

APPENDIX I

RECOMMENDED CHANGES TO PROPOSED 600, 601, 604, AND 605 REGULATIONS  
AND GUIDELINES

On July 29-30, 1988, the chairmen of the Regional Fishery Management Councils reviewed the proposed 600, 601, 604, and 605 Regulations and Guidelines and the proposed 602.11 and 602.12 Conservation Standards. Following are their recommendations. New language is underlined, deletions are in brackets.

§600.1 Definitions. Include processing employees.

§601.25 - Support Services.

It was pointed out that the Magnuson Act, §302(f)(3) directs the Secretary to provide the Councils with administrative and technical support services. The wording in §601.25 only lists administrative support services.

(d)(1) add the following to the end of the sentence: ". . . Council activities unless requested by the Council and approved by the Assistant Administrator on a case-by-case basis." It was suggested that this authority could be delegated to Regional Directors.

§601.27 - Protection of confidentiality of statistics.

(a) delete in its entirety.

(b)(1) delete in its entirety. The section (undesigned by any letter) would then read:

"NOAA does not release or allow access to confidential information in its possession to Council members and members of Council advisory groups. Council staff access to such data is granted after Councils have[: (1) documented a need for unaggregated data and (2)] established procedures to ensure the confidentiality of such information as required by the Magnuson Act."

§601.33 Appointments.

There was considerable discussion about the proposed changes in appointing Council members. Most Chairmen felt that the new system would cause problems in the equitable representation of states and that the current system works well. Rod Moore suggested that the current system is more in line with the original intent of Congress.

§601.33(b)(1) & (2). Discussion focused on the "3 years' experience" requirement. Most felt this was too restrictive and should be deleted.

§601.33(g). Mr. Borden (New England FMC) suggested that the word "fair" (" . . . ensure a fair appointment, . . .") should either be defined or deleted.

It was consensus that regulations interpreting the appointments section should not be changed.

§601.35 Rules of Conduct.

There was considerable discussion about the scope of the prohibition against Council lobbying with appropriated funds. Chairmen wanted to know if this extended to writing letters on behalf of the Councils to Congress commenting on particular issues and legislation relevant to fisheries management. Eileen Cooney said that comments provided in response to a specific request would be acceptable. There is still some concern on this subject and the Chairmen requested that NOAA General Counsel provide them with a legal opinion on the scope of this rule.

There was also considerable discussion on financial disclosure and who is covered under section (b)(4), particularly as it applies to Council staff members other than the Executive Director. Chairmen asked that a General Counsel opinion be solicited for clarification.

§601.38 Security investigations and clearances.

In paragraph (a), NMFS was requested to define the term "confidential".

Change paragraph (i) to read:

"(i) In addition to submission of SF-85 and FD-258, Council members and Executive Directors as well as other staff, and members of advisory groups designated by the Councils under paragraph (c) of this section, will be required to submit . . . ."

§601.38(d) should refer to "security clearances", not "assurances".

601.39 Council member compensation.

(b) Change "will" to "may" in the first sentence -

"Council members whose eligibility for compensation has been established in accordance with NOAA guidelines [will] may be paid . . . ."

(d) Delete this section in its entirety.

"[The Council Chair must submit to the Regional Office annually a report of Council member compensation authorized. This report shall identify, for each member, amount paid, dates, and location and purpose of meetings attended.]"

It was felt that this information is already available in Council records and can be requested, but there is no need to add another report.

604.1 Definitions.

Replace this section with the following:

"604.1 Purpose and scope.

(a) This part sets forth abbreviated summaries of other law applicable to the FMP process. (Regulations or agency directives specific to each law may also apply.)

(b) Definitions. Definitions used in this part are those set forth in Part 600."

605.1 Purpose and scope.

After the word "guidelines" in the first line, add the following phrase:

"(which do not have the force and effect of law) . . . ."

605.11 General.

Insert the words "and" before "evaluate" and "FMPs" after "evaluate," in the first sentence; delete "to FMPs" after "amendments" in the first sentence.

605.13 Use of the best available scientific information.

(a)(1) Add the following to the end of the first sentence:

". . . for each FMP and must provide the necessary data to complete the report. The Secretary of Commerce will prepare the report unless a Council elects to do so. . . ."

In the second sentence of (a)(1), beginning with "The Secretary or Council may . . .", delete "[call on]" and insert "utilize".

In the first sentence of (a)(2), insert "Councils" before "determining".

(b) Insert (6) as follows and renumber existing paragraph (6) as (7).

"(b)(6) A recommendation of a threshold level or other definition of overfishing for each stock that will assure recruitment overfishing does not occur and its method of derivation; and"

(c)(6) Change to read "The numbers of processing plants and their employment, . . . ."

605.14 Planning.

(b) Data Collection Program (DCP).

In the last sentence, delete "[a reasonable period of time]" and insert "30 days."

§605.16 Establishment of management measures.

(b)(1) delete "analysis" after "regulatory" in the first sentence, and insert "impact review". The sentence would read

"(1) The Council must prepare a regulatory [analysis] impact review of the economic and social . . . ."

(b)(3) Insert "within 60 days" after "written comments" in the first sentence.

§605.24 Council meetings and hearings.

(3) Conduct of meetings.

(i) Delete "or Council comments to the Secretary on foreign fishing applications" in the last sentence of the paragraph, which would then read

"A vote is required for Council approval or amendment of a fishery management plan (including any proposed regulations), a Council finding that an emergency exists involving a fishery, [or Council comments to the Secretary on foreign fishing applications] or fishery management plans developed by the Secretary.

(3)(iv). There was discussion on the requirement that a minority report must be submitted at the same time as the majority report. This could be a difficult thing to coordinate without slowing down the submission of the documents. Council SOPPs could reflect a deadline and the submission to the Secretary might indicate that a minority report would be submitted within a certain length of time.

§605.25 Employment practices.

(b) Experts and Consultants. The Pacific Council voiced concern that the last sentence in this section would preclude their continued contracting with a part-time economist. This has been a very cost effective way to acquire analytical support and should be accommodated in the guidelines and regulations.

(g)(2) Sick Leave. There was discussion on the financial burden this would put on Councils because a one-time payment would be required on retirement. No consensus for change was reached, but Chairmen who did not agree with the current language were asked to contact Daphne White with their suggestions for change. (Larry Six offered draft language in his August 5, 1988 letter.)

(h) Employee Benefits. Chairmen discussed the last sentence which restricts employee benefits to 20 percent of their gross salary. This could be a problem, particularly with the rising cost of health benefits. It was pointed out that NOAA approval of a larger amount would be implicit upon their approval of a Council's budget.

(i)(2) & (3) Travel Reimbursement - (2) Council, AP, SSC Members;  
(3) Council staff, members of plan teams and others.

Chairmen felt strongly that Council staff, members of plan teams, and NMFS employees should be included under Section (2), receiving the same per diem rates and other reimbursements. They suggested adding them to Section (2), deleting the current Section (3), and renumbering Section (4) to Section (3).

§605.26 Financial management.

Delete, ", DOC regulations and directives, NOAA directives," from last sentence, which would then read:

"Councils are required to comply strictly with the provisions of the Circulars [, DOC regulations and directives, NOAA directives,] and terms and conditions of the awards."

(a)(1) Administrative.

Insert the words "or biennial" after "Annual" at the beginning of the third sentence, which would then read:

"Annual or biennial grants and cooperative agreements will provide . . ."

(a)(1)(i)(A). Delete \$500 in the second to the last sentence of the paragraph; insert blank line to be filled by NMFS to agree with new A-110 regulations. The \$500 amount is unrealistic in two-year budgets.

(a)(1)(ii). Insert "or Administrative Officer" after "Executive Director" at the end of the third sentence, which would then read:

"Each cash disbursement must be approved by the Council Executive Director or Administrative Officer."

It is not cost effective for the Executive Director to approve all checks. Also note that this section is incorrectly referred to as a regulation rather than a guideline in the next to last sentence of this section.

RECOMMENDED CHANGES FOR THE PROPOSED 602.11 AND 602.12 CONSERVATION STANDARDS.

It was suggested that paragraph 8 (page 5 of the draft notice) of the "SUPPLEMENTARY INFORMATION" section, dealing with overfishing, might better be placed in an appendix rather than in this section.

§602.11 National Standard 1--Optimum Yield

(c) Overfishing.

In (1), delete the words "or economic value" after "maximum biological yield" in the first sentence.

(c)(2)(i) Insert the words "or combination of actions" after "what actions" in the first sentence.

(c)(5) In the 4th sentence, the term "conditions of concern" should be defined, perhaps in an appendix.

(c)(5) In the 6th sentence, beginning with "If environmental . . .", insert "man-made" before "environmental", delete "the primary cause of" and insert "contributing to" after "are". The sentence would then read:

"If man-made environmental changes are [the primary cause of] contributing to the downward trends, in addition . . ."

(c)(8)(ii) It was suggested that there should be some kind of "expedited review process" in order to avoid a last-minute logjam if all FMPs are to be amended within 18 months. Mr. Brennan said they would examine ways of doing this. An alternative approach would be to allow the Councils to indicate to NMFS, with written justification, that their plans already address the overfishing problem.

(e)(2) In the second sentence, replace "its exploitable biomass" with "biomass of the exploitable stock".

(f)(3) In discussing economic and social factors, the chairmen felt very strongly that these aspects of recreational fisheries must be taken into consideration.

(f)(4)(iv) In the first sentence, replace "the" with "any" before "TALFF".

(f)(5) In the third sentence, beginning with "If overfishing is permitted . . .", insert "or stock component" after "species". The sentence would then read:

"If overfishing is permitted under paragraph (c)(6) of this section, the analysis must contain a justification in terms of overall benefits and an assessment of the risk of the species or stock component reaching a . . ."

(h)(2) Reserves. The following revisions were suggested:

"Part of the OY may be held as a reserve to allow for uncertainties in estimates of stock size and of DAH; or to solve operational problems. If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to domestic or foreign fishermen, if necessary. [so that full utilization of OY may be achieved. An FMP may also provide for a direct transfer of a portion of DAH to TALFF.]

The insertion of "or to solve operational problems" was suggested because of the need for flexibility in reallocating between fisheries for bycatch needs.

§602.12 National Standard 2 -- Scientific Information.

602.12(e)(1) In the first sentence, insert "commercial" before "fishing" such that the sentence reads ". . .of the recreational and commercial fishing industries and the fish processing industries." The Chairmen advised that Section 602.12(e) should be revised to reflect their suggested changes to Section 605.13.