New England
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Alan Risenhoover
Director, Office of Sustainable Fisheries
National Marine Fisheries Service
1315 East-West Highway, SSMC3
Silver Spring, MD 20910

RE: Comments on Proposed Environmental Review Process for Fishery Management Actions

Dear Director Risenhoover,

Thank you for the opportunity to provide comments on the proposed environmental review process for fishery management actions pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). As you are aware, in 2007, the MSA was re-authorized and National Marine Fisheries Service (NMFS) was directed to update its environmental review procedures for compliance with National Environmental Policy Act (NEPA) and to improve efficiency. The proposed rule with the revised environmental review procedures was released on May 14, 2008.

Public Employees for Environmental Responsibility (PEER) is a Washington D.C.-based non-profit, non-partisan public interest organization concerned with honest and open government. Specifically, PEER serves and protects public employees working on environmental issues. PEER represents thousands of local, state and federal government employees nationwide; our New England chapter is located outside of Boston, Massachusetts. PEER has been involved in NMFS issues for a number of years, and we are extremely concerned about the proposed rule. Specifically, we believe that the rule does not comply with NEPA and the Council on Environmental Quality NEPA compliance regulations, and does not provide adequate opportunity for public comment on fishery management proposals. Our specific comments are set forth below.

Proposed rule complicates NEPA compliance. The proposed rule calls for the establishment of new forms of documentation. Specifically, the rule proposes the development of an "Integrated Fishery Environmental Management Statement" (IFEMS), instead of an Environmental Impact Statement (EIS), familiar to everyone who has dealt with NEPA. By

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substituting a new type of environmental review document, there will likely be confusion over what legal standards apply to the document. From a legal standpoint, this shift to IFEMS will likely result in more litigation as the courts are asked to clarify these new requirements. Because of the new requirements for developing an IFEMS instead rather than EIS this proposal will actually make the environmental review process more difficult, and therefore less efficient.

Increased control given to fishing industry. The proposed rule gives too much control to fishery management councils (FMCs), advisory groups composed primarily of representatives of commercial and recreational fishing interests. As you are aware, NEPA documents must be prepared by the federal agency undertaking the action that invokes NEPA in the first place, or by a consultant the agency hires. While cooperating agencies do play certain roles under NEPA, the federal agency in charge is responsible for fulfilling NEPA requirements. This process ensures that the NEPA review is fair and impartial. In a drastic shift from these requirements, the proposed rule allows FMCs a joint role in initiating the scoping process, setting time limits, reviewing and responding to comments on draft IFEMSs, preparing draft and supplemental IFEMSs, being the public contact, and selecting a contractor for preparation of the IFEMS. This appears not only to be contrary to NEPA, but also has the potential to create conflicts of interest and the appearance of impropriety.

More opportunities for avoiding environmental reviews. Fishery managers could utilize categorical exclusions, framework procedures, experimental fishing permits and other mechanisms to avoid both environmental review and public input. Specifically, the proposed "framework" provisions could shield a variety of actions from any public environmental analysis whatsoever. In addition, the proposed rule would allow expanded use of categorical exclusions and experimental fishing permits, which allow fishery managers to avoid environmental review and public input entirely. This avoidance of environmental reviews is contrary to an ecosystem-based management of ocean resources.

Reduces the opportunity for the public to comment on proposals. Council on Environmental Quality (CEQ) regulations require a minimum 45-day comment period for a draft EIS. These timeframes can be reduced in certain unusual circumstances, but such reduction in public comment periods must be approved by either EPA or CEQ. The proposed rule would allow this timeframe to be reduced to as few as 14 days, if such changes are "in the public interest" or if there is "insufficient time to meet MSA timeframes." Moreover, these reductions in time frames are not subject to CEQ or EPA approval. The spirit and intent of NEPA is to ensure that federal agencies examine all alternatives for a particular project, and take the environmental impacts of federal projects into account. The public comment process is a huge part of this review. By giving FMCs the ability to set the time limits on comment periods, NMFS may be curtailing public input and therefore closing the door to critical information necessary to making a good decision. While speed and efficiency is certainly a noble goal, it should not come at the expense of sound decision-making.

Conclusion. If adopted as proposed, this rule would undermine the application of NEPA to fishery management actions. PEER strongly urges you to withdraw this proposal. Any new proposal should ensure that: NMFS is the lead agency responsible for NEPA compliance; the existing forms of environmental review documents, such as the EA/FONSI and the EIS, are

maintained; the public is allowed ample opportunity to comment (in both scope and time); and that the new frameworking approach is eliminated.

Thank you for the opportunity to comment. Please contact me if you have any questions.

Sincerely,

Kyla Bennett, Director
New England PEER