



December 1, 2006

Via Facsimile (202) 456-0753 and e-mail: hgregzmiel@ceq.eop.gov

Horst Greczmiel
Associate Director for NEPA Oversight
NEPA Modernization (CE)
722 Jackson Place NW
Washington, D.C. 20503

Re: National Environmental Policy Act
Guidance on Categorical Exclusions

Dear Mr. Greczmiel:

Safari Club International ("SCI") and Safari Club International Foundation ("SCIF") appreciate the opportunity to comment on proposed guidance for federal agencies entitled "Establishing, Revising, and Using Categorical Exclusions under the National Environmental Policy Act." SCI, a nonprofit IRC § 501(c)(4) corporation, has approximately 49,000 members worldwide. SCI's missions include the conservation of wildlife, protection of the hunter, and education of the public concerning hunting and its use as a conservation tool. SCIF is a nonprofit IRC § 501(c)(3) corporation. Its missions include the conservation of wildlife, education of the public concerning hunting and its use as a conservation tool, and humanitarian services. More specifically, the conservation mission of SCIF is: (a) to support the conservation of the various species and populations of game animals and other wildlife and the habitats on which they depend, and (b) to demonstrate the importance of hunting as a conservation and management tool in the development, funding and operation of wildlife conservation programs.

SCI and SCIF wish to commend the Council on Environmental Quality ("CEQ") its efforts to formalize and standardize federal agencies' efforts to create and to utilize categorical exclusions from National Environmental Policy Act ("NEPA") procedures. We recognize the difficulty of creating a consistent approach to such broad and potentially discretionary determinations. We support many of the recommendations and have some questions about others. We offer our specific comments on particular sections and subsections of the proposed guidance as follows:

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B. Gathering Information to Substantiate a Categorical Exclusion

1. Evaluating an Agency's Implemented Actions.

Litigation to challenge NEPA compliance has become an overused and abused tool of environmentally affiliated organizations that see these challenges as a means of intimidating federal agencies from engaging in necessary and legitimate activities. Short of barring these suits or modifying the language of NEPA to make these suits more difficult to initiate, the best defense will always be for a federal agency to prepare a well developed and comprehensive administrative record of its activity. SCI commends CEQ for noting that categorical exclusions can be supported by documentation of previous Findings of No Significant Impact (FONSIs). Proper foresight will enable agency personnel to catalog FONSIs in such a way that they can be accessed, reviewed and then retained as part of the Categorical Exclusion development process.

2. Impact Demonstration Projects

We also agree that impact demonstration projects are an excellent methodology for developing potential categorical exclusions and for compiling documentation that can be reviewed and included in the administrative records for determination involving both specific categorical exclusion decisions and categorical exclusion categories.

3. Professional Staff and Expert Opinions, and Scientific Analysis

SCI and SCIF are concerned that the proposed guidelines do not restrict scientific analyses to peer-reviewed materials. We agree that currently observed agency practices do not require the exclusion of data from non-peer-reviewed sources. However, we also note a trend, evidenced by recent proposals to amend the Endangered Species Act, which seeks to hold federal agencies to an ever increasing standard with respect to the type and source of scientific data used for making environmentally related determinations. Consequently, we question whether additional guidance is merited in this area. Perhaps CEQ should indicate that peer-reviewed data will be weighted more heavily when and if it is available, or possibly CEQ could provide a non-exclusive list of potential scientific sources in descending order of credibility.

4. Benchmarking Public and Private Entities' Experiences

SCI and SCIF agree that federal agencies should make use of the efforts and experiences of other public and private entities to support categorical exclusion action. What is not clear from the proposed guidance is how federal agencies will be able to access such information. Consequently, we recommend that, if it does not already exist, CEQ should facilitate a "Categorical Exclusion Database" where each federal agency is required to bank supporting documentation for each categorical exclusion authorized.

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This database should be made available to all federal agencies so that they can better benchmark the work done by their fellow agencies.

VI. Using an Established Categorical Exclusion

The proposed guidance offers some inconsistency in this area. First, the document quotes the 1983 published "Guidance Regarding NEPA Regulations" that states that CEQ "strongly discourages procedures that would require the preparation of additional paperwork to document that an activity has been categorically excluded." Later, the guidance in this section admits that "[d]ocumenting the use of a categorical exclusion facilitates judicial review under the Administrative Procedure Act, which requires review to be based upon a pre-existing record." This apparent inconsistency could be remedied by a clearer admission from CEQ that a modification of previous guidance is required due to the current trend in NEPA litigation.

SCI and SCIF hope that these comments will assist CEQ in its efforts to help agencies correctly identify and utilize categorical exclusions. We also hope that the guidance that results from these efforts will reduce the amount of NEPA litigation that increasingly poses obstacles for important and legitimate agency activity.

Thank you for your attention.

Sincerely,



Ralph S. Cunningham
President,
Safari Club International