



441 G St. N.W.
Washington, DC 20548

B-329175

July 5, 2017

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: Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs*

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 “Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs” (RIN: 0648-AP25). We received the rule on June 19, 2017. It was published in the *Federal Register* as a final rule on December 12, 2003, with an effective date of January 12, 2004. 68 Fed. Reg. 69,331.

The final rule establishes a fishing capacity reduction program in the fishery for the crab species managed under the Bering Sea/Aleutian Islands King and Tanner Crabs Fishery Management Plan (crab FMP). NOAA states that the program will reduce excess capacity and promote economic efficiency in the crab fishery.

The Congressional Review Act (CRA) requires a 60-day delay in the 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). This final rule was published in the *Federal Register* on December 12, 2003. 68 Fed. Reg. 69,331. We received it on June 19, 2017. It has a stated effective date of January 12, 2004. Therefore, the final rule does not have the required 60-day delay in its effective date. During a recent internal review, it was discovered that this rule had not been received. After outreach to the agency, the rule was submitted on June 19, 2017.

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. With the exception of the 60-day delay in effective date requirement, our review of the procedural steps taken indicates that NOAA complied with the applicable requirements.

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

cc: Rebecca Lent
Deputy Assistant Administrator for
Regulatory Programs
National Marine Fisheries Service
Department of Commerce

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF COMMERCE,
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
ENTITLED
“FISHING CAPACITY REDUCTION PROGRAM FOR
THE CRAB SPECIES COVERED BY THE FISHERY MANAGEMENT PLAN
FOR THE BERING SEA/ALEUTIAN ISLANDS KING AND TANNER CRABS”
(RIN: 0648-AP25)

(i) Cost-benefit analysis

The Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), did not discuss the costs and benefits of this final rule.

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

NOAA stated that in compliance with the Act, it prepared an analysis that describes the economic impact this final rule may have on small entities.

(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 discuss the 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.

On December 12, 2002, NOAA published proposed regulations to establish this crab program. 67 Fed. Reg. 76,329. NOAA received comments from 28 entities. NOAA responded to comments in the final rule.

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

NOAA determined this final rule contains information collection requirements subject to the Paperwork Reduction Act (PRA). NOAA stated that the Office of Management and Budget (OMB) approved this information collection under OMB control number 0648-0376.

Statutory authorization for the rule

NOAA stated this rule was promulgated pursuant to 5 U.S.C. § 501, 16 U.S.C. § 18014 et seq., 16 U.S.C. §§ 1861a(b) – (e), 44 App. U.S.C. §§ 1279f and 1279g, section 144(d) of Division B of Pub. L. 106-554, section 2201 of Pub. L. 107-20, and section 205 of Pub. L. 107-117.

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

NOAA determined that this final rule is economically significant for purposes of Executive Order 12,866. NOAA stated that the rule may result in a reverse auction that could total up to \$100 million worth of successful bids.

Executive Order No. 13,132 (Federalism)

NOAA did not discuss the Order in the final rule.