

Calendar No. 893

110TH CONGRESS }
2d Session }

SENATE

{ REPORT
110-429 }

TO REQUIRE THE SECRETARY OF COM-
MERCE TO PRESCRIBE REGULATIONS TO
REDUCE THE INCIDENCE OF VESSELS
COLLIDING WITH NORTH ATLANTIC RIGHT
WHALES BY LIMITING THE SPEED OF
VESSELS, AND FOR OTHER PURPOSES

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2657



JULY 22, 2008.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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SCRIBE REGULATIONS TO REDUCE THE INCIDENCE OF
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FOR OTHER PURPOSES.

JULY 22, 2008.—Ordered to be printed

Mr. INOUE, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 2657]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2657) to require the Secretary of Commerce to prescribe regulations to reduce the incidence of vessels colliding with North Atlantic right whales by limiting the speed of vessels, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 2657, as amended, is to require the Secretary of Commerce to promulgate a final rule, after giving consideration to any comments received with respect to the proposed rule, 71 Fed Reg. 36299; June 26, 2006 titled, “Endangered Fish and Wildlife; Proposed Rule to Implement Speed Restrictions to Reduce the Threat of Ship Collisions with North Atlantic Right Whales” (Proposed Rule). The final rule would implement speed restrictions for vessels transiting certain waters off of the U.S. Atlantic seaboard to reduce the incidence of such vessels colliding with North Atlantic right whales. S. 2657 would require these regulations to be prescribed within 30 days after the enactment of the bill and to be no weaker than the proposed rule.

BACKGROUND AND NEEDS

Of all large whales worldwide, the North Atlantic right whale population is among the most endangered. Today's estimates suggest that the population consists of approximately 350 individuals which migrate throughout the waters off the eastern United States and Canada in areas that comprise a significant percentage of U.S. maritime activities. Despite protections from commercial harvest through the 1931 Convention for the Regulation of Whaling, the enactment of Federal statutes including the Marine Mammal Protection Act and the Endangered Species Act, and additional protective measures implemented through the National Marine Fisheries Service (NMFS), the North Atlantic right whale has been unable to rebuild its numbers to sustainable levels.

North Atlantic right whale deaths resulting from collisions with ships are a significant factor contributing to the low population levels and are believed to be a principal reason for a declining adult survival rate. In fact, the National Oceanic and Atmospheric Administration (NOAA) asserts that collisions with ships are the greatest threat to North Atlantic right whales. Despite conservation efforts undertaken by the Federal government, stakeholders, and industry throughout the 1990s, right whale deaths from ship strikes continue. To address the population's failure to recover, the NMFS convened more than twenty meetings along the eastern seaboard between May 1999 and April 2001 to discuss ways to reduce ship strikes. These meetings culminated in the publication of a report delineating management options to address this threat to the North Atlantic right whale. This report was used to develop the NMFS Ship Strike Reduction Strategy and the foundation for the 2004 Advanced Notice of Proposed Rulemaking (2004 ANPR).

The 2004 ANPR proposed reducing ships' speed to ten to fourteen knots when approaching ports where North Atlantic right whales were expected to be present. Additionally, the 2004 ANPR would have established three regions on the eastern seaboard, with seasonal management measures including speed limits, possible routing directions, and designated lanes. The 2004 ANPR provided a 60-day comment period, during which time the NMFS convened five public meetings along the east coast. Subsequently, the NMFS extended the 2004 ANPR comment period to allow for additional meetings in an effort to maximize public input, delineate concerns, and ascertain whether or not the NMFS was considering adequate alternative approaches. The extended comment period included eleven stakeholder meetings attended by 142 individuals and allowed NMFS the opportunity to receive 5,288 comments from relevant stakeholders, companies, associations, individuals, and organizations. Of those 5,288 comments, 88 were deemed substantive.

The two years of additional scientific research and public outreach enabled by the 2004 ANPR process resulted in the NMFS's issuance in 2006 of the Proposed Rule that would affect vessels 65 feet or greater. Like the 2004 ANPR, the Proposed Rule would divide the U.S. east coast into three subareas: Southeast United States; Mid-Atlantic United States; and Northeast United States, within which affected vessels would be required to reduce their speed to 10 knots during certain times correlated with seasonal right whale occurrences. In addition to the three defined regions on

the east coast, the proposed rule would establish temporary “Dynamic Management Areas” that would require affected vessels to either slow to ten knots or route around the area when North Atlantic right whale sightings and aggregations have been confirmed.

There are minor differences between the 2004 ANPR and the Proposed Rule including: extension of the seasonally managed areas out to 30 miles along the mid-Atlantic coast; modification of the times in which the regulations would be in effect; and updates of the economic impact to reflect that incurred costs would be a fraction of the overall value of the U.S. east coast maritime industry. Under both the 2004 ANPR and the Proposed Rule, vessels operated by Federal agencies would be exempt from these regulations; however, Federal vessels are expected to adhere to guidance provided under the Endangered Species Act Section 7 consultations.

The Committee is aware that the Proposed Rule would include and be applicable to ferry vessels and commercial whalewatching vessels. In Massachusetts, Maine, and other northeast states and Canadian provinces, ferries provide essential transportation services to locations such as Martha’s Vineyard, Nantucket Island, Provincetown on Cape Cod, and Block Island, and also across Long Island Sound between New York and Connecticut. Comments to the regulatory docket by operators of ferries and commercial whalewatching vessels make clear that a single aspect of the proposed rule, the Dynamic Management Area (DMA) of 36 miles or more in diameter and two weeks or more in duration, has the potential to severely disrupt their operations and could jeopardize the commercial existence of several companies. NMFS has acknowledged in the *Federal Register* that the proposed rule could have disproportionate impacts on several operators of ferries and commercial whalewatching vessels. Consequently, the Committee intends that S. 2657, as reported, be interpreted as allowing NMFS the freedom and flexibility to reduce the geographic size and temporal duration of a DMA or even to determine that DMAs for ferries and commercial whalewatching vessels need not be included at all in the final rule. S. 2657, as reported, is not intended to proscribe any particular management measure and simply intends to maintain a level of protection for the North Atlantic right whale at least as strong as that contained in the Proposed Rule.

LEGISLATIVE HISTORY

S. 2657 was introduced in the Senate on February 15, 2008, by Senator Kerry and is co-sponsored by Senator Snowe. The bill was referred to the Committee on Commerce, Science, and Transportation. On April 24, 2008, the Committee considered the bill in an open executive session. Senators Kerry and Snowe offered a substitute amendment to clarify the intent of legislation, and the Committee, without objection, ordered S. 2657 reported as amended by the substitute amendment.

Staff assigned to this legislation include Amanda Hallberg, Democratic professional staff, and Todd Bertosen, Republican senior counsel.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

MAY 7, 2008.

Hon. DANIEL K. INOUE
*Chairman, Committee on Commerce, Science, and Transportation,
 U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2657, a bill to require the Secretary of Commerce to prescribe regulations to reduce the incidence of vessels colliding with North Atlantic right whales by limiting the speed of vessels, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts for this estimate are Deborah Reis (for federal costs), Amy Petz (for the private-sector impact), and Elizabeth Cove (for the state and local impact).

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 2657—A bill to require the Secretary of Commerce to prescribe regulations to reduce the incidence of vessels colliding with North Atlantic right whales by limiting the speed of vessels, and for other purposes

S. 2657 would require the National Oceanic and Atmospheric Administration (NOAA) to issue—within 30 days of the bill's enactment—a final rule on speed restrictions for vessels operating in the North Atlantic that would provide protection for North Atlantic right whales that is at least as stringent as a previously proposed rule would have provided. Based on information from NOAA, CBO estimates that implementing S. 2657 would have no significant effect on discretionary outlays and no effect on revenues or direct spending. The agency is already processing the proposed rule, and complying with S. 2657 would probably have minimal effect on the rulemaking procedure.

By requiring the Secretary of Commerce to issue a rule that imposes speed restrictions on certain vessels, including publicly owned ferries, the bill could impose both a private-sector and an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). The bill would impose a mandate on certain vessels (both public and private) if the required rule establishes speed restrictions on those vessels that are more stringent than the restrictions that would have been included in the final rule in the absence of the bill. Based on information from NOAA, CBO estimates that the cost of any mandate would fall below the annual thresholds established in UMRA for private-sector and intergovernmental mandates (\$136 million and \$68 million in 2008, respectively, adjusted annually for inflation).

The CBO staff contacts for this estimate are Deborah Reis (for federal costs), Amy Petz (for the private-sector impact), and Eliza-

beth Cove (for the state and local impact). The estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 2657, as reported by the Committee, is likely to result in regulation of the speed of non-Federal vessels 65 feet or greater in overall length in limited geographic locations along the East Coast, at limited times. According to the Proposed Rule, it is likely to impact fewer than 1,000 vessels. By contrast, U.S. East Coast ports receive approximately 25,000 vessels a year, more than half of which are container ships and tankers.

ECONOMIC IMPACT

The reported bill will have little impact on the overall economy. The Congressional Budget Office estimates that private sector economic impacts will be less than the threshold established under the unfunded Mandates Reform Act, \$136 million in 2008.

PRIVACY

The reported bill would have little, if any, impact on the personal privacy of U.S. citizens.

PAPERWORK

The reported bill may increase paperwork requirements for the ports and shipping industry on the U.S. Atlantic Seaboard when sending out notices of the lower speed limit for vessels transiting in that area.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally-directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Regulations to Protect North Atlantic Right Whales from Ship Strikes

This section would require the Secretary of Commerce to promulgate a final rule that would require vessels transiting along the eastern seaboard to adhere to speed restrictions during certain times and in certain areas, based on and after duly considering all comments received regarding the Proposed Rule titled “Endangered Fish and Wildlife; Proposed Rule to Implement Speed Restrictions to Reduce the Threat of Ship Collisions with North Atlantic Right Whales” (71 Fed. Reg. 36299; June 26, 2006). Additionally, this section would require the Secretary to promulgate such final rule within 30 days after the enactment of this Act, and would mandate

that the final rule provide a level of protection for right whales against vessel collisions that is the same or greater to that afforded by the Proposed Rule.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

