

Regulatory Streamlining Program Operational Guidelines



**Pacific Fishery
Management Council**

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San Diego, CA

RSP: Why We Need It

- *NOAA Fisheries Service faces a unique combination of responsibilities in managing the multiple statutory responsibilities set forth under the M-S Act, the ESA, NEPA, the RFA, and other mandates applicable to the development and implementation of fishery management actions.*
- *A series of litigation losses led to court ordered injunctions and judicial management of fisheries.*
- *In 2002, Senate Committee on Appropriations directed NOAA Fisheries to address “unnecessary delays, unpredictable outcomes, and lack of accountability” and to apply “standardized practices” to “improve the quality and efficiency of regulatory decisions and raise the likelihood of success in litigation.”*

RSP:

What Caused the Problems

- Applicable laws impose multiple mandates that create challenges based on timing and logical sequencing of analyses.
- Multiple layers of review, and various offices charged with responsibility for administering different laws, many of which are evaluated on subjective grounds for “reasonableness.”
- Inadequate documentation of process and record to support decision.

RSP:

What Congress Mandated in 2002

1. Eliminate unpredictable outcomes
2. Increase accountability
3. Eliminate unnecessary delays
4. Apply standardized practices
5. Improve the quality and efficacy of regulatory decisions
6. Improve the likelihood of success in litigation

RSP:

How the Draft OGs Address the Problem

- Frontloading and Teamwork
- Logical Sequencing
- Quality-based Approach to Review
- Flexibility

RSP Operational Guidelines: Frontloading & Teamwork

- **Teamwork**
 - **Joint Ownership/Shared Responsibility**
 - **Cooperation and Coordination**
- **Frontloading**
 - **The earlier a problem is identified, the better**
 - **Involvement of all key players**
 - **Early input**
 - **Concurrent reviews**

Frontloading

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”

RSP Operational Guidelines: Logical Sequencing

- **Statutory and Regulatory Timelines**
 - MSA 95 days; ESA 135 days consultation; NEPA 90 days/30 days
- **Logical Interactions**
 - NEPA/FONSI and ESA BO; consideration of alternatives (NEPA, RFA) and Council discretion/Secretarial authority.
- **Clearance and Filing Considerations**
 - EPA files Friday after the week received; OFR schedule; NOAA, DOC, OMB...

RSP Operational Guidelines: Quality-based Approach to Review

- Standards to assess adequacy
- Recognizes subjectivity of review
 - Addressed through frontloading
 - Addressed in model through Critical Feedback Points
- Advisory Statements
 - Letters to a Council from the RA indicating that the relevant documentation and process are adequate and complete for that step.

RSP Operational Guidelines: Flexibility

- General roles and responsibilities
- Allows for Region/Council variations
 - Regional Operating Agreements
 - Action Plans
- Adaptable process model
 - Use steps that apply to a particular action

The RSP Model: Phases and Steps

- **Phase I – Planning and Scoping**
 - Problem identification; Initial determination re: NEPA
 - Action Plan, Advisory Statement, FMAT
- **Phase II – Preparation of the Action**
 - Frontloading; I.d. preferred alternative (consultations); Advisory Statement; file DEIS; public comment
- **Phase III – Council Final Action**
 - Vote on Final recommendation (Advisory Statement); Completion of Council packaging tasks
- **Phase IV – Secretarial Approval**
 - Completion of agency packaging tasks; Begin MSA review; (Decision memo); publish NOA, Proposed Rule, FEIS; Agency approval decisions; publication

RSP OGs: Next Steps

- **OGs transmitted by August 26, 2005, letter from Bill Hogarth**
- **Collaboration**
 - Regional Operating Agreements
 - Joint Planning
- **Try out the model where practicable**
 - Test basis
 - We recognize resource constraints
 - ID strengths and weaknesses of the OGs
 - OGs will be a living document – updated based on experience

