# Executive Order 12866 Listing Guidance

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Signed

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1. **Background**

Executive Order (E.O.) 12866, entitled Regulatory Planning and Review, has as its objective, among other things, to enhance planning and coordination with respect to both new and existing regulations. To that end, section 6(a)(3)(A) of the E.O. establishes a system whereby agencies are to periodically submit a list of all their planned regulatory actions to the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB). This list is to indicate which of those regulations NMFS determines are “significant” within the meaning of E.O. 12866. OMB then has an opportunity to concur or not concur with the Agency's determination. Those regulations designated as “not significant” by NMFS and OMB are not subject to OMB review.

2. **Objective**

This memorandum establishes a procedure for processing NMFS regulations to fulfill the listing requirement of E.O. 12866. This document describes how NFMS will: process regulations in compliance with the E.O.; submit listing documents to provide OMB with notice of regulations; and address questions from OMB.

3. **E.O. 12866 Monthly List Submission**

This listing system applies only to rules that have not previously been listed with OMB.

NMFS will list on a monthly basis all upcoming regulations not exempt from the review procedures of E.O. 12866. This monthly list will contain all regulations not previously listed that NMFS reasonably expects to publish in the coming months. The Department of Commerce Office of the Assistant General Counsel for Legislation and Regulation (AGC-LR/DoC) will be responsible for listing all rules with OMB and advising the NMFS central coordinator of the date the list was submitted to OMB and feedback from OMB about the list. AGC-LR/DoC will maintain a table indicating the status of the upcoming rules that have been listed and will provide updated copies to NMFS monthly.

The preparation and review of the listing document for any emergency or time-sensitive rulemakings will be accomplished pursuant to the procedures set forth above. However, the NMFS central coordinator will provide such listings to AGC-LR/DoC immediately upon availability.

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1 The NMFS central coordinator is staff in the Clearance Unit within the Office of Sustainable Fisheries.
4. **Listing Document Procedure**

4.1 The Point of Contact (POC) for the rule completes a Regulatory Information Data form (RID) and prepares a listing document (generally, this should occur 6-12 months prior to publication).

4.2 NOAA General Counsel (GC) reviews and clears the listing document.

4.3 POC updates the abstract in the RID form to match the abstract in the listing document.

4.4 POC submits RID and listing document with some proof of GC clearance (e.g. email) to NMFS.Clearance@noaa.gov (Critical Habitat designation rules must also be sent to the PR3 Division Chief).

4.5 Once it has both the RID form and the listing document, NMFS Clearance obtains and sends a Regulatory Information Number (RIN) to the POC who immediately fills out the necessary information in the DOC Regulatory Tracking System (RTS).

4.6 NMFS Clearance submits listing documents to the NMFS Chief of Staff and/or the Assistant to the Deputy Assistant Administrator for Regulatory Programs on the first Wednesday of each month.

4.7 The NMFS Chief of Staff and/or the Assistant to the Deputy Assistant Administrator for Regulatory Programs reviews, edits, and clears listing documents and sends them back to NMFS Clearance.

4.8 NMFS Clearance updates rule abstracts in RTS, the Regulatory Information Service Center (RISC) and OIRA Consolidated Information System (ROCIS) with the final version of the listing document.

4.9 NMFS Clearance submits listing documents to DOC-OGC on the first Friday of each month.

4.10 DOC-OGC submits listing documents to OMB.

4.11 DOC-OGC emails NMFS Clearance, with copies to the NMFS Chief of Staff and/or the Assistant to the Deputy Assistant Administrator for Regulatory Programs, any questions from OMB:
   a) NMFS Clearance works with POC and NOAA GC to respond to OMB’s questions.
   b) NMFS Clearance routes responses to the NMFS Chief of Staff and/or the Assistant to the Deputy Assistant Administrator for Regulatory Programs for clearance.
   c) NMFS Clearance forwards cleared responses to OMB’s comments to DOC-OGC.

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2 The exception to this requirement is for inseason actions that must use RINs as these actions make changes to the Code of Federal Regulations (i.e. Northwest groundfish). For these types of inseason actions only a RID form will be submitted to NMFS.Clearance@noaa.gov.

4.13 NMFS Clearance checks monthly E.O. 12866 report for each RIN submitted that month and informs POC via email of OMB’s significance determination, and follows up with DOC-OGC on any missing listing documents.

5. **A Listing Document must contain the following Information:**

5.1 Title of the regulation.

5.2 Significance for purposes of E.O. 12866.

5.3 Agency: DOC/NOAA/NMFS.

5.4 RIN. **This will be added to the listing document by NMFS.Clearance@noaa.gov**

5.5 Planned publication date of each stage of the regulation.

5.6 Statutory/Judicial deadline, if any.

5.7 Summary of Rule (See Section 6).

6. **Summary of Rule**

6.1 Remember the audience is OMB, so the summary should avoid jargon and use plain language.

6.2 Describe clearly, concisely, and in paragraph form what the regulation will do.

6.3 Discuss why NMFS needs to implement this regulation (i.e. the “driver”).

6.4 Include an early assessment of the magnitude of the economic impacts, if any, and who is likely to be affected by this regulation.

6.5 The summary should not address why the action is “not significant” for purposes of E.O. 12866.

6.6 Keep to no more than 1 or 2 paragraphs in length.