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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[Docket Number: NOAA-HQ-2016-0145]

**RIN: 0648-XF137**

**National Environmental Policy Act Implementing Procedures  
and Executive Order 12114 Categorical Exclusions**

**AGENCY:** National Oceanic and Atmospheric Administration,  
U.S. Department of Commerce.

**ACTION:** Notice of availability.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) publishes this notice to notify the public that NOAA has finalized revisions to the agency's procedures for implementing the National Environmental Policy Act (NEPA) and related authorities, as contained in the Companion Manual to NOAA Administrative Order NAO 216-6A (Companion Manual). Included in the Companion Manual are NOAA's revised categorical exclusions (CE) and related extraordinary circumstances. This notice provides a summary of the public comments received and the agency's responses as well as a summary of changes from the draft to the final procedures. The final Companion Manual is available online at <http://www.nepa.noaa.gov>.

**DATES:** The revised procedures are effective [DATE of publication].

**FOR FURTHER INFORMATION CONTACT:** For information regarding NOAA's NEPA procedures, contact Katherine Renshaw, NOAA NEPA Coordinator, at [noaa.nepa@noaa.gov](mailto:noaa.nepa@noaa.gov) or 301-713-7380.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On April 22, 2016, NOAA issued NOAA Administrative Order 216-6A (NAO 216-6A), which updated NOAA's policy for compliance with NEPA, the CEQ NEPA regulations, and other related authorities, including Executive Order (EO) 12114, *Environmental Effects Abroad of Major Federal Actions*; EO 11988, *Floodplain Management*; and EO 11990, *Protection of Wetlands*. The NOAA Administrative Order authorized the development of a Companion Manual entitled *Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities* ("Companion Manual"). On November, 17, 2016, NOAA published a notice in the Federal Register inviting public comments for a 30-day period on the draft Companion Manual, which included NOAA's revised CEs. After careful consideration of the public comments received in response to that notice, and upon further internal review, NOAA has decided to finalize the Companion

Manual and CEs with some minor revisions from the November 17, 2016 draft.

## **II. Comments Received and NOAA's Responses:**

NOAA received comments from private citizens, nongovernmental organizations, states and state organizations. All substantive comments received and considered are available online at (<http://noaa.nepa.gov>), and on the Regulations.gov Web site ([www.regulations.gov](http://www.regulations.gov)) at docket ID: [NOAA-HQ-2016-0145]. NOAA has considered all comments received, and NOAA's response to the comments is contained below.

### *A. Comments on NOAA's NEPA Process*

State commenters raised concerns regarding the process of applying NEPA to the Federal grant application process. State commenters also sought additional criteria for determining whether cumulative and secondary impacts will trigger an Environmental Assessment (EA), specifically requesting a clear flow chart on the process.

NOAA appreciates the concerns expressed by these comments and will continue to seek ways to improve coordination of environmental review requirements as we begin implementing these revised procedures.

### *B. Comments on Previously Analyzed Activities*

State commenters requested that NOAA develop a CE that "includes projects that have already undergone sufficient environmental review under NEPA."

NOAA does not agree that a broad CE that would cover all such activities would be appropriate. Instead, NOAA would point the commenters to section 5 of the Companion Manual that provides guidance on how to determine whether existing NOAA NEPA documents adequately analyze the impacts of a proposed action; as well as section 6(H) that provides guidance on adopting other agency NEPA documents. We believe that the processes outlined in those sections that include factors to consider and required documentation (including, for example, the requirement that NOAA issue its own FONSI when adopting another agency EA), are the appropriate processes to use when relying on existing NEPA documents, consistent with the Council on Environmental Quality (CEQ) regulations and guidance.

*C. Comments on Definitions Used in the Companion Manual and CEs*

State commenters requested that NOAA provide definitions for frequently used terms including "minor," "small scale," "nondestructive," and "substantial."

NOAA provided definitions for the terms "previously disturbed ground," "minor," "small scale," and "negligible"

in the November 17, 2016 **Federal Register** notice (81 FR 81067). In order to ensure consistent application of its procedures, NOAA determined that such definitions should be included in the Companion Manual and will add the definitions included in our initial **Federal Register** notice to the glossary at Appendix A of the Companion Manual. NOAA will also add definitions for the terms "short term," "long term," and "nondestructive," to provide further clarity. These additional terms will be defined as follows:

*Short-term*—refers to a potential impact of short duration, relative to the proposed project and the environmental resource. Short-term impacts occur while the activity is underway, and do not persist once the activity ends. Noise produced by temporary construction activities is an example of a short-term impact. *Long-term*—refers to a potential impact of long duration, relative to the proposed project and the environmental resources. Long-term impacts continue after the project has ceased. Permanent impacts that remain after the construction phase of a project is an example of a long-term impact.

*Nondestructive*—this terms refers to actions that do not result in long term or permanent physical alteration of a component of the human environment. Passive acoustics, ground penetrating radar, and air quality sampling are

examples of nondestructive methods to collect environmental data.

*D. Comments on Individual CEs*

A1

One commenter recommended deleting the phrase "access to fishery resources" from A1. The commenter notes that actions that change access to fishery resources do not necessarily result in environmental impacts when there are no changes of any of the other actions listed in the CE, i.e., fishing location, timing, effort, authorized gear types, or harvest levels.

We agree, and have removed the phrase "access to fishery resources" from the text of CE A1.

A5

State commenters requested that NOAA modify CE A5 so as to include minor five-year updates to National Estuarine Research Reserve (NERR) management plans relative to boundary expansion based on acquisition of property for conservation purposes. The proposed A5 applies to updates to NERR management plans, provided that the update does not change NERR boundaries.

Boundary changes will involve areas that fall outside the geographic scope of the original Environmental Impact Statement (EIS) prepared pursuant to 15 CFR 921.13, and may

involve potentially significant impacts to additional species or habitats that were not considered when the reserve was established. For this reason, NOAA will retain the proposed limiting language in the CE in the final procedures.

B4

One comment raised concerns with proposed CE B4. Generally, the comment expresses concern that the application of the CE will result in a failure to consider the cumulative impacts of activities authorized under that CE. Additionally, the commenter is concerned about NOAA's decision to include authorizations under both sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA) in the same CE, arguing that doing so ignores the differences in these authorizations. The commenter finally expressed a concern that NOAA has eliminated language from the 1999 procedures that had specifically stated that "if authorization under 101(a)(5)(A) does not tier from a programmatic environmental review, that action may require an EIS, EA, or CE, based on a case-by-case review."

NOAA has determined that this CE, by its terms, and in light of the requirement to consider extraordinary circumstances, is appropriate and would not have the potential for significant impacts. In particular, NOAA

notes that extraordinary circumstances (1) refers to "the potential for significant cumulative impacts when the proposed action is combined with other past, present and reasonably foreseeable future actions, even though the impacts of the proposed action may not be significant by themselves." See Companion Manual for NOAA Administrative Order 216-6A at 4-5.

Additionally, the B4 CE does not ignore the differences between 101(a)(5)(A) and (D); rather it was crafted to apply to incidental take authorizations issued under either provision *if* they meet the criterion of no serious injury or mortality (and are not disqualified under the extraordinary circumstances evaluation). While it is true that criterion will be satisfied with any authorization issued under section 101(a)(5)(D), it is also true that in some cases authorizations issued under section 101(a)(5)(A) could meet that criterion as well, depending on the specified activity. Section 101(a)(5)(A) allows for authorization of take by serious injury or mortality but is not only for activities involving those effects.

Finally, NOAA notes that although language specific to the application of NEPA to the MMPA process was removed in the revised NEPA procedures, generally applicable provisions still apply to MMPA authorizations. For example,

section 3 of the Companion Manual explains how, on a case-by-case basis, to determine the proper level of NEPA analysis for an action.

B12

One comment raises a concern that proposed CE B12 is overly broad and requests that NOAA delete the CE. As proposed, B12 would cover "issuance of Exempted Fishing Permits (EFP) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and Scientific Research Permits (SRP) and other permits for research that may impact species regulated under the authority of the MSA and the Atlantic Tunas Convention Act (ATCA). This includes permitted research of limited size, magnitude or duration with negligible individual or cumulative impacts, which requires temporary relief of fishery management regulations."

NOAA has determined that this CE, by its terms, and in light of the requirement to consider extraordinary circumstances, is appropriate and would not have the potential for significant impacts. We agree, however, that as proposed, CE B12 would benefit from revision for clarity to make clear that the limitations described in the proposed category apply to all activities under the CE. NOAA will revise B12 in the following manner: "Issuance of

Exempted Fishing Permits (EFP), Scientific Research Permits (SRP), and other permits for research that may impact species regulated under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Atlantic Tunas Convention Act (ATCA). This CE is limited to permits that authorize activities of limited size, magnitude or duration, which have no potential for significant individual or cumulative impacts.”

C1

State commenters asked for several areas of clarification regarding the application of CE C1 that addresses habitat restoration activities.

The state commenters requested that NOAA either remove the CE’s dredge and fill limitation, or provide additional clarity as to the application of that limitation. As proposed, C1 is limited to projects that “[do] not require substantial placement of fill or dredging.”

NOAA believes that the limitation of the CE with respect to dredging and placement of fill is appropriate and notes that its application will be context dependent. When considering whether placement of fill or dredging are “substantial,” NOAA will consider the volume of the fill to be placed, as well as the context in which it would occur to determine that the placement will not have the potential

to cause significant environmental impacts. Thus, NOAA is not proposing any modifications to this CE to address this issue.

Additionally, the states requested that NOAA further limit covered habitat restoration actions to those that transplant only native species. The proposed C1 language would limit actions to those that "transplant" only organisms currently or formerly present at the site or in its immediate vicinity (if transplant is a component of the action). The states expressed concern that without limiting transplant to native species that such actions may result in impacts from exotic invasive species.

NOAA has determined that this CE, by its terms, and in light of the requirement to consider extraordinary circumstances, is appropriate and would not have the potential for significant impacts. In particular, NOAA notes that extraordinary circumstance (j) refers to the "contribution to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species." See Companion Manual for NOAA Administrative Order 216-6A at 4-5. Accordingly, if a proposed action to transplant organisms has the potential to result in

significant impacts due to the potential spread of exotic invasive species, such an action may require additional analysis.

Finally, the states requested further guidance as to the applicability of C1 to various restoration activities such as living shoreline construction, routine terrestrial restoration activities, and stocking fish and associated activities.

As noted in Appendix E, the examples provided with the CEs are intended to be illustrative, but not exhaustive. Thus, omission of a particular activity does not mean that such activity could not potentially be covered by the CE. In reviewing whether an activity, such as a living shoreline construction project would be potentially included within C1, NOAA would consider the particular elements of that project to determine whether the proposed action fits within the limits of the CE.

F3

State commenters requested clarification as to whether CE F3 applies to the restoration or repair of buildings of cultural or historic significance. Additionally, state commenters sought clarification as to whether the CE applies to small-scale construction of boat ramps, fishing piers, and observation platforms. Commenters note that

limitations in F3(b), such as F3(b)(3) that would preclude proposed uses of newly constructed facilities that will substantially increase the number of marine vessels in the area would potentially preclude application to the construction of public access facilities such as boat ramps. Finally, one commenter questioned how NOAA will determine viewshed impacts.

NOAA's extraordinary circumstance (e) would require evaluation of whether a proposed activity would involve adverse effects on properties listed or eligible for listing on the National Register of Historic Places authorized by the National Historic Preservation Act of 1966, National Historic Landmarks designated by the Secretary of the Interior, or National Monuments designated through the Antiquities Act of 1906; Federally recognized tribal and Native Alaskan lands, cultural or natural resources, or religious or cultural sites that cannot be resolved through applicable regulatory processes. See Companion Manual for NOAA Administrative Order 216-6A at 4-5.

With respect to the construction of public access facilities, NOAA notes that such activities are covered explicitly under F3(c), and not F3(b). Thus, the limitations that the commenters are concerned with would

not be applicable to the construction of public access facilities such as boat ramps, docks, or observation platforms. Those projects are potentially allowable under the CE so long as the proposed activity is (1) small-scale and nondestructive; and (2) is consistent with applicable right-of-way conditions and approved land use plans. NOAA notes that there is a typographical error in the proposed CE that included an "and" following F3(c)(2), which may be confusing, and has corrected that error.

As discussed above, NOAA is adding several additional definitions to the handbook, including "nondestructive." NOAA does not believe that it is necessary to make any modifications to the CE to exempt small scale construction of public access facilities such as boat ramps, fishing piers, and observation platforms as such activities are explicitly covered by F3(c), and included as examples of activities covered by the CE. As described in our definitions section, we believe that it is appropriate to define small scale relative to the potential impacts of the project, rather than with respect to the funding level involved.

Finally, with respect to viewshed impact evaluation, NOAA's staff will rely upon their professional expertise and standard practices and procedures to evaluate potential

impacts to viewsheds. Viewshed analysis, through the use of GIS technology, is commonly used by researchers and natural resource managers to assess potential visual impacts of development.

F4

State commenters request that NOAA clarify whether routine grounds keeping and landscaping would include native landscaping installation or rain gardens and other storm water Best Management Practices.

As discussed above, when determining whether a particular proposed action would be potentially included within a CE, NOAA will consider the particular elements of the project to determine its eligibility. NOAA does note however, that activities that involve improvements of real property may be better categorized under CE F3.

G1

State commenters request clarification as to whether CE G1 applies to the development of community development plans, vulnerability assessments, erosion management plans, feasibility studies, and engineering/design plans for restoration projects.

G1 includes routine administrative actions such as development, establishment, and revisions to documents including, but not limited to interagency agreements,

memoranda of understanding, memoranda of agreement, cooperative agreements and university agreements. As noted in Appendix E, the examples provided with the CEs are intended to be illustrative, but not exhaustive. Thus, omission of a particular activity does not mean that such activity could not potentially be covered by the CE. NOAA will evaluate proposed actions on a case-by-case basis to determine whether they are appropriately addressed by the CE.

H4

State commenters request clarification as to whether the acquisition of land intended for habitat restoration, including removal of invasive plant species or off-site native plants/trees would be included within CE H4. Commenters additionally request the development of a new CE to explicitly cover tree removal activities.

CE H4 applies to the acquisition of real property that is not acquired through condemnation of a lease interest, and will not result in significant change in use and does involve construction or modification. Accordingly, so long as the acquisition is done in accordance with the terms of the CE, and upon review by NOAA's NEPA professional staff, acquisition of land intended for habitat restoration may potentially be covered. NOAA notes that one of the examples

provided of activities covered by the CE includes funding for land acquisition under the Coastal Zone Management Act (CZMA) and Fish and Wildlife Conservation Act (FWCA) to purchase land (submerged or not submerged) or interests in land that includes but is not limited to conservation easements, for purposes that do not involve construction or modification.

With respect to the request for the development of an additional CE to specifically cover tree removal, NOAA does not currently have the experience to support expanding the CE to include such projects, but this may change as NOAA gains experience over time.

### **III. Additional Changes to Companion Manual and Categorical Exclusions**

In addition to revisions to CEs based on its consideration of public comments, NOAA further reviewed the proposed CEs and determined that certain CEs would benefit from revisions that clarified the scope and applicability of the CE, specifically the limitations described in the text of the CE to ensure it is only applied to activities with no potential for significant effects on the environment under normal circumstances. Internal discussions also resulted in many instances in the addition or revision of examples provided for the CEs for the

benefit of NOAA NEPA practitioners. Additionally, NOAA identified typographical and grammatical errors and corrected those errors. This section explains the substantive revisions NOAA made to its proposed CEs and the rationale for those revisions.

E3

NOAA is adding two additional examples of activities that fit within this category: "use of mobile platforms (e.g., ships, aircraft, balloons, vehicles) to study biological, chemical, or physical processes;" and "collection of cultural and environmental data to find and assess archaeological resources."

E4

NOAA has made minor modifications to the text of E4 following internal discussions with subject matter experts in order to ensure that the category of activities is sufficiently limited. The revised text is as follows: "Activities that remotely survey or observe living resources in the field using non-invasive techniques, which have little to no potential to adversely affect the environment or interfere with organisms or habitat." NOAA has also slightly modified one of the examples provided to make clear that electronic monitoring activities under this

category are limited to deployment of non animal-borne devices.

E5

NOAA has made minor modifications to the text of E5 following internal discussions with subject matter experts in order to ensure that the category of activities is sufficiently limited. The revised text is as follows: "Activities involving invasive techniques or methods that are conducted for scientific purposes, when such activities are conducted in accordance with all applicable provisions of the Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, and Magnuson-Stevens Fishery Conservation and Management Act. Such activities will be limited to impacting living resources on a small scale relative to the size of their populations, and limited to methodologies and locations to ensure that there are no long-term, adverse ecosystem impacts."

E6

NOAA made a minor modification to the text of E6 to improve internal consistency. The text of the revised CE is as follows: "Research that involves the development and testing of new and modified fishing gear and technology in order to reduce adverse effects from fishing gear on non-target species, and is limited in size, magnitude or

duration with no potential for significant individual or cumulative impacts.”

E7

Based on internal discussions on proposed CE E7, NOAA has revised the text of the CE to remove the references to fishing vessels and dockside as locations for the collection of data and biological samples. These terms were intended to be broad and to encompass any number of locations, including, for example, on fishing vessels, on motherships, in processing plants, dockside, and shoreside. However, that broad scope might not have been obvious to readers on the face of the proposed CE, and including the terms “fishing vessels” and “dockside” may have unintentionally suggested a narrower scope than what was intended. Therefore, we are removing those terms from the text of the CE and leaving the CE to broadly encompass data and biological samples collected as part of previously authorized commercial and/or recreational fishing activities. This change does not change the intended scope of the proposed CE, but only makes the scope of the CE clearer for users and the public. In addition, we have revised the first example under this CE to add “Collecting data from” before “observer coverage onboard commercial and recreational fishing vessels.” This change is being made to

make it more explicit that the example is referring only to the collection of data through previously authorized observer coverage, and nothing else related to observer coverage. This CE does not cover observer coverage requirements onboard commercial or recreational fishing vessels, which are generally addressed through fishery management plans or regulations for the fishery for which observer coverage is being implemented.

E8

NOAA made a minor modification to the text of E8 following internal discussions with subject matter experts to ensure that the scope of the CE correctly described the activities undertaken and funded by NOAA. The text of the revised CE is as follows: "Biological, chemical, food production, ecological, or toxicological research conducted in closed system mesocosm/aquaculture facilities that are conducted according to recommended protocols that provide containment and disposal of waste, chemicals, toxins, non-native species, etc., in compliance with established Federal and state regulatory guidelines, and best management practices."

#### **IV. NOAA Categorical Exclusions**

The following series of CEs includes actions that may be implemented either directly by NOAA or by the recipient

of a financial assistance award. The activities contemplated in the series of CEs have been evaluated and found not to have individual or cumulative significant impacts on the human environment, whether implemented by a grantee through a financial assistance award or directly implemented by NOAA. These CEs can be found as appendix E to the Companion Manual, along with illustrative examples for many of the categories.

*Trust Resource Management Actions*

[A1]. "An action that is a technical correction or a change to a fishery management action or regulation, which does not result in a substantial change in any of the following: fishing location, timing, effort, authorized gear types, or harvest levels."

[A2]. "Preparation of a recovery plan pursuant to section 4(f)(1) of the ESA. Such plans are advisory documents that provide consultative and technical assistance in recovery planning and do not implement site-specific or species-specific management actions. However, implementation of specific tasks identified in a recovery plan may require an EA or EIS depending on the nature of the action."

[A3.] "Temporary fishery closures or extensions of closures under Section 305(c)(3)(C) of the Magnuson-Stevens

Fishery Conservation and Management Act to ensure public health and safety.”

[A4.] “Minor updates to existing national marine sanctuary management plans. This CE does not apply to sanctuary designations, expansions, changes in terms of designation, or new sanctuary management plans.”

[A5.] “Updates to existing National Estuarine Research Reserve (NERR) management plans, provided that the update does not change NERR boundaries or add or significantly change allowable uses, uses requiring a permit, or restrictions on uses. This CE does not apply to new NERR management plans, or to the execution of any specific action subsequently funded to support the updated NERR management plan.”

[A6.] “Review and approval of changes to state coastal management programs under the Coastal Zone Management Act (CZMA) § 306(e) (16 U.S.C. § 1455(e)) and NOAA’s regulations at 15 C.F.R. Part 923.”

*Trust Resource Authorization and Permitting Actions*

[B1.] “Issuance of permits or permit modifications under section 10(a)(1)(A) of the ESA for take, import, or export of endangered species for scientific purposes or to enhance the propagation or survival of the affected

species, or in accordance with the requirements of an ESA section 4(d) regulation for threatened species.”

[B2.] “Issuance of permits or permit amendments under section 104 of the MMPA for take or import of marine mammals for scientific research, enhancement, commercial or educational photography or public display purposes; and issuance of Letters of Confirmation under the General Authorization for scientific research involving only Level B harassment.”

[B3.] “Issuance of, and amendments to, “low effect” Incidental Take Permits and their supporting “low effect” Habitat Conservation Plans under section 10(a)(1)(B) of the ESA.”

[B4.] “Issuance of incidental harassment authorizations under section 101(a)(5)(A) and (D) of the MMPA for the incidental, but not intentional, take by harassment of marine mammals during specified activities and for which no serious injury or mortality is anticipated.”

[B5.] “Issuance of, or amendments to, general permits for activities that are included in established permit categories at 15 C.F.R. pt. 922 and that meet the regulatory review criteria at 15 C.F.R. pt. 922, that limit any potential impacts so that the proposed activity will be

conducted in a manner compatible with the National Marine Sanctuaries Act's primary objective of resource protection."

[B6.] "Issuance of, or amendments to, special use permits for activities in a national marine sanctuary that are necessary to either establish conditions of access to and use of any sanctuary resource or promote public use and understanding of a sanctuary resource and must be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources in accordance with the National Marine Sanctuaries Act."

[B7.] "Issuance of or amendments to, authorizations for activities allowed by a valid federal, regional, state, local or tribal government approval (e.g., leases, permits and licenses) issued after the effective date of sanctuary designation or expansion, so long as such authorizations are based upon a consideration of the regulatory review criteria at 15 C.F.R. pt. 922, and will only result in negligible effects to sanctuary resources."

[B8.] "Issuance of, or amendments to certifications for pre-existing activities authorized by a valid federal, regional, state, local, or tribal government approval (e.g., leases, permits and licenses) or rights of subsistence use or access in existence on the date of the

designation or expansion of any national marine sanctuary where the Office of National Marine Sanctuaries issues terms and conditions that are either ministerial or prescribe avoidance, minimization, or mitigation measures designed to ensure negligible effects to sanctuary resources."

[B9.] "Issuance of, or amendments to Papahānaumokuākea Marine National Monument (as originally established by Presidential Proclamation 8031 and named Papahānaumokuākea Marine National Monument by Presidential Proclamation 8112) permits for activities that are included in established permit categories (50 C.F.R. pt. 404) and that meet the regulatory review criteria at (50 C.F.R. § 404.11), that limit any potential impacts so that the proposed activity will be conducted in a manner compatible with the monument's primary objective of resource protection."

[B10.] "Issuance of, or amendments to, Papahānaumokuākea Marine National Monument special ocean use permits for activities or use of the monument that are engaged in to generate revenue or profits for one or more of the persons associated with the activity or use, and do not destroy, cause the loss of, or injure monument resources."

[B11.] "Issuance of, or amendments to permits or authorizations for activities that are conducted within Marine National Monuments other than Papahānaumokuākea that are limited in scope so that the potential impacts of the proposed activities will be conducted in a manner compatible with a monument's primary objective of resource protection, and do not destroy, cause the loss of, or injure monument resources."

[B12.] "Issuance of Exempted Fishing Permits (EFPs), Scientific Research Permits (SRPs), and other permits for research that may impact species under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Atlantic Tunas Convention Act (ATCA). This CE is limited to permits that authorize activities that are limited in size, magnitude or duration with no potential for significant individual or cumulative impacts."

*Habitat Restoration Actions*

[C1.] "Habitat restoration actions, provided that such action: 1) transplants only organisms currently or formerly present at the site or in its immediate vicinity (if transplant is a component of the action); 2) does not require substantial placement of fill or dredging; 3) does not involve any removal of debris, excavation, or conditioning of soils unless such removal of debris,

excavation, or conditioning of soils is geographically limited to the impact area such that site conditions will not impede or negatively alter natural processes, is in compliance with all permit and disposal requirements, and will not impact critical aquifers or recharge areas; and 4) does not involve an added risk of human or environmental exposure to toxic or hazardous substances, pathogens, or radioactive materials.

Notes: If applicable, limitations and mitigation measures identified in the NOAA Restoration Center Programmatic Environmental Impact Statement for Habitat Restoration Actions must be followed. This CE includes, but is not limited to, response or restoration actions under CERLCA, OPA, or NMSA, if such actions help to restore an ecosystem, habitat, biotic community, or population of living resources to a determinable pre-impact condition prior to the incident leading to the response or restoration."

*Additional External Funding*

[D1.] "Financial activities for the following financial services: (1) Loans for purchase, refinancing, or reconstruction of fishing vessels and purchase or refinancing of individual fishing quota through the Fisheries Finance Program; (2) Deferred tax program

provided to fishermen to construct, reconstruct, or acquire fishing vessels through the Capital Construction Fund Program; and (3) Compensation to fishermen for economic and property losses caused by oil and gas obstructions on the U.S. Outer Continental Shelf under the Fishermen's Contingency Fund."

[D2.] "Provision of a grant, a contract or other financial assistance to a State, Fishery Management Council or Marine Fisheries Commission under 16 U.S.C §1881a(d)."  
*Research Actions*

[E1.] "Activities conducted in laboratories and facilities where research practices and safeguards prevent environmental impacts."

[E2.] "Social science projects and programs, including economic, political science, human geography, demography, and sociology studies, including information collection activities in support of studies."

[E3.] "Activities to collect aquatic, terrestrial, and atmospheric data in a non-destructive manner."

[E4.] "Activities that remotely survey or observe living resources in the field using non-invasive techniques, which have little to no potential to adversely affect the environment or interfere with organisms or habitat."

[E5.] "Activities involving invasive techniques or methods that are conducted for scientific purposes, when such activities are conducted in accordance with all applicable provisions of the Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, and Magnuson-Stevens Fishery Conservation and Management Act. Such activities will be limited to impacting living resources on a small scale relative to the size of their populations, and limited to methodologies and locations to ensure that there are no long-term adverse ecosystem impacts."

[E6.] "Research that involves the development and testing of new and modified fishing gear and technology in order to reduce adverse effects from fishing gear on non-target species, and is limited in size, magnitude, or duration with no potential for significant individual or cumulative impacts."

[E7.] "Collection of data and biological samples as part of previously authorized commercial and/or recreational fishing activities."

[E8.] "Biological, chemical, food production, ecological, or toxicological research conducted in closed system mesocosm/aquaculture facilities that are conducted according to recommended protocols that provide containment

and disposal of waste, chemicals, toxins, non-native species, etc., in compliance with established Federal and state regulatory guidelines, and best management practices.”

*Real and Personal Property Improvement, Maintenance, and Construction Actions*

[F1.] “Siting, construction (or modification), and operation of support buildings and support structures (including, but not limited to, trailers and prefabricated buildings) within or contiguous to an already developed area (where active utilities and currently used roads are readily accessible).”

[F2.] “In-kind replacement of personal property and fixtures and other components of real property when such activities do not result in a substantial change in the existing construction footprint. In-kind replacement includes installation of new components to replace outmoded components if the replacement does not result in a substantial change to the design capacity, or function of the facility.”

[F3.] “(a) Routine repair, maintenance, and improvement of real and personal property, where such activities are required to maintain and preserve buildings,

structures, infrastructures, vehicles, and equipment in a condition suitable to be used for its designed purpose.

(b) New construction, expansion and/or improvement of facilities where all of the following conditions are met:

(1) The site is in a developed area and/or a previously disturbed site;

(2) The structure and proposed use are compatible with applicable Federal, Tribal, State, and local planning and zoning standards and consistent with Federally approved State coastal management programs and the National Historic Preservation Act;

(3) The proposed use will not substantially increase the number of motor vehicles, marine vessels, or aircraft at the facility or in the area;

(4) The site and scale of construction or improvement are consistent with those of existing, adjacent, or nearby buildings;

(5) The construction or improvement will not result in uses that exceed existing infrastructure capacities (e.g., electrical, roads, sewer, water, parking);

(6) The construction or improvement will not result in operational uses that adversely affect the surrounding community (e.g., noise); and

(7) The community-valued view sheds are not adversely affected.

(c) Installation, repair, maintenance, and enhancement of public access facilities and infrastructure, if the activity:

(1) Is small-scale and nondestructive; and

(2) Is consistent with applicable right-of-way conditions and approved land use plans.”

[F4]. “Routine groundskeeping and landscaping activities where ground disturbance is limited to previously disturbed areas (e.g., previously filled paved, or cleared areas).”

[F5.] “Installation, operation, maintenance, improvements, repair, upgrade, removal, and/or replacement of instruments or instrument systems in or on:

1. an existing structure or object (e.g., tower, antenna, building, pier, buoy, terrestrial vehicle, or bridge) or

2. on previously disturbed (e.g., filled, paved, or cleared) ground, or

3. on undisturbed ground, if the equipment installation, operation, and removal will require no or minimal ground disturbance.”

Microwave/radio communications towers and antennas must be limited to 200 feet in height without guy wires. NOAA proposes a new CE to cover activities of installing, operating, repairing, maintaining, upgrading, removing and/or replacing instruments or instrument systems in or on an existing structure or object, or on previously disturbed ground or on undisturbed ground that involve either no or minimal ground disturbance.

[F6.] "The determination that real property is excess to the needs of the Agency, when the real property is exceeded in conformity with General Services Administration procedures or is legislatively authorized to be exceeded."

[F7.] "The disposal, demolition or removal of real property and related improvements, buildings and structures, including associated site restoration, and the disposal of personal property and debris in accordance with all applicable agency procedures and legal requirements."

*Operational Actions*

[G1.] "Routine administrative actions such as (1) program planning, direction and evaluation, (2) administrative tasks, services and support including personnel and fiscal management, advisory services, document and policy preparation, and records management, and (3) development, establishment, and revisions to

documents including, but not limited to interagency agreements, memoranda of understanding, memoranda of agreement, cooperative agreements, and university agreements. This CE does not include any associated activities proposed in these documents beyond the administrative task of creating and establishing the document. Actions subsequently funded by or undertaken pursuant to the approved documents may require additional NEPA review at the time those actions are proposed.”

[G2.] “Routine movement of mobile assets, such as vessels and aircraft, for homeport reassignments or repair/overhaul, where no new support facilities are required.”

[G3.] “Topographic, bathymetric, land use and land cover, geological, hydrologic mapping, charting, and surveying services that do not involve major surface or subsurface land disturbance and involve no permanent physical, chemical, or biological change to the environment.”

[G4.] “Basic environmental services and monitoring, such as weather observations, communications, analyses, and predictions; environmental satellite operations and services; digital and physical environmental data and information services; air and water quality observations

and analysis, and IT operations. All such activities must be conducted within existing facilities.”

[G5.] “Enforcement operations conducted under legislative mandate such as the MSA, ESA, MMPA, the Lacey Act Amendments of 1981 (Lacey), and/or the National Marine Sanctuaries Act. This does not include bringing judicial or administrative civil or criminal enforcement actions which are outside the scope of NEPA in accordance with 40 CFR 1508.18(a).”

[G6.] “Actions that change the NEXRAD radar coverage patterns that do not lower the lowest scan elevation and do not result in direct scanning of previously non-scanned terrain by the NEXRAD main beam.”

[G7.] “Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis.”

[G8.] “Activities that are educational, informational, or advisory to other agencies, public and private entities, visitors, individuals, or the general public, including training exercises and simulations.”

[G9.] "Actions taken to identify, determine sources of, assess, prevent, reduce, remove, dispose, or recycle marine debris when removal is undertaken in a non-destructive manner and actions are in accordance with Federal, State, and local laws and regulations for environmental protection, and where all relevant regulatory consultation, and/or permit requirements have been satisfied."

*Acquisition and Real Property Actions*

[H1.] "Procurement of labor, equipment, materials, data and software needed to execute mission requirements in accordance with applicable procurement regulations, executive orders, and policies. This includes, but is not limited to, procurement of mobile and portable equipment that is stored in existing structures or facilities."

[H2.] "Procurement of space by purchase or lease of or within an existing facility or structure in accordance with applicable procurement regulations, executive orders, and policies when there is no change in the general type of use, no new construction of buildings or utilities, and minimal change in design from the previous occupancy level."

[H3.] "Outgranting of government-controlled property in accordance with applicable regulations, executive

orders, and policies to a Federal entity for any purpose consistent with the existing land or facility use or to a non-Federal entity, when the use will remain substantially the same.”

[H4.] “Acquisition of real property (including fee simple estates, leaseholds, and easements) that is not acquired through condemnation of a lease interest, and will not result in significant change in use and does not involve construction or modification.”

[H5.] “Granting easements or rights of entry to use NOAA controlled property for activities that, if conducted by NOAA, could be categorically excluded. Grants of easements or rights-of-way for the use of NOAA controlled real property complementing the use of existing rights-of-way or real property use for use by vehicles (not to include significant increases in vehicle loading); electrical, telephone, and other transmission and communication lines; water, wastewater, stormwater, and irrigation pipelines, pumping stations, and facilities; and similar utility and transportation uses.”

[H6.] “Relocation of employees into existing Federally-owned or commercially leased office space within the same metropolitan area not involving a substantial

increase in the number of motor or other vehicles at a facility.”

[H7.] “Transferring real property to a non-Federal entity, an agency other than GSA, as well as to States, local agencies and Indian Tribes, including return of public domain lands to the Department of the Interior.”

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