

Department of Commerce--National Oceanic and Atmospheric Administration Proposed Agency Action Plan to Improve Performance of Federal Permitting and Review of Infrastructure Projects

Executive Order 13604

Introduction:

Order 13604 *Improving Performance of Federal Permitting and Review of Infrastructure Projects* (EO 13604) establishes an interagency Steering Committee and calls on its members to develop and publish agency action plans to improve their permitting and review processes for infrastructure projects. The Department of Commerce is a member of the Steering Committee. The National Oceanic and Atmospheric Administration (NOAA) proposed action plan (Plan) tiers off of the Federal Plan for Modernizing the Federal Permitting and Review Process for Better Projects, Improved Environmental and Community Outcomes, and Quicker Decisions (<http://permits.performance.gov/>) and includes the elements required by EO 13604. The Plan provides a structure for identifying practices and procedures which can significantly reduce time required to make permitting and review decisions as well as improve community and environmental outcomes for proposed infrastructure projects. The final Plan will be published on the Federal Infrastructure Permitting Dashboard, per EO 13604. Agencies must submit progress reports every six months to the Chief Performance Office at the Office of Management and Budget (OMB). The first report will be submitted December 31, 2012.

Background—Mission and Overview of Statutory Authorities:

The Department of Commerce is responsible for creating the conditions for economic growth and opportunity by promoting innovation, entrepreneurship, competitiveness, and stewardship informed by world-class scientific research and information. Within the Department there are twelve Bureaus, including NOAA. NOAA's statutory authorities include permitting activities relevant to Executive Order 13604. NOAA's mission is to: (1) understand and predict changes in climate, weather, oceans, and coasts, (2) share that knowledge and information with others, and (3) conserve and manage coastal and marine ecosystems and resources. The third component of NOAA's mission requires consultations, authorizations, and licenses for Federal infrastructure projects to ensure conservation and protection of marine natural resources. Four statutory authorities which involve NOAA's review and permitting of Federal infrastructure projects have been identified. They are:

- Endangered Species Act (ESA),
- Magnuson-Stevens Fishery Conservation and Management Act (MSA),
- Marine Mammal Protection Act (MMPA), and
- National Marine Sanctuaries Act (NMSA).

The first three of these (ESA, MSA, and MMPA) are implemented by NOAA's National Marine Fisheries Service (NMFS), and the fourth is implemented by NOAA's National Ocean Service (NOS). See Figure 1 for NOAA's organizational structure.

Three other NOAA authorities have been identified as ancillary to improving NOAA's role in Federal permitting and review of infrastructure projects, but are not considered directly related to the Plan. They are the National Environmental Policy Act (NEPA), the Coastal Zone Management Act (CZMA), and the Ocean Thermal Energy Conversion Act (OTEC Act). Brief descriptions are provided here in the introduction.

Large scale projects that have a Federal nexus, such as infrastructure projects, must undergo review in accordance with NEPA. NEPA itself is a planning process and is intended to streamline and improve the Federal agency awareness and consideration of environmental effects and issues, as well as allow public participation in the process. NEPA provides a framework by which Federal action agencies consider all reasonably foreseeable environmental effects of their proposed actions, evaluate other reasonable alternatives, and involve and inform the public in the decision-making process. The NEPA review is conducted by the Federal agency primarily responsible for the action (referred to as the "action agency").

NOAA does not typically have primary responsibility for infrastructure projects, but instead coordinates with the action agency on how the project may affect NOAA trust resources. Thus, NOAA's role in infrastructure projects is often referred to as the "coordinating agency" or "resource management agency," depending on the statute from which the authority derives. For projects with the potential to significantly impact the environment, NOAA's reviews of proposed projects build on the Environmental Assessments (EAs) or Environmental Impact Statements (EISs) generated by the action agency. Although NOAA has NEPA responsibilities under several of the authorities identified in the Plan, we generally rely on the Federal agency proposing an infrastructure project to be the lead on the NEPA document. Thus, the Federal action agency's NEPA policies and practices are more relevant to improving the permitting and review of those infrastructure projects.

The CZMA recognizes the national interest in improved state and local management of coastal resources and uses. Under CZMA, states are responsible for developing coastal management plans. NOAA approves these coastal management plans and sometimes grants to implement those programs. Once a state coastal management program has been completed and approved, execution of the program is the responsibility of the States. States' coastal management programs must consider and plan for economic development, such as ports and harbor development, and energy facility siting, in order to receive program approval. Any development project that is either sponsored by a Federal agency or that requires a Federal license or permit must be consistent with the enforceable policies of the State, as approved by NOAA. NOAA does not become involved in project reviews unless a State CZMA objection to a project as being inconsistent is appealed to the Secretary of Commerce. Substantial improvements were made to the rulemaking process in 2006 to expedite the review of appeals (*e.g.*, new and shorter appeal-processing deadlines and added guidance on record development) and no further changes are recommended at this time.

The OTEC Act of 1980 gives NOAA the authority to grant licenses to facilities that use temperature differences in ocean water to produce electricity or products. The OTEC Act requirements are administered by the NOAA Office of Ocean and Coastal Resource Management, with consultation from other Federal agencies such as the U.S. Coast Guard. In

the 30-plus years since the enactment of the OTEC Act, NOAA has yet to receive a license application, and no applications are pending, due to technological and financial challenges. NOAA rescinded its OTEC Act licensing regulations in 1996; if a license application appears to be possible, NOAA anticipates it will have sufficient lead time to identify the resources needed to complete the rulemaking process.

Should NOAA’s practices and policies under NEPA, CZMA, or the OTEC Act become more relevant to NOAA’s core permitting and review of infrastructure projects, they will be included in subsequent reports to OMB under Executive Order 13604.

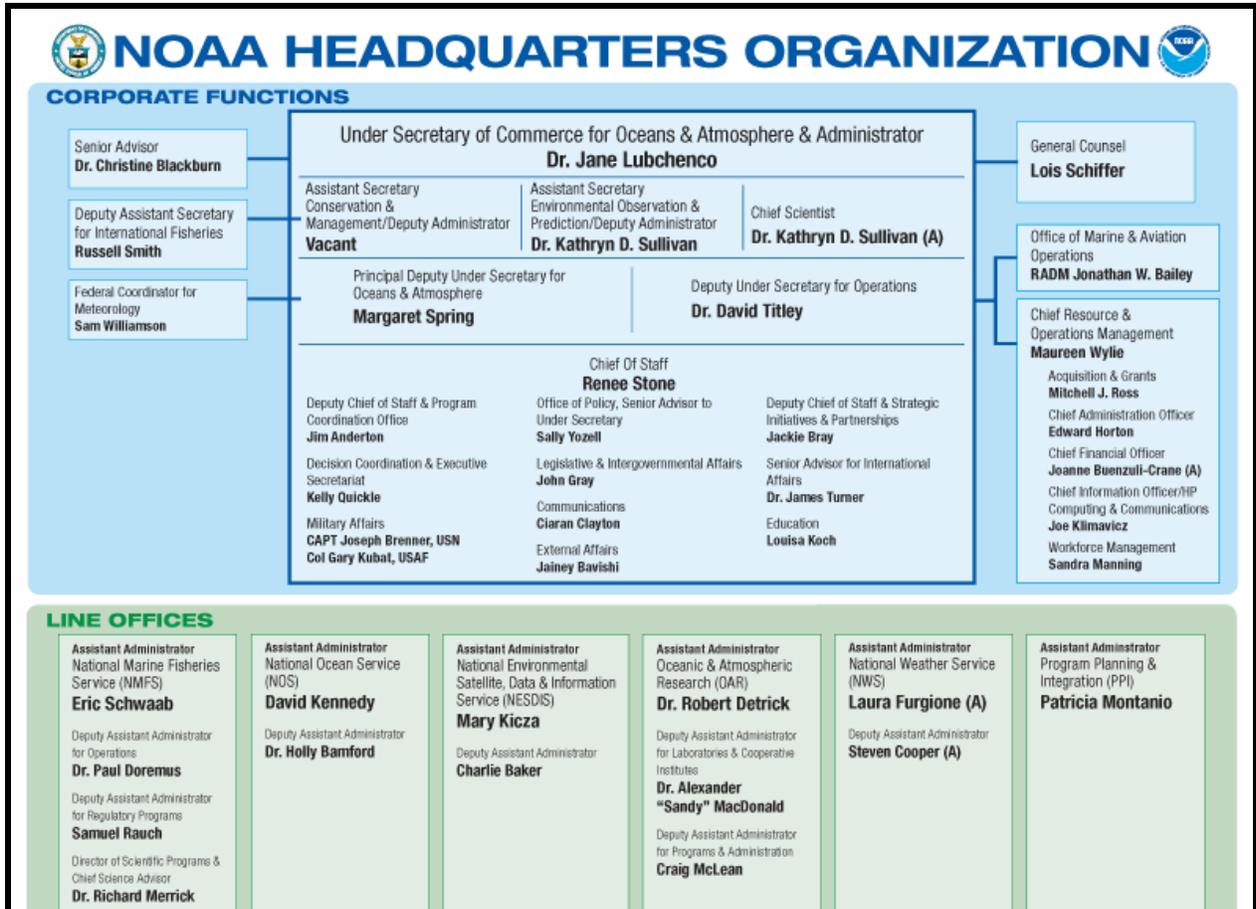


Figure 1: NOAA Organizational Chart. The National Marine Fisheries Service oversees the Endangered Species Act, Marine Mammal Protection Act, and Magnuson-Stevens Conservation and Management Act—Essential Fish Habitat. The National Ocean Service oversees the National Marine Sanctuaries Act.

Permitting and Reviews:

Endangered Species Act of 1973.

- Requirement. Under the Endangered Species Act (ESA) Section 7, all Federal agencies must consult with NMFS on any actions they authorize, fund, or carry out, if they determine their actions may affect listed species under NMFS's jurisdiction or critical habitat designated for such species. Therefore, the requirement to consult encompasses a broad range of activities, including infrastructure projects such as bridge replacements or energy development. A Federal agency determines, through a biological assessment or other review, if an action may affect a listed species. If an action may affect but is not likely to adversely affect a listed species (the action is wholly beneficial, insignificant, or discountable) the agency may request informal consultation. Section 7 consultation is completed informally if NMFS concurs with the action agency's determination that the action is not likely to adversely affect a listed species or designated critical habitat. If the action is likely to adversely affect a listed species, the agency submits a request for formal consultation to NMFS. ESA's Section 7 implementing regulations (50 CFR Part 402) are jointly administered with the U.S. Fish and Wildlife Service (FWS).
- Timeline. Section 7 of the ESA provides NOAA up to 90-days to conclude the consultation from date of initiation. The ESA implementing regulations provide 45 days to write the biological opinion and submit it to the action agency and any applicant identified by the action agency once the 90-day consultation period ends (total 135 days). However, NOAA and the action agency may mutually agree to extend the consultation timeline, except in instances where an applicant has been identified. When an applicant has been identified, the consultation may not extend more than 60 days (total days 195) without consent of the applicant. NOAA and the action agencies may extend the timeline due to many factors, including the geographic scale of the action area, complexity of the action, actions which are interrelated to and interdependent on the proposed action, number of species affected, and/or data availability and sufficiency.

The ESA implementing regulations also provide for an optional informal consultation when the effects of the action are believed to be wholly beneficial, insignificant, or discountable. In those instances, we conclude consultation within 30 days by policy after receiving the action agency's request for concurrence with its not likely to adversely affect determination.

- Operational and Coordination Practices. We seek to coordinate with action agencies early in the project development stages. The purpose of the early coordination is to identify whether the agency can avoid effects to ESA listed species and/or designated critical habitat. If effects are unavoidable, we consult with the action agency to develop measures to minimize the impacts to ESA species and/or designated critical habitat. In some cases, we work with the action agency to develop alternatives to the proposed infrastructure project that would avoid the likelihood of jeopardizing the continued existence of listed species and/or destroying or adversely modifying critical habitat.

When an applicant for a permit is involved in a Federal project, the applicant has certain privileges during the ESA Section 7 consultation process. Applicants include any person who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action being consulted on under Section 7 of the ESA. If the Federal agency identifies an applicant, NOAA and the action agency meet their obligations by providing an opportunity for the applicant to submit information, allowing the applicants to review the draft biological opinion, and seeking the applicant's expertise in identifying Reasonable and Prudent Alternatives (RPAs), if any. Applicants must also approve extended timelines for completing the consultation.

The ESA requires consultation as appropriate with affected states. NOAA and the FWS issued a joint policy in 1994 that specifies the agencies will coordinate with, gather information from, and provide biological opinions to the States during the consultation process. In 2010 NOAA, FWS, and states signed a charter to provide a process to work with State wildlife agencies to identify and address ESA issues of national significance and develop jointly any recommendations concerning those issues.

Tribes have special rights defined by treaties, statutes, executive orders, judicial decisions, and agreements, and these also must be considered in the consultation process. In 1995, the Department of Commerce issued a policy entitled "American Indian and Alaska Native Policy of the Department of Commerce." In 1997, NMFS and FWS (jointly, the Services) signed a Secretarial Order entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" to further refine Native American policies. Under the Secretarial Order, tribal governments can play a role in the consultation process when the action may affect tribal resources or rights. The Secretarial Order requires the Services to provide timely notification to affected tribes early in the consultation process, provide copies of final biological opinions, and treat the affected tribe as an applicant when the Federal action agency is the Bureau of Indian Affairs.

ESA Section 7 consultations involve inter- or intra-agency consultation amongst Federal agencies. Thus, public participation is not required by the joint regulations and is generally limited. Federal action agencies may elect to submit draft biological opinions for public review and comment.

- Internal, Interagency and External Opportunities to Improve Process. Guidelines, practices and regulations specify early coordination in the consultation process to address potential impacts or obstacles early in the process. Early coordination often leads to changes to the proposed action to reduce the impact on listed species and their habitats and ensures relevant information is exchanged to inform the consultation. Consultations may also be done on similar actions that are 'batched' into one biological opinion or action agencies may request region or ecosystem-wide consultations on activities under their jurisdiction.

Opportunities to improve the process may include, but are not limited to, review of the joint FWS and NMFS Consultation Handbook, published in 1998; continued dialogue on the Services/State Charter established in 2010 on State participation in the consultation

process; and development of Memorandums of Agreement to improve coordination between ESA Section 7 and infrastructure project development.

ACTION: NOAA will inventory existing ESA Section 7 regulations, policy, guidance, and practices, and report on results by December 31, 2012.

- Conflict Resolution/Exemption Process. The ESA Section 7 consultation process is an interagency coordination endeavor which requires information exchange and continued discussion on proposed actions. The process is meant to resolve issues on a case-by-case basis. There is a statutory exemption process within the ESA; however, it is rarely used.

- Share in Cost.

Next Steps: NOAA will inventory existing ESA share in cost policy, guidance, and practices, and will report on results.

- Application Process. The consultation process is described at 50 CFR 402 and in the joint FWS and NMFS Consultation Handbook.

Magnuson-Stevens Fishery Conservation and Management Act

- Requirement. All Federal agencies must consult on any action they authorize, fund, or carry out, if they determine their actions may adversely affect essential fish habitat (EFH). Therefore, the requirement to consult encompasses a broad range of activities, including infrastructure projects, such as bridge replacements or energy development.
- Timeline. EFH consultations should be consolidated, where appropriate, with interagency consultation, coordination, and environmental review procedures required by other statutes, such as NEPA, the Fish and Wildlife Coordination Act, Clean Water Act, ESA, and Federal Power Act. When EFH consultations and comments are combined with these existing procedures, the timeframe of the existing procedure is used. When not combined with interagency procedures associated with these other acts, additional EFH consultation options are available. Abbreviated EFH consultations cover actions that may adversely affect EFH but do not have the potential to cause substantial adverse effects on EFH and are completed within 30-60 days. For infrastructure projects that may result in substantial adverse effects to EFH or encompass a large number of individual actions, expanded EFH consultations are completed within 60-90 days unless an extension is agreed to by NOAA and the action agency. Incomplete or inadequate EFH assessments may require NOAA to request additional information. The EFH regulations allow extra time to acquire additional information that would improve the conservation recommendations if that extra time is agreed to by the action agency. These situations often arise with particularly complex or large-scale actions. General concurrences are a possibility, but are rare given they are intended only for a suite of activities with similar impacts. There are no timing guidelines for this iterative process. As noted below, pre-consultation coordination with NOAA is encouraged and when used in conjunction with existing guidance for minimizing impacts to EFH, the time required to complete a consultation can often be reduced.
- Operational and Coordination Practices. NOAA often engages in pre-consultation with action agencies during a project's planning phase to facilitate discussion of measures to conserve EFH. If the action agency determines that a project may adversely affect EFH, they are required to consult with NOAA beginning with the preparation of a written assessment of the effects of that action on EFH. Based on the EFH assessment, NOAA may provide conservation recommendations to the action agency. While these recommendations are advisory, the action agency must provide a written response to NOAA indicating the measures proposed to avoid, mitigate or offset the impact of their action on EFH. If the measures differ from NOAA's recommendations, the action agency must provide an explanation to NOAA detailing the reason for not accepting our conservation recommendations including the scientific justification for any disagreements with NMFS

NOAA does not issue permits. NOAA provides non-binding recommendations to Federal action agencies to minimize the potential adverse impacts of the project to EFH, and final decisions are made by the Federal action agency; therefore, does not have any

guidelines, practices, or mechanism for informing stakeholders on the status of pending projects in other Federal agencies.

- Internal, Interagency and External Opportunities to Improve Process. NOAA regularly engages with other Federal action agencies to coordinate the development of programmatic authorizations, with associated EFH consultations, on Federal actions at the regional and national level (e.g., nationwide permits, regional general permits). In addition, NOAA meets with U.S. Army Corps of Engineers (Corps) District staff to anticipate and coordinate upcoming Corps permit actions. NOAA engages similarly with other agencies such as the Bureau of Ocean Energy Management (BOEM), U.S. Forest Service, and the Federal Highways Administration. In addition, at the national level, NOAA has entered into Memoranda of Understanding with multiple agencies to streamline and coordinate data and environmental reviews for various sectors such as liquid natural gas with the U.S. Coast Guard and offshore wind energy with BOEM. NOAA will seek opportunities to develop additional Memoranda of Understanding with Federal agency partners as appropriate.

The MSA does not require State agencies to consult with NOAA regarding EFH. NOAA uses existing coordination procedures to identify state actions that may adversely affect EFH, and to determine the most appropriate method for providing EFH Conservation Recommendations to State agencies.

ACTION: NOAA will inventory existing MSA regulations, policy, guidance, and practices, and report on results by December 31, 2012.

- Conflict Resolution. In the event that a Federal agency decision is inconsistent with NOAA EFH Conservation Recommendations, the regulations to implement EFH provisions of the MSA (50 CFR §600.920 (k)(2) provides authority to the NOAA Assistant Administrator for Fisheries to request a meeting with the head of that Federal agency to discuss the action and opportunities to resolve the disagreement. However, most EFH consultations are incorporated with regulatory and environmental review procedures required by other statutes and in those instances the established conflict resolution procedure is typically utilized to solve disputes at the lowest levels possible.
- Share in Cost. In some regions, NOAA has established a relationship with specific Federal agencies to reimburse NOAA for the staffing costs associated with fulfilling the MSA EFH consultation requirements. This model has worked well for all parties, and NOAA would likely pursue additional agreements with other Federal agencies to ensure sufficient staffing for infrastructure projects.
- Application Process. The guidelines at 50 CFR §600.815 (a)(6) require that Fishery Management Plans also identify actions to encourage the conservation and enhancement of EFH, including recommended options to avoid, minimize, or compensate for the adverse effects of the activities identified as having potential to adversely impact EFH. Useful guidance documents can be found in the EFH Data Inventory:
www.habitat.noaa.gov/efhmapper

Marine Mammal Protection Act.

- Requirement. The Marine Mammal Protection Act (MMPA) generally prohibits the take of marine mammals without an applicable permit or authorization. All Federal agencies and individuals must seek authorization to incidentally take a marine mammal when conducting otherwise lawful activities. Thus, the requirement encompasses a broad range of activities, including infrastructure projects such as bridge replacements or energy development. With authority granted to the Secretary of Commerce and the Secretary of Interior, authorizations under section 101(a)(5) of the MMPA shall be issued if the taking will be of small numbers, have a negligible impact on the affected species or stock, and will not have an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses (where relevant). The issued authorization shall prescribe the permissible methods of taking and requirements pertaining to mitigation and monitoring and reporting of such taking.
- Timeline. The MMPA provides for two types of incidental take authorizations – Incidental Harassment Authorizations (IHAs) and Letters of Authorization (LOAs). The IHA is an expedited permitting process for actions that do not have the potential to cause marine mammal mortality or serious injury and are likely to result in negligible impacts only to the stocks or marine mammals affected. NMFS typically prepares NEPA documents to support issuance of IHA's and engages in ESA intra-agency Section 7 consultation if affected marine mammal species are also listed as threatened or endangered. The MMPA prescribes a 120-day processing time for IHAs. IHAs typically take about 6 months to process, but this can vary depending on the ESA and NEPA requirements, staff workload, controversy of the action, etc. IHAs, however, are only effective for a one year period. If a longer authorization is desired or required, an LOA issued after promulgation of regulations is necessary.

The LOA is a longer permitting process, required for actions that have the potential to cause serious injury or mortality to marine mammals. It is also a good option for complex, multi-year activities even when such activities are anticipated to result in incidental take not causing serious injury or mortality. LOAs require promulgation of regulations, which are valid for 5 years. There are two public comment periods for the rulemaking (but none for annual LOAs). The initial LOA (with regulations) typically takes about 12-18 months to process, but this can vary depending on ESA and NEPA requirements, staff workload, and controversy of the action. The processing time for LOAs is not prescribed by statute.

Key factors which may affect processing time include whether or not an ESA Section 7 consultation is needed; what level of NEPA review is needed; and the complexity and controversy surrounding the proposed project.

- Operational and Coordination Practices. We review proposed actions once we receive an application from the action agency. If a potential applicant engages us early, we can help identify means of minimizing or avoiding impacts to marine mammals. Once we receive an application, we may provide feedback to the applicant on their method for estimating

take, additional mitigation measures, or a revised monitoring plan, if appropriate. After our initial analysis is complete, we publish our preliminary determination in the *Federal Register* for public review. We then consider public comments as we make our final determination.

- Internal, Interagency and External Opportunities to Improve Process. NOAA staff encourages early MMPA consultation through numerous venues, such as the annual Arctic Open Water Meeting (<http://www.nmfs.noaa.gov/pr/permits/openwater.htm>), professional meetings and conferences attended by potential applicants, and outreach to other Federal agencies. Once proposed actions are reviewed and analyzed, NMFS publishes preliminary determinations in the *Federal Register* for public review and comment.

ACTION: NOAA will inventory existing MMPA regulations, policy, guidance, and practices, and report on results by December 31, 2012.

- Conflict Resolution.

Next Steps: NOAA will inventory existing MMPA conflict resolution policy, guidance, and practices, and will report on results.

- Share in Cost

Next Steps: NOAA will inventory existing ESA share in cost policy, guidance, and practices, and will report on results.

- Application Process. All applications and related documents (e.g., NEPA documents, monitoring reports, etc.) are posted on the Incidental Take Authorization website (<http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>) for public review. Notifications are also published in the *Federal Register* throughout the permitting process, as detailed below:

IHAs: Once staff concludes initial analysis of the proposed action, NOAA publishes a preliminary determination and request for comments in the *Federal Register*. After the 30-day public comment period and final analysis/review/clearance, NMFS publishes a final determination in the *Federal Register*.

LOA and Regulations: Once the agency receives a complete application, NOAA publishes a notice of receipt and request for comments (for a rulemaking) in the *Federal Register*. Once initial analysis is concluded, NOAA publishes a preliminary determination and request for comments in the *Federal Register* on the proposed rule and regulations. After the comment period (usually 30 to 60 days) and final analysis/review/clearance, NOAA publishes a final determination in the *Federal Register*. Annual or multi-year LOA renewals (under a rulemaking) do not require comment periods.

National Marine Sanctuaries Act.

- Requirement. Consultations pursuant to Section 304(d) of NMSA [16 U.S.C § 1434(d)]: All Federal agencies taking actions that are likely to destroy, cause the loss of, or injure a sanctuary resource are required to consult with NOAA Office of National Marine Sanctuaries (ONMS) pursuant to section 304(d) of NMSA. In addition, Federal agencies are required to consult on proposed actions that “may affect” the resources of Stellwagen Bank National Marine Sanctuary. The trigger for sanctuary consultation is linked to the potential injury to resources, not to the type of activity or technology proposed. However, if the proposed activity is also prohibited by NOAA regulations, an ONMS permit would also be required.

The purpose of sanctuary consultation is to eliminate, reduce, or mitigate potential injury to “sanctuary resources”. The NMSA and the ONMS regulations (15 CFR 922) define the term “sanctuary resource” broadly to include living and non-living components of the sanctuary ecosystem (15 CFR 922.3). In the NMSA, sanctuary resource is defined as any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, educational, cultural, archeological, scientific, or aesthetic value of the sanctuary (NMSA; 16 U.S.C. § 1431-1445c). A Federal action agency conducting a consultation pursuant to section 304(d) may be required to apply for a sanctuary permit if the consultation process determines that the proposed action contains activities that are otherwise prohibited in sanctuaries.

ONMS Permits: An ONMS permit is required whenever an individual wishes to conduct an activity within a sanctuary that would otherwise be prohibited by sanctuary regulations (15 CFR 922).

- Timeline. Consultations Pursuant to Section 304(d) of NMSA: The NMSA requires a Federal agency to submit the sanctuary resource statement at the earliest practicable time, but at least 45 days before the final approval of the action. The NMSA gives ONMS 45 days upon the receipt of a complete sanctuary resource statement to provide any recommended alternatives. The agency must promptly consult with ONMS regarding the recommendations.

ONMS Permits: ONMS permit applications must be submitted at least 30 calendar days in advance of the requested effective date to allow time for evaluation and processing. Sensitive or complicated requests, requests for collection of sensitive species, or requests which may require the ONMS to undertake certain NEPA or consultation requirements should be submitted at least 90 calendar days in advance, if not sooner. Applications that may require ONMS to prepare an EIS prior to issuance will typically require at least 12 months to process. In order to expedite processing, applicants are encouraged to contact the appropriate sanctuary staff well in advance of submitting a formal application to discuss any questions or issues they feel may complicate or delay the application process. More information is available at <http://sanctuaries.noaa.gov/management/permits/welcome.html>.

- Internal, Interagency and External Opportunity to Improve Process.

ACTION: NOAA will inventory existing NMSA, policy, guidance, and practices, and report on results by December 31, 2012.

- Operational and Coordination Practices. Consultations Pursuant to Section 304(d) of NMSA: The Federal agency initiates sanctuary consultation by submitting a “sanctuary resource statement.” The purpose of the sanctuary resource statement is to provide NOAA with enough information to understand the nature of the proposed activity and its potential impacts on sanctuary resources. It is important to recognize that sanctuary resource statements are not necessarily separate documents prepared by the Federal agency and may consist of documents prepared in compliance with other statutes such as NEPA. The agency need only ensure complete information is provided and may use existing analyses, processes, or mechanisms to provide this information.

The NMSA requires that the Federal agency “shall provide the Secretary with a written statement describing the action and its potential effects on sanctuary resources at the earliest practicable time, but in no case later than 45 days before the final approval of the action unless such Federal agency and the Secretary agree to a different schedule” (NMSA section 304(d)(1)(A)).

NOAA reviews the written statement and provides recommended alternatives, which consist of types of actions that “will protect sanctuary resources” by eliminating, reducing, or mitigating potential injury to sanctuary resources. They may include alternatives such as modification to the location, timing, or methods proposed.

The NMSA requires that “If the Secretary finds that a Federal agency action is likely to destroy, cause the loss of, or injure a sanctuary resource, the Secretary shall (within 45 days of receipt of complete information on the proposed agency action) recommend reasonable and prudent alternatives, which may include conduct of the action elsewhere, which can be taken by the Federal agency in implementing the agency action that will protect sanctuary resources” (NMSA section 304(d)(2)).

Promptly upon receiving the recommended alternatives from NOAA, the action agency must consult with NOAA to discuss the recommendations. If the action agency plans to fully implement NOAA’s recommended alternatives and fully incorporate them into its proposed action, the agency should respond by indicating so and no further sanctuary consultation is necessary prior to conducting the action. If the agency decides not to follow the NOAA recommended alternatives, the agency must provide a written explanation to NOAA that describes the reason or reasons for not following the alternatives.

The NMSA requires that “the agency head who receives the Secretary's recommended alternatives under paragraph (2) shall promptly consult with the Secretary on the alternatives” (NMSA section 304(d)(3)).

ONMS Permits: In order to expedite processing, ONMS permit applicants are encouraged to contact appropriate sanctuary staff well in advance of submitting a formal application to discuss any questions or issues they feel may complicate or delay the application

process. Multi-site sanctuary permits may be issued, which authorize activities across multiple sanctuaries. Issuance of multi-site permits reduces time and burden hours for permit applicants.

- Conflict Resolution. Consultations Pursuant to Section 304(d) of NMSA: If the head of a federal agency takes an action other than an alternative recommended by the Secretary and such action results in the destruction of, loss of, or injury to a sanctuary resource, the head of the agency shall promptly prevent and mitigate further damage and restore or replace the sanctuary resource in a manner approved by the Secretary (NMSA section 304(d)(4)).

ONMS Permits: Any interested party may appeal an ONMS permitting decision for the following sanctuaries: Monitor, Channel Islands, Gulf of the Farallones, Gray's Reef, Fagatele Bay and Cordell Bank. For the six other sanctuaries with permitting authority, only permit applicants and permittees can appeal. Appellants may appeal to the NOAA Assistant Administrator for Ocean Services and Coastal Zone Management, the granting, denial, conditioning, amendment, suspension or revocation of a permit.

- Share in Cost

Next Steps: NOAA will inventory existing ESA share in cost policy, guidance, and practices, and will report on results.

- Application Process. Consultations pursuant to Section 304(d) of NMSA: ONMS consultations are initiated by the Federal agency taking actions that are “likely to destroy, cause the loss of, or injure a sanctuary resource.” Consultations are initiated when the Federal action agency submits a sanctuary resource statement providing NOAA with enough information to understand the nature of the proposed activity and its potential impacts on sanctuary resources.

ONMS Permits: ONMS permit applications for activities otherwise prohibited by respective sanctuary regulations are available online at the link below. The application process is described at <http://sanctuaries.noaa.gov/management/permits/welcome.html>.

Information Technology:

Endangered Species Act and Magnuson-Stevens Act Essential Fish Habitat Consultations. The ESA and EFH consultations are tracked on the Public Consultation Tracking System. This database tracks individual consultation records, including timelines to completion, action agency and proposed action, geographic region of concern, species and EFH impacted. We track the percent of ESA consultations completed and percent completed on time on a quarterly basis. We also track the annual percent reduction of backlogged consultations. The database is being upgraded for more user-friendly interface. See: <http://www.nmfs.noaa.gov/pr/consultations/>.

Marine Mammal Protection Act. Incidental take authorizations are tracked internally through a database titled Authorizations and Permits for Protected Species (APPS). We record activity type, location, take information, project contacts, and status of the application process. Applications are reviewed at monthly staff meetings.

Incidental take authorization applications (and other relevant documents, including NEPA analysis) are available on our website, which is being upgraded for more user-friendly interface. See: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#application/>.

National Marine Sanctuaries Act. Consultations pursuant to Section 304(d) of NMSA: NOAA does not have guidelines for informing the general public of the status of pending sanctuary consultations. The sanctuary consultation process only involves Federal agencies; therefore, the respective Federal action agency is given discretion as to how or if it would like to inform the public of a pending consultation with ONMS.

ONMS Permits: ONMS permit applications are transferred to the Online Sanctuary Permit and Reporting System (OSPREY), an internal permit interface and online tracking database: <https://www8.nos.noaa.gov/nmspermit/index.aspx>. OSPREY is used by NOAA staff for tracking, processing, and memorializing application data, consultations and processing permit decisions in accordance with various Federal, State, and local laws. OSPREY ensures consistent permitting across sanctuary sites and serves as an important paperless tracking system.

Public Outreach:

Endangered Species Act. ESA Section 7 consultations involve inter- or intra-agency consultation. Thus, generally public participation is limited. Federal agencies may elect to submit draft biological opinions for public review and comment. The consultation process is described at 50 CFR 402 and in the joint FWS and NMFS Consultation Handbook. These resources describe what information is needed to initiate consultation with the Services.

Magnuson-Stevens Essential Fish Habitat. The MSA does not require State/local entities or tribes to consult with NOAA regarding EFH consultations. NOAA uses existing coordination procedures to identify State actions that may adversely affect EFH, and to determine the most appropriate method for providing EFH Conservation Recommendations to state agencies.

Marine Mammal Protection Act. NOAA staff encourage early MMPA consultation through numerous venues, such as the annual Arctic Open Water Meeting (<http://www.nmfs.noaa.gov/pr/permits/openwater.htm>), professional meetings and conferences attended by potential applicants, and outreach to other federal agencies. Once proposed actions are reviewed and analyzed, NMFS publishes preliminary determinations in the *Federal Register* for public review and comment.

National Marine Sanctuaries Act. Information regarding consultations pursuant to section 304(d) of the NMSA and ONMS permits for otherwise prohibited activities is available at: <http://sanctuaries.noaa.gov/management/permits/welcome.html>. NOAA staff encourage the early submission of sanctuary resource statements (and other materials, as needed) for NMSA consultations and ONMS permit applications through the sanctuaries website. This website also features the following tools: (1) contact information for ONMS sanctuary site permit coordinators; (2) guidelines for permit applications for certain activities including artificial reefs; overflight of aircraft, fireworks and pyrotechnics and activities involving historical resources; (3) information for Special Use Permit applicants and (4) Frequently Asked Questions about the sanctuary permitting process.

MAJOR PERMITS AND APPROVALS RELATED TO MAJOR INFRASTRUCTURE PROJECTS

Below is an inventory of NOAA’s major permitting responsibilities related to major infrastructure projects, complete with estimated average processing times. Additional information about these and other NOAA permits related to infrastructure projects will be available on the MAX.gov website. Since each project is unique, the processing times can vary significantly. The times below are estimates only and are not intended to be used for setting individual project schedules.

Major Permits	Issuing Line Office	Estimated Average Processing Time
Endangered Species Act Section 7 Consultation—50 CRF 402	National Marine Fisheries Service	135—195 days from date of initiation of consultation. NOAA and action agency may mutually extend the consultation beyond 195 days if an applicant is not involved or consents to the longer period.
Magnuson Stevens Fishery Conservation and Management Act Essential Fish Habitat—50 CFR 600.805	National Marine Fisheries Service	Abbreviated consultation---30-60 days Expanded consultation---60-90 days
Marine Mammal Protection Act—50 CFR 216	National Marine Fisheries Service	Incidental Harassment Authorization---120 days to 6 months Letter of Authorization—12 to 16 months
National Marine Sanctuaries Act---15 CFR 922	National Ocean Service	45 days-12 months, depending on NEPA requirements