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Washington, DC 20548

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B-317302

October 27, 2008

The Honorable Daniel K. Inouye  
Chairman  
The Honorable Kay Bailey Hutchison  
Ranking Minority Member  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable James L. Oberstar  
Chairman  
The Honorable John L. Mica  
Ranking Minority Member  
Committee on Transportation and Infrastructure  
House of Representatives

Subject: *Department of Commerce, National Oceanic and Atmospheric Administration: Endangered Fish and Wildlife; Final Rule To Implement Speed Restrictions to Reduce the Threat of Ship Collisions With North Atlantic Right Whales*

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 “Endangered Fish and Wildlife; Final Rule To Implement Speed Restrictions to Reduce the Threat of Ship Collisions With North Atlantic Right Whales” (RIN: 0648-AS36). We received the rule on October 7, 2008. It was published in the *Federal Register* as a final rule on October 10, 2008. 73 Fed. Reg. 60,173. The rule has a stated effective period of December 9, 2008, to December 9, 2013.

The final rule restricts the speed of vessels 65 or more feet long in certain locations and at certain times along the east coast of the U.S. Atlantic Seaboard. The purpose of this final rule is to reduce the likelihood of collisions between these vessels and North Atlantic right whales. Such collisions can result in the death or serious injury to the whales.

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 or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236.

signed

Robert J. Cramer  
Associate General Counsel

Enclosure

cc: Samuel D. Rauch III  
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  
"ENDANGERED FISH AND WILDLIFE; FINAL RULE  
TO IMPLEMENT SPEED RESTRICTIONS TO REDUCE  
THE THREAT OF SHIP COLLISIONS WITH  
NORTH ATLANTIC RIGHT WHALES"  
(RIN: 0648-AS36)

(i) Cost-benefit analysis

NOAA analyzed the costs and benefits of this final rule. The cost of this final rule is \$137.3 million, which is comprised of \$87.6 million in direct economic impacts and \$49.7 million in indirect economic impacts.

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

NOAA prepared a Regulatory Flexibility Analysis for this final rule describing the impact the rule will have on small entities. NOAA estimates that this rule will have an economic impact on high-speed passenger ferries of \$2.6 million, on regular-speed ferries of \$6 million, on the whale watching industry of \$1.3 million, on the charter fishing industry of \$0.8 million, and on the commercial fishing industry of \$1.3 million. NOAA's estimates are for 2004.

(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 any agency actions relevant to the Act in its submission to the Comptroller General. NOAA indicated that preparing a written statement under the Act was not applicable to this final rule.

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

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

NOAA promulgated this final rule using the notice and comment procedures found in the Administrative Procedure Act. 5 U.S.C. § 553. On June 1, 2004, NOAA published advance notice of the proposed rule. 69 Fed. Reg. 30,857. On June 26, 2006, NOAA published the proposed rule. 71 Fed. Reg. 36,299. NOAA received over 10,000

comments on the proposed rule, which they considered in the final rule. 73 Fed. Reg. 60,175–60,183.

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

This final rule contains an information collection requirement which will be submitted to the Office of Management and Budget (OMB). NOAA also requests public comments on this information collection requirement. NOAA estimates that the information collection requirement in this final rule will impose no additional cost on the affected public.

Statutory authorization for the rule

NOAA promulgated this final rule under the authority of sections 1361 to 1423h and 1531 to 1543 of title 16, United States Code.

Executive Order No. 12,866

NOAA determined that this final rule is economically significant under the Order.

Executive Order No. 13,132 (Federalism)

NOAA determined that this final rule does not have federalism implications under the Order.