

CONDUCTING ECONOMIC IMPACT ANALYSES FOR NOAA FISHERIES SERVICE

prepared by

Lewis E. Queirolo, Ph.D.

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The following guidance pertains specifically to the preparation of “*economic*” and “*socioeconomic*” impact analyses associated with proposed regulatory management actions, whether initiated under the Magnuson-Stevens Act (MSA), the Regulatory Flexibility Act (RFA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), or other applicable law. While these analyses typically compliment, and even build directly upon, physical resource assessments, such as, Environmental Assessments (EA), Biological Opinions (BiOp), or Environmental Impact Statements (EIS), they must be complete and internally consistent in their own right. Whether integrated (e.g., EIS/RIR/RFAA) or submitted separately, the economic analysis should provide a reader, having no special knowledge of the issue at hand, sufficient information to understand:

- [1] the need for the proposed action;
- [2] the objectives being pursued;
- [3] the range of alternatives examined;
- [4] the relative implications of adopting each alternative; and
- [5] the *likely* attributable economic and welfare outcomes of the proposed action (e.g., who gains and who loses; what is the likely nature, magnitude, and distribution of the economic and welfare impacts; do the ‘benefits’ justify the ‘costs’ (i.e., is there a net National benefit accruing from the action?)).

An effective (and procedurally *acceptable*) economic analysis of a proposed management action will require some initial planning. The “*need for*” and “*objectives of*” the proposed action must be clearly enunciated (e.g., within the Council’s Problem Statement, the Agency’s Regulatory Action proposal, or the ESA Status Review, Biological Opinion, or Issues Advisory).

The suite of *alternatives* under consideration, including the requisite *No Action* alternative, must also be clearly identified and articulated. It is, however, the sole obligation of the decision-maker(s) to specify the suite of alternatives to be examined in the analysis (i.e., it is *never* the analyst's responsibility, nor purview to unilaterally interpose alternatives for analysis).

Once provided specific guidance as to the purpose of the proposed action and the suite of alternative means to be considered in achieving that purpose, the analyst's first task should be to identify *all* potentially impacted groups having a plausible linkage to the resource being addressed by the proposed action (e.g., directed fisheries, gear groups, conservation interest groups, fishery dependent communities, State or Federal agencies, Native American jurisdictions, CDQ groups). Consider making a list. Next to each group, describe (briefly) how one might characterize the likely impacts of the action (either adverse or positive), by alternative; and begin thinking about how one might measure each (either quantitatively or qualitatively). Don't neglect the *No Action* alternative, which may *not* be identical to the status quo condition, in this stage of analytical preparation.¹

For any given suite of alternative actions, there will be some obvious potentially impacted groups. For example, an FMP action might be expected to impact a number of commercial fishing sectors, both directly and indirectly. But, the analyst's challenge is to think more expansively. Economic and socioeconomic impacts may also extend to many other groups (e.g., fishery dependent communities, subsistence users, culturally dependent groups, commercial entities supplying goods and services to the fishing sectors, conservation organizations and public interest groups) and, as one considers the design of an RIR and RFAA, one should think about how those analyses might capture these effects, as well.

¹ The inclusion of a *No Action* alternative is mandatory, as is a thorough description of the prevailing *status quo* condition within which the proposed action is being contemplated. Typically, these serve as the baseline against which each action alternatives will be contrasted. However, under some circumstances (e.g., when the proposed action is initiated because an existing management program is scheduled to *sunset*), adoption of the *No Action* alternative will result in an outcome different from the pre-decisional *status quo*. In such circumstances, it is the *No Action* alternative that correctly reflects the analytical baseline.

In the case of a fishery management action, ask, for example, “Who are the most likely primary, intermediate, and end users (e.g., domestic or foreign)?” “How might consumers, in general, and American consumers in particular, be impacted by the proposed action (e.g., consumer-level price effects, product supply effects, changes in product form or quality)?” “Are there U.S. seafood market-share implications (e.g., will U.S. consumers be induced to ‘substitute’ away from domestically produced seafood products, to an alternative product/species, perhaps imported from a foreign supplier)?” “Might there be attributable ‘trade’ implications (e.g., increases or declines in seafood exports/imports; changes in global supply)?” “Are there community and/or regional economic implications (e.g., increases or reductions in local employment opportunities, duration, or seasonality; community stability and economic welfare impacts; local tax revenue effects)?” “Are there ‘spillover’ effects (e.g., will there be displaced capacity and/or effort that might seek to move into other fisheries; with what economic and welfare implications for those already participating there)?”

The foregoing exercise may highlight groups with either direct or indirect market-based linkages, subject to change under the proposed action. But, for some actions, perhaps especially those dealing with ESA, MMPA, Essential Fish Habitat, or Protected Resources issues, it will be necessary to include among the list of potentially impacted groups, populations of individuals without a traditional market linkage to their interest in the resource. These may include groups such as subsistence users, recreational users, even *non-users* or *passive-users* (e.g., those U.S.-citizens who derive *value* from the resource, but never intend to utilize it; or those who wish to maintain an *option* to do so in the future; or those who base their welfare valuation on *bequeathing* the resource to future generations). The values each of these non-market users places on the resource (and, therefore, the value which may be impacted by a proposed action) are difficult to quantify, but *must* be included, even if only qualitatively, as one designs the mandatory economic benefit/cost and impact analyses. Note that not every action will involve non-market uses or users, but each analytical design should assess the *likelihood* that such uses or individuals may be impacted.

So now we see, a regulatory economic impact analysis must encompass not only attributable effects imposed upon the people, businesses, and communities that directly utilize and depend upon the resource, but also those that may be indirectly impacted by the action, whether through market mechanisms or through non-market relationships. The complexity of these relationships makes an economic analysis of the impacts of a suite of potential alternative management actions at least as difficult a task as characterizing the biological and ecological impacts. Nonetheless, changes in the regulatory environment, attributable to both recent legislative and judicial actions, impose an enhanced level of specific analytical scrutiny of proposed regulatory actions.

Preparation of economic analyses (with socioeconomic elements) contained in an RIR and RFAA, respectively, are required of the agency under provisions of Executive Order 12866 and the Regulatory Flexibility Act (RFA). The Magnuson-Stevens Act (inclusive of National Standards) and the National Environmental Policy Act also contain specific requirements concerning analysis of economic benefits, costs, and distributional considerations. If done *systematically* and with appropriate care, an RIR (and RFA) analysis will satisfy all these requirements, simultaneously.

The Regulatory Impact Review

What *precisely* does this Executive Order require of a Regulatory Impact Analysis (*a.k.a.*, an RIR)? E.O.12866 states (in relevant part):

“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, environment, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.”

This is *not* to suggest that every RIR must meet the standards of a doctoral dissertation in resource economics. Indeed, the guiding requirements for an RIR, enumerated in subsequent sections of E.O.12866, establish a very specific set of threshold criteria, against which judgments about economic *significance* are to be measured. Specifically, E.O.12866 requires that the Office of Management and Budget (OMB) review proposed regulatory programs that are considered to be *significant*. OMB goes on to explain that “A *significant* regulatory action is one that is *likely* to:

- (1) *Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;*
- (2) *Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;*
- (3) *Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or*
- (4) *Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.”*

The Regulatory Impact Analysis is, in this *particular* respect, designed to provide information with which to determine whether a proposed regulation is likely to be *significant* (and, therefore, subject to OMB review and concurrence). The challenge as the analyst, here, is to perform a level of analysis, and present a coherent description of the probable impacts of each proposed alternative, which permits an objective determination as to whether or not the proposed action is expected to reach *any* one of the threshold impacts triggering OMB examination. In the course of this process, the relative performance (e.g., costs, benefits, efficacy) of each competing alternative should emerge, especially if all the relevant groups (and their respective economic and socioeconomic interests) are represented in the assessment’s design and execution.

This may still seem rather abstract. So, let's examine, specifically, what *must* be included in an RIR. The *minimum* requirements for an RIR include:

- a complete *quantitative* description (to the extent practicable) of the problem being addressed;
- a clear description of the management objectives;
- a comprehensive description of each alternative (including the *No Action* alternative);
- a thorough description of the expected effects (both positive and negative) of each alternative, on *each* potentially impacted group;
- a *qualitative* analysis of the benefits and costs of each alternative, with a summary of the 'net National benefit' (possibly negative).

When adequate data are available, expected benefits and costs should be *quantified* to the fullest extent that these can be usefully estimated. Assuming that you are preparing an integrated EA/RIR/IRFA (which is the *preferred* format), elements (1), (2), and (3) should already be present in the Introduction and/or EA portions of the document. They, nonetheless, *must* be explicitly included in the RIR. One need *not* repeat these sections verbatim from the EA, although a *thorough* summary (i.e., sufficient for the reader to adequately understand the purpose and need for the action, as well as the suite of alternatives under consideration), with supporting references to the full text contained in the EA, is *required*.

This apparent redundancy has a purpose. Some reviewers (e.g., OMB) can be expected to turn directly to the RIR, rather than working their way through the background material contained in the "Introduction and EA" portions of the integrated document. Administration policy *requires* that the RIR provide a reader the ability, based *solely* upon the material contained within the RIR, to understand the action being proposed, the necessity for regulatory intervention, and the action's implications (at least, its economic and socioeconomic implications).

Element (4) requires the construction of a logical and internally consistent description of the characteristics of *each* alternative and precisely how each alternative, in turn, is expected to achieve the stated management objective(s). On the basis of this profile, the analysis must

explain how each alternative may impact *each* relevant user group. Note that the comprehensive list of potentially impacted groups, which was prepared in the pre-analysis design phase, will guide the analyst through completion of this aspect of element 4.

One should endeavor to describe *each* potentially impacted group in some detail here. This should include (whenever possible, and as appropriate) the number and characteristics of the members of each group (e.g., vessel counts, by gear-type, by size class, by gross revenue category, and breadth of economic diversification; numbers, geographic location, affiliation, and types of processing; etc.). Then describe the nature (positive/negative, direct/indirect, market/non-market) of all expected economic effects attributable to the action, accruing to each group. In so doing, the approximate magnitude, timing, and duration of these impacts... for each group... for *each* alternative must be considered, to the fullest extent practicable (*given* available data, models, and the relative significance of the action). Creation of a tabular matrix has proven useful for organizing and presenting these categories across alternatives, but with or without a table, clear explanatory text is crucial to presentation of this portion of the analysis; again, *quantify* that which can be usefully quantified, including *qualitative* estimates of all the remaining impacts and linkages ... taking care to leave *none* out.²

One useful exercise which has often been employed to develop these impact characterizations is to ask, for example, in an FMP action, “What would the fishery(ies) have looked like (in the most recent year for which complete empirical data are available), had the proposed alternative been in effect?” On that basis, one may contrast: [1] the actual empirical observations one can cite from the data (e.g., numbers of participants, by sector, vessel size, gear-group; ex vessel gross earnings; total landings, by sector, area, gear-type; product mix and prices, first wholesale gross receipts; enforcement and management costs, etc.), with [2] reasonable expectations of the impacts on each of these parameters that one may derive from knowledge of the industry (and from the underlying economic theory). For the most part, these “potential” outcomes will be self-evident and, with experience, should present little difficulty in interpretation.

² As an aside, if it's not clear from the foregoing, a complete and detailed accounting within the RIR of the group members, by key characteristics (e.g., gross receipts, employee numbers, affiliations), will *greatly* facilitate completion of the RFA-portion of the integrated EIS/RIR/IRFA.

In the interim, you are encouraged to consult with knowledgeable colleagues, SF or Council economists, and especially the Regional Economist.

Keep in mind that, within the RIR, one is attempting to assess the *incremental differences* (in economic terms) between each proposed alternative and the baseline alternative. Therefore, the empirical baseline against which one measures *each* potential action alternative should always be that associated with the “state-of-the-world” that is expected to exist, if no action is taken.

Because every action which you will be analyzing occurs within an existing management context, it is not necessary (nor appropriate) for you to address impacts which are beyond the scope of the action under consideration. For example, assume that one is analyzing a proposed action that would modify a prohibited species catch (PSC) cap. There exists a current cap (e.g., that specified under the status quo management regulations). The proposed action under analysis likely includes a range of alternatives that would reduce or redistribute the cap, each by a differing amount or through a different mechanism (but, none proposes to eliminate PSC restrictions). Your analysis of the PSC change will appropriately compare and contrast the expected economic costs and benefits of each alternative action, *relative* to the prevailing *No Action* PSC allowance. That is, it is only the economic values of the *incremental* change in PSC (positive or negative) from the regulatory baseline condition that need be assessed... not every hypothetical PSC allowance limit imaginable. Recall, it is neither the responsibility nor prerogative of the analyst to introduce hypothetical alternatives into the suite of actions proposed for analysis by the decision-maker (e.g., Council).

Having now completed the essential descriptions of all expected economic impacts (costs and benefits) for *each* alternative and for *each* potentially impacted group, the last step in RIR preparation is to integrate the component parts from element (4). This generally will take the form of a *descriptive* summary of the likely *net benefits* or *net costs* of each alternative, as measured against the *No Action* baseline. This should yield some conclusions concerning the likely *net benefit to the Nation*, deriving from the proposed action (given that, by this point a preferred alternative will have either emerged on the basis of your analytical work, or have been *specified* for you by the Council or Agency).

Because, for the foreseeable future, it is unlikely that the agency will have the type and detail of empirical data necessary to derive true *net benefit* estimates, this section will in the main consist of professional interpretations, based upon the aggregate body of quantitative and qualitative *projected* economic outcomes developed in the foregoing analysis. Informed by economic theory, management experience, and those empirical data that are available, it is incumbent upon the analyst, at this point in the RIR, to objectively characterize to the fullest extent practicable, the relative net benefit to the Nation attributable to each of the competing alternatives. As previously noted, E.O.12866 explicitly directs that, "... *in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environment, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.*"

NOTE: This is among the most important sections in your analysis. Here, you have the opportunity (and responsibility) to bring together the best empirical data, information, and professional experience available to inform the policy process. Do not squander this opportunity! This is not the time or place for '*boilerplate*'. A clear, concise, and objectively presented *summation* of the net economic and socioeconomic effects, across alternatives, has the potential to significantly contribute to efficient, effective, and equitable management decisions. Within the specific context of the problem being analyzed, develop a set of summary statements (drawing on the material in elements 1 through 4 of your RIR) that impartially, unambiguously, and systematically reflect your analytical findings, being clear to identify critical assumptions, caveats, and uncertainties.

Congratulations ! You should now have a *fully compliant* RIR in front of you! So, let's continue on to the RFAA section of this integrated document.

The Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act has taken on considerable significance for the agency, since its original enactment. While there are several good sources describing why this is so, for our purposes, it is enough to accept that the RFA is a procedurally *significant* element of most actions you will be analyzing. NOAA is currently in the process of developing new guidelines for preparation of documents that comply with the Small Business Administration's (SBA) interpretation of the Reg. Flex. requirements. When these become available, the advice which follows *may* have to be revised.³

The RFA is primarily concerned with assuring that Federal agency decision-makers contemplating regulatory action, seriously and systematically consider *disproportionate and/or significant adverse economic impacts on small entities* that may result. For your point of reference as the RFAA analyst, it is important to keep foremost in mind the *small entities* of interest and concern under RFA include *only* those that are *directly regulated* by the proposed action *and*⁴ which may, as a result of the action, incur *adverse economic impacts*. [I have emphasized the absolutely critical thresholds that govern the scope of your RFAA. Commit them to memory and your task will be much easier.]

According to the SBA, which administers the RFA, a small entity may be a small *business*, a small *nonprofit* organization, or a small *governmental jurisdiction*. The SBA has provided criteria to be used to identify a *small* entity, for RFA analytical purposes. You should familiarize yourself with these specific criteria and adhere strictly to each. They may vary across applications. For example, what constitutes a 'small business' for purposes of a given Protected Resources action (e.g., impacting commercial whale watching operators) may be based on different economic and size criteria than is the case for a fishery management action (e.g., impacting observer coverage on vessels <60' LOA). Consult the SBA website, if in doubt.

³ Although originally penned in 1999, and re-written in July 2005, February 2007, January 2008, April 2009, and September 2010, the preceding paragraph precisely reflects the circumstances which prevail within the Agency at this writing, February 2011.

⁴ Please take note, this is a two-part threshold. First, the small entity must be **directly** regulated by the action (i.e., the action must require some affirmative action on the part of the specific entity, not simply impact it). Second, the action must impose an adverse economic impact. **Both** must be present for the threshold to be crossed.

In the context of a fishery management action, in general, if a *fishing* operation's total annual gross receipts, from all commercial activities, is less than \$4.0 million, the business is deemed to be *small* for RFA purposes. If the *fishing* operation is jointly owned, or otherwise affiliated (e.g., a member of an AFA or BSAI Crab cooperative), the *aggregate* annual gross revenues (including those of all affiliates, worldwide) must be considered when assessing the entity's size for RFA analytical purposes. In practice, the analyst will often not have access to adequately detailed ownership and affiliation information upon which to make these individual interpretations. Until (or unless⁵) these data are available, *assume* fishing vessels with less than \$4.0 million in annual gross receipts are '*small*,' for purposes of the RFA analysis.

At present (February 2011), based upon direction from NMFS HQ, catcher/processor operations (C/Ps) are to be evaluated upon the same criterion as catcher vessels (i.e., <\$4.0 million total annual gross receipts), for RFA purposes. In the case of C/Ps, gross receipts are measured at the first wholesale level. This criterion is under review by HQ, and *may* be modified at a future time.

Processors (including, motherships, inshore floaters, and onshore plants) are '*small entities*' if they employ fewer than 500 people (100 employees for secondary processors) "... *in full-time, part-time, temporary, or in any other capacity, when all of their operations, anywhere in the world, are combined.*" Often, one does not have this level of information concerning the employment structure of such firms. Unless data (or other forms of public information) are available that indicate otherwise, assume all processors operating in commercial groundfish and crab fisheries in and off Alaska are not '*small*' businesses, for purposes of RFA.

In the fisheries management context, '*small nonprofits*' are defined to be independently operated and not dominant in their field. In practice, entities such as the CDQ groups qualify as '*small*' under these criteria, for RFA purposes.

⁵ It is widely reported that specific catcher vessels (identifiable by name) in the BSAI pollock fishery are 'owned' by the onshore plants to which they deliver. These and similarly situated individual boats may not be 'small', based upon the earnings aggregation of all affiliated elements of the parent entity, within the RFA context. Likewise, all AFA cooperative member operations are 'affiliated' and, by definition, do not meet the 'small entity' criteria.

Similarly, any governmental jurisdiction with a population of fewer than 50,000 is 'small'. With few exceptions (e.g., Seattle, Anchorage), all the governmental jurisdictions likely to be *directly regulated* by any given proposed action under analysis by NMFS Alaska Region or the NPFMC, will meet the SBA criterion for a 'small entity' for RFA purposes. *If in doubt, refer to the SBA definitions... or, consult with the Regional Economist.*

What precisely constitutes a "significant impact" to a "substantial number," as per RFA certification criteria, is in flux within the agency at the present time. A previously asserted set of numerical criteria, advanced in an earlier version of NMFS guidelines, has been rejected as arbitrary, by SBA's Office of Advocacy. New criteria have, however, not been developed and endorsed by the Agency.

Notwithstanding this complication, initially, the primary objective of an RFA is to determine ... on a "factual basis" ... whether or not the action under consideration will result in... "a significant (adverse) impact on a substantial number of small entities." If an agency can quantitatively demonstrate that no such significant adverse economic impact will be imposed upon a substantial number of small entities, the agency may "certify" this finding⁶; in which case, the proposed action is then exempt from further analytical requirements under RFA.

However, because (for the foreseeable future) we typically will not have the necessary, detailed empirical data on operational ownership, affiliation, contractual interdependence, etc., with which to conduct such a rigorous quantitative analysis ... we cannot, in most cases, provide the requisite factual basis upon which to certify. Even if we *sincerely believe* that the action in question will not result in ... *a significant (adverse) economic impact on a substantial number of small entities...*, absent a quantitative factual basis, we may not "certify" under RFA. Therefore, it remains my advice that, except on the relatively rare occasion in which there can be no question about 'small entity' impacts (e.g., an action that only directly regulates individual subsistence users, *ipso facto*, there are no RFA 'entities' of any kind being directly regulated), prepare an Initial Regulatory Flexibility Analysis.

⁶ Certification involves the Secretary of Commerce notifying the Small Business Administration of his intent to 'certify' an action, and accompanying that notification with the 'factual basis' upon which that decision is based.

The SBA requirements for preparation of a fully compliant IRFA are straightforward and substantially less rigorous, onerous, and burdensome, than are the demands of preparing and defending the ‘factual basis’ upon which to certify, given the prevailing state-of-the-data in the fisheries off Alaska.⁷ Another advantage to preparation of an IRFA is that it provides the public an opportunity to comment on the analysis, which may provide data or other information critical to evaluating small entity impacts. It is possible for the Agency to ‘certify,’ even following public release of an IRFA, if a ‘factual basis’ can be developed, perhaps on the basis of public comment.

This brings us to another *fundamental* consideration in the RFA process. Please note! The matter of “*significant adverse economic impacts on a substantial number of small entities*” is exclusively relevant to the *certification* decision. That is, once one concludes that certification of an action is not factually supportable, “*significant and substantial*” are no longer relevant considerations under RFA. At this point, the RFAA shifts to preparation of an Initial Regulatory Flexibility Analysis (IRFA).

So, what must an IRFA include? Unlike the RIR, sections of the IRFA may explicitly incorporate (by reference) material and analysis contained in earlier portions of the integrated EA/RIR/IRFA document, if those earlier passages fully address the IRFA element in question. For example, the first requirement is: “*A description of the reasons why the action is being considered.*” Obviously, one will have exhaustively addressed this topic in the Introduction, EA, and/or RIR sections of your analytical document. I recommend that you provide the “element heading”, a brief but thorough transition summary, cite the appropriate section/page references from the EA and/or RIR, and move on.

⁷ This advice is in full accord with that given at the 1998 NMFS RFA Workshop, by Marian Macpherson, NOAA GC. Quoting Ms. Macpherson, “*It can require more hard data on impacts to certify an action (under our current guidelines) than to prepare an analysis. If there are any questions about an action’s impacts, it is better to do the (IRFA) analysis.*”

IRFA requirement two asks for: *“A statement of the need for, and objectives of, the rule; and the legal basis for the proposed action.”*⁸ Here, again, one *must* have treated this issue in substantial detail in earlier sections. Provide an appropriate section heading, a summary statement of the requested information, direct the reader to the relevant passages in the RIR and/or EA, and move on.

Requirement three includes: *“A description of, and when feasible, an estimate of the number of small entities to which the proposed action will apply.”* If you prepared a detailed description of the ‘potentially impacted groups’ in the RIR, this immediately drops out of that preparatory work! Otherwise, break the groups down on the basis of ‘small’ and ‘not small’ criteria (e.g., annual gross receipts; numbers of employees). In practice, this should not be a complex derivation, especially because NMFS typically will not have the level of detail on each operation necessary to develop an exhaustive profile. Most often, unless specific information suggests otherwise (e.g., a CV is a member of an AFA cooperative), one will find it necessary to fall back on the rule-of-thumb classifications, referenced above (e.g., catcher boats shall be assumed to be ‘small’, C/Ps shall be assumed ‘not small’, etc.). Cite, also, to the RIR for greater detail, as appropriate.

Remember, the universe of entities for RFA purposes, includes *only* those that will be *directly regulated* by the proposed action and, among these, *only* those that qualify as *small*. That is, if the rule does not require specific affirmative action by an entity, it is not among the population that is the subject of the RFAA. Indirect, induced, secondary, and distributive economic impacts are all important concerns of any management action assessment ... *but*, they are appropriately the subjects of the RIR ... *not* the IRFA. [In the event one does not do an RIR to accompany the action, but still must do an RFAA, then these issues should be treated to the extent, and in the manner, required under NEPA in the EA.]

Element four of an IRFA shall include: *“A description of the reporting, record keeping, and other compliance requirements, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the*

⁸ On September 27, 2010, President Obama signed into law the Small Business Jobs Act of 2010 (Pub. Law 111-240).

report or records.” This is self-explanatory and will differ with every action. Some actions may have absolutely no additional reporting, record keeping, or other compliance requirements... in which case, simply say so under this section heading. Other actions may require of the ***directly regulated small entity***, some additional time and resources. In these cases, explain what these are (e.g., how much time, what level of sophistication or technical skills may be involved, and roughly how much it will cost each operator to comply). If, for example, an action will require every ***directly regulated*** operation to make one additional data submission per week to NMFS, and the submission will require 15 minutes of ‘administrative-time’ to complete and transmit, estimate the total number of reports (weeks); multiple times 15 minutes; then, times a representative wage rate (say, \$15.00/hour). The result is your estimate of the reporting, record keeping, compliance burden for the average ***directly regulated*** operation, imposed by the proposed action. If more complex or technical skills are required to fulfill these new mandates, describe them and estimate the cost of compliance.

Note here that the agency’s (current) position is that only ***adverse*** impacts need be accounted for. That is, if the new regulation *reduces* the reporting burden by 15 minutes per week, you will not typically include a numerical “savings” estimate in your IRFA. This *may* change under guideline revisions or Congressional action. An advisory will be circulated, if this comes to pass.

The fifth IRFA requirement is, *“An identification, to the extent practicable, of all relevant Federal rules that duplicate, overlap, or conflict with the proposed rule.”* Generally, there will be none, and you will simply report this finding in this section. Consultation with NOAA GC, senior SF staff, or *the Regional Economist* might be in order, if there is any serious doubt in your mind.

And, finally, your IRFA shall contain, *“A description and analysis of **any significant alternatives to the proposed action** [i.e., to the preferred alternative (PA)] that would accomplish the stated objective of the MFCMA and any other applicable statutes **and** that would **minimize** any significant [adverse] economic impact on small entities.”* [emphasis added]

There is a great deal of information and guidance contained in this brief statement and, as a result, it is often misinterpreted by analysts. The objective here is to assure that, among the

alternatives considered, the IRFA identifies any that have the potential to explicitly accommodate the limitations unique to *small entities* or relieve any disproportionate adverse economic burdens on this class of operations, while (i.e., simultaneously) achieving the objectives of the action. Typically, one or more of the alternatives under consideration will include provisions that can reasonably be characterized as “accommodating” (i.e., reducing the regulatory burden and, by implication, lessening adverse economic impacts on) small entities. For example, one or more alternatives may exempt small boats from certain provisions of the proposed action; or reduce the observer coverage requirements for small processing plants; or modify reporting requirements in proportion to the size and sophistication of an operation. These special provisions should be explicitly cited in this section of this analysis, even if they are not adopted as part of the final action. If these provisions are among the alternatives included in the RIR, you will have provided the essential “analysis” there, and you may reference the appropriate sections of the RIR to partially fulfill this IRFA requirement.

Take care, however, to place that analysis in an RFA-appropriate context. That is, the RIR treatment will likely be broader in scope, capturing the entire range of economic impacts, across all impacted individuals, operations, communities, and regions. Interpretation of that sweeping analytical content, so as to explicitly address relevant implications for the *directly regulated small entities*, is your challenge under this heading.

Also take note, this final element of the IRFA juxtaposes the analytical frame of reference with that employed in the balance of the analysis. That is, here, it is the “preferred alternative” (PA) that is used as the baseline, against which *any significant alternatives* are to be compared. The pertinent question becomes, “*Does any alternative to the PA result in a smaller adverse economic impact on directly regulated small entities, while achieving the stated objectives of the Magnuson Act and other applicable law (i.e., the PA is presumed to reflect these objectives)?*”

The intuitive reader will immediately recognize that addressing this RFA requirement involves a two-part test. An alternative to the PA may result in smaller adverse economic impacts on directly regulated small entities, but, nonetheless, fail to achieve the objectives set forth for the action; or, it may fulfill those objectives, but not minimize the adverse economic impacts on

directly regulated small entities... In either case, such an alternative would not be expected to be a superior choice to the PA, for RFA purposes.

Only in a case in which a *significant alternative* was identified that met the stated objectives ... **and** minimized the economic burden ..., would it have to be described and analyzed in this subsection of the IRFA. Following its description and analysis, the reasons why it was not selected must be explained. This will be a rare occurrence, given the exhaustive scrutiny the suite of available alternatives receives in the public review and analytical development process, characteristic of NOAAs regulatory preparation. Nonetheless, provisions are made here for that infrequent eventuality.

And, just that simply... you have completed a document that meets or exceeds... “*the minimum requirements for the RIR and IRFA*”, as set forth in NMFS Guidelines and applicable law.⁹

⁹ *Regulatory Impacts Assessments are Exempt from the Data Quality Act*

The Final Information Quality Bulletin for Peer Review **excludes** Regulatory Impact Analyses (RIAs), including RFAs and RIRs, from coverage under the Data Quality Act. However, original data and formal analytical models used by agencies in economic analyses to support RIAs will be subject to peer review. The general benefit-cost model, as suggested by Circular A-4, is an accepted method of estimating impacts under E.O. 12866 and would be exempt from peer review. RIA documents themselves are already reviewed through an interagency review process under E.O. 12866 that involves application of the principles and methods defined in OMB Circular A-4.