

***NATIONAL MARINE FISHERIES SERVICE PROCEDURE 01-123-01***

Effective on: June 7, 1994

To be reviewed on: October 1, 2029

Fisheries Management  
Policy on Regulatory Process, 01-123

Procedures for Complying with Executive Order 12866

**NOTICE:** This publication is available at: <https://www.fisheries.noaa.gov/national/laws-and-policies/policy-directive-system>

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***SUMMARY OF REVISIONS:***

The initial directive was put into effect on June 7, 1994, and revised to reflect NMFS' current practice for complying with Executive Order 12866. The revisions include the removal of procedures for complying with Executive Order 13771, which was rescinded on January 20, 2021. This procedure was updated per current OMB practice of requiring significance determinations at each rulemaking stage and includes the revised definition for "significant" actions under Executive Order 12866.

Signed \_\_\_\_\_ Date 10/25/2024

Director, Office of Sustainable Fisheries

**I. Introduction**

Executive Order (E.O.) 12866 is intended to enhance planning and coordination of new and existing regulations. In section 6(a)(3)(A), E.O. 12866 establishes a system whereby agencies are to periodically submit a list of all planned regulatory actions to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB). This list is to indicate which of those planned regulations the Agency believes are "significant" within the meaning of E.O. 12866. OMB then has an opportunity to concur or not with the Agency's E.O. 12866 determinations. On April 6, 2023, E.O. 12866 was amended by E.O. 14094 (Modernizing Regulatory Review), and the definition of a "significant regulatory action" was revised to encompass "any regulatory action that is likely to result in a rule that may:

- (1) have an annual effect on the economy of \$200 million or more (adjusted every 3 years by

the Administrator of OIRA for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities;

- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.”.

Those regulations designated as “significant” are subject to OMB and interagency review, while those designated as “not significant” are not subject to such review. OMB requires a separate significance determination for each stage of a rulemaking. The Office of the Assistant General Counsel for Legislation and Regulation, Department of Commerce (DOC-OGC), has responsibility for coordinating the E.O. 12866 listing process for all rules issued by the Department of Commerce (DOC)

## **II. Objective**

This directive describes an updated procedure for how NOAA Fisheries will: (1) process regulations in compliance with this E.O.; (2) submit E.O. 12866 listing documents to provide OMB with notice of regulations and to obtain a significance determination for the initial stage of a rulemaking; and (3) address E.O. 12866 questions from OMB. If applicable, NMFS Clearance will obtain a significance determination for the next stage(s) of a rulemaking. For example, after the public comment period for the proposed rule stage of a rulemaking ends, NMFS Clearance adds the action to the Next Stage Report to obtain a determination for the final rule stage.

## **III. Guidance**

### *A. Listing Document Procedures*

1. The Point of Contact (POC) for the rulemaking prepares the E.O. 12866 listing document and obtains clearance from General Counsel (GC) for the originating program office.
2. The POC completes a Regulatory Information Data form (RID) in addition to the GC-cleared E.O. 12866 listing document. These documents are all contained on the intranet's Examples and Checklists webpage. To the extent possible, the POC submits these documents to NMFS Clearance 6 months ahead of intended publication of the initial stage of rulemaking.<sup>1</sup> At minimum, listing documents

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<sup>1</sup> For critical habitat designation rules, POCs must provide documents to the Office of Protected Resources, Endangered Species Division's (PR3) Division Chief for clearance prior to submission to [NMFS.Clearance@noaa.gov](mailto:NMFS.Clearance@noaa.gov).

must be submitted to NMFS Clearance 6 weeks prior to the month of the planned publication for the first stage of the rulemaking.

3. All requests for a Regulatory Identifier Number (RIN) must include: 1) RID form and 2) E.O. 12866 listing document, with 3) some proof of GC clearance (e.g., email). RIN requests are submitted to NMFS Clearance by the means appropriate for the originating program office.<sup>2</sup>
4. Once the required documents have been submitted, NMFS Clearance obtains and sends the RIN to the POC.
5. NMFS Clearance submits E.O. 12866 listing documents to the Senior Advisor for Regulatory Programs by the first week of each month.
6. The Senior Advisor for Regulatory Programs reviews, edits, and clears E.O. 12866 listing documents and sends them back to NMFS Clearance.
7. NMFS Clearance updates rule abstracts in ROCIS with the final version of the E.O. 12866 listing document.
8. NMFS Clearance submits E.O. 12866 listing documents to DOC-OGC upon clearance from the Senior Advisor for Regulatory Programs.
9. DOC-OGC submits E.O. 12866 listing documents to OMB.
10. DOC-OGC emails NMFS Clearance and the Senior Advisor for Regulatory Programs with any follow-up questions from OMB:
  - a. Upon request from the Senior Advisor for Regulatory Programs, NMFS Clearance works with the POC and the appropriate GC office to respond to OMB's questions.
  - b. The Senior Advisor for Regulatory Programs responds to DOC-OGC.
11. DOC-OGC forwards OMB's responses and significance determinations for the applicable month's batch of RINs to NMFS Clearance.
12. NMFS Clearance informs the POC of OMB's significance determination<sup>3</sup>, and follows up with DOC-OGC on any missing E.O. 12866 listing documents.

#### *B. Content of E.O. 12866 Listing Document*

1. Title of the rulemaking (avoid mentioning specific stages in the rulemaking

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<sup>2</sup> West Coast Region's Groundfish in-season actions are exempt from OMB review, but receive a RIN because they make changes to the Code of Federal Regulations. For these in-season actions, only a RID form will be submitted.

<sup>3</sup> POC is responsible for keeping track of the E.O. 12866 status for their action(s) in the Upcoming Decisions report document.

process, e.g., proposed rule). Please note that ROCIS has a 200 character limit for this field, so it is important to keep titles concise.

2. Point of Contact.
3. Agency's initial determination of significance for purposes of E.O. 12866.
4. Agency's initial Congressional Review Act determination (e.g., Not Major).
5. Paperwork Reduction Act Requirement (e.g., New information collection request (ICR)).
6. Upcoming Action (e.g., Proposed rule).
7. Agency: DOC/NOAA/NMFS.
8. RIN. **\*\*This will be added to the listing document by Regulatory Services \*\***
9. Planned publication date (month and year) of each stage of the rulemaking.
10. Statutory/Judicial deadline, if any.
11. Council Action(s) (provide a copy of the Council Action, if applicable).
12. Description of the rule.
  - a. Remember the audience is OMB, so the summary should use plain language.<sup>4</sup>
  - b. Describe clearly, concisely, and in paragraph form what the rulemaking proposes to do.
  - c. Specify the authority under which NMFS will implement the rulemaking.
  - d. If applicable, specify if NMFS is proposing the rulemaking in response to a specific event (e.g., a regional Fishery Management Council or interstate Fishery Commission action, an advisory body recommendation, measures taken by an international body to which the United States is a member, a rulemaking petition, court order, etc.)
  - e. Briefly discuss the situation that led to the need for this rulemaking (i.e., the "driver").
  - f. Include an early assessment of the magnitude of the economic impacts, if any, and who is likely to be affected by this rulemaking.

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<sup>4</sup> The cleared summary in the listing document is what will appear in the semi-annual Unified Agenda publication.

- g. Keep to no more than 1 to 2 paragraphs in length. There is a character limit in ROCIS so it is important to keep the Description concise.

C. *Next Stage Report Procedures*

1. NMFS Clearance compiles a batch of RINs whose comment periods have ended within the past month, to potentially be included in the monthly Next Stage Report.
2. NMFS Clearance emails the POCs for each action included in the Next Stage Report batch for the applicable month to confirm the below statement from OIRA:

*“Public comments did not provide substantial evidence that this rule [or these rules] would result in an economic impact of \$200 million or more; raise any additional legal or policy questions; create an inconsistency or contradiction to other agencies’ regulations; or materially alter the budgetary impact of grants, entitlements, or loans, or the obligations and rights of recipients thereof. All public comments are posted in the proposed rule’s docket on [regulations.gov](http://www.regulations.gov).”*

3. NMFS Clearance gives POCs no less than five days to respond and confirm the above statement from OIRA. If a POC is not able to confirm the OIRA statement for an action, that action is included in the Next Stage Report batch for the following month. If a POC is unable to confirm the OIRA statement, they must provide an explanation detailing the economic, legal, and/or policy impacts of public comments received for the action.
4. Once confirmation of the OIRA statement has been provided for all applicable actions, NMFS Clearance submits the monthly batch to DOC-OGC via email.
5. DOC-OGC submits the batch to OMB for review.
6. DOC-OGC emails NMFS Clearance and the Senior Advisor for Regulatory Programs with any follow-up questions from OMB:
  - a. Upon request from the Senior Advisor for Regulatory Programs, NMFS Clearance works with the POC and the appropriate GC office to respond to OMB's questions.
  - b. The Senior Advisor for Regulatory Programs responds to DOC-OGC.
7. DOC-OGC forwards OMB's responses and significance determinations for that month's batch of RINs to NMFS Clearance.
8. NMFS Clearance informs the POC for each action of OMB's significance determination for that action.