

This comment was submitted by the Honorable Nick J. Rahall, II, Chairman of the Committee on Natural Resources, U.S. House of Representatives.

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**U.S. House of Representatives**  
**Committee on Natural Resources**  
**Washington, DC 20515**

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**Dr. William Hogarth**  
**Assistant Administrator for Fisheries**  
**National Oceanic and Atmospheric Administration**  
**1315 East-West Highway**  
**Silver Spring, MD 20910**

Dear Dr. Hogarth:

I am writing to offer my comments regarding the National Marine Fisheries Service's (NMFS) ongoing process to update its procedures for compliance with the National Environmental Policy Act (NEPA). NEPA is an important tool to educate and engage the public in the long-term sustainability of fisheries and oceans that the Magnuson-Stevens Fishery Conservation and Management Act (MSA) does not duplicate. As the committee of jurisdiction over NEPA, we closely follow both legislative and administrative actions to ensure their compliance with the intent and letter of the law.

As you are aware, the changes to the MSA passed by Congress last year directed the Agency to "revise and update agency procedures for compliance with the National Environmental Policy Act." This language does not exempt the Agency or the Regional Fishery Management Councils (Councils) from complying with the requirements of NEPA or the regulations of the Council on Environmental Quality (CEQ) that implement NEPA. Nor does it require or anticipate any changes to CEQ regulations to accommodate these revisions. The Senate Report accompanying the legislation affirms that point, stating that "[t]he intent is not to exempt the Magnuson-Stevens Act from NEPA or any of its substantive environmental protections, including those in existing regulation."

In fact, CEQ regulations already require agencies to "adopt procedures to supplement" NEPA regulations, but those agency procedures must "confine themselves to implementing procedures." Moreover, Federal agencies often go through the process of updating their implementing regulations or procedures for complying with NEPA. The amendments to MSA simply set the process in motion.

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Unique to this situation is the requirement that the Agency consult with CEQ, the Councils and the general public in the development of their revised regulations.

With all of this in mind, I offer the following additional comments in response to some of the questions posed by the Agency regarding the process for revising your NEPA compliance regulations.

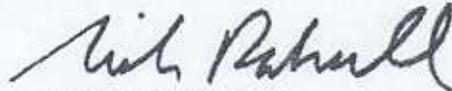
- With respect to improving efficiencies in the NEPA process, the existing CEQ regulations provide a variety of options that could improve efficiencies in the NEPA process for fisheries management. For instance, the implementation of programmatic Environmental Impact Statements and appropriate tiering for lower impact actions could make the NEPA process more efficient. It is my understanding that the Agency's NEPA policy guidance also provides many options to improve the efficiencies in the NEPA compliance process. I urge the Agency to use their resources to work with the Councils to utilize those existing authorities fully.
- The CEQ regulations and three decades of case law make clear the requirements for ensuring that analyses are conducted on an appropriate scale for various types of fishery management action and that the level of analysis is commensurate with the scope, duration and effect of the action. The Agency should not attempt to re-interpret these regulations, as it would only serve to confuse and slow the NEPA process for fisheries managers—the opposite of what was intended by the amendments to MSA.
- The Agency does not have the authority to eliminate the distinction between an environmental assessment and an environmental impact statement. Legal requirements under NEPA turn on this distinction and are fundamental to the process. Eliminating this distinction for fisheries management actions would undermine the purposes of NEPA, and could possibly lead to increased litigation, further slowing the process the Councils and the Agency are seeking to make more efficient.
- There is a long line of NEPA case law related to the question of defining a "reasonable range of alternatives." Again, the Agency should not attempt to re-interpret this terminology as doing so will only further confuse and bog down a process that fishery managers are seeking to make more efficient.
- With respect to developing a more effective scoping process, Council meetings and Council agenda notices are not sufficient to ensure full participation from the public nor to serve as a traditional Notice of Intent to prepare an environmental assessment. NMFS should improve scoping by ensuring that public hearings are held in locations that are accessible to the general public and that preliminary alternatives are not selected until the public is given the opportunity to provide input.

- Agency guidance with respect to emergency actions and NEPA compliance already exist. It is my understanding that Councils have typically not followed that guidance, and this has resulted in delayed actions. Again, I urge you to work to clarify current agency guidance with the Councils.
- CEQ regulations require at least 45 days for public comment on an action. The Agency should not reduce that comment period as it would be inconsistent with CEQ regulations and decrease the opportunity for public involvement counter to the objectives of the law.

Thank you for considering my comments. I look forward to working with the Agency to ensure the full implementation of NEPA in the fisheries management process in an efficient and effective manner.

With warm regards, I am

Sincerely,



NICK J. RAHALL, II  
Chairman  
Committee on Natural Resources