June 19, 2018

The Honorable John Thune
Chairman
The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Rob Bishop
Chairman
The Honorable Raúl Grijalva
Ranking Member
Committee on Natural Resources
House of Representatives

Subject: Department of Commerce, National Oceanic and Atmospheric Administration:
Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of
the Northeastern United States; Essential Fish Habitat

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 Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Essential Fish Habitat” (RIN: 0648-BF82). We received the rule on June 4, 2018. It was published in the Federal Register as a final rule on April 9, 2018. 83 Fed. Reg. 15,240.

The final rule implements approved regulations for the New England Fishery Management Council’s Omnibus Essential Fish Habitat Amendment 2 (OHA2). This rule revises essential fish habitat and habitat area of particular concern designations; revises or creates habitat management areas, including gear restrictions to protect vulnerable habitat from fishing gear impacts; establishes dedicated habitat research areas; and implements several administrative measures related to reviewing these measures, as well as other regulatory adjustments to implement these measures. NOAA views these actions as necessary to comply with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act to periodically review essential fish habitat designations and protections. NOAA explains that the measures are designed to minimize to the extent practicable the adverse effects of fishing on essential fish habitats.

In general, the Congressional Review Act requires a 60-day delay in effective date of a major rule from the date of publication in the Federal Register or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). However, any rule that “establishes, modifies, opens, closes, or conducts a regulatory program for commercial, recreational, or subsistence
activity related to hunting, fishing, or camping” is exempt from the 60-day delay requirement. 5 U.S.C. § 808(1). This final rule is related to fishing and, therefore, is exempt from the 60-day delay requirement. The effective date of the rule is April 9, 2018.

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 of the agency’s submissions to us indicates that NOAA complied with the applicable requirements. NOAA did not address the Unfunded Mandate Reform Act in the final rule.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

c: Alan D. Risenhoover
Acting Deputy Assistant Administrator for Regulatory Programs, NMFS
Department of Commerce
(i) Cost-benefit analysis

NOAA found that the overall impact of the measures being implemented is a reduction in management restrictions in the majority of areas being considered. NOAA stated that, in general, the overall approved changes to the fishing areas are relatively modest, as the majority of areas are already closed to fishing. NOAA noted that, in the areas that are resulting in new closures, the impacts are anticipated to be minimal. With regard to the measures that will increase fishing opportunities, NOAA expected the partial opening of areas in the Gulf of Maine to result in a modest increase in groundfish revenue, and the removal of two closed areas will allow the scallop fishery to establish access areas and allocations that are projected to result in an additional $140-160 million in potential fishing revenue.

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

A final regulatory flexibility analysis was prepared for this action and is available from the New England Fishery Management Council. NOAA published a summary of this analysis in the final rule.

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

NOAA did not address the Unfunded Mandate Reform Act in the final rule.

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

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

The Notice of Availability for the New England Fishery Management Council’s Omnibus Essential Fish Habitat Amendment 2 was published on October 6, 2017. 82 Fed. Reg. 46,749. The proposed rule was published on November 5, 2017. 82 Fed. Reg. 51,492. The comment periods for both ended on December 5, 2017. In total, 72 comments were submitted on behalf of environmental or fishing organizations or businesses; however, NOAA determined that 17 of the comments were not relevant to this action as they were nominally about global climate change. NOAA responded to the comments in the final rule, which was published on April 9, 2018. 83 Fed. Reg. 15,240.
Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

NOAA states that the rule does not contain any reporting or recordkeeping requirements.

Statutory authorization for the rule

NOAA promulgated the rule under 16 U.S.C. §§ 1801 et seq.

Executive Order No. 12,866 (Regulatory Planning and Review)

According to NOAA, the final rule has been determined to be significant under Executive Order 12,866, and a major rule under the Congressional Review Act.

Executive Order No. 13,132 (Federalism)

NOAA states that the rule does not contain policies that have federalism implications.