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August 11, 2008

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

Re: RIR 0648-AV53

Dear Mr. Risenhoover,

On behalf of the 216 accredited member institutions of the Association of Zoos and Aquariums (AZA) I respectfully submit the following comments on the National Marine Fisheries Service's (NMFS) proposed NEPA regulations that were published in the Federal Register on May 14<sup>th</sup>, 2008 (73 Fed. Reg. 27998).

AZA and its member institutions are proud to work with Congress, the Federal agencies, conservation organizations, the private sector and the general public to conserve our wildlife heritage. With 160 million visitors to 218 accredited zoos and aquariums, AZA's focus on connecting people and animals provides a critical link to helping wildlife in their native habitats. AZA members share the natural world with millions every year and share important conservation messages with citizens—of all ages—who come to see animals and nature that they probably would never have the opportunity to see in any other venue except on a zoo or aquarium visit. Our ability to legally obtain and display animals under federal regulatory regimes (including NMFS) is essential to carrying out the conservation and education missions of our members.

AZA and its members have serious concerns that the NMFS proposed changes would significantly weaken the integrity of the National Environmental Policy Act (NEPA), especially as it impacts potential users of the resource—such as zoos and aquariums. Accordingly, we recommend that you re-work this proposal accordingly.

NEPA, the strong foundation of US environmental law, ensures that federal agencies publicly disclose their actions that may significantly affect our environment and natural resources. NEPA also requires agencies to examine the impacts of those actions, consider alternatives to those actions, and obtain public comment before deciding on what action to take. Full NEPA compliance is essential to ensure that all federal agencies conduct a comprehensive review of

the significant environmental impacts of their decisions, and to guarantee that affected parties have an opportunity to fully participate in those decisions.

This NMFS proposal appears to significantly modify those essential NEPA core principles and provisions. As members of the environmental and NMFS-regulated community, AZA and its accredited institutions are concerned about the broad implications this rule could have on NEPA and the precedent it could establish. Specifically, we have the following concerns with the proposed rule:

- **Ability to Participate in Decisions is Limited:** NEPA ensures that affected parties will have an opportunity to participate and shape federal decisions that will have a significant effect on the environment, human health, and the ability to conduct their businesses. However, the NMFS proposed rule would curtail the ability for affected parties to comment. The proposed rule would authorize NMFS, on its own authority, to reduce the comment period (when certain, broadly defined conditions are met) from the minimum 45 days that the Council on Environmental Quality (CEQ) requires to as little as 14 days.

CEQ's NEPA regulations provide for two mechanisms through which agencies can shorten the public comment time periods and expedite environmental review if there are compelling reasons. These exceptions can be utilized when an emergency exists or there is a compelling national policy issue. Under the existing regulations, the lead agency must consult with either CEQ or the Environmental Protection Agency (EPA) before reducing the public comment time periods, providing a vital independent check and balance. The NMFS proposal appears to eliminate this critical consultation requirement by allowing NMFS to unilaterally decide that a shortening of the public comment period should be allowed, without any guidance/oversight from CEQ or EPA.

As a practical matter, reducing the public comment period to 14 days significantly limits affected parties' ability to participate in NMFS decision-making. This short time period does not grant these parties a realistic window of opportunity to review and prepare comments on proposals. In practice, allowing a federal agency to shorten the time period to 14 days when there is neither an emergency nor a compelling national policy concern, will likely shut the public or, more importantly, potential users of the resource out from participating in that agency's decisions, in contravention of the basic premise of NEPA.

We urge you to withdraw this provision and adhere to the current CEQ regulations that maintain a minimum 45 day public comment period unless exigent conditions exist. Removing this vital component of the NEPA process is a disservice to all parties involved since meaningful public and user involvement is essential to developing informed decisions.

- **Improper Delegation of Authority:** CEQ regulations plainly state that an EIS should be prepared by the lead agency, a cooperating agency when appropriate, or a contractor selected by the lead agency. In clear violation of those regulations, the proposed rule allows a non-federal advisory body to select a contractor to prepare environmental analysis documents. This establishes a dangerous precedent that could create a potential for abuse. Only the lead agency, or when appropriate, a cooperating agency, should be permitted to select a contractor to prepare an Environmental Impact Statement (EIS).

Further, the proposed rule contains various provisions that would allow a non-federal advisory body to perform essential NEPA tasks, such as deciding which alternatives should be chosen and what should be included in the scoping process. The rule must clearly articulate that NMFS, as the federal agency, has the ultimate decision-making authority.

AZA believes the proposed rule amends the basic structure of the NEPA process and damages the integrity of NEPA's mandate for environmental review and critical involvement from affected parties. We urge NMFS to withdraw this proposal and to redraft a new rule that will integrate the NEPA process into critical NMFS resource management decisions, while ensuring that NEPA is not weakened.

In closing, thank you for the opportunity to comment on this very important proposal. As NMFS continues to formulate future policies to address fisheries and marine mammal management issues, I strongly encourage the agency to call upon the informational resources and expertise of the AZA and its member institutions as a critical source of public comment. The professional zoo and aquarium community continues to view ourselves as important partners with NMFS in our ability to speak to millions of visitors annually about marine conservation needs and how fishery management is one of many tools that help protect the ocean's resources.

Sincerely,

Steve Olson  
Vice President, Government Affairs