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**VIA EMAIL: [nepataskforce@mail.house.gov](mailto:nepataskforce@mail.house.gov)**

NEPA Draft Report Comments  
c/o NEPA Task Force  
Committee on Resources  
1324 Longworth House Office Building  
Washington, D.C. 20003

**Re: Comments on NEPA Reform Recommendations**

To the Members of the Task Force on Improving  
and Updating the National Environmental Policy Act:

These comments are provided on behalf of the Hawaii Longline Association (HLA) in response to the *Initial Findings and Draft Recommendations* issued December 21, 2005 by the Task Force on Improving the National Environmental Policy Act and Task Force on Updating the National Environmental Policy Act (Task Force). As the representative of a highly-regulated commercial fishery, HLA has had significant experience over the years with the NEPA process and has expended substantial resources defending against litigation brought by conservation groups under NEPA. HLA therefore greatly appreciates the Task Force's efforts to clarify and simplify the NEPA process. Nevertheless, HLA is concerned that some of the Task Force's efforts at reform, as outlined in the Draft Recommendations, could increase rather than decrease regulatory uncertainty and NEPA litigation. HLA urges the Task Force to modify some of its proposals, as discussed further below, and also strongly recommends that the Task Force take measures to coordinate NEPA review with the Magnuson-Stevens Fishery Conservation and Management Act rulemaking process, pursuant to which commercial fisheries are regulated.

HLA represents the interests of the Hawaii-based longline fishery, including vessel owners, crew, wholesalers, distributors, and other fishery-related businesses in Hawaii. The fishery is subject to an extensive array of federal regulations promulgated under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 *et seq.* (MSA). Under the MSA, the Western Pacific Regional Fishery Management Council (Council) develops fishery management measures and implementing regulations, which are approved and promulgated by the National Marine Fisheries Service (NMFS). The MSA sets forth a detailed rulemaking process, including notice-and-comment requirements and specific time-frames for regulatory action. In promulgating MSA regulations, the Council and NMFS must comply with a series of other federal laws, including NEPA, the Regulatory Flexibility Act, the Endangered Species Act, the High Seas Fishing Compliance Act, and the Marine Mammal Protection Act, among others.

The Hawaii-based longline fishery operates mainly on the high seas in the Pacific Ocean, where it competes with a number of large foreign fleets. Because the foreign fleets are minimally regulated, they cause significantly greater impacts on marine species than the small and highly-regulated domestic fleet. Since 1999, the Hawaii-based fishery has been the target of litigation brought by national conservation advocacy groups seeking to make a political statement regarding the effects of international fisheries on the plight of pelagic endangered species, such as sea turtles. As a consequence, although the Draft Recommendations suggest that NEPA litigation is uncommon, our experience has been otherwise. For the last seven years, HLA has been a party to a continuous string of NEPA lawsuits in federal district court or the Ninth Circuit Court of Appeals concerning NEPA analyses performed (or not performed) by NMFS.<sup>1</sup>

HLA appreciates the Task Force's consideration of the comments provided below. Of paramount concern to HLA is better coordination of NEPA review with the MSA rulemaking process, as the two statutes impose duplicative and sometimes conflicting requirements. As part of the solution HLA recommends that the CEQ regulations expressly recognize MSA regional fishery management councils as "cooperating agencies" for NEPA purposes and direct each council to prepare, jointly with the relevant NMFS regional office, NEPA procedures specific to the implementation of management measures within that region. This would allow the councils to tailor their NEPA reviews to the MSA's requirements and to the particular needs of the fisheries within their jurisdictions. This suggestion is discussed below in conjunction with Task Force Draft Recommendations 3.1 and 9.1. Other Draft Recommendations of particular concern to HLA are Recommendation 4.1 (citizen suit provision), Recommendation 5.1 (alternatives analysis), Recommendation 5.3 (mandatory mitigation), Recommendations 8.1-8.2 (cumulative impacts), and Recommendation 9.1 (further study of interaction between NEPA/MSA). HLA's specific comments are set forth in order below.

#### **Recommendation 1.1: New Definition of "Major Federal Action"**

HLA takes no position on Recommendation 1.1. In our experience, the term "major federal action" has not been the focus of a regulatory problem or the subject of NEPA litigation involving our fisheries. HLA is concerned that, if anything, altering the established definition could give rise to additional litigation.

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<sup>1</sup> See, e.g., *Center for Marine Conservation v. NMFS* (No. 99-152, D. Haw.); *Ocean Conservancy v. NMFS* (No. 02-393, D. Haw.); *Turtle Island Restoration Network v. Department of Commerce* (No. 04-528, D. Haw).

### **Recommendations 1.2: Mandatory Deadlines**

HLA strongly supports Recommendation 1.2. Lack of schedule discipline is an important issue affecting the current NEPA process. This problem is especially acute where, as in our case, NEPA analysis is being performed with respect to an ongoing commercial activity.

Recommendation 1.2 would establish a nine-month deadline for an EA and an 18-month deadline for an EIS, with CEQ authorized to grant limited extensions. The Recommendation provides that if the analysis is not concluded by the deadline, it is considered completed. HLA supports this approach, provided that the “automatic completion” provision is clearly written to ensure that decisions based on such NEPA documents are not subject to invalidation for lack of sufficient NEPA analysis. This could be accomplished by using language similar to that contained in Section 401(a) of the Clean Water Act, which provides that failure by a state to act on a request for certification within one year constitutes a waiver of section 401’s requirements. *See* 33 U.S.C. § 1341(a)(1).

Additionally, or as an alternative means of reducing delay while retaining flexibility, HLA suggests that the Task Force consider codifying into NEPA the concept of an “applicant,” similar to that contained in the Endangered Species Act and also as already recognized in the CEQ regulations. *See* 16 U.S.C. § 1536 (describing role of applicants in § 7 consultation process); 40 C.F.R. § 1501.8(a) (requiring agency to set time limits when requested by the applicant for the proposed action). Under the ESA, an “applicant” is any person “who requires formal approval or authorization from a Federal agency as a prerequisite to conducting the action.” 50 C.F.R. § 401.02.

Recognizing the benefits of closely involving applicants in federal review processes concerning their projects, the ESA regulations grant applicants certain procedural rights, including the ability to block unlimited extensions of the consultation timeframes established by regulation. Accordingly, under the ESA, the consulting agency cannot extend the prescribed timeframe for consultations without providing the applicant with written notice of the reasons for the extension and cannot extend the timeframe beyond an additional 60 days without the applicant’s concurrence. 50 C.F.R. §§ 402.14(e), (g)(5).

In a similar manner, NEPA or its implementing regulations could be amended to establish the deadlines contained in Recommendation 1.2 but to allow the agency flexibility to extend the deadlines for a finite period. For example, NEPA could allow the agency an additional 30 or 60 days for an EA or EIS, respectively, with written notice to the applicant, but require the applicant’s agreement to additional extensions. This approach would allow for legitimate extensions of time while ensuring that an agency not indefinitely delay the NEPA process.

### **Recommendation 1.3: Criteria for CEs, EAs, and EISs**

HLA supports Recommendation 1.3. In HLA’s experience, the initial decision of what type of NEPA analysis is necessary for a particular action often itself generates significant delay and controversy. Categorical Exclusions, in particular, are often poorly defined in an agency’s NEPA procedures and underutilized in practice. HLA believes that clear statutory standards could greatly streamline the NEPA process.

#### **Recommendation 1.4: Supplementation**

HLA takes no position on Recommendation 1.4. This Recommendation would amend NEPA to codify the existing regulatory criteria for NEPA supplementation, contained in 40 C.F.R. § 1502.9(c)(1). HLA does not believe that this change is necessary, as we have not experienced problems with application of the regulatory standards.

Instead of the proposed Recommendation, HLA suggests that the Task Force consider amending the regulations to delete 40 C.F.R. § 1502.9(c)(2). This section allows agencies essentially limitless discretion to engage in supplemental NEPA review “when the agency determines that the purposes of the Act will be furthered by doing so.” While we have not to date experienced problems with this provision, we do not see the usefulness of providing for supplemental NEPA review where the proposed project has not been modified and where there is no pertinent new information.

#### **Recommendation 2.1: Weighting of Comments**

HLA supports the concept of preferentially weighting local comments but also believes that agencies should have discretion to weight comments according to their merit. Generally, we find that the comments of involved fishermen, knowledgeable scientists from NMFS’s Pacific Island laboratory, and participants in the Western Pacific Regional Fishery Management Council are far more informed and useful than the submissions of mainland-based advocacy groups pursuing national or international agendas. In our experience, federal agencies properly use their expertise and best judgment to weight comments according to their merit and the amount of detailed evidence that supports them. Thoughtful comments from persons with professional expertise or important local knowledge are and should be given more weight than non-specific or computer-generated comments. We are concerned, however, that an attempt to require local weighting would be difficult to implement in practice and could be the source of additional disputes. Also, there may be instances when non-“local” comments from persons with scientific or technical expertise are more insightful and pertinent than uninformed “local” comments. We therefore suggest that Recommendation 2.1 be included in the regulations as policy guidance rather than a mandatory requirement and that it provide for weighting based on the scientific and technical merits of the comments in addition to the source of the comments.

#### **Recommendation 2.2: Page Limits**

HLA supports reform efforts to ensure that the NEPA process is manageable; however, we do not think that mandatory page limits for documents would prove useful unless the existing standards for assessing the adequacy of NEPA documents are also changed.

#### **Recommendations 3.1: Cooperating Agencies**

HLA’s experience does not indicate a need for further or formalized participation rights by State, local or tribal interests, as suggested in Recommendation 3.1. However, we strongly believe that the Regional Fishery Management Councils (councils) formed pursuant to the MSA should be recognized as cooperating agencies for NEPA purposes.

Under the MSA, the councils are charged with preparing fishery management plans, plan amendments, and implementing regulations, as necessary and appropriate for the management of

the fisheries within their jurisdictions. 16 U.S.C. §§ 1852(h), 1853. The councils prepare management measures through a public process and then transmit their proposals to NMFS for review and approval. NMFS's approval authority is limited to determining whether the proposed management measures are consistent with the MSA and with other applicable law. 16 U.S.C. § 1854. NMFS does not have general authority to formulate its own management measures for the fishery. *Id.* Thus, it is the *combined* actions of a council and NMFS that constitute an "agency action" for NEPA purposes: the council undertakes scoping and develops the proposed action and alternatives; then NMFS makes a final "decision" whether to approve the council's proposal.

Although the councils play an integral role in the MSA rulemaking process, their status under NEPA is unclear, and often they are not formally recognized as a participating entity in an EA or EIS.<sup>2</sup> In our experience, this can lead to conflict, delay, and insufficient NEPA documents. This problem could be addressed by expressly recognizing the councils as "cooperating agencies" for NEPA purposes. Further, given the complementary roles played by the councils and NMFS under the MSA and the existing discrepancies between NEPA's and the MSA's procedural requirements, we suggest that the councils each be directed to formulate, jointly with NMFS, NEPA procedures specifically tailored to implement NEPA in conjunction with their authorities under the MSA and taking into account the unique needs of the fisheries within their jurisdictions. Streamlining NEPA review in this manner would greatly increase efficiency, ensure appropriate coordination among agencies, and eliminate unnecessary duplication and delay, thereby addressing a number of concerns recognized in the Draft Recommendations.

### **Recommendation 3.2: Coordination with State NEPA Processes**

HLA generally supports the idea of reducing duplication and enhancing coordination with state NEPA processes but does not have specific concerns regarding the existing practice in this area.

### **Recommendation 4.1: Citizen Suit Provision**

HLA supports the concept of placing reasonable limits on judicial review under NEPA but opposes Recommendation 4.1 as written, because we are concerned that it could radically alter settled standards for NEPA review and lead to additional litigation. We suggest that instead of creating a new cause of action, Congress should clarify existing limits on judicial review, add a reasonable time-limit for NEPA challenges, and expressly provide for the participation of applicants in NEPA litigation concerning their projects. The various elements of Recommendation 4.1, along with HLA's additional recommendations, are discussed below.

#### **Citizen-Suit Provision**

HLA opposes the creation of a new citizen-suit cause of action under NEPA. We understand the Task Force's proposal as generally intended to limit who has standing to bring a NEPA claim, yet citizen suits are a tool used by Congress to broaden access to judicial review. We are

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<sup>2</sup> It is unclear whether fishery management councils are "federal agencies" for purposes of NEPA. At least two courts have held that, because their power is limited to recommending FMPs and amendments to FMPs to NMFS, fishery management councils, in general, are not considered federal agencies. North Carolina Fisheries Ass'n v. Brown, 917 F. Supp. 1108, 1116 (E.D. Va. 1996); J.H. Miles & Co., Inc. v. Brown, 910 F. Supp. 1138, 1157 (E.D. Va. 1995). However, several agency and Department of Justice legal memoranda have concluded that the councils do qualify as "agencies" for certain purposes.

concerned that attempting to use a citizen-suit as a limitation on review would lead to confusion and unpredictable court interpretations.

It is well-settled under current law that NEPA challenges may be brought under the Administrative Procedure Act (APA), if the plaintiff has standing and meets other procedural requirements. Review under the APA is based on the agency's administrative record, and the court must accord considerable deference to the agency's conclusions. 5 U.S.C. § 706(2)(A). Replacing this established process with a new citizen-suit procedure could generate years of litigation and could result in a different standard of review based on extra-record evidence, increasing the cost and delay associated with NEPA litigation. We firmly believe that all stakeholders in the NEPA process are better off with the established process than with a new and uncertain citizen suit cause of action.

#### Best Science Requirement

Recommendation 4.1 would require that a plaintiff under NEPA establish that the NEPA review was not based on the best available information and science. HLA strongly opposes this concept. NEPA does not currently require agencies to use the "best available information and science," rather, EISs are reviewed under a standard of "reasonableness." See *Oregon Natural Resources Council v. Lowe*, 109 F.3d 521, 526 (9th Cir. 1997). Because NEPA is procedural, we do not believe there is any reason to impose a substantive "best science" requirement.

#### Standing

The Draft Recommendation suggests that, to have standing to bring a NEPA challenge, the plaintiff must show that he or she was involved throughout the NEPA process. The Recommendation also suggests that Congress establish clear standing guidelines, which would take into account the plaintiff's relationship to the proposed action and the extent of involvement in the administrative process. HLA generally supports these proposals, but believes that they would be more useful if implemented as a supplement to the current standing/exhaustion requirements that apply to a NEPA claim brought under the APA rather than as part of a new citizen-suit cause of action.

Under current law, NEPA plaintiffs are generally required to have exhausted their administrative remedies by participating in the administrative process as a prerequisite to suit. This exhaustion requirement is generally applied liberally in favor of the plaintiff; thus some courts have held that a plaintiff may raise a claim in litigation as long as *any* party raised it – or something similar to it – during the administrative process. See, e.g., *Kern v. U.S. Bureau of Land Management*, 38 F. Supp. 2d 1174, 1180 (D. Or. 1999), *rev'd on other grounds*, 284 F.3d 1062 (9th Cir. 2002). Given that agencies may receive and respond to hundreds of technical comments where larger projects are concerned, applying the exhaustion requirement in this broad, general manner does not ensure that the agency was in fact alerted to a specific issue and given a fair opportunity to address it during the administrative process.

To ensure full consideration of all parties' concerns *before* an agency takes final action and to prevent the disruption of authorized projects based on belatedly-raised issues, we recommend that the proposed NEPA standing/exhaustion requirements clarify that the particular plaintiff in a

NEPA lawsuit must have itself raised the issue presented for judicial review during the administrative process with sufficient specificity to allow for a reasoned agency response.

#### Time Limitation

HLA strongly supports the Task Force’s proposal for a time limitation of 180 days – or even a shorter limit such as 90 days – for bringing NEPA challenges. Currently, the general six-year statute of limitations is applied to NEPA claims brought under the APA. Given that a plaintiff under NEPA must have participated in the administrative process and must bring its claim based on the information gathered during that process, allowing challenges up to six years after the fact based on previously-developed legal theories is unreasonable and creates unnecessary uncertainty for project sponsors and regulated entities.

#### Settlement Rights to Project Applicants

Recommendation 4.1 includes a suggestion that the federal agency and Department of Justice not be permitted to settle NEPA challenges without the involvement of affected businesses and individuals, whether or not parties to the litigation. HLA supports this concept and believes that the policy considerations underlying it could be furthered by incorporating into NEPA the concept of an “applicant” party with certain procedural rights, as discussed also under Recommendation 1.2 above.

We suggest, as a way of implementing this Recommendation and also addressing a significant problem identified by the Task Force on page 12 of its *Initial Findings and Draft Recommendations*, that NEPA be amended to expressly recognize that “applicants” are interested parties entitled to intervene as of right in NEPA litigation concerning their projects. As the *Draft Recommendations* acknowledge, interested parties are not always able to participate as intervenors in NEPA litigation, regardless of their real and substantial interest in the outcome of the litigation. The Ninth Circuit Court of Appeals has repeatedly held that project proponents are not entitled to intervene as of right in NEPA challenges. *See e.g., Wetlands Action Network v. U.S. Army Corps of Eng’rs*, 222 F.3d 1105, 1114 (9th Cir. 2000); *Churchill County v. Babbitt*, 150 F.3d 1072, 1082-83 (9th Cir. 1998), *amended* 158 F.3d 491 (9th Cir. 1998); *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1108 (9th Cir. 2002). This rule has been rejected by other circuits for good reason. *See, e.g., Kleissler v. U.S. Forest Service*, 157 F.3d 964, 971 (3d Cir. 1998) (explaining that because NEPA suits “frequently pit private, state, and federal interests against each other,” the Ninth Circuit’s rigid rule “contravene[s] a major premise of intervention – the protection of third parties affected by pending litigation” that can have “an immediate and deleterious effect” on other parties).

We strongly urge the Task Force to consider amending NEPA to reaffirm an applicant’s right to participate in any NEPA litigation about its project, which would also ensure that the applicant has the right to participate in any settlement discussions.

#### **Recommendation 4.2: Pre-Clearance**

While HLA has no opposition to any pertinent guidance that CEQ may provide to federal agencies regarding NEPA compliance, we are unclear how this Recommendation would work in practice or what it is intended to accomplish and therefore do not support it as written.

### **Recommendation 5.1: Define “Reasonable Alternatives”**

HLA supports the idea of clarifying the range of alternatives that must be considered under NEPA but does not support the proposal for requiring early-stage feasibility and engineering studies in all cases, as it could pose an undue burden in some circumstances. Instead, HLA recommends that “reasonable alternatives” be defined as those that are economically and technologically feasible, and also within the agency’s jurisdiction and authority to implement. The regulations currently require that agencies consider alternatives “not within the jurisdiction of the lead agency,” *see* 40 C.F.R. § 1502.14(c), yet it is unclear how an alternative that the agency is powerless to implement can be considered “feasible.” Agencies should be allowed the discretion to apply these standards for a particular project to select an appropriate range of alternatives. The agencies should be required, however, to consult with any project “applicant” in devising alternatives, as generally the applicant is best situated to determine the economic and technical feasibility of various courses of action.

Also, HLA notes that there is an inconsistency between NEPA and the implementing regulations that often creates confusion about the extent of an agency’s obligation in selecting alternatives. The statute directs federal agencies to “study, develop, and describe *appropriate* alternatives” to the proposed action. 42 U.S.C. § 4332(2)(E) (emphasis added). Yet the regulations require that agencies “rigorously explore and objectively evaluate *all* reasonable alternatives.” 40 C.F.R. § 1502.14(b) (emphasis added). Courts and agencies have struggled to harmonize the phrase “all reasonable alternatives” with common-sense notions of limiting the evaluation to a reasonable number of alternatives. In our experience, project opponents have not been hesitant to exploit this uncertainty. We therefore suggest that the Task Force consider, as an additional measure, amending 40 C.F.R. 1502.14(b) to state that agencies must consider “a reasonable range of alternatives” rather than “all reasonable alternatives.”

### **Recommendation 5.2: “No Action” Alternative**

HLA does not support Recommendation 5.2, which suggests amending NEPA to clarify that an EIS must analyze a “no action” alternative. The regulations already require analysis of the “no action” alternative, and we are not aware of any problems related to this requirement that would warrant a statutory amendment. *See* 40 C.F.R. § 1502.14(d).

### **Recommendation 5.3: Mandatory Mitigation**

HLA opposes Recommendation 5.3 and does not agree with its premise. The Task Force suggests that it is an open question whether NEPA is procedural or substantive in nature, and this Recommendation appears to contemplate imposing a substantive mitigation requirement under NEPA. Yet it is well-settled law that NEPA is strictly procedural. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (“Although [NEPA’s] procedures are almost certain to affect the agency’s substantive decision, *it is now well settled that NEPA itself does not mandate particular results, but simply prescribes the necessary process.*”); *id.* (“Other statutes may impose substantive environmental obligations on federal agencies, but NEPA merely prohibits uninformed – rather than unwise – agency action”). That NEPA is procedural does not diminish its importance in requiring a thoughtful and thorough public review of an activity’s environmental impacts. Nevertheless, the lack of substantive environmental protection authority in NEPA is among the most fundamental and important limitations on the scope of NEPA.

We believe that it would be inconsistent with the nature and purpose of NEPA – to ensure informed decision-making – to impose binding mitigation requirements, and that doing so would increase the already-excessive expense associated with the NEPA process and lead to yet more litigation. *See Robertson*, 490 U.S. at 342-53 (“[I]t would be inconsistent with NEPA’s reliance on procedural mechanisms – as opposed to substantive, result-based standards – to demand the presence of a full developed plan that will mitigate environmental harm before an agency can act.”). Moreover, the regulations already provide that, where mitigation is committed to as part of the agency decision, it must be implemented through appropriate terms and conditions and monitoring, as necessary. 40 C.F.R. § 1505.3. Under these circumstances, and given that federal agencies have ample authority under a variety of substantive environmental laws, such as the Endangered Species Act, Clean Water Act, and Clean Air Act, among others, to impose binding mitigation requirements, we believe that the Recommendation 5.3 is unnecessary and likely to increase delay and expense.

#### **Recommendation 6.1: Stakeholder Consultation**

HLA does not support Recommendation 6.1, because we believe that the NEPA process already provides substantial and sufficient opportunities for public comment and participation. We are concerned that adding yet more process would result in further delay. We do, however, support limited “consultation” rights for project “applicants,” as described under Recommendations 1.2, 4.1, and 5.1 above.

#### **Recommendation 6.2: Lead Agency Status**

HLA takes no position on this recommendation as we have not experienced difficulty arising from application of 40 C.F.R. § 1501.5 regarding selection of a lead agency.

#### **Recommendation 7.1 NEPA Ombudsman**

HLA does not support the proposal to create a “NEPA Ombudsman” within CEQ to resolve conflicts within the NEPA process. We are concerned that the additional process envisioned in this plan would further delay NEPA reviews. Also, it is not clear what sorts of disputes would be referable to the ombudsman, whether the ombudsman would have the necessary scientific or technical background given the extremely wide range of agency decisions subject to NEPA, and how or to what extent stakeholders would be permitted to participate in the dispute resolution process. This Recommendation seems likely to increase disagreements, costs, and delays rather than reduce them.

#### **Recommendation 7.2: Cost Control**

HLA supports directing CEQ to propose methods for reducing NEPA-related costs.

#### **Recommendation 8.1: Past Actions/Cumulative Impacts Analysis**

HLA strongly supports clarifying the scope of a “cumulative impacts” analysis. In our view, this requirement has been subject to such an expansive interpretation by the courts that practically *any* cumulative impacts analysis, no matter how detailed, could be deemed insufficient if a court were so inclined. This in turn has led to lengthier and lengthier analyses by the agencies, generating more paperwork and greater expense, yet without significantly enhancing the quality of the underlying decision-making process. We strongly concur in the Task Force’s proposal to merge the assessment of existing conditions with the cumulative impacts analysis. We also urge

the Task Force to consider clarifying that the analysis of past actions must meet a standard of “reasonableness,” as necessary to allow for a reasoned choice among alternatives, but that past actions do not need to be individually analyzed or quantified in exhausting detail.

**Recommendation 8.2: Future Actions/Cumulative Impacts Analysis**

HLA supports this Recommendation and believes that amending the regulations to identify the kind of impacts that *do not* need to be considered in a cumulative impacts analysis would be of great practical benefit. For example, under the ESA, “cumulative effects” do not include future federal actions or actions requiring federal approval. 50 C.F.R. § 402.02. Instead, if such actions are proposed, they receive full review, including cumulative effects review, at that time. This same idea would help provide clarity with respect to the analysis of future actions under NEPA.

**Recommendations 9.1 and 9.3: Interaction Between NEPA/Other Federal Laws**

In addition to our suggestions under Recommendation 3.1, HLA encourages the Task Force to consider further measures to synchronize NEPA review with the MSA’s rulemaking procedures to eliminate duplication and inconsistencies. The MSA provides its own notice-and-comment process and timelines for council and NMFS action, which are often inconsistent with the requirements of NEPA. The Task Force should consider whether the MSA provides the “functional equivalent” of NEPA review so that application of NEPA is unnecessary or should develop specific reforms to streamline the process. This analysis should be included in the Report to Congress provided for under Recommendation 9.3b.

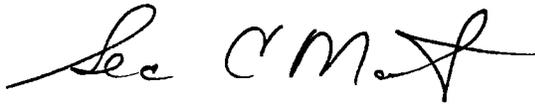
**Recommendation 9.2: Study of Staffing Issues**

HLA has not encountered significant resource issues in the NEPA context and thus takes no position on this Recommendation.

In summary, HLA believes that many of the Task Force’s Recommendations could assist in streamlining the NEPA process but suggests that other Recommendations, in particular, the citizen-suit provision and the suggestion for binding mitigation, be abandoned or modified. Additionally, HLA strongly urges the Task Force to expressly recognize the role of regional fishery management councils in the MSA rulemaking/NEPA process and to allow the councils to participate in the development of procedures to better coordinate these processes. Finally, HLA recommends that the Task Force consider incorporating into NEPA the concept of an “applicant” entitled to veto excessive extensions of time, participate in the formulation of alternatives, and actively participate in any litigation and settlement discussions concerning the applicant’s project.

HLA sincerely appreciates the Task Force's efforts to reform NEPA and thanks the Task Force for its consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean C. Martin". The signature is fluid and cursive, with the first name "Sean" written in a larger, more prominent script than the last name "Martin".

Sean C. Martin, President  
Hawaii Longline Association

cc: Ms. Kitty Simonds, Executive Director  
Western Pacific Fishery Management Council  
Mr. Bill Robinson, Pacific Islands Regional Administrator  
NOAA Fisheries