

The following comments were submitted by the Pacific Marine Conservation Council.



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Port Townsend, WA  
Fisherman

[REDACTED]  
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Marine Scientist

[REDACTED]  
Portland, OR  
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Fisherman & Reindeer

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Environmental Activist

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Carmel, CA  
Marine Scientist

STAFF

April 20, 2007

Dr. William T. Hogarth  
Assistant Administrator for Fisheries  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910  
NEPAprocedures@noaa.gov

Re: Magnuson-Stevens Fishery Conservation and Management Reauthorization Act  
Environmental Review Procedures (Request for Comments)

Dear Dr. Hogarth:

The Pacific Marine Conservation Council (PMCC) would like to enter our comments into the record with regard to the environmental review process in the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act. PMCC is a nonprofit, public benefit corporation, with offices in Astoria, Oregon and Port Townsend, Washington. Our organization has a diverse Board of Directors representing commercial and sport fishermen, marine scientists and other constituent groups, all dedicated to sustaining healthy and diverse marine ecosystems. PMCC works to link science, policy and communities to benefit the marine environment and the people and livelihoods connected to the sea.

PMCC considers the environmental review and public involvement features of the National Environmental Policy Act (NEPA) to be exceptionally important components of fishery management. We have read additional comments into the record at the Seattle listening session. We are members of the Marine Fish Conservation Network (MFCN) and support the comments submitted by MFCN addressing the ten topics described in NOAA Fisheries' Request for Comments. The primary purpose of this letter is to summarize our concerns regarding the 'Revised Procedure' submitted by the Council Coordination Committee. To some degree we err on the side of redundancy, because we are also signators to a more detailed letter on this subject submitted by Earthjustice et al.

In January 2007, the President signed the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act. This law took several important steps forward to

*Linking science, policy, and community to benefit the marine environment, and the people and livelihoods connected to the sea*



protect our oceans and marine fish populations while ensuring continued fishing opportunities, including strengthening the role of science in fisheries management and seeking to end overfishing.

The reauthorized Magnuson-Steven Act (MSA) also directed your agency to modify its environmental review procedures to ensure compliance with all existing legal requirements. To ensure that environmental impacts are clearly spelled out and the public has an opportunity to comment and have its comments responded to, your agency should develop procedures that fully comply with the legal requirements of NEPA. As a publicly-owned resource, it is vital that America's oceans receive careful environmental review with respect to all federal fisheries management actions, including clear opportunities for the public to comment.

As you are aware, on February 28, 2007 the Regional Fishery Management Councils' Council Coordination Committee (CCC - a body composed of the executive directors and chairs of the eight regional fishery management councils) submitted its "Proposed 'Revised Procedure' for MSA/NEPA Compliance" ("CCC proposal"). This proposal snubs the clear intent of Congress, violates the reauthorized MSA, and ignores the requirements of the National Environmental Policy Act. Accordingly, it should be rejected.

The CCC proposal disregards the clear intent of Congress by creating an improper delegation of authority to an advisory body. Congress vested your agency with the authority to make decisions with regard to marine fisheries management, including conducting environmental reviews of such management. The Regional Councils are advisory bodies to your agency and do not possess the authority to conduct the environmental reviews required by NEPA, nor should they. In addition, this proposal attempts to resurrect a "functional equivalence" argument set forth in legislation sponsored by former Representative Richard Pombo (R-CA). That "functional equivalence" proposal failed when Congress rejected that legislation and instead required new MSA/NEPA procedures to fully comply with NEPA and with current CEQ regulations.

The CCC proposal also flouts Congress by stating that actions taken under the MSA "need not necessarily comply with existing CEQ regulations,"<sup>1</sup> and suggesting that "new CEQ regulations may need to be developed."<sup>2</sup> The MSA states explicitly that revised procedures are to be written "for compliance with" NEPA. Such compliance implicitly includes compliance with CEQ regulations.

In addition, legislative history makes clear that Congress did not intend for the new procedures to affect existing CEQ regulations, as seen in the Senate Report's statement 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."<sup>3</sup> NOAA may consult with CEQ in the development of revised environmental review procedures; however, the amendments to the MSA do not provide the direction or authority for amendment of the CEQ regulations.

Further, this proposal ignores the requirements of NEPA by undermining the public's ability to participate effectively in decisions about how public marine resources are managed, and would unacceptably narrow environmental review of fishery management actions. For the reasons stated above, this proposal should be firmly rejected.

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<sup>1</sup> CCC Proposal, p.1.

<sup>2</sup> Id.

<sup>3</sup> Senate Report 109-229, April 4, 2006 at 8 (emphasis added).

In order for the reauthorized MSA to fully comply with NEPA as it pledges to do, your agency (not the advisory Regional Councils) must promulgate procedures that do not compromise the fundamental basis of NEPA so that fisheries management is moved forward, not backward. NEPA's promise of project review and public involvement must be safeguarded, not sacrificed in the name of speed and convenience. By requiring the decision-maker and the public to evaluate an array of alternatives and their consequences, NEPA saves time and money in the long run by reducing controversy, building consensus, and ensuring that projects, including fishery management plans, are done right the first time. In the realm of marine fisheries management, this forward-looking statute is vital to ensuring the presence of sustainable and diverse populations of fish and other marine life for future generations, and its environmental review process must therefore be kept intact.

Thank you for considering these comments.

Sincerely,



Pacific Marine Conservation Council