

## **National Oceanic and Atmospheric Administration (NOAA) Supplement to Executive Order 13563 (September 4, 2012)**

In May 2012, the Department provided the Office of Management and Budget (OMB) a progress report required by Executive Order 13563 (EO). The following narrative summary, along with the NOAA rules listed in the Department's EO progress report table, identifies actions that NOAA has taken to implement the EO regulatory reform plan since that time.

### **Regulatory Flexibility Act**

- Under § 610 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 610, NOAA conducts ongoing reviews of rules that were identified as having a significant economic impact on a substantial number of small entities.
  - NOAA has completed review of all significant rules published in 2001 and 2002. NOAA published a *Federal Register* notice, as required by the RFA identifying 76 significant rules from 2003 and 2004 to be reviewed by the agency during 2012. 77 Fed. Reg. 41728 (July 16, 2012).

### **Magnuson-Stevens Act**

- In 2007, new requirements for annual catch limits and preventing overfishing went into effect in the Magnuson-Stevens Act. 16 U.S.C. § 1853(a)(15). As a result, the National Marine Fisheries Service and the Regional Fishery Management Councils have engaged in a comprehensive review of existing fishery management plans and amendments. Through this review, the Councils have undertaken substantial revisions to the existing fishery management plans, addressing inefficiencies in existing processes as well as new statutory requirements.
  - As of June 20, 2012, NOAA and the Councils have completed revision of all 46 fishery management plans, implementing new annual catch limits for all of the affected fisheries.

### **Commercial Remote Sensing Regulatory Affairs Office**

- NOAA's Office of Commercial Remote Sensing Regulatory Affairs (CRSRA) periodically reviews and updates, as appropriate, regulations at 15 CFR Part 960 (Licensing of Private Land Remote-Sensing Space Systems) implementing the licensing and compliance provisions contained in the Land Remote Sensing Policy Act, 15 U.S.C. § 60121 et seq., to ensure that they facilitate the growth and international competitiveness of the U.S. commercial remote sensing industry while preserving national security and addressing international obligations.
  - National Environmental Satellite, Data, and Information Service (NESDIS) senior management approved proposed draft regulations addressing the licensing of private

land remote sensing space systems. The draft proposed regulations were subsequently provided to the Departments of Defense, State, and the Interior, and the intelligence community for their informal review and comment. NESDIS and NOAA General Counsel prepared a written response to informal comments and will provide it to the reviewing agencies this month. NOAA CRSRA held a meeting with the agencies to walk them through how we have responded to their comments. NOAA is currently planning public meetings to solicit further input on the draft proposed regulations prior to publication. The goal is to publish a proposed rule in the first quarter of the next calendar year.

## **National Marine Sanctuaries**

- NOAA's Office of National Marine Sanctuaries (ONMS) is undertaking a regulatory review and update of regulations, to remove inconsistencies and redundancies. ONMS has periodically performed similar reviews; however, this review would not only make technical revisions, but would also reorganize large sections of the regulations to streamline them into a more coherent form and make them internally consistent.
  - Since last report, ONMS has initiated tribal consultation under EO 13175, and has made additional modifications to the draft revisions. ONMS also consulted with other offices of general counsel, and is drafting an environmental assessment as a supporting document to the proposed rule. It was determined by OMB on August 8, 2012, to be not significant. The proposed rule will be submitted for publication in the *Federal Register* in the fourth quarter of 2012.
- Pursuant to section 304(e) of the National Marine Sanctuaries Act, (16 U.S.C. § 1434(a)), the following national marine sanctuaries are currently in ongoing management plan review, or are in the process of undergoing management plan review:
  1. Flower Garden Banks: A Final Management Plan and Environmental Analysis following a multi-year review were released on April 12, 2012. The revised regulations were designed to improve diver safety, minimize impacts to wildlife and standardize pollutant discharge guidelines. Specifically, the revised regulations prohibit harassment or injury to whale sharks and rays in the sanctuary, particularly by diving charter operations offering dives with these animals. The prohibition of discharges was altered to reflect regulatory language more recently adopted at other national marine sanctuaries. The changes also eliminate outdated references to paragraphs that no longer exist, update cross references to other paragraphs, and establish definitions for various new terms adopted in the rulemaking. 77 Fed. Reg. 25060 (Apr. 27, 2012).
  2. Monitor: NOAA issued a draft revised Management Plan and Environmental Assessment for the Monitor National Marine Sanctuary on April 17, 2012. 77 Fed. Reg. 22761 (Apr. 17, 2012). The draft plan, which is non-regulatory in nature, includes proposals to enhance education and outreach, continue restoration and conservation of USS Monitor artifacts, consider possible expansion of the sanctuary's boundaries in a subsequent rulemaking, and work with the

state of North Carolina to strengthen coastal economies through maritime history and Civil War tourism. The comment period closed on June 22, 2012. NOAA is currently considering a regulatory action to expand the boundaries of the sanctuary, but a decision to proceed to the rulemaking stage has not been made at this time.

3. Fagatele Bay: On July 26, 2012, NOAA issued a final rule adding five additional discrete geographical areas to the Fagatele Bay National Marine Sanctuary and changing the name of the Fagatele Bay National Marine Sanctuary to the National Marine Sanctuary of American Samoa. NOAA also amended existing sanctuary regulations and applied those regulations to activities in the sanctuary. 77 Fed. Reg. 43942 (July 26, 2012). This update was the result of extensive review of the original management plan that was first published in 1986 and reflects new tools and techniques that allow for improved conservation and management to slow the long-term decline of coral reefs. Such techniques include a biogeographic study of the American Samoa archipelago, which informed decision makers on the need and best location for new geographical areas to be added to the sanctuary. The expansion of the geographic area covered by the Marine Sanctuaries Plan resulted from Presidential Proclamation 8337 issued by President George W. Bush in 2009.

4. Hawaiian Islands Humpback Whale: The review process was initiated in 2010. The target for a draft revised management plan is early 2013 with the final management plan targeted for completion in 2014.

5. Gray's Reef: NOAA began the public scoping process for management review of the Gray's Reef National Marine Sanctuary Plan on July 1, 2012. Scoping concluded on August 31, 2012.

6. Florida Keys: On April 19, 2012, NOAA issued a joint notice of intent to prepare an Environmental Assessment or a Draft Environmental Impact Statement for amending the zoning scheme and regulations for Florida Keys National Marine Sanctuary and Fish and Wildlife Service and State of Florida Management Agreement for Submerged Lands within Boundaries of the Key West and Great White Heron National Wildlife Refuges and Regulations (77 FR 23425). The comment period closed on June 29, 2012. The desired outcome of the zoning review is revised marine zoning for the FKNMS that reflects current scientific knowledge and research related to the conservation of important and sensitive habitats and which address current issues and use patterns that affect these habitats. The existing zoning has been in place since the late 1990's and may not reflect the best management practices.