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**From:** Mike Ruccio

**Sent:** Tuesday, March 03, 2009 10:37 AM

**To:** FN-OMB-OIRA-Submission

**Subject:** Public Comments on 74 FR 8819; on replacing EO 12866 Regulatory Planning and Review

In my experience, the analysis conducted by most agencies for the existing EO 12866 review is often only lip service to the EO and does not substantively consider the cost benefit analysis. Furthermore, it appears that many agencies have already determined their courses of action before the analysis is performed and the final outcome is justified within the context of the analysis rather than the analysis being conducted to inform decisionmaking.

I am particularly concerned about the delays that occur in rule making related to the existing EO 12866. In many cases fishery related actions, with which I am most familiar and concerned, must undergo both notice and comment rulemaking and administrative "cooling off" periods under the current operating paradigm, even when the actions are regular, routine, and have been fully commented on by the public through the regional fishery management council system established under the Magnuson-Stevens Fishery Conservation and Management Act (MSCMA). While transparency and public input is necessary for effective governance, there are many regular and routine actions (e.g., fishery closures, trip limit adjustments, ect.) that are prescribed in MSCMA actions that are unnecessarily burdened by the current EO. Such actions enacted by the National Oceanic and Atmospheric Administration (NOAA) through the National Marine Fisheries Service (NMFS) should be exempted. Specifically, rules, otherwise prescribed by applicable regulation, in this case fishery regulation promulgated under the MSCMA, should be exempt from further EO 12866 review. The overarching action that established the regulation would not be exempt. This would greatly simplify the timeliness of rulemaking, lessen the need to obtain exemptions from the EO, and minimize the potential for litigation as a 'backdoor' means to object to fishery decisionmaking.