



Office of the General Counsel

B-280016

May 28, 1998

The Honorable John McCain
Chairman
The Honorable Ernest F. Hollings
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Don Young
Chairman
The Honorable George Miller
Ranking Minority Member
Committee on Resources
House of Representatives

Subject: Department of Commerce, National Oceanic and Atmospheric
Administration: Magnuson-Stevens Act Provisions; National Standard
Guidelines

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), entitled "Magnuson-Stevens Act Provisions; National Standard Guidelines" (RIN: 0648-AJ58). We received the rule on May 14, 1998. It was published in the Federal Register as a final rule on May 1, 1998. 63 Fed. Reg. 24212.

The final rule revises certain guidelines used in the development and review of Fishery Management Plans, amendments, and regulations prepared by the Regional Fishery Management Councils and the Secretary of Commerce under the Magnuson-Stevens Fishery Conservation and Management Act. The final rule implements changes made by the October 1996 amendments to the Act.

The rule revises guidelines for optimum yield, scientific information, allocations, efficiency, and costs and benefits and adds guidelines for new national standards concerning communities, bycatch, and safety of life at sea.

Enclosed is our assessment of NOAA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that NOAA complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Department of Commerce, National Oceanic and Atmospheric Administration, is Victor Rezendes, Director, Energy, Resources, and Science Issues. Mr. Rezendes can be reached at (202) 512-3841.

Robert P. Murphy
General Counsel

Enclosure

cc: Mr. Rolland A. Schmitten
Assistant Administrator for Fisheries
National Marine Fisheries Service
NOAA
Department of Commerce

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE DEPARTMENT OF COMMERCE,
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
ENTITLED
"MAGNUSON-STEVENS ACT PROVISIONS;
NATIONAL STANDARD GUIDELINES"
(RIN: 0648-AJ58)

(i) Cost-benefit analysis

NOAA did not perform a detailed cost-benefit analysis for the final rule because costs and benefits which are quantifiable will not be known until each existing Fishery Management Plan (FMP) is amended or new FMP's are written. Upon the amendment of an existing plan or the issuance of a new plan, a detailed cost and benefit analysis will be performed. The preamble does contain a general qualitative description of the impact of the final rule on a overall basis for the industry.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

NOAA has certified that the final rule will not have a significant economic impact on a substantial number of small entities. NOAA finds that while significant impacts could result from future management actions when existing FMP's are amended to conform to the guidelines or new FMP's are issued, the guidelines themselves have no effect and therefore, there is no basis to assess, at this time, the impacts that may result. At the time FMP's are amended or issued, a Regulatory Flexibility Analysis will be prepared if necessary.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule will not impose a federal intergovernmental or private sector mandate of \$100 million or more, as defined in the Unfunded Mandates Reform Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures contained in 5 U.S.C. § 553. NOAA published a notice of proposed rulemaking on August 4, 1997, requesting comments through September 18, 1997. 62 Fed. Reg. 41907.

Thirty-seven comments were received in response to the notice. Because issues remained concerning overfishing and rebuilding overfished stocks, the comment period was reopened on December 29, 1997, for an additional 30 days. 62 Fed. Reg. 67608. Thirty-four additional comments were received and all comments are responded to and the actions taken based on them are discussed in the final rule's preamble.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule does not contain any information collections which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule was issued pursuant to the authority contained in 16 U.S.C. § 1801 et seq. and in particular § 1851(b).

Executive Order No. 12866

The final rule was determined to be an economically significant regulatory action by the Office of Management and Budget, which reviewed and approved the rule, because it provides guidance on implementing statutory changes that may have large economic impacts on specific sectors of the economy.