

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

September 11, 2020

Dr. Neil Jacobs

Acting Under Secretary of Commerce for Oceans and Atmosphere  
National Oceanic and Atmospheric Administration  
1401 Constitution Avenue N.W., Room 5128  
Washington, DC 20230

Mr. Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs  
National Marine Fisheries Service  
1315 East-West Highway, 14th Floor  
Silver Spring, MD 20910

Dear Dr. Jacobs and Mr. Rauch:

We write to express our grave concern about the undermining of the National Environmental Policy Act (NEPA) procedures driven by the Council on Environmental Quality's (CEQ) final rule revising its NEPA regulations, and the recent executive order for economic recovery.<sup>1</sup> Among other things, NEPA protects the health of marine ecosystems and promotes sustainable fisheries. It is essential for the National Oceanic and Atmospheric Administration (NOAA), the National Marine Fisheries Service (NMFS), the regional fishery management councils (Councils), and other agencies approving marine and coastal projects to maintain the protections required by NEPA.

NEPA safeguards ocean resources for future generations. Agencies must comply with NEPA prior to approving or amending a fishery management plan, allowing the development of new offshore oil and gas leases, or greenlighting Navy training exercises affecting marine life. NEPA involves key stakeholders—including commercial and recreational fishermen, seafood processors, public interest organizations, Tribes, and local governments—in decisions about ocean resources. Furthermore, NEPA review requires input from other agencies on how actions affect their regulatory responsibilities over fisheries, oil and gas development, aquaculture, hydropower, and offshore wind projects.

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<sup>1</sup> Council on Environmental Quality, Final Rule, *Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act*, 85 Fed. Reg. 43,304 (July 16, 2020); Executive Order 13,927, *Accelerating the Nation's Economic Recovery From the COVID-19 Emergency by Expediting Infrastructure Investments and Other Activities*, 85 Fed. Reg. 35,165 (June 4, 2020).

The new CEQ procedures to implement NEPA undermine the review process and pose serious risks to fisheries and the communities and economies they support. New procedures limit the federal actions to which NEPA applies, allowing projects to proceed without analysis of their cumulative, indirect, and “reasonably foreseeable” effects on fishery resources. New CEQ regulations restrict alternatives that must be considered in environmental reviews, and effectively weaken the ability of NMFS and the Councils to protect fishery resources from non-fishing threats and climate change. They also allow Councils and other responsible agencies to substitute skimpy analyses for those required by NEPA and increase potential conflicts of interest by allowing industry actors to influence environmental review documents.

The new NEPA implementing procedures weaken core components of the environmental impact statement process and invite agencies to substitute other, non-NEPA review processes that “may satisfy” CEQ’s new, lax interpretation of what NEPA requires.<sup>2</sup> Such substitution is inadequate for fishery management.

NEPA and the Magnuson-Stevens Fishery Conservation and Management Act (MSA) require complementary but distinct processes for effective fishery management. The MSA requires relatively little review prior to action with strong emphasis on stakeholders and group decision-making. In contrast, the NEPA process provides a comprehensive environmental review through an interdisciplinary approach and facilitates informed agency actions to minimize adverse environmental impacts. These two statutory processes are not functionally equivalent, with little substantive overlap. Congress never intended for procedural elements of the MSA to substitute for NEPA requirements. The 2006 MSA reauthorization made clear that Congress viewed the NEPA and MSA processes as distinct with no intention of exempting fishery management from NEPA compliance, nor supplanting with MSA-based review procedures.<sup>3</sup>

CEQ’s new NEPA procedures and the deregulatory executive order undermine the effectiveness of NEPA and MSA by weakening their respective review processes, exposing our fisheries to unnecessary and unacceptable risk. We will not allow this politically-driven deregulatory agenda to erode one of our nation’s key environmental protection laws. Numerous lawsuits have already been filed over CEQ’s new regulations, challenging the Administration’s arbitrary and unreasonable interpretation of the statute. If anything, this provides another reason for NMFS to stay the course and not expend resources attempting to overhaul its recently finalized NEPA procedures.

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<sup>2</sup> *Id.* at 43,372.

<sup>3</sup> *See* Pub. L. No. 109-479, § 107, 120 Stat. 3575, 3594 (2007); *see also* S. Rep. No. 109-229, at 8 (Apr. 4, 2006) (stating an intent to weave together the distinct requirements of NEPA and the MSA into a single “consistent, timely, and predictable regulatory process for fishery management decisions”).

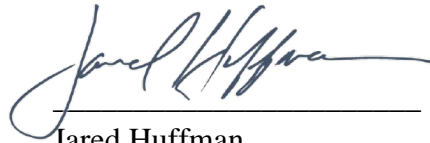
We urge NMFS to maintain its NEPA procedures applicable to MSA fishery management, and not engage in the Administration's reckless attempt to undermine environmental protection.

Sincerely,



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Raúl M. Grijalva  
Chair  
Committee on Natural Resources



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Jared Huffman  
Chair  
Subcommittee on Water, Oceans, and  
Wildlife