





The following comments were submitted by the New England Aquarium.

From [REDACTED]
Sent Tuesday, April 17, 2007 4:20 pm
To NEPAprocedures@noaa.gov
Cc
Bcc
Subject NEPA Comments for MSRA

April 17, 2007

To Whom It May Concern:

We are writing to express our view that the application of the National Environmental Policy Act (NEPA) by NOAA Fisheries to permits for scientific research has impeded the development of technologies that would avoid the kind of environmental damage the Act was created to prevent in the first place. At immediate risk is the extinction of endangered marine wildlife that is prone to excessive levels of fisheries bycatch. Specifically, researchers within the Consortium for Wildlife Bycatch Reduction (New England Aquarium, Duke University, Maine Lobstermen Association, Blue Water Fishermen's Association, and the University of New Hampshire) have had permits to conduct gear modification experiments held up for over five years by NEPA requirements. In contrast, the permits to conduct such experiments in the past were typically acquired within one year by working through processes established under the Marine Mammal Protection Act and the Endangered Species Act. The current process undermines the conservation of species threatened by fisheries bycatch including large whales, small cetaceans, sea turtles, seabirds, pinnipeds, and sharks. Furthermore, this situation has unnecessarily stalled the development of more fishery-friendly wildlife bycatch reduction technologies that would greatly benefit otherwise sustainable fisheries.

The scientific community and fishing industry have demonstrated that close cooperation can yield highly effective and practical bycatch reduction solutions, particularly those involving gear technology and methodology. Such solutions are often readily exportable to fisheries worldwide, especially if pursued in cooperation with scientists and fishing industry experts from other nations. In many cases, the wildlife bycatch mortality associated with non-US fisheries far exceeds that associated with US fisheries. US scientists and fishermen are uniquely poised to provide the necessary leadership for developing such global solutions to global wildlife bycatch problems, but find themselves mired in NEPA bureaucracy.

Part of the problem is the language of NEPA NOAA Administrative Order (NAO) 216-6, Section 5.05c. makes preparation of an EA or EIS automatic in almost all cases, because it requires that these be prepared for a research proposal that meets any of the following criteria:

- (1) involves a geographic area with unique characteristics;
- (2) is the subject of public controversy based on potential environmental consequences;
- (3) involves uncertain environmental impacts or unique or unknown risks;
- (4) establishes a precedent or decision in principle about future proposals;
- (5) may result in cumulatively significant impacts; or
- (6) may have any adverse effects upon endangered or threatened marine species or their habitats.

Criterion 1 is all encompassing – all geographic areas are unique, and therefore, all activities would require an EA or EIS. Likewise, number 4 is meaningless – nearly every research study is new, and therefore sets a precedent, and therefore all scientific research actions would require an EIS. Criteria 2, 3, and 6 are also anti-science, because the whole point of scientific research is to find out things we

don't know. So, since we don't know them, there *may be* potential environmental consequences, and there *may be* uncertain environmental impacts, and there *may be* adverse effects upon endangered species or habitats. Therefore, the very act of doing scientific research triggers a requirement for an EA or EIS under this Order, which in our experience results in the delay of critical research for years. In the meantime, whatever conservation challenges we have been trying to solve (e.g., right whales dying in fishing gear) remain unattended, with animals perishing at rates that may very well lead to their extinction. This was not the intent of NEPA, but it is currently a reality.

We urge you to identify and advance an expedient solution to correct this problem. One suggestion is to provide a statutory exemption from NEPA requirements for research permits and activities conducted pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. We understand such an exemption would be accompanied by provisions that should incorporate the important, relevant concepts of NEPA into the exemptions.

Another suggestion is to clarify that the exception for scientific research in the current definition of "fishing" under the Magnuson-Stevens Act is intended to include important bycatch reduction research activities, particularly research on fishing gear technology and methodologies conducted in cooperation with the fishing industry on their vessels. In any case, the situation is dire and at stake is the health and survival of numerous marine wildlife populations as well as the viability of many important fisheries in the US and worldwide.

Alternatively, the NOAA Administrative Order (NAO) 216-6, Section 5.05c with regard to NEPA requirements could be re-written to exclude conservation research from the anti-science and other provisions that make critical conservation research nearly impossible in the United States. At the very least, there needs to be clarification of this administrative order that matches the intent of NEPA, not to tie up scientists in unanswerable bureaucratic questions, but to promote sustainable fisheries practices and conservation.

We appreciate your consideration of our concerns and sincerely hope for a timely resolution of this problem. If you have any questions and wish to discuss this matter further, please contact us.

Respectfully yours,


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