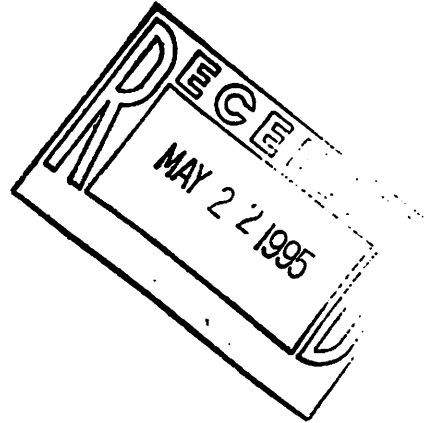


GULF OF MEXICO FISHERY MANAGEMENT COUNCIL
Lincoln Center, Suite 331 • 5401 W. Kennedy Blvd.
Tampa, Florida 33609-2486 • 813/228-2815 • Fax 813/225-7015

May 17, 1995

MEMORANDUM

TO: Clarence G. Pautzke
FROM: Wayne E. Swingle *Wayne*
SUBJECT: Tentative Agenda Items



Listed below are issues that we would like some discussion on in the session closed to NMFS. We are interested if other Councils perceive them as problem areas. If they do, and the Chairmen take a position, the issues could then be discussed in the general session.

1. Transmit Date for FMPs and Amendments

After Congress specified NMFS should start the review and approval process on the receipt date (i.e., five days after received from a Council), Dr. Fox developed a procedure which provides for NMFS to specify a transmit date for FMPs or amendments as the date NMFS determines the package is structurally complete. There is no legal basis for the transmit date and its use has no relationship to whether the documents are structurally complete. Delays in processing Gulf Council documents have been up to a month in duration. If the amendments to the Magnuson Act shorten the review period and include regulatory amendments, the use by NMFS of transmit dates likely will become more frequent.

2. Implications of Growth in Recreational Fishing for Shared Fishery Resources

We would like to know how each of the Councils are handling continually increasing recreational participation and effort for stocks that are allocated to both recreational and commercial sectors.

WES:ccm

c: Julius Collins
Kenneth Roberts
Technical Staff

council\pautzke.mem

RECEIVED

MAR 11 1991

GULF FISHERIES COUNCIL



ADVISOR CC: LINDALL & TURNER

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1335 East-West Highway
Silver Spring, MD 20910
THE DIRECTOR

Copy C + T's

MEMORANDUM FOR: Regional Directors

FROM: William W. Fox, Jr. *William W. Fox, Jr.*

SUBJECT: Procedures for Initiating Secretarial Review of
Fishery Management Plans and Amendments

At the Council Chairmen's Meeting in Tampa, discussion of the draft interpretive rule regarding Magnuson Act fishery management plans (FMPs) and FMP amendments confirmed that there is need to standardize procedures for initiating Secretarial review of these actions. Significant delays are occurring in processing fishery management actions that lack critical elements. Every FMP or amendment must be accompanied by all documents necessary to permit timely conformance with the Magnuson Act and other applicable law; Secretarial review cannot begin without them.

There was strong general agreement among the Council Chairmen and Executive Directors that formal review should not begin before the package is complete. Therefore, we agreed to establish written procedures for starting formal review to try to resolve the problem. If the situation is not corrected, we will again consider publication of an interpretive rule. Therefore, effective immediately, the following procedure will be followed for initiating Secretarial review of FMPs and amendments.

Procedure for Initiating Secretarial Review

1. All documents required for Secretarial review will be submitted by the Councils to the Regional Director (see below for a list of these documents). Copies should be sent simultaneously to F/CM, but the copies will be considered only drafts at this stage.

2. Any of the required documents that have not been prepared by the Council, by agreement with the Regional Director (e.g., PRA package, proposed rule, etc.), must be prepared by the Regional Office in consultation with the Council or, if prepared by the Science Center, be submitted to the Regional Director. The Regional Director will send to F/CM copies of all documents received as soon as possible to allow preliminary review; before the "transmit date" is declared, all documents will be considered drafts only. Close consultation between the Regional Office and Headquarters is strongly encouraged at this stage.

3. The Regional Director will decide whether the required documents are present and meet at least the minimum requirements for making the necessary determinations. If any document is deemed inadequate to make those determinations, it must be made adequate before the FMP or amendment is considered complete for

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES



purposes of declaring the "transmit date." The proposed rule must accurately reflect the contents of the FMP or amendment it is to implement. The date on which all of the required documents have been received by the Regional Director and have been adjudged to be adequate is the "receipt date," and the Regional Director will then declare the "transmit date," which is the date 5 days prior to the "receipt date."

4. If any Council disputes any decision made by the Regional Director, the Council may appeal to the AA who will make a final determination within 5 working days of receipt of the Council's appeal.

5. Once the "transmit date" has been declared, the Regional Director will recommend to the Assistant Administrator, based on a preliminary evaluation of consistency with the national standards, whether to proceed with Secretarial review or to disapprove the FMP or amendment.

6. The Regional Director will, on the "receipt date," send all necessary documents for Secretarial review to F/CM, along with a completed checklist (see attachment) certifying that the required documents are present and adequate to make all required determinations. The Regional General Counsel should also certify that the package, including the proposed rule, is complete and adequate.

7. If disapproval is recommended, the Regional Director must immediately notify the Assistant Administrator of that recommendation.

8. Upon receipt of the certified, complete submission package from the Regional Director, NMFS Headquarters will immediately commence a review to determine preliminarily whether the FMP or amendment is consistent with the national standards, other provisions of the Magnuson Act, and all other applicable law and whether the documents are sufficient in scope and substance to warrant review under the Magnuson Act.

9. If Headquarters concurs with the recommendation of the Regional Director that a preliminary evaluation indicates consistency with the national standards and other applicable law, a notice of availability will be published in the Federal Register and Secretarial review will continue. If Headquarters does not concur with the recommendation, the Assistant Administrator will determine whether to disapprove the FMP or amendment. No more than 2 working days should elapse between the "receipt date" and filing the notice of availability or deciding not to proceed with Secretarial review. F/CM will prepare a schedule for processing the action under the Magnuson Act and will distribute the schedule to the Regional Office and to GCF. "Day 1" is the day (whether weekend, holiday, or working day) following the "receipt date."

cc: Science Directors; Regional Attorneys; F/CM(2); F/CM2(2);
GCF, F/CU(2)

NMFS:F/CM2:GHDarcy:427-2341:2/14/91:ghd (D27) (FOXINTER)
Revised:GHDarcy:2/26/91 Revised:GHDarcy:2/27/91
Revised:DJLeedy:3/1/91

Documents Required to Initiate Secretarial Review

The following documents are required to initiate Secretarial review. In their absence, the Secretary, and those delegated authority by the Secretary, cannot make all determinations required by the Magnuson Act and other applicable law. The required documents are:

1. FMP or FMP amendment.
2. Proposed regulations, if any.
3. A regulatory impact review (RIR).
4. A regulatory flexibility analysis (RFA), if the action is significant under the RFA.
5. An environmental assessment (EA); or environmental impact statement (EIS); or supplemental environmental impact statement (SEIS).
6. A section 7 biological opinion under the Endangered Species Act, if required; or an informal consultation signed by the Regional Director concluding that formal consultation is not required.
7. A Request for Approval of Information Under the Paperwork Reduction Act ("PRA package"), if required.

In addition, the following documents are needed to process the FMP or FMP amendment. They must be prepared and submitted as soon as possible after the "receipt date," preferably along with the FMP or amendment package, to Headquarters (attention: F/CM). Because these documents are administrative, rather than statutory, requirements, their availability does not impact declaration of the "transmit date." However, failure to prepare and send these documents to F/CM in a timely manner will delay the review process and filing of the proposed rule. These additional documents are:

1. Regional Director's decision memorandum to publish the proposed rule (signed original).
2. Regional Attorney's "work product" (signed original).
3. Science Director's certification (for overfishing definitions) (signed original).
4. Notice of availability to be published in the Federal Register.

5. Memorandum from Assistant Administrator to General Counsel, DOC.
6. Memorandum to Small Business Administration, if required.
7. Memorandum from the Assistant Administrator to the Under Secretary for Oceans and Atmosphere (if the action is controversial).
8. Copies of letters sent to the states regarding Coastal Zone Management Act consistency.

If they are needed, the following additional documents should be provided to F/CM as early in the review process as they are available:

1. Federalism Assessment.
2. Taking Implications Assessment.

Conclusion

Timely review of fishery management actions, in addition to being mandated under the Magnuson Act, is necessary to address effectively problems in the fisheries. To accomplish this, it is imperative that the Councils, the Regions, including General Counsel, and the Centers work together cooperatively to produce complete, high-quality documents that satisfy all statutory requirements and provide the public with the information necessary to comment on proposed measures. That collaboration must include coordinated efforts to agree on a schedule for submission and to prepare the analyses and documents required for Secretarial review, to the extent possible, in advance of the Council's final decision to submit an FMP or amendment. You should make every effort to achieve this.

Attachment

MEMORANDUM FOR: William W. Fox, Jr.
FROM: [Regional Director]
SUBJECT: Transmit Date for [Title of FMP or Amendment];

The [Council] has submitted [Title of FMP or FMP amendment] for Secretarial review. I have reviewed the [FMP or amendment] and have determined that all documents required to make determinations under the Magnuson Act and other applicable law are present and adequate to make the required determinations. Therefore, the "receipt date" for this action is [date] and I declare that the "transmit date" for this action is [date]. I have also completed a preliminary evaluation of the action for consistency with the national standards, other provisions of the Magnuson Act, and other applicable law and recommend that a notice of availability be published in the Federal Register. The following documents, which accompany this memorandum, comprise the complete [FMP or amendment] submission package:

	<u>Present</u>	<u>Not Required</u>
1. FMP or FMP amendment.	[]	[]
2. Proposed regulations.	[]	[]
3. Regulatory impact review (RIR).	[]	[]
4. Regulatory flexibility analysis (RFA).	[]	[]
5. A NEPA statement; or environmental assessment (EA); or environmental impact statement (EIS); or supplemental environmental impact statement (SEIS).	[] [] [] []	[] [] [] []
6. A section 7 biological opinion ESA; or a statement of informal consultation.	[] []	[] []
7. A Request for Approval of Information Under the Paperwork Reduction Act.	[]	[]

Attachments



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, Maryland 20910

JAN 14 1994

MEMORANDUM FOR: Regional Directors
FROM: F/CM - Richard H. Schaefer
SUBJECT: Critical Dates for Regulatory Actions

Increased attention by the NMFS/NOAA directorate, and the courts, make it imperative that our regulatory actions be published and implemented in a timely manner. This means not only meeting statutory deadlines, but also meeting deadlines for which starting dates, or other critical dates, for fisheries have been identified (e.g., annual specifications); honoring constituency commitments; and following through on all regulatory actions. If a regulatory action is important enough to initiate, it is important enough to complete in a timely manner. Because of the complex and lengthy procedures needed to accomplish this, it is necessary that the planning and scheduling of events in the review and implementation process begin at the very earliest stages of development, and that constant attention be directed to adherence to schedules until actions are completed.

As you are aware, F/CM prepares a Weekly Management Schedule (WMS) that is widely distributed, including to the NOAA directorate, and used to track all regulatory actions in, or soon approaching, the review/clearance system. While this has always been used as a tool by management and staff, it has recently taken on even greater significance; NOAA is closely tracking all NMFS actions on a day-to-day basis and is holding NMFS accountable for meeting its own established deadlines. Gary Matlock has made it clear that this is of the highest priority. Therefore, for purposes of more precise tracking, the WMS has been modified to display "critical dates" for every action. Beginning immediately, each decision or transmittal memorandum accompanying a regulatory action sent to Headquarters to begin the review process must contain a critical date for that action, with an explanation of why that date was chosen (i.e., Why is it needed by that date, and what will happen if that deadline is not met?). The critical date information will be used in preparation of the WMS.

Because of the importance of early response to meeting final deadlines, I have directed my staff to alert me each week to any actions that are late or in danger of being late, from each Region. I will call each of you, as necessary, to discuss these items and to resolve scheduling problems. It is critically important that we keep Gary, Nancy, and Rollie fully informed of



any pending issues or expected deviations from schedules, as soon as we are aware of them. I strongly encourage you to bring to my attention any such matters at the earliest possible opportunity, and to impress upon your respective staffs the importance of this entire process.

In order for this process to work, there must be continuous, accurate communication within, between, and among our offices. The need for timely and accurate information has never been more critical; we must be ready and able to respond to requests for information without delay and without confusion. Submission of draft documents and frequent communication at the staff level is essential to work out potential problems early in the process. My staff is always available by telephone or e-mail to answer questions regarding most recent guidance or to discuss options. However, draft documents should be cleared at least at the Division Chief level in the Region prior to requesting Headquarters review. My office will not begin final review of any regulatory package until we have received all necessary Regional sign-offs (Regional Director, Regional Attorney, and, if applicable, Science Director).

I also ask your continued cooperation in responding rapidly to controlled correspondence, when Regional drafting assistance is requested. As stated at the BOD meeting, Rollie is placing great emphasis on correspondence, both in timeliness and substance. A quick turnaround from the Regions will be very important to meeting controlled correspondence deadlines, which, as you know, are frequently very tight. Thanks.