

Appendix C2: Economic Analysis of Protected Resources Regulation

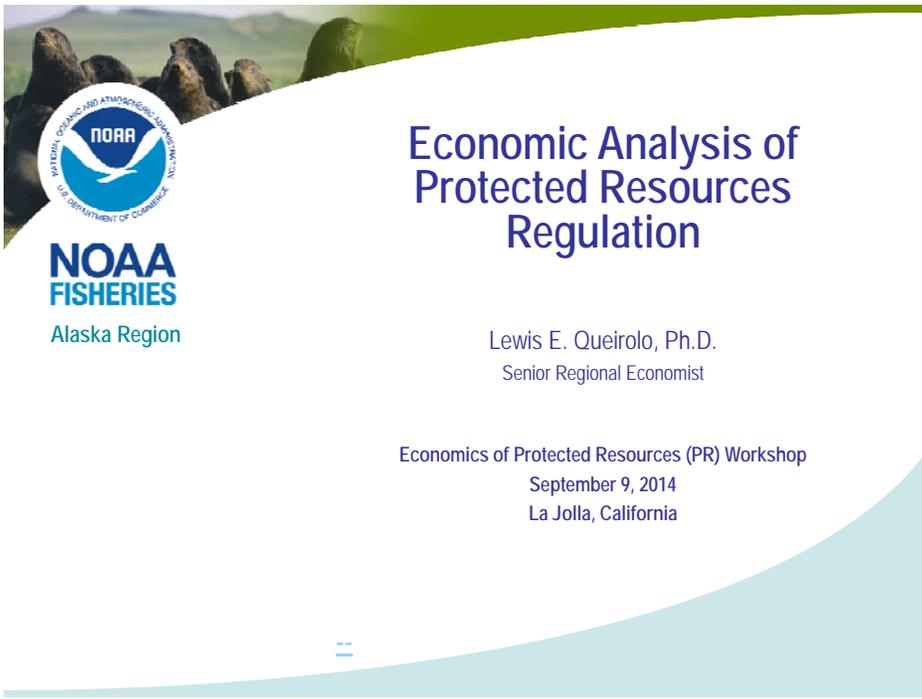



Alaska Region

Economic Analysis of Protected Resources Regulation

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A 'VERY' BRIEF OVERVIEW ... AUTHORIZING LAW

Sources of regulatory authority:

- MMPA
- ESA
- MSA
- NEPA
- APA

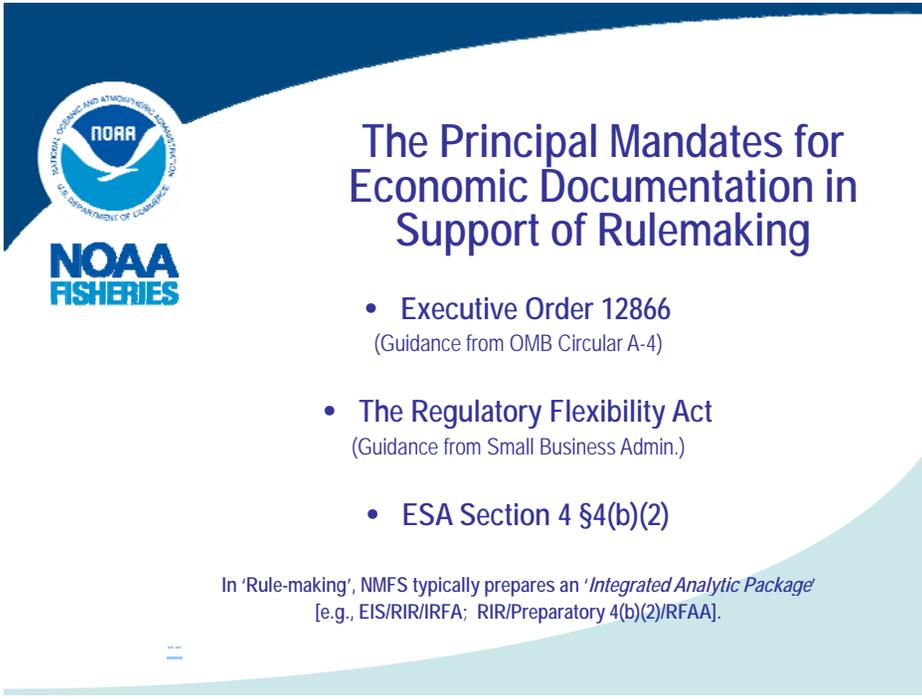




The Principal Mandates for Economic Documentation in Support of Rulemaking

- Executive Order 12866
(Guidance from OMB Circular A-4)
- The Regulatory Flexibility Act
(Guidance from Small Business Admin.)
- ESA Section 4 §4(b)(2)

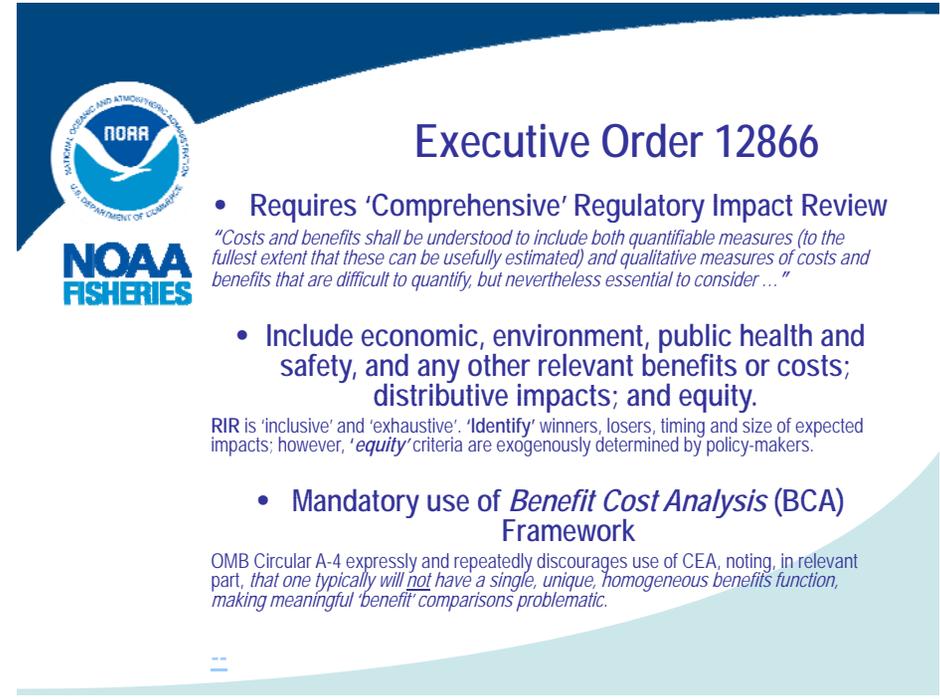
In 'Rule-making', NMFS typically prepares an *'Integrated Analytic Package'* [e.g., EIS/RIR/IRFA; RIR/Preparatory 4(b)(2)/RFAA].





Executive Order 12866

- Requires 'Comprehensive' Regulatory Impact Review
"Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider ..."
- Include economic, environment, public health and safety, and any other relevant benefits or costs; distributive impacts; and equity.
RIR is 'inclusive' and 'exhaustive'. 'Identify' winners, losers, timing and size of expected impacts; however, *'equity'* criteria are exogenously determined by policy-makers.
- Mandatory use of *Benefit Cost Analysis (BCA) Framework*
OMB Circular A-4 expressly and repeatedly discourages use of CEA, noting, in relevant part, *that one typically will not have a single, unique, homogeneous benefits function, making meaningful 'benefit' comparisons problematic.*





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Executive Order 12866 (cont.)

- Conduct BCA of alternatives *vis-à-vis* No Action

The analytic 'baseline' is No Action. Evaluate comparative strengths and weaknesses of each competing action alternative in achieving regulatory objectives, contrasted with not regulating. Identify critical assumptions, data limitations, caveats, and uncertainties.

- Requires National Accounting Stance

Maximize '*net benefit to the Nation*'. An RIR may *supplement* the BCA – but must separate benefits & costs from economic *impacts*. Limit RIR to residents of the United States.

- Impact analyses are sequentially dependent

Defining the Objectives, Purpose & Need, and Action Alternatives are *strictly reserved* for the decision-maker, never the purview or responsibility of the analyst. Biological, temporal, and physical dimensions; policy, institutional, and political parameters are precursor to economic analyses.

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Executive Order 12866 (cont.)

- CHD economic analysis depends on '*pre-specified*' physical parameters

Those proposing regulation must identify the '*essential features*' (PCEs) that define critical habitat; then precisely demarcate the physical boundaries thereof, special management needs, mechanisms of 'adverse mod' ... *before* the RIR can be conducted.

- Seek unique '*attribution*' of benefits and costs to each action alternative

Adverse modification of CH is defined through changes to the specific PCEs. Thus, PCEs must be "quantifiable" and "measurable" → *attributable impacts* (to some level of probability).

- Summarize RIR findings: relative performance;
net benefit conclusion(s); impact attribution

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Section 4 ESA 4(b)(2) Analysis

- Substantially Narrower Economic Question

For any *particular area*, within the proposed CHD, upon a determination that the benefits of exclusion outweigh the benefits of designation, the SOC has the *discretion* to exclude.

- Confine geographic dimensions of BCA to each '*particular area*' considered for exclusion

Estimate benefit of 'inclusion' and benefit of 'exclusion' *comprehensively*, treat in the same manner as prescribed under E012866 (i.e., monetize, quantify, measure qualitatively, leaving none out).

- § 4(b)(2) also provides for non-economic exclusions and exemptions

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Section 4 ESA 4(b)(2) Analysis (cont. - CHD)

- Benefits w/ and Benefits w/o

To fully comply with the mandates of E.O.12866 and RFA, as well as communicating strictly '*comparable economic measures*', the 4(b)(2) 'benefits' analysis must extend beyond arbitrary '*conservation rankings*' or '*annualized average revenues*' for each *particular area* being considered for exclusion.

- Bottom line – What Does 4(b)(2) mean?

Under the ESA, the *only direct consequence* of CHD is to require Federal agencies to ensure, through Section 7 consultation, that any action they fund, authorize, or carry out does not *destroy or adversely modify* designated critical habitat.

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Regulatory Flexibility Act

- When contemplating Federal regulations, seriously consider *adverse economic impacts on 'small' entities*.

"Small entities" may be small businesses, small non-profits, small government jurisdictions. SBA establishes definitional thresholds for each category (e.g., total annual gross receipts, numbers of employees, population size, affiliations). Only directly regulated small entities are relevant to RFAA.

Ask: "Does the proposed action have the potential to impose significant adverse economic impacts on a substantial number of small entities?"

No ... *Certify*, accompanied by the supporting 'factual basis'. -- We have met RFA obligation
Yes ... Prepare a Regulatory Flexibility Act Analysis (RFAA)

"*Significant ...*" and "*substantial ...*" are only relevant to the Certification stage. They do not carry forward into the RFAA.

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What must the RFAA contain?

- The Initial Reg. Flex. Analysis (IRFA) must provide

- (1) A description of the reasons why action by the agency is being considered;
- (2) A succinct statement of the objectives of, and legal basis for, the proposed rule;
- (3) A description and, where feasible, an estimate of the number of small entities to which the rule will apply (i.e., directly regulate);
- (4) A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including the type of professional skills necessary for preparation of the report or record;
- (5) An identification of all relevant Federal rules, which may duplicate, overlap, or conflict with the proposed action;
- (6) A description of any 'significant alternatives' to the proposed rule (i.e., the **selected action**) that accomplish the stated objectives of the proposed action **and** that would minimize any significant adverse economic impact of the proposed rule on small entities.

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What must the RFAA contain? (cont.)

- At the end of the public comment period, NMFS must prepare a Final Reg. Flex. Analysis (FRFA) containing:

- (1) A succinct statement of the objectives ... ;
- (2) A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the Agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- (3) A description and estimate of the number of small entities ... ;
- (4) A description of the projected reporting, recordkeeping and other compliance requirements ... ;
- (5) A description of the steps the Agency has taken to minimize the significant adverse economic impact on small entities, consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule, **and** the reason that each one of the other **significant alternatives** to the rule considered by the Agency which affect small entities was rejected.

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That's it ...

QUESTIONS ?

Thank you