

We the People of the United States, in order to insure domestic Tranquility, provide for the common defence, promote the Progress, Welfare and establish this Constitution for the United States

United States Department of Commerce

NOAA Supplement to Executive Order 13563 - Plan for Retrospective Analysis of Existing Rules



Open Government

*Transparency
Participation
Collaboration*

**Updated
January 2014**



**NOAA Supplement to Executive Order 13563
January 2014**



Table of Contents

NOAA FISHERIES POLICY ON ELECTRONIC REPORTING AND ELECTRONIC MONITORING TECHNOLOGIES..... 1

NOAA FISHERIES NATIONAL ENVIRONMENTAL POLICY AND MAGNUSON STEVENS ACT POLICY..... 1

NOAA FISHERIES REGULATORY FLEXIBILITY ACT REVIEWS 2

WEEKLY REPORTS OF NO FISHING ACTIVITY..... 2

COMMERCIAL REMOTE SENSING REGULATORY AFFAIRS OFFICE 3

NATIONAL MARINE SANCTUARIES..... 3



NOAA Fisheries Policy on Electronic Reporting and Electronic Monitoring Technologies

Constraining budgets and increasing demands for data to manage fisheries have been driving the need to evaluate and improve existing fishery-dependent data collection programs, in particular with respect to cost-effectiveness, economies of scale and sharing of electronic technology solutions across regions. The demand for more precise, timelier, and more comprehensive fishery-dependent data continues to rise every year. The regulatory burden on stakeholders from traditional fisheries management regulations that require near real-time monitoring of catch by species at the vessel level has been increasing. This challenged the agency to evaluate the methodological and budgetary limits of traditional data collection methods such as paper-based logbooks/self-reporting, on-board observers, and dockside monitoring. A new policy and process to consider the adoption of electronic technology options was needed to help ensure the agency's fishery-dependent data collection programs are cost-effective and sustainable for both the agency and stakeholders.

In April 2013, NOAA Fisheries Service adopted a new policy governing consideration of electronic technologies for fishery-dependent data collection. This policy guidance governs electronic technologies including the use of vessel monitoring systems (VMS), electronic logbooks, video cameras for electronic monitoring (EM), and other technologies that provide EM and electronic reporting (ER). It is our policy to encourage the consideration of electronic technologies to complement and/or improve existing fishery-dependent data collection programs to achieve the most cost-effective and sustainable approach that ensures alignment of management goals, data needs, funding sources and regulations.

The policy outlines eight principles NOAA Fisheries will be following for the consideration of electronic monitoring and electronic reporting options in the future. The policy statement is posted on line at <http://www.nmfs.noaa.gov/op/pds/documents/30/30-133.pdf>.

NOAA Fisheries National Environmental Policy and Magnuson Stevens Act Policy

The 2007 Magnuson-Stevens Reauthorization Act (MSRA) required NMFS to “revise and update” agency procedures to comply with NEPA for fisheries management actions. NMFS's initial approach was to propose a rule creating new regulatory requirements aligning the decision-making processes of the Councils and NMFS under the MSA with the analytical and procedural requirements of NEPA. NMFS published the proposed rule on May 14, 2008, and provided for a 90-day public comment period. 73 Fed. Reg. 27998. By the close of the public comment period, NMFS had received over 150,000 comment letters, many of which were form letters urging NMFS to withdraw the proposed rule and start over.



NOAA Supplement to Executive Order 13563 January 2014



NMFS subsequently determined that it would be more appropriate to revise and update internal guidance rather than to create new regulatory requirements. In 2013, NMFS issued a policy titled “National Environmental Policy Act Compliance for Council-Initiated Fishery Management Actions under the Magnuson-Stevens Act.” This policy clarifies roles and responsibilities of NMFS and the Councils, explains timing and procedural linkages, provides guidance on documentation needs, and fosters partnerships and cooperation between NMFS and FMCs on NEPA compliance. This policy satisfied the requirements of section 304(i) of the MSA.

In early 2014, NMFS will withdraw the prior proposed rule, consult with CEQ regarding the 2013 policy document, and solicit public comment on the policy document through a Federal Register notice in compliance with 40 C.F.R. § 1507.3(a).

NOAA Fisheries Regulatory Flexibility Act Reviews

For 2013, NOAA's Fisheries Service is conducting Section 610 reviews under the Regulatory Flexibility Act for 76 rules implemented under the Magnuson-Stevens, Endangered Species, or Marine Mammal Protection Acts during the 2005-2006 time period. The proposed rule asking for public comments on the Service's plan to conduct these reviews was published on June 20, 2013 (78 FR 37186). The public comment period closed on July 22, 2013. We received one comment and it was in support of an Office of Protected Resource's rule. Over 75% of the reviews have been completed so far while the remainder are expected to be completed within the next few weeks. In 2014, we will review rules originally published in 2007-2008. The appropriate list of rules to be reviewed will be compiled in the second quarter of 2014.

Weekly Reports of No Fishing Activity

NOAA Fisheries Service is reviewing the practice of requiring fishing vessels in certain fisheries to submit weekly reports when they have no activity to report from the prior week. Weekly reporting is sometimes required in fisheries to ensure that the fishery does not exceed the overfishing limit, and no-activity reports help NOAA ensure they have a complete data set when making time sensitive management decisions. However, it is possible that the requirement is unnecessarily burdensome when a vessel has no activity to report. NMFS will be working to explore mechanisms of reducing paperwork burden, such as not requiring vessels to submit a weekly report when there is no fishing activity.



NOAA Supplement to Executive Order 13563 January 2014



Commercial Remote Sensing Regulatory Affairs Office

National Environmental Satellite, Data, and Information Service (NESDIS) senior management approved proposed draft regulations addressing the licensing of private land remote sensing space systems. The draft proposed regulations were subsequently provided to the Departments of Defense, State, and the Interior, and the intelligence community for their informal review and comment. NESDIS and NOAA General Counsel prepared a written response to informal comments and provided it to the reviewing agencies this month. NOAA CRSRA held a meeting with the agencies to walk them through how we have responded to their comments. The draft regulations were also provided to the Advisory Committee on Commercial Remote Sensing (ACCRES) for review and comment. ACCRES submitted comments to NOAA and NOAA revised the proposed rule based on the comments and also provided a response back to the Committee. This rule is currently designated as significant under E.O. 12866 and subject to review by the Office of Management and Budget. NOAA anticipates publishing a proposed rule by the end of the 2014 calendar year.

National Marine Sanctuaries

Pursuant to section 304(e) of the National Marine Sanctuaries Act, (16 U.S.C. § 1434(a)), the following national marine sanctuaries are currently in ongoing management plan review, or are in the process of undergoing management plan review:

- Monitor NMS: NOAA issued a draft revised Management Plan and Environmental Assessment for the Monitor National Marine Sanctuary on April 17, 2012. 77 Fed. Reg. 22761 (Apr. 17, 2012). The plan includes proposals to enhance education and outreach, continue restoration and conservation of USS Monitor artifacts, consider possible expansion of the sanctuary's boundaries, and work with the state of North Carolina to strengthen coastal economies through maritime history and Civil War tourism. The final management plan and environmental assessment were issued on February 14, 2013 (78 FR 10606).
- Hawaiian Islands Humpback Whale NMS: The review process was initiated in 2010. The target for a draft revised management plan is 2014, with the final management plan targeted for completion in 2015.
- Gray's Reef NMS: NOAA began the public scoping process for GRNMS management plan review on July 1, 2012. The draft management plan environmental assessment, and proposed rule were issued on December 20, 2013. The rule proposes amendments to the regulations regarding anchoring and the use of small weighted marker buoys for diving or fishing in the sanctuary (78 FR 74046).



NOAA Supplement to Executive Order 13563 January 2014



- Florida Keys NMS: On April 19, 2012, NOAA issued a joint notice of intent to prepare an EA or DEIS for amending the zoning scheme and regulations for FKNMS and Fish and Wildlife Service and State of Florida Management Agreement for Submerged Lands within Boundaries of the Key West and Great White Heron National Wildlife Refuges and Regulations (77 FR 23425). The comment period closed on June 29, 2012.
- Thunder Bay: In response to strategies identified in the 2009 Thunder Bay National Marine Sanctuary management plan (74 FR 42651), NOAA issued a proposed rule to expand the boundary of the Thunder Bay National Marine Sanctuary on June 14, 2013 (78 FR 35776). The comment period closed on December 19, 2013.