

Chris Oliver <chris.oliver@noaa.gov>
12/22/2003 07:28:09 PM

Record Type: Record

To: Mabel E. Echols OMB_Peer_Review/OMB/EOP@EOP, Nancy Beck/OMB/EOP@EOP

cc:

Subject: comments on IQA Bulletin

Please find attached (and below) comments from the North Pacific Fishery Management Council RE the September 15, 2003 FEDERAL REGISTER notice and request for comments regarding peer review mechanisms under the Information Quality Act.

-Chris Oliver
Executive Director

- ombletterdecember.wpd

North Pacific Fishery Management Council

Stephanie Madsen, Chair
Chris Oliver, Executive Director



605 W 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Telephone: (907) 271-2809

Fax: (907) 271-2817

Visit our website: www.fakr.noaa.gov/npfmc

December 15, 2003

Ms Margo Schwab
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, N.W.
New Executive Office Building, Room 10201
Washington, D.C. 20503

Dear Ms. Schwab:

The North Pacific Fishery Management Council (Council) wishes to submit comments on the proposed OMB Bulletin on Peer Review and Information Quality. The proposed independent scientific review mechanisms contained in the Bulletin raise significant concerns on the part of our Council, and could seriously jeopardize the promulgation of fisheries related regulations. The Council is one of eight Regional Councils around the country, corresponding to the major NOAA Fisheries management regions. The Councils are partners with NOAA Fisheries in managing our Nation's marine fisheries resources, and in fact are considered to be 'executive agencies' of the Department of Commerce. Most of the information used in management of these fisheries, including the preparation of environmental impact statements and related documents for regulatory actions, are jointly prepared by the Council and NOAA Fisheries. We may be submitting more detailed comments to OMB by the January 16, 2004 federal agency deadline, but wish to get our initial comments to you at this time. The Council's own Scientific and Statistical Committee (SSC) carefully reviewed the proposed bulletin at our recent Council meeting held this past week, and these comments reflect many of the views of our SSC.

Regulations governing marine fisheries in the U.S. 200-mile Exclusive Economic Zone (EEZ) are required to comply with provisions of the Magnuson-Stevens Fishery Conservation and Management Act, the National Environmental Policy Act, the Endangered Species Act, the Regulatory Flexibility Act, the Administrative Procedures Act, and numerous, additional laws and Executive Orders. The process of developing regulatory actions under these Acts is already a herculean task, involving many of the types of scientific review proposed under the OMB Bulletin. The Bulletin and the associated guidelines for independent peer review of data and information appear to be well-intended, but they appear to have substantial, practical impediments; appear redundant in some ways to processes already in place; and, most importantly, could have significant, unintended, and negative impacts on the process of promulgating regulations to manage and conserve our Nation's important fisheries resources. We realize that these guidelines are intended to apply to all federal agencies, but we believe that the proposed requirements for independent scientific review would particularly impact the Councils and Department of Commerce with regard to fisheries management. These impacts are detailed below and would affect the Council directly (through requirements attendant to data and analyses we prepare, in conjunction with NOAA Fisheries), and indirectly (through requirements that may be placed on NOAA Fisheries in the review and processing of Council recommendations through the Secretary of Commerce).

Redundancy to existing scientific review processes

The consequences of OMB's proposed bulletin on peer review and information quality will depend on how provisions of the Act are construed. If the bulletin is interpreted as a reinforcement of existing review mechanisms, the structure and operation of current Council and NOAA Fisheries review processes could be construed as more than fully compliant. If the bulletin is interpreted as taking precedence over existing review structures, current Council review processes could be construed as inadequate with respect to compliance, and such compliance could be an onerous burden that would reduce the role of science in Council and Secretarial decision-making. It is incumbent on the OMB/OIRA to consult with the Council and the Department of Commerce regarding the relationship of the proposed bulletin with the requirements of the Magnuson-Stevens Act and with the Council and NOAA Fisheries' existing review processes. The existing review process at the Council level includes the use of our SSC and Plan Teams to review all information and analyses that accompany regulatory documents, from fishery stock assessment information to social and economic analyses of proposed management actions. These review processes are in addition to the existing, internal review processes within NOAA Fisheries, which occur both prior to and after SSC review and Council recommendations to the Secretary of Commerce for fishery management actions.

The North Pacific Council's SSC is a body of nationally and internationally prominent research scientists, and the existing processes for the review of information and analyses prepared in support of Council decision-making constitute a rigorous peer review with excellent opportunity for public review and comment. Indeed, the primary reason for the existence of the SSC (and the Councils Groundfish, Scallop, and Crab Plan Teams) is to provide independent peer review of information and analyses prepared in support of Council decision-making. If the review of information and analyses provided by the SSC and Plan Teams is judged to be noncompliant with guidelines in the proposed OMB bulletin, there may be little benefit in continuing the existence of the SSC or Plan Teams. In defense of the continuation of the SSC and Plan Teams, we note that: SSC and Plan Team members are selected through an annual nomination process; members are selected for their expertise; members are active in the research community and often serve as peer reviewers for scientific journals and as reviewers of fishery programs elsewhere in the US and internationally; the review process is public; during the review process, the SSC and Plan Teams regularly solicit participation of interested public and other researchers and that the input of these participants is often reflected in the recommendations that emerge from the SSC and Plan Team meetings.

Cost and Practicality

If current Council review processes are deemed noncompliant, there may be need for substantial and costly modifications of the structure and timing of Council decision-making. We note that a strict reading of OMB's proposed bulletin suggests a review process that would likely involve a substantial increase in direct costs to the Council and NMFS to solicit peer reviews and to convene meetings to support the peer reviews. There would likely be substantial increases in cost to the public associated with delayed decision-making occasioned by the need to accommodate a review process that is unlikely to be as closely attuned to the decision-cycle as are the current review processes. There would also likely be substantial costs to individual researchers asked to serve as peer reviewers. There is a limited pool of individuals with appropriate expertise and the disposition to participate in public service activities such as the review of information and analyses that support government decision-making. It is unlikely that an exhaustive peer review process could be conducted without reliance on consulting firms and payment for review services. We are very concerned that a strict reading of the guidelines in the proposed bulletin may have the perverse effect of discouraging agencies from basing decisions on scientific information or analyses.

Clarity in definitions

The Bulletin is unclear in terms of exactly what would be subject to independent peer review - for example, data for fisheries stock assessments and economic analysis versus the analyses themselves. It is also unclear what constitutes 'significant' regulatory information, and further unclear what is meant by 'especially significant' information. Given the additional review processes implied for 'especially significant' regulatory information, it is imperative that the guidelines be clear in this regard. Depending on the interpretation of these terms, the application of these guidelines could range from a small subset of major regulatory actions, all the way to every regulatory action promulgated. With the vast number of regulations necessary to effectively manage marine fisheries, application of these review mechanisms could effectively hamstring the fisheries management process.

In closing, we support the concept of improving the information that underpins the development of regulations, but reiterate that the requirements set forth in this Bulletin pose a potentially unrealistic and unnecessary burden on the regulatory process, at least with regard to the promulgation of regulations governing marine fisheries management under the Magnuson-Stevens Act. Convening independent, scientific panels to review all of the information that goes into fisheries management decision-making would be cost-prohibitive, suffers from the practical impediment of availability of reviewers, would significantly delay our ability to process and promulgate fisheries regulations, and has the overall potential to compromise our ability to manage and conserve our Nation's fisheries resources.

We urge the OMB to seriously consider the practicality and costs to all federal agencies associated with the proposed Bulletin. At the same, we believe that existing processes for scientific review of fisheries regulations comply with the intent of the OMB Bulletin, and particularly that the Council's SSC already represents an "independent body of experts outside the agency" (even though there are agency representative on that SSC). It is also worth noting that recommendations from the President's U.S. Ocean Commission will be forthcoming in early 2004, and among those recommendations will be suggestions for further strengthening of the SSC process by the Regional Fishery Management Councils. Finally, we further urge that the proposed guidelines, if promulgated, be guidelines as opposed to requirements, and that flexibility be incorporated to allow a determination that existing processes comply with the intent of the guidelines. Please feel free to contact me for any additional information in regard to this important issue.

Sincerely,

Chris Oliver
Executive Director

CC: Dr. William Hogarth, Assistant Administrator for Fisheries, NOAA
Dr. James Balsiger, Alaska Regional Administrator, NOAA
Dr. Douglas DeMaster, Director, Alaska Fisheries Science Center
Mr. David Russell, Chief of Staff, U.S. Senator Ted Stevens
Regional Council Executive Directors