



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

August 12, 2008

Re: Revisions to National Environmental Policy Act Procedures under the Magnuson-Stevens Act. Comments on RIR 0648-AV53. Proposed Rule 73 Federal Register 27998 (May 14, 2008)

Submitted via email and U.S. Mail: NEPAprocedures@noaa.gov

Dear Mr. Risenhoover:

Environment America is the national office representing hundreds of thousands of citizens in twenty-four statewide, grassroots environmental groups around the U.S. advocating for clean air, clean water, open spaces and healthy oceans. Of these twenty-four states, sixteen are coastal state partners of Environment America. They are: Washington, Oregon, California, Texas, Florida, Georgia, North Carolina, Virginia, Maryland, New Jersey, Connecticut, Rhode Island, Massachusetts, New Hampshire and Maine. All these state organizations join Environment America in condemning this latest move to weaken ecosystem protections by undermining environmental review rules as they apply to fishery management decisions. There are serious flaws in these proposals. They are actually a giant step backwards from current practice in terms of protections for our sensitive oceans. They should be sent back to the drawing boards.

**The Importance of a Strong National Environmental Policy Act Process**

The current National Environmental Policy Act (NEPA) process has resulted in some of the most important environmental improvements in fisheries management in the last two decades. Examples abound of important advances occurring because NEPA was used in decision making. Hundreds of thousands of square miles off the Aleutian Islands have been protected from destructive bottom trawling because of NEPA; groundfish

populations off the West Coast and New England are being rebuilt faster and smarter because of NEPA; and Western Pacific sea turtles and sea birds are being protected today from ending up drowned at the end of longline hooks because of the NEPA process. NEPA is not a theoretical exercise for these animals; for many it means life.

For three decades Environment America and its state affiliated organizations like Environment California, Environment Maryland, and Environment Texas have encouraged members and citizens around the country to express their opinions about a variety of environmental issues before Congress and on federal and state agency rule makings. We have organized the public to comment on such issues as protecting roadless areas in our forests to stopping poorly conceived national fishing standards such as the attempt to revise NS1 several years ago.

Underlying many of these campaigns is full public participation in a robust environmental review process for preparing Environmental Impact Statements on major federal actions. But the way that the National Marine Fisheries Service (NMFS) has recently proposed to comply with NEPA in fishery management decisions weakens this process and would roll back protections that have been in place for decades. Our ocean and its magnificent sea life such as whales, dolphins, sea turtles, fish and sea birds deserve no less than the full protection that NEPA provides.

### **Specific Problems with Proposals**

Specifically, we are concerned about these aspects of the proposal:

1) *Throws out 30 years of accepted NEPA practice and resolved issues in favor of a new untested process and document.* NMFS is proposing to create a whole new Environmental Impact Statement-like process it calls the Integrated Fishery and Environmental Management Statement. This would throw out 30 years of accepted NEPA practice and court opinions for a new untested, and importantly, un-litigated process and document. This will not streamline environmental reviews; rather it is likely to lead to more litigation and delay as different groups attempt to define what is meant by the new rules. NMFS simply should comply with time-tested Environmental Impact Statement procedures and documentation standards.

2) *Limits public comments on alternatives proposed in later stages.* The proposed process limits public comments in later stages to only those issues raised in the initial comment period even though NMFS and the regional fishery management councils can examine and adopt last-minute alternatives that have never been reviewed or assessed in the NEPA process. We support creative solutions to fishery management problems, but these must be vetted and commented on by every interested party regardless of when they are proposed.

3) *Allows fishery managers to reduce the time periods for public comment well below the current required minimums.* At its discretion, NMFS can cut the length of any public

comment period from 45 days to as little as 14 days. This is a very short period of time for the public and fishermen to comment on complex issues.

4) *Enables fishery managers to circumvent environmental review.* Broad ranges of fishery management decisions can be excluded from any significant NEPA analysis by declaring them to be ‘framework decisions’ even if they will have significant environmental impacts.

5) *Can the new process produce decisions that favor ecosystem balance and resilience over single species management?* At a time when forage fish like herring, menhaden, sardines, pollock, and pacific whiting are managed as single species rather than as critical links in a food web that sustains other ocean populations, it is unclear to us that the new NEPA process will produce decisions on catch limits and methods that recognize other species besides the one being targeted in the fishery management plan. We believe that it is critical that fishery management decisions begin to be made as if the ecosystem exists. These proposals do not ensure that outcome.

### **Summary**

The Bush administration has wisely chosen to make ocean preservation and reform of fishery management one of its signature environmental priorities. We applaud that. Unfortunately, the problems of our oceans are well documented and widespread. Overfishing, persistent toxic pollution, over-enrichment and dead zones, habitat destruction underwater and on land, marine debris and global warming and acidification are just the major problems. Various fish, forage fish, marine mammals like whales, dolphins and sea lions, sea turtles, and sea birds are just some of the populations that are under stress as a result.

I am old enough to remember when the National Environmental Policy Act was enacted. It came at the very beginning of my environmental career. I was a senior in high school organizing recycling events and stream cleanups, wondering whether the grownups and those in power would save our planet from human excess. We viewed NEPA then as a huge step forward for: (1) getting federal agencies to recognize and assess the consequences of their decisions on ecosystems; and (2) getting federal agencies to listen to the public about those decisions and impacts.

Now, I am one of those grownups and I find it ironic that we are skirmishing over implementation of these basic principles when for more than 30 years this law has helped guide our way in making informed, rational tradeoffs between the natural environment and the human inhabitants of that environment. The law promises that those who don’t have a voice be represented at the decision making table: the fish, the marine mammals, the sea turtles and sea birds. Your proposed revisions will not allow those voices mediated through citizens and fishermen to be heard at the table.

We must not go backwards to the old way of doing things that got us into trouble with so many fisheries. We know how that works out. Too many of our fish stocks are overfished or experiencing overfishing or subjected to bycatch rates that are too high. Too much of our marine habitat is compromised by destructive fishing practices. Our oceans need us to be bold and resolute in their protection.

Sincerely,

Michael Gravitz, Oceans Advocate  
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