

DEPARTMENT OF COMMERCE (DOC)

Statement of Regulatory and Deregulatory Priorities

The President's Fiscal Year (FY) 2010 Budget details how this Administration plans to lift our economy out of recession, and lay a new foundation for long-term growth and prosperity. The Department of Commerce (the "Department" or "Commerce") is aligning itself to contribute to both of these goals.

Established in 1903, the Department of Commerce is one of the oldest Cabinet-level agencies in the Federal Government. The Department's mission is to create the conditions for economic growth and opportunity by promoting innovation, entrepreneurship, competitiveness, and environmental stewardship. Commerce has 12 operating units, which are responsible for managing a diverse portfolio of programs and services, ranging from trade promotion and economic development assistance to broadband and the National Weather Service. The Department currently employs approximately 53,000 people around the world, although this workforce will more than double temporarily in 2010, due to the decennial census.

The Department touches Americans daily, in many ways — making possible the daily weather reports and survey research; facilitating technology that all of us use in the workplace and in the home each day; supporting the development, gathering, and transmission of information essential to competitive business; enabling the diversity of companies and goods found in America's and the world's marketplace, and supporting environmental and economic health for the communities in which Americans live.

Commerce has a clear and compelling vision for itself, for its role in the federal government, and for its roles supporting the American people, now and in the future. To achieve this vision, the Department works in partnership with businesses, universities, communities, and workers to:

- **Innovate** by creating new ideas through cutting-edge science and technology from advances in nanotechnology, to ocean exploration, to broadband deployment and by protecting American innovations through the patent and trademark system;
- Support **entrepreneurship and commercialization** by enabling

community development and strengthening minority businesses and small manufacturers;

- Maintain U.S. economic **competitiveness** in the global marketplace by promoting exports, ensuring a level playing field for U.S. businesses, and ensuring that technology transfer is consistent with our nation's economic and security interests;
- Provide effective management and **stewardship** of our nation's resources and assets to ensure sustainable economic opportunities; and
- Make informed policy decisions and enable better understanding of the economy by providing **accurate economic and demographic data**.

The Department is a vital resource base, a tireless advocate, and Cabinet-level voice for job creation.

The Regulatory Plan tracks the most important regulations that implement these policy and program priorities, several of which involve regulation of the private sector by the Department.

Responding to the Administration's Regulatory Philosophy and Principles

The vast majority of the Department's programs and activities do not involve regulation. Of the Department's 12 primary operating units, only the National Oceanic and Atmospheric Administration (NOAA) will be planning actions that are considered the "most important" significant preregulatory or regulatory actions for FY 2010. During the next year, NOAA plans to publish four rulemaking actions that are designated as Regulatory Plan actions. Further information on these actions is provided below.

The Department has a long-standing policy to prohibit the issuance of any regulation that discriminates on the basis of race, religion, gender, or any other suspect category and requires that all regulations be written so as to be understandable to those affected by them. The Secretary also requires that the Department afford the public the maximum possible opportunity to participate in departmental rulemakings, even where public participation is not required by law.

National Oceanic and Atmospheric Administration

NOAA establishes and administers federal policy for the conservation and management of the Nation's oceanic, coastal, and atmospheric resources. It provides a variety of essential environmental and climate services vital

to public safety and to the Nation's economy, such as weather forecasts, drought forecasts and storm warnings. It is a source of objective information on the state of the environment. NOAA plays the lead role in achieving the departmental goal of promoting stewardship by providing assessments of the global environment.

Recognizing that economic growth must go hand-in-hand with environmental stewardship, the Department, through NOAA, conducts programs designed to provide a better understanding of the connections between environmental health, economics, and national security. Commerce's emphasis on "sustainable fisheries" is designed to boost long-term economic growth in a vital sector of the U.S. economy while conserving the resources in the public trust and minimizing any economic dislocation necessary to ensure long-term economic growth. The Department is where business and environmental interests intersect, and the classic debate on the use of natural resources is transformed into a "win-win" situation for the environment and the economy.

Three of NOAA's major components, the National Marine Fisheries Services (NMFS), the National Ocean Service (NOS), and the National Environmental Satellite, Data, and Information Service (NESDIS), exercise regulatory authority.

NMFS oversees the management and conservation of the Nation's marine fisheries, protects threatened and endangered marine and anadromous species and marine mammals, and promotes economic development of the U.S. fishing industry. NOS assists the coastal states in their management of land and ocean resources in their coastal zones, including estuarine research reserves; manages the Nation's national marine sanctuaries; monitors marine pollution; and directs the national program for deep-seabed minerals and ocean thermal energy. NESDIS administers the civilian weather satellite program and licenses private organizations to operate commercial land-remote sensing satellite systems.

The Department, through NOAA, has a unique role in promoting stewardship of the global environment through effective management of the Nation's marine and coastal resources and in monitoring and predicting changes in the Earth's environment, thus linking trade, development, and technology with environmental issues. NOAA has the primary federal responsibility for providing sound scientific observations,

assessments, and forecasts of environmental phenomena on which resource management, adaptation and other societal decisions can be made.

In the environmental stewardship area, NOAA's goals include: rebuilding and maintaining strong U.S. fisheries by using market-based ecosystem approaches to management; increasing the populations of depleted, threatened, or endangered species and marine mammals by implementing recovery plans that provide for their recovery while still allowing for economic and recreational opportunities; promoting healthy coastal ecosystems by ensuring that economic development is managed in ways that maintain biodiversity and long-term productivity for sustained use; and modernizing navigation and positioning services. In the environmental assessment and prediction area, goals include: understanding climate change science and impacts, and communicating that understanding to government and private sector stakeholders enabling them to adapt; continually improving the National Weather Service; implementing reliable seasonal and interannual climate forecasts to guide economic planning; providing science-based policy advice on options to deal with very long-term (decadal to centennial) changes in the environment; and advancing and improving short-term warning and forecast services for the entire environment.

Magnuson-Stevens Fishery Conservation and Management Act

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) rulemakings concern the conservation and management of fishery resources in the U.S. Exclusive Economic Zone (generally 3-200 nautical miles). Among the several hundred rulemakings that NOAA plans to issue in fiscal year 2010, a number of the preregulatory and regulatory actions will be significant. The exact number of such rulemakings is unknown, since they are usually initiated by the actions of eight regional Fishery Management Councils (FMCs) that are responsible for preparing fishery management plans (FMPs) and FMP amendments, and for drafting implementing regulations for each managed fishery. NOAA issues regulations to implement FMPs and FMP amendments. Once a rulemaking is triggered by an FMC, the Magnuson-Stevens Act places stringent deadlines upon NOAA by which it must exercise its rulemaking responsibilities. FMPs and FMP amendments for Atlantic

highly migratory species, such as bluefin tuna, swordfish, and sharks, are developed directly by NOAA, not by FMCs.

FMPs address a variety of issues including maximizing fishing opportunities on healthy stocks, rebuilding overfished stocks, and addressing gear conflicts. One of the problems that FMPs may address is preventing overcapitalization (preventing excess fishing capacity) of fisheries. This may be resolved by market-based systems such as catch shares, which permit share holders to harvest a quantity of fish and which can be traded on the open market. Harvest limits based on the best available scientific information, whether as a total fishing limit for a species in a fishery or as a share assigned to each vessel participant, enable stressed stocks to rebuild. Other measures include staggering fishing seasons or limiting gear types to avoid gear conflicts on the fishing grounds, and establishing seasonal and area closures to protect fishery stocks.

The FMCs provide a forum for public debate and, using the best scientific information available, make the judgments needed to determine optimum yield on a fishery-by-fishery basis. Optional management measures are examined and selected in accordance with the national standards set forth in the Magnuson-Stevens Act. This process, including the selection of the preferred management measures, constitutes the development, in simplified form, of an FMP. The FMP, together with draft implementing regulations and supporting documentation, is submitted to NMFS for review against the national standards set forth in the Magnuson-Stevens Act, in other provisions of the Act, and other applicable laws. The same process applies to amending an existing approved FMP.

Marine Mammal Protection Act

The Marine Mammal Protection Act of 1972 (MMPA) provides the authority for the conservation and management of marine mammals under U.S. jurisdiction. It expressly prohibits, with certain exceptions, the take of marine mammals. Exceptions include the collection of wild animals for scientific research or public display or to enhance the survival of a species or stock. NMFS initiates rulemakings under the MMPA to establish a management regime to reduce marine mammal mortalities and injuries as a result of interactions with fisheries. The Act also established the

Marine Mammal Commission, which makes recommendations to the Secretaries of the Departments of Commerce and the Interior and other Federal officials on protecting and conserving marine mammals. The Act underwent significant changes in 1994 to allow for takings incidental to commercial fishing operations, to provide certain exemptions for subsistence and scientific uses, and to require the preparation of stock assessments for all marine mammal stocks in waters under U.S. jurisdiction.

Endangered Species Act

The Endangered Species Act of 1973 (ESA) provides for the conservation of species that are determined to be "endangered" or "threatened," and the conservation of the ecosystems on which these species depend. The ESA authorizes both NMFS and the Fish and Wildlife Service (FWS) to jointly administer the provisions of the Act. NMFS manages marine and "anadromous" species and FWS manages land and freshwater species. Together, NMFS and FWS work to protect critically imperiled species from extinction. Of the 1,310 listed species found in part or entirely in the United States and its waters, NMFS has jurisdiction over approximately 60 species. NMFS' rulemaking actions are focused on determining whether any species under its responsibility is an endangered or threatened species and whether those species must be added to the list of protected species. NMFS is also responsible for designating, reviewing, and revising critical habitat for any listed species. In addition, under the ESA's procedural framework, federal agencies consult with NMFS on any proposed action authorized, funded, or carried out by that agency that may affect one of the listed species or designated critical habitat, or is likely to jeopardize proposed species or adversely modify proposed critical habitat that is under NMFS' jurisdiction.

NOAA's Regulatory Plan Actions

While most of the rulemakings undertaken by NOAA do not rise to the level necessary to be included in the Department's Regulatory Plan, NMFS is undertaking four actions that rise to the level of "most important" of the Department's significant regulatory actions, and thus are included in this year's Regulatory Plan. The four actions implement provisions of the Magnuson-Stevens Fishery Conservation and Management Act, as reauthorized in 2006. The first action may be of particular interest to international

trading partners as it concerns the Certification of Nations Whose Fishing Vessels are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources. A description of the four Regulatory Plan actions is provided below.

Certification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported or Unregulated Fishing or Bycatch of Protected Living Marine Resources (0648-AV51). NOAA's NMFS is establishing a process of identification and certification to address illegal, unreported, or unregulated (IUU) activities and bycatch of protected species in international fisheries. Nations whose fishing vessels engage, or have been engaged, in IUU fishing would be identified in a biennial report to Congress, as required under Section 403 of the Magnuson-Stevens Fishery Conservation and Management Act. NMFS would subsequently certify whether identified nations have taken appropriate corrective action with respect to the activities of its fishing vessels.

Magnuson-Stevens Fishery Conservation and Management Act Provisions and Interjurisdictional Fisheries Act Disaster Assistance Programs (0648-AW38). This final rule would clarify the fishery disaster assistance provisions under both the Magnuson-Stevens Fishery Conservation and Management Act and the Interjurisdictional Fisheries Act. The regulations would establish definitions, characteristics of commercial fishery failures and fishery resource disasters, and the administrative process NMFS will follow in processing disaster assistance requests.

Amendment 16 to the Northeast Multispecies Fishery Management Plan (0648-AW72). The Northeast Multispecies Fishery Management Plan includes species such as cod, haddock and various flounders. This long-term plan will implement the necessary reductions to end overfishing as required by the Magnuson-Stevens Fishery Conservation and Management Act.

Provide Guidance for the Limited Access Privilege Program (0648-AX13). The Magnuson-Stevens Fishery Conservation and Management Act as reauthorized in 2006, included a section on Limited Access Privilege Programs (LAPPs). To assist the Councils in developing and implementing LAPPs, this rulemaking includes guidance on: (1) procedures for developing LAPPs; (2)

eligibility criteria; (3) Council approval of LAPP programs; (4) initial allocations; (5) restrictions on the sale and lease of privileges; (6) recovery of administrative costs; and (7) program review and monitoring.

At this time, NOAA is unable to determine the aggregate cost of the identified Regulatory Plan actions as several of these actions are currently under development.

Bureau of Industry and Security

The Bureau of Industry and Security (BIS) promotes U.S. national and economic security and foreign policy interests by managing and enforcing the Department's security-related trade and competitiveness programs. BIS plays a key role in challenging issues involving national security and nonproliferation, export growth, and high technology. The Bureau's continuing major challenge is combating the proliferation of weapons of mass destruction while furthering the growth of U.S. exports, which are critical to maintaining our leadership in an increasingly competitive global economy. BIS strives to be the leading innovator in transforming U.S. strategic trade policy and programs to adapt to the changing world.

Major Programs and Activities

The Export Administration Regulations (EAR) provide for export controls on dual-use goods and technology (primarily commercial goods that have potential military applications) not only to fight proliferation, but also to pursue other national security, short supply, and foreign policy goals (such as combating terrorism). Simplifying and updating these controls in light of the end of the Cold War has been a major accomplishment of BIS.

BIS is also responsible for:

- Enforcing the export control and antiboycott provisions of the Export Administration Act (EAA), as well as other statutes such as the Fastener Quality Act. The EAA is enforced through a variety of administrative, civil, and criminal sanctions.
- Analyzing and protecting the defense industrial and technology base, pursuant to the Defense Production Act and other laws. As the Defense Department increases its reliance on dual-use high technology goods as part of its cost-cutting efforts, ensuring that we remain competitive in those sectors and subsectors is critical to our national security.

- Helping Ukraine, Kazakhstan, Belarus, Russia, and other newly emerging countries develop effective export control systems. The effectiveness of U.S. export controls can be severely undercut if "rogue states" or terrorists gain access to sensitive goods and technology from other supplier countries.
- Working with former defense plants in the Newly Independent States to help make a successful transition to profitable and peaceful civilian endeavors. This involves helping remove unnecessary obstacles to trade and investment and identifying opportunities for joint ventures with U.S. companies.
- Assisting U.S. defense enterprises to meet the challenge of the reduction in defense spending by converting to civilian production and by developing export markets. This work assists in maintaining our defense industrial base as well as preserving jobs for U.S. workers.

DOC—National Oceanic and Atmospheric Administration (NOAA)

PROPOSED RULE STAGE

32. AMENDMENT 16 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

Priority:

Other Significant

Legal Authority:

16 USC 1801 et seq

CFR Citation:

50 CFR 648

Legal Deadline:

None

Abstract:

This action would implement management measures to continue rebuilding overfished stocks, revise biological reference points, and develop annual catch limits and accountability measures. This action would also adopt new sectors as an alternative effort control to days-at-sea restrictions.

Statement of Need:

Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) was developed by the New England Fishery Management Council (Council) as part of the biennial adjustment process established in the

FMP to evaluate the status of the all NE multispecies stocks; update status determination criteria for all NE multispecies stocks based upon the best scientific information available; and to revise management measures necessary to end overfishing, rebuild overfished NE multispecies stocks, and mitigate the adverse economic impacts of increased effort controls. In addition, this action would adopt rebuilding programs for four NE multispecies stocks newly classified as being overfished and subject to overfishing and incorporate Atlantic wolffish into the management unit. Finally, Amendment 16 would establish procedures for specifying allowable biological catch (ABC) and annual catch limits (ACLs) and implement accountability measures (AMs) for each stock managed by the FMP, as required by recent revisions to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Summary of Legal Basis:

Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.

Alternatives:

Amendment 16 includes numerous measures designed to achieve the goals and objectives of the FMP and the Magnuson-Stevens Act, including reporting and record keeping requirements, allocation criteria, effort controls, and administrative and enforcement provisions. Each measure includes a range of alternatives, including the no action alternative. Of particular note, Amendment 16 authorizes 17 new sectors and revises measures for the existing two sectors and. In addition, Amendment 16 includes six options for potential sector contributions (i.e., the stock allocations that each individual vessel could bring to a particular sector). Amendment 16 also includes four options for non-sector effort controls and three alternatives for commercial non-sector accountability measures. Finally, the Council considered several additional management measures under Amendment 16, including several alternative management regimes such as area-based management and a days-at-sea (DAS) performance plan, but these provisions were not included in this action at this time.

Anticipated Cost and Benefits:

The costs and benefits associated with measures under Amendment 16 are described in detail within the

associated draft environmental impact statement (EIS). A final EIS that would include updated analysis of economic impacts of this action is currently being developed for submission and review by NMFS. Due to uncertainty in the number of vessels that may participate in sectors, it is difficult to precisely quantify the economic impacts of this action. However, should all affected vessels elect not to participate in sectors and remain under the current DAS management regime, the potential adverse economic impacts are expected to be about \$15.5 million. Potential benefits of Amendment 16 include: Ending overfishing and ensuring that overfished stocks rebuild within established rebuilding time periods, developing a comprehensive procedure to establish ABCs and ACLs for each stock that more systematically incorporates both biological and management uncertainty into the FMP, increasing the accuracy and timeliness of catch monitoring data throughout the fishery, and increasing the efficiency and economic return of vessel operations by promoting participation in sectors. Costs associated with this action include additional monitoring and reporting costs for vessels; additional administration and membership costs to vessels participating in sectors; costs associated with complying with new gear requirements in some areas; opportunity costs associated with continued effort controls necessary to rebuild overfished stocks; and increased administration, monitoring, and enforcement costs to implement sector management.

Risks:

The risks associated with not implementing measures proposed in Amendment 16 include the potential for continued overfishing on several stocks and delayed rebuilding of overfished stocks beyond established rebuilding timelines. Moreover, the continuation of existing measures would maintain exclusive reliance upon DAS measures to manage the fishery, forgoing efficiency gains resulting from expanded participation in sectors, one form of a catch-share management regime. Further, without this rulemaking, the NE Multispecies FMP would not be able to establish a process for setting ABCs, ACLs, and AMs for managed stocks by 2011, as required by the Magnuson-Stevens Act. Finally, because this action would incorporate Atlantic wolffish into the FMP and specify management measures to rebuild this species, failure to

implement this action could increase the likelihood that this species would be listed under the Endangered Species Act and result in substantial economic impacts beyond those considered under this action.

Timetable:

Action	Date	FR Cite
Notice of Availability	10/23/09	74 FR 54773
Comment Period End	12/22/09	
NPRM	12/00/09	
NPRM Comment Period End	01/00/10	
Final Rule	03/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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RIN: 0648-AW72

DOC—NOAA

33. PROVIDE GUIDANCE FOR THE LIMITED ACCESS PRIVILEGE PROGRAM

Priority:

Other Significant

Legal Authority:

16 USC 1801 et seq

CFR Citation:

50 CFR 600

Legal Deadline:

None

Abstract:

This rule will provide regions with interpretive guidance on the use of Limited Access Privilege Programs as fishery management tools. The guidance is intended to assist the fishery management councils and NMFS regional offices in developing and implementing LAPPs.

Statement of Need:

The National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) intends to propose this rulemaking to create national guidance for the new Limited Access Privilege Program (LAPP) provisions found in section 303(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA). The LAPP provisions provide new incentive-based options for fisheries management. NMFS has received numerous requests from constituent groups, Regional Fishery Management Councils (Councils), and Congress to develop such guidance. This guidance will assist Councils in developing LAPPs with full consideration of national perspectives and concerns.

Summary of Legal Basis:

NMFS is proposing these regulations pursuant to its rulemaking authority under the MSA, 5 USC 561, 16 USC 773 et seq., and 16 USC 1801 et seq.

Alternatives:

Because this rule is presently in the beginning stages of development, no alternatives have been formulated or analyzed at this time.

Anticipated Cost and Benefits:

Because this rule is presently in the beginning stages of development, no analysis has been completed at this time to assess the amount that would be saved or imposed as a result of this rule. However, this rule does not meet the \$100 million annual economic impact threshold and thus has not been determined to be economically significant under EO 12866.

Risks:

Without this rulemaking, there is a risk that new LAPPs will be developed that do not meet the requirements of section 303(A), and therefore may detrimentally impact the fish stocks that they are designed to manage, the fisheries, or the human environment. Properly designed LAPPs mitigate environmental risk, ensure fair and equitable initial allocations, prevent excessive shares, protect the basic cultural and social framework of the fisheries and fishing communities, and contribute to public safety and economic prosperity.

Timetable:

Action	Date	FR Cite
NPRM	05/00/10	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

None

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Related RIN: Previously reported as 0648-AV48

RIN: 0648-AX13

DOC—NOAA**FINAL RULE STAGE**

34. CERTIFICATION OF NATIONS WHOSE FISHING VESSELS ARE ENGAGED IN ILLEGAL, UNREPORTED OR UNREGULATED FISHING OR BYCATCH OF PROTECTED LIVING MARINE RESOURCES

Priority:

Other Significant

Legal Authority:

16 USC 1801 et seq; 16 USC 1826d to 1826k

CFR Citation:

50 CFR 300

Legal Deadline:

None

Abstract:

The National Marine Fisheries Service (NMFS) is establishing a process of identification and certification to address illegal, unreported, or unregulated (IUU) activities and bycatch of protected species in international fisheries. Nations whose fishing vessels engage, or have been engaged, in IUU fishing or bycatch of

protected living marine resources would be identified in a biennial report to Congress, as required under section 403 of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) of 2006. NMFS would subsequently certify whether identified nations have taken appropriate corrective action with respect to the activities of its fishing vessels, as required under section 403 of MSRA.

Statement of Need:

The National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) proposes regulations to set forth identification and certification procedures for nations whose vessels engage in illegal, unregulated, and unreported (IUU) fishing activities or bycatch of protected living marine resources pursuant to the High Seas Fishing Moratorium Protection Act (Moratorium Protection Act). Specifically, the Moratorium Protection Act requires the Secretary of Commerce to identify in a biennial report to Congress those foreign nations whose vessels are engaged in IUU fishing or fishing that results in bycatch of protected living marine resources. The Moratorium Protection Act also requires the establishment of procedures to certify whether nations identified in the biennial report are taking appropriate corrective actions to address IUU fishing or bycatch of protected living marine resources by fishing vessels of that nation. Based upon the outcome of the certification procedures developed in this rulemaking, nations could be subject to import prohibitions on certain fisheries products and other measures under the authority provided in the High Seas Driftnet Fisheries Enforcement Act if they are not positively certified by the Secretary of Commerce.

Summary of Legal Basis:

NOAA is proposing these regulations pursuant to its rulemaking authority under sections 609 and 610 of the High Seas Driftnet Fishing Moratorium Protection Act (16 USC 1826j-k), as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act.

Alternatives:

NMFS is currently in the process of developing alternatives, and will provide this information at a later date.

Anticipated Cost and Benefits:

Because this rule is under development, NMFS does not currently have estimates of the amount of product that is imported into the United States from other nations whose vessels are engaged in illegal, unreported, and unregulated (IUU) fishing or bycatch of protected living marine resources. Therefore, quantification of the economic impacts of this rulemaking is not possible at this time. This rulemaking does not meet the \$100 million annual economic impact threshold and thus has not been determined to be economically significant under EO 12866.

Risks:

The risks associated with not pursuing the proposed rulemaking include allowing IUU fishing activities and/or bycatch of protected living marine resources by foreign vessels to continue without an effective tool to aid in combating such activities.

Timetable:

Action	Date	FR Cite
ANPRM	06/11/07	72 FR 32052
ANPRM Comment Period End	07/26/07	
NPRM	01/14/09	74 FR 2019
NPRM Comment Period End	05/14/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required:

Yes

Small Entities Affected:

Businesses

Government Levels Affected:

None

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Related RIN: Related to 0648-AV23

RIN: 0648-AV51

DOC—NOAA**35. MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT PROVISIONS AND INTERJURISDICTIONAL FISHERIES ACT DISASTER ASSISTANCE PROGRAMS****Priority:**

Other Significant

Legal Authority:

16 USC 1861; 16 USC 4107

CFR Citation:

50 CFR 600

Legal Deadline:

None

Abstract:

In accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA), as amended, and the Interjurisdictional Fisheries Act (IFA), the National Marine Fisheries Service (NMFS) proposes regulations to govern the application for and determination of commercial fishery failures as a basis for acquiring potential disaster assistance. The regulations would establish definitions and characteristics of commercial fishery failures, serious disruptions affecting future production, and harm incurred by fishermen, fishery resource disasters, requirements for initiating a review by NMFS, and the administrative process it will follow in processing such applications. The intended effect of these procedures and requirements is to clarify the fishery disaster assistance provisions of the MSA and the IFA through rulemaking and thereby facilitate the processing of requests.

Statement of Need:

The National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) intends to propose this rule to govern the requests for determinations of fishery resource disasters as a basis for acquiring potential disaster assistance. The regulations would establish definitions and characteristics of commercial fishery failures, fishery resource disasters, serious disruptions affecting future production, and harm incurred by fishermen, as well as requirements for initiating a review by NMFS, and the administrative process it will follow in processing such applications. The intended result of these procedures and requirements is to clarify and interpret the fishery disaster assistance provisions of the

Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Interjurisdictional Fisheries Act (IFA) through rulemaking and thereby ensure consistency and facilitate the processing of requests.

Summary of Legal Basis:

NMFS is proposing these regulations pursuant to its rulemaking authority under sections 312(a) or 315 of the MSA (16 USC 1861, 1864), as amended, and sections 308(b) or 308(d) of the IFA (16 USC 4107).

Alternatives:

N/A

Anticipated Cost and Benefits:

Because this rule is presently in the beginning stages of development, no analysis has been completed at this time to assess the amount that would be saved or imposed as a result of this rule. However, this rule does not meet the \$100 million annual economic impact threshold and thus has not been determined to be economically significant under EO 12866.

Risks:

Without this rulemaking, there is a risk that disaster determinations can be made on an ad hoc basis, without regard to any standardized guidelines or procedures.

Timetable:

Action	Date	FR Cite
NPRM	01/15/09	74 FR 2478
NPRM Comment Period Extended	02/06/09	74 FR 6257
NPRM Comment Period End	02/17/09	
NPRM Comment Period End	04/20/09	
Final Action	12/00/09	

Regulatory Flexibility Analysis Required:

No

Small Entities Affected:

No

Government Levels Affected:

Local, State, Tribal

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