

Presentation
to the
Marine Protected Areas
Federal Advisory Committee

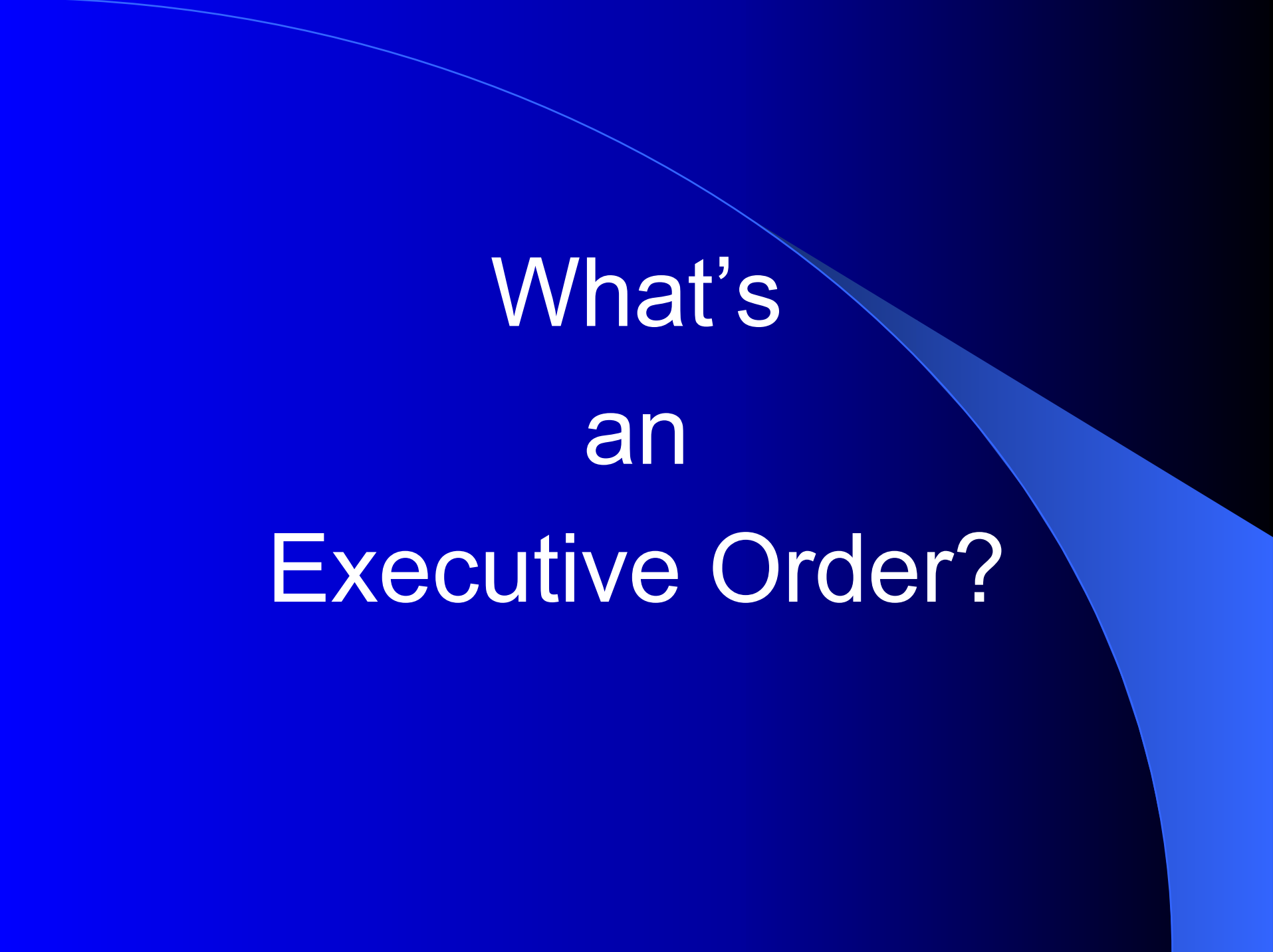
By

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February 15, 2005

President William J. Clinton

Executive Order 13158

May 26, 2000



What's
an
Executive Order?

An
Executive Order
Is

“A rule or order having the
force of law, issued by the
President”

Paul Begalia, a Clinton
Political Strategist saw
executive orders this way:

“Stroke of the pen. Law of
the land. Kinda cool.”

His Royal Highness
King George III
Practiced such a
philosophy

Upstart
American
Colonists
Revolted

Executive Order 13158

Defined MPAs

As

“Any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein”

Executive Order 13158

- Established this Advisory Committee
- Established a website
- Established a MPA Center
- Established consultation requirement with RFMC to promote coordination of actions to establish and manage MPAs
- Did not create any new authorities
- Did not appropriate any funding

“Consultation Requirement”

Brings us to

Today’s Agenda Item

Fishery Management Councils’

MPA – Related Activities

The
MAFMC
Has
None

And Why
Do We Have
None ?

Semantics

Regional Fishery
Management Councils
were created in 1976

By PL94-265

“Fisheries Conservation
and Management Act”

Now known as the Magnuson-Stevens Fishery Conservation and Management Act. It was most recently amended by the Sustainable Fisheries Act of 1996 PL104-297

Dilemma
Of
Chicken and Egg
Semantics
EFH . . . MPA

Sustainable Fisheries Act

- Made one EFH finding
- Articulated one EFH purpose
- Defined EFH
- Added one FMP required item
- Directed the Secretary to:
 - Establish guidelines to assist Councils
 - Consult with fishery participants
 - Review DOC programs
 - Coordinate with other Federal agencies
- Directed all Federal agencies to consult with Secretary of Commerce
- Gave Councils license to comment about EFH issues
- Directed the Secretary to initiate and maintain fishery research to:
 - Support . . . Identification of EFH
 - Minimize through conservation engineering . . . Adverse effects on EFH

Section 2.

Findings, Purposes, and Policy

(a) Findings. - -

(6)“ . . . To facilitate long-term protection of essential fish habitats . . . ”

(b) Purposes. - -

(7)“ to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.”

Section 3. Definitions

“(10) The term ‘essential fish habitat’ means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.”

Title III, Section 303.

Contents of Fishery Management Plans

(a) Required Provisions. - -

(7) “describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305 (b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat.”

Councils
Are
Charged
to do
Seven Things

List of Seven Charges

- Prepare and submit to the Secretary (A) a fishery management plan, and (B) amendments.
- Prepare comments on any application for foreign fishing.
- Conduct public hearings for the development of fishery management plans and amendments.
- Submit to the Secretary such periodic reports as the Council deems appropriate.
- Review and revise the assessments and specifications.
- Comment and recommend to the Secretary and any Federal or State agency on any activity that may affect the habitat, including essential fish habitat.
- Conduct any other activities which are required.

Governed
By
10 National
Standards

National Standards

Any fishery management plan prepared, and any regulation promulgated to implement such plan, shall be consistent with the following national standards for fishery conservation and management:

- (1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.
- (2) Conservation and management measures shall be based upon the best scientific information available.
- (3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

National Standards

- (4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.
- (5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.
- (6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

National Standards

- (7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.
- (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 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.
- (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.
- (10) Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

In Developing FMPs
There are 14
Mandatory Considerations
And 12
Discretionary
Considerations

Title III, Section 303.

Contents of Fishery Management Plans

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DOC, NOAA, NMFS

January 17, 2002 Final Rule on Magnuson-Stevens Act Provisions; Essential Fish Habitat (EFH)

“To Revise the Regulations Implementing the EFH Provisions of the Magnuson-Stevens Act”

Subpart J – Essential Fish Habitat

Guidelines for Councils and the Secretary to use in Adding Required EFH Provisions to an FMP

- (1) Description and Identification of EFH
- (2) Fishing Activities that may Adversely Affect EFH
- (3) Conservation and Enhancement
- (4) Conservation and Enhancement
- (5) Conservation and Enhancement
- (6) Conservation and Enhancement

Bureaucratic Add-ons:

- (3) Non-Magnuson-Stevens Act Fishing Activities that may Adversely Affect EFH
- (4) Non-Fishing Related Activities that may Adversely Affect EFH
- (5) Cumulative Impacts Analysis
- (7) Prey Species
- (8) Identification of Habitat Areas of Particular Concern
- (9) Research and Information Needs
- (10) Review and Revision of EFH Components of FMPs

Subpart K – EFH Coordination, Consultation, and Recommendations

Procedures to Address Coordination,
Consultation, and Recommendations
Required by Magnuson-Stevens Act

Prior and Current Opportunities for NMFS Comments:

- Sec 10 Rivers and Harbor Act (1899)
- Sec 662 F&W Coordination Act (1934)
- Sec 404 Federal Water Pollution Control Act* (1972)
- Sec 307 CZM Act (1972)
- Sec 302 FCM Act (1976)
- Sec 108/110 SFA Act (1996)
- Sec 305(b) M-S Act (1996)

*1977 Amendment changed name to Clean Water Act

Mid-Atlantic States



Mid-Atlantic Council Jurisdictional Perspective

	<u>Coast</u>	<u>Shore</u>
NY	125	2,625
NJ	130	1,792
PA	---	57
DE	30	381
MD	30	3,190
VA	110	3,315
NC	<u>300</u>	<u>3,375</u>
	725	14,735

Source: DOC, NOAA, NOS

Mid-Atlantic Council Jurisdictional Perspective

- Fishery conservation zone established through passage of FCMA (1976) ... (seaward of states' territorial seas to 200 nm)
- EEZ was established by Presidential Proclamation in 1983
- Given 725 miles of Mid-Atlantic coastline and 197 miles of EEZ, there are, at most, approximately 140,000 square miles of ocean bottom in the Council's jurisdiction

Mid-Atlantic Council Jurisdictional Perspective

Of the approximate 140,000 sq miles of EEZ, bottom types are estimated as follows:

	<u>%</u>
Sand	95
Mud	4
Rock	1
Coral	0

Mid-Atlantic Council Jurisdictional Perspective

- Bottom tending gear physical impacts on sand, mud, clay are:
 - minimal
 - temporary

Source: Workshop on the effects of fishing gear on marine habitats off northeastern US (Oct '01)

- In effect for 99% of our Council's jurisdiction there are NO adverse physical impacts on ocean bottom

Mid-Atlantic Landings

SPECIES	GEAR TYPE	%-AGE LANDINGS
Surfclams	Clam dredge	100%
Ocean Quahogs	Clam dredge	100%
Tilefish	Long line	95%
	Trawl	5%
Squid	Bottom trawl	100%
Mackerel	Md-water trawl	85%
	Bottom trawl	15%
Butterfish	Bottom trawl	100%
Summer Flounder	Bottom trawl	95%
	Other	5%
Scup	Bottom trawl	75%
	Floating traps	10%
	Hook & Line	5%
	Other	10%
Black Sea Bass	Pots/Traps	45%
	Bottom trawl	40%
	Hook & Line	10%
	Other	5%
Bluefish	Gill net	50%
	Bottom trawl	20%
	Hook & Line	5%
	Other	25%
Dogfish	Gill net	75%
	Bottom trawl	15%
	Hook & Line	10%

MPAs in MAFMC Geographic Area

- Monitor National Marine Sanctuary (3.14 square miles)
- EFH – All FMPs
- HAPC – Tilefish
- Horseshoe Crab Reserve
- Time and area closures – quota managed
- Gear restricted areas – scup and butterfish
- Closures – Oceanographer and Lydonia Canyons for Monkfish