comments below touch on some of the main areas where procedures may change, there may be other aspects of the procedures whose implications become apparent only after implementation.

The Pacific Council recommends that NMFS ensure sufficient training and resources are made available to FMC and NMFS staffs to allow efficient implementation of the new NEPA procedures.

Specific Comments

Major Changes

Subpart C Integrated Fishery and Environmental Management Statement (IFEMS)

Section 700.203(a) under timing of IFEMS process states "...the FMC must use the draft IFEMS in its deliberations." 700.203(b), IFEMS for fishery management actions developed by an FMC, states "(1) NMFS shall publish a Notice of Availability (NOA) of a draft IFEMS in the Federal Register no later than public release of the FMC's meeting agenda notice. NMFS shall ensure that the draft IFEMS is made available to the public at least 45 days in advance of the FMC meeting (unless this time frame is reduced under § 700.604(b))." Section 700.604, Minimum time periods for agency action, provides criteria NMFS may use, in consultation with the FMC and the Environmental Protection Agency (EPA), to reduce the public comment to period no less than 14 days. Many criteria are enumerated, which must be met to justify shortening the time period, in addition to the need to consult with EPA. This suggests that shortening of the time period would only occur in unusual circumstances. This section also allows the public comment period to commence upon publication by NMFS of a Notice of Availability (NOA) for the draft IFEMS rather than the Notice published by EPA for Environmental Impact Statements (EISs) received the week before.

It is also important to note that the draft IFEMS would not include the Pacific Council's final preferred alternative because this is not determined, or finalized, until the Pacific Council final action meeting. (In some cases, such as Trawl Rationalization, the Pacific Council takes preliminary action to develop a preliminary preferred alternative before taking final action at a subsequent meeting. In these cases an at least partial preferred alternative could be included in the draft IFEMS.) Section 700.203(b)(5) states "In its final vote to recommend an action, an FMC may select combinations of parts of various alternatives analyzed in the draft IFEMS or a new alternative within the scope of those analyzed in the draft IFEMS. NMFS may accept this recommendation without further analysis or supplementation by the FMC." If the Pacific Council develops a preferred alternative that is "not within the range of alternatives analyzed in the draft IFEMS"—that is, substantially different in its elements and anticipated impacts—then the Pacific Council must circulate a supplemental draft IFEMS containing an analysis of the preferred alternative for a second 45-day public comment period before preparing the final IFEMS.

Under section 700.203(b)(6)(i) the Final IFEMS is included with the transmittal package. Section 600.704(c) states that NMFS shall not make the final approval decision less than 90 days after publication of the NOA for the draft IFEMS or 30 days after the NOA for the final IFEMS. (These minimum time periods parallel the CEQ timelines at 40 CFR 1506.10). These time periods may be shortened in extraordinary circumstances. This brings the final IFEMS earlier in the process than is the case for a final EIS. Currently, the final EIS is usually published so that the ROD can be signed concurrently with the Secretarial determination or publication of the Final Rule. Under this section the Final IFEMS would be published at the start of the 95-day MSA clock.

Pacific Council perspective: In many cases the IFEMS process will require a change from how EISs are usually prepared under the current Pacific Council process. Typically, a complete draft EIS is not released for the 45-day public comment process required by CEQ regulations (40 CFR 1506.10(c)) until after the Pacific Council has taken final action. Under the proposed regulations the draft IFEMS would need to be completed and released much earlier than this since the public comment period initiated by NMFS publishing the NOA begins 45 days in advance of the meeting where the Pacific Council takes final action (by finalizing their selection of or a preferred alternative).

In some cases this will conform closely to current practice (the diagram at the end of this document compares the current process with that for an IFEMS). For example, staff currently plan to release a substantially completed draft of the Trawl Rationalization EIS around September 22, 2008, in anticipation of Pacific Council final action at the November 2-7, 2008, meeting. However, this document is not the "final" draft EIS triggering the public comment period in CEQ regulations. For that reason there is some flexibility in how complete the document needs to be. The "statutory" (i.e., submitted to EPA to trigger the public comment periods) draft EIS will be released some time in the first half of 2009. Under the new process, the draft IFEMS would need to be released on September 17 and would have to be a complete document containing all analyses.[1] The Trawl Rationalization project has an extended timeline because of the complexities of the decision to be made. More typically a partially complete, "preliminary" draft EIS is included in the briefing book for the meeting at which the Pacific Council takes final action.

In general, the proposed regulations better integrate public comment time periods into the Pacific Council process. This comes at a cost, however, in that a completed document must be ready well before the Pacific Council meeting at which final action occurs. Currently, it is often a struggle for staff to meet the comparatively shorter deadline of the briefing book and incomplete documents (although sufficient for reasoned decision making) are usually produced at this stage. Greater forethought will be needed to ensure that the range of alternatives likely encompasses what the Pacific Council eventually chooses as its preferred alternative in order to avoid the additional time required for circulation of a supplemental draft IFEMS. As an example, if this process were used for the groundfish harvest specifications (because an EA or Framework Compliance Memorandum could not be used), then in 2008 the draft IFEMS would have to be released (by publication of the NOA) on April 24. This would require the Pacific Council to fully flesh out a range of alternatives at the April meeting, giving staff less than 2 weeks afterwards to complete all the analyses and prepare a complete document. If information became available after this deadline that caused the Pacific Council to formulate a substantially different preferred alternative a supplemental draft IFEMS would have to be prepared. It should also be noted that the amount of time needed after Pacific Council action until implementation (e.g., Secretarial determination, final rule effective date) is unlikely to be substantially shortened, because of the statutory time periods in the MSA and, for regulations, in the APA. For example, even if these procedures shortened the environmental review timeline it still may not be possible

[1] Note that section 700.217, circulation of the IFEMS, states "NMFS shall ensure that the entire draft and final IFEMS, except for certain appendices as provided in § 700.216 and an unchanged IFEMS as provided in § 700.304, are circulated in a format that is readily accessible to decisionmakers and the public." This underscores the requirement that the draft IFEMS be a complete document.

to move final action on the groundfish harvest specifications to the September Pacific Council meeting because of time periods required under the APA.[2]

The Pacific Council views the IFEMS process as an improvement in terms of better-integrating public comment and participation into the Pacific Council process. But the Pacific Council views the overall process in the proposed regulations as worse than the current process under CEQ regulations because 1) a 45-day advance publication of the draft IFEMS before Pacific Council final action would impair many current Pacific Council schedules (the groundfish biennial specifications development process, for example) and 2) it actually lengthens the overall time required for the overall process, because a lot of the IFEMS timeline is before, rather than concurrent with, the MSA and APA timelines.

Generally, the Pacific Council recommends that Subpart C in the proposed regulations be changed to shorten the timeline, either on the front end (before Pacific Council final action), or the back end (after Pacific Council final action), or both.

Specifically, the new NEPA regulations could be changed in one or more of the following ways as a partial solution:

- **Reduce the public comment period to 14 days. This would more closely correspond to the current practice of including a preliminary draft EIS in the briefing book for the Pacific Council final action meeting.**
- **Eliminate the requirement for the public comment period to occur before Pacific Council final action. The new NEPA procedures actually reduce flexibility compared to current CEQ regulations, which allow initiating the 45-day public comment period on the draft EIS before Pacific Council final action and also allow it to occur afterwards.**
- **Loosen the criteria under which NMFS would grant a shortened public comment period to allow it to be better matched to circumstances.**

Section 700.104 Utilizing a memorandum of framework compliance pursuant to a framework implementation procedure

This section would be applicable to harvest specification processes authorized under each of the Pacific Council's four Fishery Management Plans (FMPs). Annual specifications under the Salmon FMP and biennial specifications under the groundfish FMP are the most complex and procedurally demanding. The proposed regulations (700.104(a)) state "An FMP may establish a Framework Implementation Procedure which provides a mechanism to allow actions to be undertaken pursuant to a previously planned and constructed management regime without requiring additional environmental analysis, as provided in this section." The procedure allows determination of whether the anticipated effects of the action fall within a previous environmental analysis and criteria triggering additional analysis in an environmental assessment

[2] Note also that both the 2007-08 and 2009-10 harvest specifications were combined with FMP amendments to modify rebuilding plans, invoking the 95-day MSA timeline.

(EA) or IFEMS.[3] This implies that an FMP must be amended to include the specifics for these determinations; because of the lack of these specifics any existing framework for harvest specifications described in an FMP would be insufficient for this purpose. If the action falls within the scope of a previous evaluation then a Memorandum of Framework Compliance may be prepared instead of an EA or IFEMS. This Memorandum is "a concise (ordinarily 2 pages) document that briefly summarizes the fishery management action taken pursuant to a Framework Implementation Procedure, identifies the prior analyses that addressed the impacts of the action, and incorporates any other relevant discussion or analysis for the record." (701.104(c))

Pacific Council perspective: Overall, the Framework Implementation Procedure could provide considerable benefits if the Memorandum of Framework Compliance can be prepared in most circumstances. Alternatively (700.102(a)), an EA may be prepared for "...annual specifications taken pursuant to a fishery management plan and tiered to an IFEMS, EIS, or prior EA that are not covered by a CE or Memorandum of Framework Analysis [*sic*]." A Memorandum of Framework Compliance would be a much briefer exercise than the EAs or EISs currently prepared for harvest specifications, and the regulations support preparing an EA for actions not eligible for a Memorandum.

It seems likely that a broad, programmatic evaluation, covering the range of possible effects of harvest specifications, would be necessary to support the preparation of a Memorandum of Framework Compliance (or an EA) for harvest specifications. Environmental analyses prepared to date, which tend to be action specific rather than programmatic, may be insufficient for this purpose. However, if the FMPs must be amended to incorporate the Framework Implementation Procedure, the accompanying environmental analysis (IFEMS) could include the type of programmatic analysis necessary to support future Memorandums. However, such analyses may need to be periodically updated (5 years seems to be a common benchmark for programmatic evaluations; see, for example, NAO 216-6 Sec. 6.03a).

If the Framework Procedure is not implemented or the anticipated impacts of the action are outside the previously-analyzed range, an IFEMS would have to be prepared for harvest specifications. It may be difficult to meet the new timeline for an IFEMS, as discussed above.[4]

The Pacific Council thinks that the Framework Compliance Procedure could offer significant benefits, depending on ease of implementation. The Pacific Council recommends that the new NEPA regulations state more explicitly whether or not an FMP amendment is needed to establish a Framework Compliance Procedure. In general, the staff does not favor requiring an FMP amendment in all cases. If an FMP already contains a framework for harvest specifications and previous environmental analyses cover the range of potential impacts, then NEPA compliance procedures should be specified in Council Operating Procedures rather than an FMP amendment. If an FMP amendment is required, the regulations should include a grace period under which current processes are

[3] An IFEMS (Integrated Fishery and Environmental Management Statement) would replace the Environmental Impact Statement described in CEQ regulations.

[4] EISs have been prepared for each groundfish harvest specifications since 2003, suggesting the need for an IFEMS in the absence of the Framework Compliance Procedure.

allowed (i.e., EIS under CEQ regulations) to give time to amend the FMP with the Framework Compliance Procedure.

Minor Changes

700.108 Scoping

Section 708.108(a)(1), FMC-initiated actions, states "If scoping is conducted as part of an FMC meeting, a scoping notice must, at a minimum, be included as a component of the appropriate FMC's next meeting agenda (MSA section 302(i)(2)(C)) and must be titled and formatted in a manner that provides the public with adequate notice of the NEPA-related scoping process." Furthermore, 708.108(b)(1) states "NMFS, working with the appropriate FMC, shall ensure that affected Federal, State, and local agencies, any affected Indian tribe, the proponents of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds) are invited to participate. NMFS, working with the appropriate FMC, shall ensure that the scoping process meets the purposes of scoping as set forth in 40 CFR 1501.7." This section then enumerates a range of activities to be included in the scoping process.

Pacific Council perspective: Scoping goes beyond the requirement to allow for public comment; in essence it is the process whereby the agency specifies the action and determines the necessary environmental analysis. In general, the Pacific Council process, through committee and Pacific Council meetings, addresses the public involvement aspect of scoping. However, public comment opportunities at these meetings are usually not specifically identified as a scoping exercise. It would be beneficial if any interpretation of implemented regulations determined that the current public comment procedures used by the Pacific Council are sufficient and that a special scoping meeting or agenda item would not be required during a Council meeting.

The Pacific Council considers the discussion of scoping in the regulations beneficial because it makes explicit that the Pacific Council process is the principal scoping mechanism for fishery management actions. However, the regulations should not be interpreted in a way that would reduce Pacific Council discretion on how meetings are run and public input solicited.

700.112 Assignment of tasks

According to this section an FMC and NMFS must establish which entity will carry the various actions required in the proposed regulations. "This clarification may be established through a Memorandum of Understanding for each environmental document individually or for classes of environmental documents, but in no case should scoping activities be considered complete until such clarification is made."

Pacific Council perspective: **The Pacific Council considers the requirement to clarify responsibilities beneficial. However, a written statement or MOU should not be required in all cases, if such clarification can be achieved informally. In general, the level of detail and formality of a clarification of responsibilities should be matched to the complexity of the project being undertaken.**

Section 700.205 Page limits and Section 700.206 Writing

An IFEMS "should be less than 150 pages ... but may be up to 300 pages for proposals of unusual scope or complexity." (Note that CEQ regulations at 40 CFR 1502.7 identify a 150-page limit on EIS length and 40 CFR 1502.2 and 1500.4 speak to writing concise documents.) Section 700.205 also states that NMFS shall consult with CEQ on a programmatic basis if these page limits are regularly exceeded. Section 700.206 states in part "Each IFEMS should use all appropriate techniques to clearly and accurately communicate with the public and with decisionmakers, including plain language, tables, and graphics, with particular emphasis on making complex scientific or technical concepts understandable to the non-expert."

Pacific Council perspective: **The Pacific Council considers the mandate for concise and clearly written documents beneficial. However, Pacific Council NEPA documents (including EAs) are almost never less than 150 pages, reflecting the difficulty of preparing concise, trenchant evaluations, especially for complex actions. The Pacific Council recommends that NMFS provide assistance to more fully develop techniques, such as incorporation by reference and tiering off programmatic documents, to reduce the length of NEPA documents. Exceeding page limits, by itself, should not be a reason for NMFS (or the courts) to find a NEPA document inadequate.**

700.301 Public outreach

This section lists a wide variety of public outreach methods, including mailing notices to those who express an interest, and for actions of national concern to national organizations reasonably expected to be interested in the matter. Actions with effects of primarily local concern should be noticed through areawide clearinghouses; notice to Indian tribes; using the affected State's public notice procedures; publication in local newspapers; other media and relevant newsletters; notice to community organizations; direct mailings to affected property owners and occurants; public posting of notices; and outreach via the internet. Section 700.301(c) discusses circumstances in which public hearings are warranted.

Pacific Council perspective: **The Pacific Council considers the mandate for comprehensive public outreach beneficial, but Pacific Council staffing and resources are likely inadequate for a substantially expanded outreach effort as suggested by the regulations. If an action requires extensive outreach, dedicated funding will need to be provided or these efforts should be spearheaded by NMFS.**

700.303 Opportunity to comment and 700.305 Response to comments

Section 700.303(b)(1) states that the public may make comments "...to the FMC during the public comment period on the draft IFEMS by submitting written comments or during the appropriate FMC meeting by providing oral testimony." Section 700.305 requires written responses to comments to be incorporated into the final IFEMS in a fashion patterned after the requirements in current CEQ regulations for a final EIS (40 CFR 1503.4). This section emphasizes that the Regional Fishery Management Council process is the principal vehicle for

commenting on the action; section 700.305(d) allows comments on the final IFEMS but states "NMFS is not required to respond to comments raised for the first time with respect to a Final IFEMS if such comments were required to be raised with respect to a draft IFEMS pursuant to § 700.302(b)."

Pacific Council perspective: Currently, because the 45-day NEPA comment period occurs after Pacific Council final action, often few comments are received. Integrating formal public comment into the Pacific Council process will make the public comments more influential. This is likely to generate a larger volume of comments requiring formal response. Furthermore, it is not clear how oral comments given at a Pacific Council meeting should be handled. If treated in the same manner as written comments, they will need to be transcribed or summarized in some fashion in order to formulate a formal response in the final IFEMS. As noted above, a special comment period during the Pacific Council meeting might be necessary to accept oral comments in a way that makes it easier to formally address them.

The Pacific Council finds the response to comments requirements beneficial in terms of public participation, but the commenting process will increase the amount of work needed to complete the final IFEMS. The Pacific Council strongly recommends that the response to comments requirement should not apply to oral public comments made at Pacific Council meetings.

700.401 Determining the significance of NMFS's actions and 700.402 Guidance on significance determinations

Section 700.401 lists factors for assessing significant impacts that are effectively identical to those in CEQ regulations at 40 CFR 1508.27. Section 700.401(d), potentially significant but previously analyzed effects, states "A FONSI may be appropriate for an action that may have significant or unknown effects, as long as the significance and effects have been analyzed previously." Section 700.402 lists factors for assessing significance previously included in NAO 216-6, section 6.02. Section 700.402(a) states that "NMFS may, as appropriate, develop guidance regarding criteria for determining the significance of effects on a national or regional level for purposes of informing the determination of whether a FONSI is appropriate or an IFEMS must be prepared."

Pacific Council perspective: **The Pacific Council believes that additional guidance on criteria for determining significant effects would be helpful. Such guidance should focus on methods for identifying case-specific thresholds rather than identifying specific thresholds applicable to all actions. The Pacific Council recommends that the current internal scoping process conducted by NMFS staff, used to decide what kind of NEPA document to prepare, include development of thresholds and allow for early, full participation by Pacific Council staff.**

700.501 Fishery management decisionmaking procedures

This section states "NMFS and the FMCs shall adopt and maintain procedures, consistent with current or future Statements of Organization, Practices, and Procedures, as described in 50 CFR

600.115, to ensure that fishery management decisions are made in accordance with the policies and purposes of NEPA and the MSA."

Pacific Council perspective: This requirement will increase workload if the Pacific Council has to adopt and maintain new Council Operating Procedures describing the full decision process. The Pacific Council SOPP document already has a clause indicating compliance with current applicable Federal law. **The Pacific Council recommends that this requirement apply only to the modification of current Council Operating Procedures that would directly conflict with any procedural changes implemented through the regulations.**

700.701 Emergencies

Section 700.701(a) directs NMFS to develop alternative arrangements for NEPA compliance in consultation with CEQ for emergency actions with significant impacts (i.e., requiring an IFEMS). Section 700.701(b) allows promulgation of emergency regulations prior to the completion of an EA and FONSI for emergency actions that will not result in significant impacts.

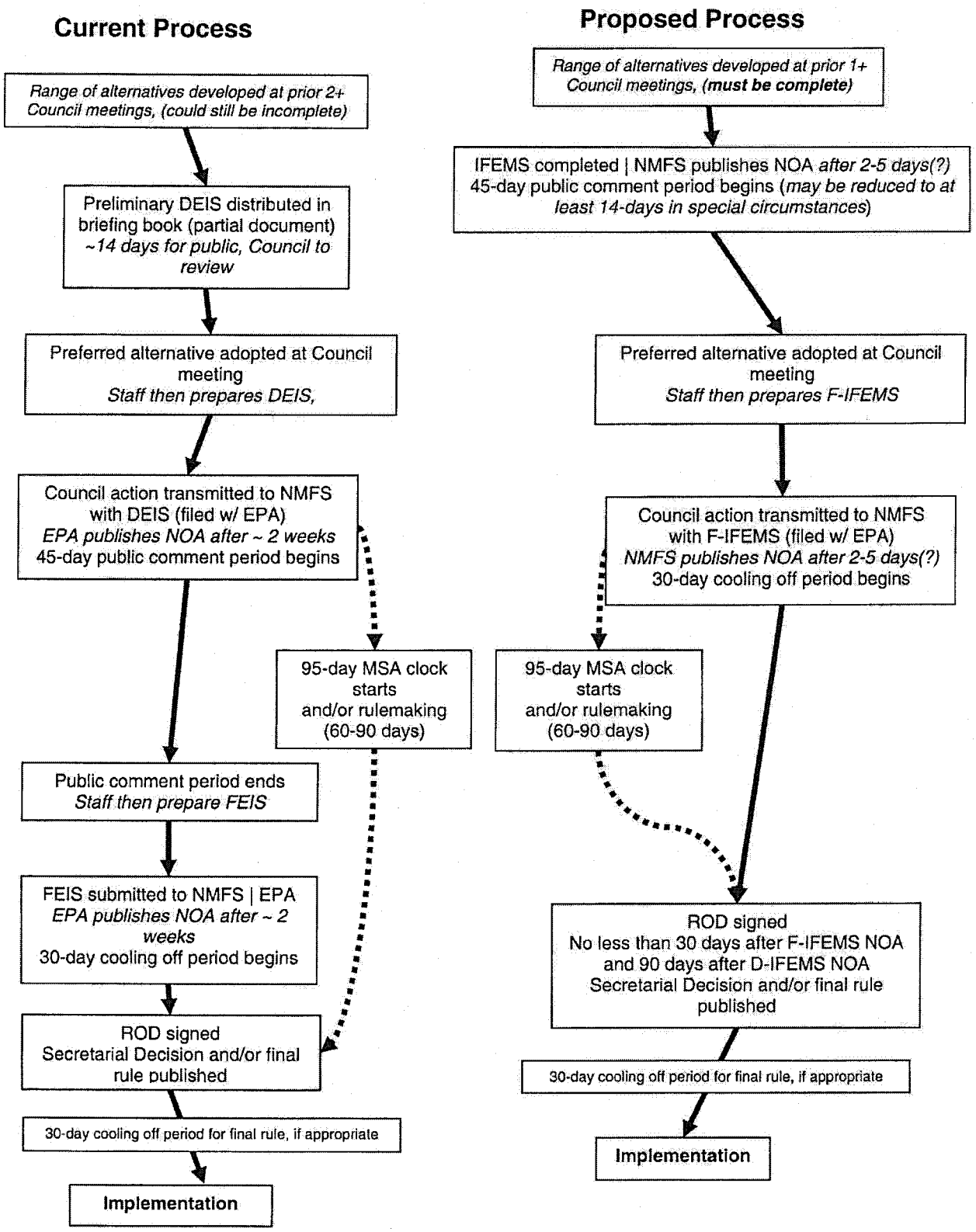
Pacific Council perspective: Salmon harvest specifications required the promulgation of emergency regulations in 2006 and 2008. This language is an improvement on the current guidance on emergency actions in NAO 216-6, §5.06. **The Pacific Council believes these provisions are beneficial because they clarify how NEPA compliance can be appropriately addressed when emergency regulations must be promulgated. The Pacific Council recommends that the regulations describe how NEPA for emergency regulations can be incorporated into the Framework Compliance Procedure.**

700.702 Categorical exclusions

Section 700.702 identifies certain classes of actions eligible for a categorical exclusion (CE).[5] These include ongoing or recurring fisheries actions; minor technical additions corrections, or changes to an FMP or IFEMS; and research activities permitted under an EFP or Letter of Authorization. In all cases the actions cannot have impacts not already assessed or do not have significant impacts. Section 700.702(a)(1) states that "...reallocations of yield within the scope of a previously published IFEMs, FMP or fishery regulation..." can qualify for a CE if, as already stated, the impacts have been previously analyzed and are not significant.

Pacific Council perspective: This language may allow more frequent application of CEs in comparison to current guidance in NAO 216-6, §5.05. **The Pacific Council believes that the language in the new NEPA regulations on CEs is beneficial to the degree it clarifies their use and allows them to be used more frequently.** The Pacific Council recommends working with NMFS to explore whether the alternatives in the NEPA document for groundfish FMP Amendment 22, Inter-sector Allocation, could be structured in such a way so as to allow future changes in formal allocations to qualify for a CE.

[5] CEQ regulations at 40 CFR 1508.4 define a categorical exclusion as "a category of actions which do not individually or cumulatively have a significant effect on the human environment ... and for which, therefore, neither an environmental assessment nor an environmental impact statement is required."



Comparison of current and proposed processes for NEPA, decisionmaking, and implementation.