

## APPENDIX A

### Economic Data Requirements for Federally Managed Recreational Fisheries

#### 1. Introduction

NMFS uses economic data and the models and analyses they support to monitor, explain and predict changes in the economic performance and impacts of federally managed recreational fisheries. The legal and policy requirements for economic data and analyses are intended to promote better informed conservation and management decisions on the use of living marine resources and marine habitat in federally managed fisheries by improving the ability of NMFS and the Councils to monitor, explain and predict those changes.

In this appendix, we address the following three laws, Executive Orders (EOs) and NOAA Fisheries strategy and policy statements with requirements for economic data, models and analyses.

1. The Magnuson-Stevens Fishery Conservation and Management Act (MSA)
2. The Regulatory Flexibility Act (RFA)
3. EO 12866 (Regulatory Planning and Review)

We use the terms “needed” and “required”, with respect to economic data, to refer to data that would support more than a highly superficial effort to comply with or support those laws, EOs and statements.

#### 2. MSA

In addition to identifying the importance of economic information, the MSA includes requirements that NMFS and the Councils can at best meet superficially without basic economic data. Specifically, NMFS and the Councils need economic data to meet and/or to know if they have met each of the 10 National Standards, 9 of the 15 required provisions of a Fishery Management Plan (FMP), some discretionary provisions of an FMP, and some of the required actions by the Secretary. Below, we present examples of the most explicit MSA requirements for economic data.

##### 2.1 National Standards

###### National Standard 2:

Conservation and management measures shall be based upon the best scientific information available (see 16 USC Ch 38 §1851 (a) (2)).

Various sections of the MSA make it clear that scientific information includes economic information. Further, current NOAA guidelines for National Standard 2 explicitly state that:

Fishery conservation and management require high quality and timely ... economic ... scientific information to effectively conserve and manage living marine resources.

Management decisions should recognize the ... economic (e.g., loss of fishery benefits) risks associated with the sources of uncertainty and gaps in the scientific information.

Each SAFE (Stock Assessment and Fishery Evaluation) report should contain the following scientific information when it exists: ... Pertinent economic ... information for assessing the success and impacts of management measures or the achievement of objectives of each FMP.

The “best scientific information available” requirement of NS2 is not the same as the “best reasonably obtainable information” requirement of EO 12866.

#### **National Standard 8:**

Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities (see 16 USC Ch 38 §1851 (a)(8)).

There is an explicit requirement to use the best available economic and social data to meet this national standard. Specifically, we need economic data to predict the extent to which we expect conservation and management measures to provide for the sustained participation and to minimize adverse economic impacts.

#### **National Standard 9:**

Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch (see 16 USC Ch 38 §1851 (a)(9)).

Congress and NMFS have made it clear that the broadly defined benefits and costs of further reductions in the levels of bycatch or discard mortality rates are critical for determining if further reductions are practicable. Therefore, NMFS requires economic data to determine if we have met this national standard.

## **2.2 Regional Fishery Management Councils**

The following two MSA requirements for Council Scientific and Statistical Committees (SSCs) make it explicit that basic economic data, models and analyses are part of the scientific information that the Councils are required to consider.

Each Council shall establish, maintain, and appoint the members of a scientific and statistical committee to assist it in the development, collection, evaluation, and peer review of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan (see 16 USC Ch 38 §1852 (g)(1)(A)).

Each scientific and statistical committee shall provide its Council ongoing scientific advice for fishery management decisions, including ... reports on social and economic impacts of management measures ... (see 16 USC Ch 38 §1852 (g)(1)(B)).

### **2.3 FMP Required Provisions**

NMFS needs basic economic data to meet 9 of the 15 MSA required provisions for FMPs prepared by either a Council or the Secretary. The following are the four most explicit examples of those required provisions.

FMPs are required to “contain a description of the fishery, including, but not limited to ... the cost likely to be incurred in management, actual and potential revenues from the fishery ...” (see 16 USC Ch 38 §1853 (a)(2)). We need basic economic data to describe the cost likely to be incurred in management and the actual and potential revenues from the fishery.

FMPs are required to “include a fishery impact statement for the plan or amendment .... which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures ... and possible mitigation measures” (see 16 USC Ch 38 §1853 (a)(9)). We need economic data to assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures and possible mitigation measures.

FMPs are required to “include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact ...” (see 16 USC Ch 38 §1853 (a)(13)). We need economic data to describe the fishing sectors of a fishery and to estimate and describe the economic impacts.

FMPs are required to “to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery;” (see 16 USC Ch 38 §1853 (a)(14)). NMFS needs economic data to: (1) identify and consider either the economic

impact of the harvest restrictions or the recovery benefits on the fishery participants in each sector and (2) determine if the associated impacts and benefits are allocated fairly and equitably.

The MSA recognizes the importance of economic data for its effective implementation. Therefore, it requires each FMP to “specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing in the fishery, including ... economic information necessary to meet the requirements of this chapter (see 16 USC Ch 38 §1853 (a)(5)).

### **3. Regulatory Flexibility Act (RFA)**

If the agency does not have a factual basis for a determination that there are not a substantial number of directly regulated small entities or that no significant adverse impact on directly regulated small entities will occur, it must prepare an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA). The IRFA: (1) describes the impact of the proposed rule on small entities [Sec. 603(a)] and (2) identifies the directly regulated small entities and any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the proposed rule on small entities [Sec. 603(c)]. Each FRFA is required to describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes [Sec. 604(a)(5)]. In addition, several Sections of the RFA require Federal agencies to analyze the effects of regulations to determine whether an action will have or has had "a significant economic impact on a substantial number of small entities." Cost, revenue and ownership information for the specific activity in question (e.g., recreational fishing), as well as some level of general information on the full range of income producing activities in which firms are engaged are necessary to effectively conduct the RFA analyses. The RFA also requires that agencies consider all affiliations, worldwide, of regulated entities such as ownership affiliations and cooperative affiliations.

### **4. EO 12866 “Regulatory Planning and Review”**

EO 12866 (58 FR 51735, October 4, 1993) requires analysis of the impacts of regulations implementing fishery conservation and management actions. Specifically, it includes the following requirements.

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. 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. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach [Sec. 1(a)].

Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic and other information concerning the need for, and consequences of, the intended regulation" [Sec. 1(b)(7)].

In an effort to meet the requirements of EO 12866, NMFS or a Council prepares a Regulatory Impact Review (RIR) for each proposed regulatory action. The economic data, models and analyses used in an RIR in part determine its success in meeting those requirements and contributing to having a well-informed regulatory decision.