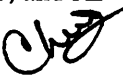


MEMORANDUM

TO: Council, SSC, and AP

FROM: Chris Oliver   
Executive Director

ESTIMATED TIME  
2 HOURS

DATE: June 3, 2003

SUBJECT: Staff Tasking

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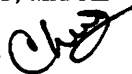
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*Regulatory Streamlining:  
Improving the Quality of  
Fisheries Regulations*



**Fisheries Management  
Council Briefing  
2003**

**John H. Dunnigan  
Director, Office of Sustainable Fisheries  
NOAA Fisheries  
Silver Spring, MD**

1

## Introduction

- **Purpose of the Briefing**
- **Plans for Proceeding**

2

## Purpose of the Briefing

- **Describe our Goals**
- **Invitation to Greater Collaboration**
- **Next Steps**

3

## What Are We Doing Here?

- **NOAA Fisheries is looking for a new way of doing business**
- **We cannot be successful without our Regional Fishery Management Councils Partners**
- **Where we were, where we are, and what we are doing to smooth the bumps along the road**

4

## How Will This Help the Councils?

- **Better documents – better decisions**
- **Less litigation**
- **Drive the process**
- **Partnership of NMFS and Councils**
- **Build a quality product together**
- **Safe harbor – accelerated process**
- **No surprises**
- **Get NOAA HQs approvals faster**

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## So Let's Talk About:

- **Background**
  - **Why Do We Need RSP**
  - **Working Together to Improve**
  - **Congressional Direction**
- **Regulatory Streamlining**
  - **The Report**
  - **The Implementation Plan**
- **Improving the Quality of Fisheries Regulations**
  - **Goals, Philosophy, Principles, Roles, Process**

6

# 1. Background

## 2. Regulatory Streamlining

## 3. Improving the Quality of Fisheries Rulemaking

7

## Background: Why Do We Need RSP?

- **To improve timeliness**
- **To produce regulations that will withstand legal challenge**
- **To improve the confidence in the Fishery Management Process**

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## Background: Working Together to Improve

- **NMFS Management Control Review (1994)**
- **Charter Teams**
- **Kammer Report**
- **Integration Project**
- **NAPA Report**
- **Council Chair Recommendations**
- **Still to come: Pew Commission; National Oceans Commission**

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## Background: Working Together to Improve

- **Council Chair Recommendations:**
  - **Define missions, roles, and responsibilities throughout the decision making process**
  - **Create and require continuing participation in a comprehensive training program**
  - **Establish NEPA Coordinator positions in the Regions and Headquarters**
  - **Reconcile statutory timelines for document and reviews**
  - **Create centralized guidance on analytical documents, including analytical frameworks**

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## Background: Congressional Direction

**The RSP is designed to address problems with “unnecessary delays, unpredictable outcomes, and lack of accountability” and move us toward “...development and application of standardized practices” to “improve the quality and efficiency of regulatory decisions and raise the likelihood of success in litigation” (S. RPT 107-42).**

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1. Background

2. Regulatory Streamlining

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12

## Regulatory Streamlining: The Report to Congress

- **Unique challenge: integrating statutory requirements under the MSA with the requirements of other statutes.**
- **ESA, MMPA, NEPA, RFA and Executive Orders impose analytical responsibilities on the agency and require that environmental, economic, and other impact analyses be conducted on a range of possible federal actions.**
- **These analyses must occur sufficiently early in the regulatory process, in order to facilitate consideration of a range of reasonable alternatives.**

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## Regulatory Streamlining: The Report to Congress

- **The primary mechanisms for implementing RSP include:**
  - **Frontloading the NEPA Process**
  - **Revising the Operational Guidelines**
  - **Establishing a National Training Program**
  - **Hiring Environmental Policy Coordinators**
  - **Improving the Administrative Process**
  - **Improving the Fishery Management Process**
  - **Addressing Science Issues**
  - **Workforce Organization and Prioritization**

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## Regulatory Streamlining: The Report to Congress

***Frontloading:*** “the active participation of all regional, science center, and Council staff in key responsibilities (e.g., sustainable fisheries, protected resources, habitat, economics, legal review) at the early stages of fishery management action development -- a “no-surprises” approach”

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## Regulatory Streamlining: The Report to Congress

### ***Role of the NEPA Coordinators:***

**“to ensure national and regional consistency, facilitate front loading of the NEPA process, provide advice on integrating statutes, and remain current on national policy issues related to environmental compliance”**

17

## Regulatory Streamlining: The Report to Congress

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## Regulatory Streamlining: The Report to Congress

- **Delegations of Signature Authority (NOAA to NMFS)**
- **Delegation of Signature Authority (HQ Office Directors to Regional Administrators)**
  - **Endangered Species Act for Section 7 Consultation**
  - **Magnuson-Stevens Act and Federal Actions under the Atlantic Coastal Act**
  - **National Environmental Policy Act Documents**
- **Using NEPA as a Framework for Regulatory Streamlining**
- **Streamlining Review of Regulatory Actions**
- **Streamlining Legal Review**
- **Process Improvements**

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## Regulatory Streamlining: Implementing RSP

- **Six Tasks to Implement RSP in the MSA Context:**
  - **Revise the Operational Guidelines**
  - **Develop Standards for Content**
  - **Develop Training Program**
  - **Develop Web-based Documentation Guide**
  - **Develop Quality Control/Quality Assurance System**
  - **Undertake E-comment Pilot Programs**

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# Regulatory Streamlining: Implementing RSP

- **Goals of RSP: Resolve problems**

- **Unnecessary delays**
- **Unpredictable outcomes**
- **Lack of accountability**
- **Lack of standard practices**
- **Inadequate regulatory decisions**
- **Losses in litigation**

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1. Background

2. Regulatory Streamlining

3. Improving the Quality  
of Fisheries Rulemaking

22

## Quality in Fisheries Rulemaking

- **Quality is the degree to which a set of inherent characteristics fulfills the stated requirements**
- **Quality, in our context, has three components dealing with management, control, and assurance**

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## Quality Improvement in Fisheries Rulemaking

- **Philosophy and Approach**
- **General Principles**
- **Roles**
- **Procedures**

24

## Quality Improvement in Fisheries Rulemaking

### • Philosophy and Approach:

- Focus on documentation for decision-making
- Collaborative Council/NOAA Fisheries efforts to produce documentation to support decisions
- Raise, analyze, and properly deal with all issues as soon as they can be anticipated
- Allow Councils and Region Offices to develop protocols for collaboration
- Encourage participation up front – avoid sequential reviews
- Collaborative Council/NOAA Fisheries planning process 25

## Quality Improvement in Fisheries Rulemaking

### • General Principles:

- Use NEPA process as the umbrella
- Frontloading
- Collaboration in the preparation of documents
- Determinations must be supported by facts and analysis in the record
- Cohesive, coherent documentation
- Regional Operating Agreements
- Expedited reviews for conforming documents
- Concurrent reviews 26

## Quality Improvement in Fisheries Rulemaking

- **Roles:**

- **Regional Fishery Management Councils**
- **NOAA Fisheries Regional Offices**
- **Regional General Counsel**
- **NOAA Fisheries Headquarters**
- **General Counsel for Fisheries/NOAA GC**
- **NOAA/DOC**
- **OMB**

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## Quality Improvement in Fisheries Rulemaking

- **Procedures: Five Types of Actions**

- **Regulatory Actions with an EA**
- **Regulatory Actions with an EIS**
- **FMPs with an EIS**
- **FMPs with an EA**
- **Categorical Exclusions**

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## Quality Improvement in Fisheries Rulemaking

- **Procedures:**

- **HACCP**

- ✓ **Make your effort more effective by focusing on where it counts the most**
- ✓ **It works because everybody is involved**

- **What are the Critical Control Points in making our MSA rules?**

- **Each type of action will have different Critical Control Points**

- **What should we do to ensure quality management at each Critical Control Point?**

29

## Quality Improvement in Fisheries Rulemaking

### ***Regulatory Critical Control Point:***

**A step or stage in the process of rulemaking where the quality of the product could raise concerns about achieving the *goals of RSP***

30

## Regulatory Streamlining: Implementing RSP

- **Goals of RSP: Resolve problems**
  - Unnecessary delays
  - Unpredictable outcomes
  - Lack of accountability
  - Lack of standard practices
  - Poor quality of regulatory decisions
  - Losses in litigation

31

## Quality Improvement in Fisheries Rulemaking

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## Quality Improvement in Fisheries Rulemaking

- **For each Regulatory Critical Control Point, identify:**
  - **What it is**
  - **Who is involved**
  - **Standards for preparation and review**
  - **Special timing considerations**
  - **Documentation requirements**
  - **Other issues**

33

## Quality Improvement in Fisheries Rulemaking

*For  
Example:*

34

# Quality Improvement in Fisheries Rulemaking

- **Regulatory Amendment with an EA:**

**Phase I: Planning**

1. Initial Determinations

**Phase II: Preparation of Action**

2. Council Adoption

**Phase III: Proposed Rule**

3. RA Approves the Decision
4. Publish Proposed Rule in Federal Register

**Phase IV: Final Rule**

5. RA Recommends Final Rule
6. HQ Review of Final Rule
7. Publish Rule in Federal Register

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## Next Steps

Review with each Regional Fishery Management Council	April 2003
Review with Council Chairs	May 2003
Operations Guidelines workshop with Councils and NOAA	June 2003
Draft Guidelines out for Council/NOAA Review	June - July 2003
Councils/Regional Offices Develop Operating Protocols	June 2003
Initial Adoption of Operations Guidelines	July 2003

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# PUBLIC TESTIMONY SIGN-UP SHEET FOR AGENDA ITEM D-3 Staff Tasking

PLEASE SIGN ON THE NEXT BLANK LINE.  
LINES LEFT BLANK WILL BE DELETED.

	NAME	AFFILIATION
<del>1.</del>	<del>MARK BUCKLEY</del>	<del>DIGITAL OBSERVER PROJ</del>
<del>2.</del>	<del>Joe Sullivan</del>	<del>City of Kodiak / Munt Mac</del>
<del>3.</del>	<del>Heather McCarty</del>	<del>CBSFA</del>
<del>4.</del>	<del>Dorothy Chandler</del>	<del>AMCC</del>
<del>5.</del>	<del>JAMES SPARKES</del>	<del>Creona</del>
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# PUBLIC TESTIMONY SIGN-UP SHEET FOR AGENDA ITEM D-3 STAFF TASKING

PLEASE SIGN ON THE NEXT BLANK LINE.  
LINES LEFT BLANK WILL BE DELETED.

	NAME	AFFILIATION
1.	Jeff Stephan	UFMA
2.	THORN SMITH	APCA
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