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September 23, 2002

VIA FACSIMILE  
(801-517-1021)

James L. Connaughton  
Chairman, Council on Environmental Quality  
722 Jackson Place, N.W.  
Washington, D.C. 20503

Re: Comments to NEPA Task Force, 67 Fed. Reg. 45510 (July 9, 2002), 67 Fed. Reg. 53931 (August 20, 2002)

Dear Chairman Connaughton:

Oceana, The Ocean Conservancy, Humane Society of the United States, Marine Conservation Biology Institute, Natural Resources Defense Council, Sierra Club, and National Environmental Trust submit these comments on the Council on Environmental Quality's National Environmental Policy Act Task Force notice and request for comments on current NEPA implementing practices and procedures.

Our organizations are very concerned about a reported Administration proposal to exclude NEPA review for federal and federally permitted activities in the U.S. Exclusive Economic Zone and High Seas. (NY Times, August 9, 2002; LA Times, August 9 and 10, 2002; The Times Picayune, August 16, 2002) In our view, such a proposal would not improve NEPA analyses; it would do quite the opposite.

The NEPA process, when properly executed, works well to help ensure that public resources and environmental decisions are well managed. NEPA requirements inform the public and agency decision-makers about federal activities, provide the public an opportunity to comment on the potential environmental consequences of agency actions, and provide the right to ensure that the government does its job correctly. Any effort to exempt ocean activities from the requirements of NEPA would undermine public participation, accountability, and oversight of agency actions that affect the marine environment.

The impacts of important ocean activities and decisions should continue to be reviewed under NEPA. These activities include, among others, fisheries management, ocean dumping, oil and gas leasing, laying of pipelines, and the protection of marine mammals. NEPA provides procedures for requiring environmental reviews and exerts oversight of actions already authorized under other federal laws, thereby minimizing conflicts with the laws of other nations outside the U.S. territorial sea (0-3 miles offshore). More importantly, within the U.S. EEZ (3-200 miles offshore), the U.S. exerts *exclusive* control and exercises sovereign rights for the purposes of exploring, exploiting and managing

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natural resources, and protecting and preserving the marine environment. Proclamation 5928, December 27, 1988, 54 Fed. Reg. 777 (1989).

Last Thursday, a U.S. District Court held that,

“However, it is undisputed that with regard to natural resource conservation and management, the area of concern to which NEPA is directed, the United States does have substantial, if not exclusive legislative control of the EEZ. Because the U.S. exercises substantial legislative control of the EEZ in the area of the environment stemming from its “sovereign rights” for the purpose of conserving and managing natural resources, the Court finds that NEPA applies to federal actions which may affect the environment in the EEZ.” *Natural Resources Defense Council v. U.S. Department of the Navy*, Case No. CV-01-07781CAS, Summary Judgment Order (C.D. Cal, Sept. 19, 2002).

The U.S. is therefore legally obligated to apply NEPA to activities affecting the EEZ.

To underscore our concern, we are enclosing for the record a letter from eighteen national conservation organizations urging President Bush to reject any proposal to exclude the application of one of our nation’s leading environmental laws to ocean areas of vital interest to the American people.

We urge the Task Force to ensure that federal and federally permitted activities in the U.S. Exclusive Economic Zone and High Seas are entitled to full NEPA review.

Thank you for considering our comments.

Sincerely,

Tim Eichenberg  
Senior Policy Advisor  
Oceana

Julia Hathaway  
Legislative Director  
The Ocean Conservancy

John W. Grandy  
Senior Vice-President for Wildlife Programs  
Humane Society of the United States

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