

**SUPPORTING STATEMENT
IMPLEMENTATION OF SPEED RESTRICTIONS TO REDUCE THE THREAT
OF SHIP COLLISIONS WITH NORTH ATLANTIC RIGHT WHALES
OMB CONTROL NO. 0648-xxxx**

INTRODUCTION

The National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) requests an emergency review of an information collection request for the provisions contained in Final Rule 0648-AS36, to address the threat of ship collisions with North Atlantic right whales.

To assure that the collection-of-information is cleared as soon as possible after the final rule publication, we are requesting clearance of the collection-of-information request by October 10, 2008.

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

The North Atlantic right whale is a highly depleted species: only about 300 individuals exist. NMFS relies on the best available scientific information to assess North Atlantic right whale abundance, status and threats. Primarily, this includes Stock Assessment Reports (SAR), required by provisions of the Marine Mammal Protection Act (MMPA), and the peer reviewed scientific literature. The SAR for North Atlantic right whales is updated annually and reviewed both internally and externally by teams of scientists. NMFS also considered additional population analyses and modeling exercises that were conducted and published in the peer-reviewed literature (e.g., Caswell *et al.*, 1999; Fujiwara and Caswell, 2001).

Collisions with vessels (i.e., “ship strikes”) are a major cause of serious injury and death, and therefore are the greatest threat to the species: nineteen known ship strikes-related right whale deaths occurred between 1986 and 2005; the actual number is almost certainly higher as not all carcasses are detected. Evidence implicates vessel speed as a primary factor in the strikes and indicates that the occurrence and severity of ship strikes can be reduced if vessels are traveling 10 knots or less. As a result, National Oceanic and Atmospheric Administration (NOAA)’s National Marine Fisheries Service (NMFS) has prepared and is promulgating regulations via Final Rule 0648-AS36 to restrict vessel speed in certain times and locations along the United States (U.S.) eastern seaboard to reduce the threat of lethal ship collisions with North Atlantic right whales. Vessels 65 feet or greater in overall length will be required to travel at 10 knots or less in certain key areas where right whales occur.

In its proposed rulemaking, NMFS requested comments on the vessel speed restrictions. Public and interagency comment on a proposed rule indicated that in certain sea and weather conditions a large ship may lose maneuverability at such speeds. Therefore, NMFS has decided that under such conditions a ship, at the captain’s discretion, may opt not to abide by the speed restrictions. If s/he chooses to do so, s/he will be required to make an entry into the ship’s log, providing the reasons for the deviation, the speed at which the vessel is operated, the area, and the time and duration of such deviation. The U.S. Coast Guard (USCG) will collect information from the log

book during routine port boardings. NOAA is making an emergency request to collect this information so that collection may begin as soon as possible after the final rule becomes effective.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The information will be collected by USCG personnel, or in some cases NOAA's Office of Law Enforcement (OLE), during routine port boardings. The USCG will make note of location(s) and circumstance(s) for not adhering to speed restrictions and provide the information to the NMFS and/or NOAA's OLE. NMFS will review the information and if warranted (i.e., failure to adhere to required speed limits in situations without sufficient reason) will issue a letter for each violation reminding the ship captain and agent of the need for the restrictions and possible fines that could be levied for subsequent violations. If failure to adhere to the restrictions was warranted (i.e., sea and wind conditions threatened vessel maneuverability), NMFS will retain the information for later analysis (e.g., on a quarterly or annual basis) of the number of times conditions prevented captains from adhering to the restrictions.

As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NMFS decide to disseminate the information, it will be subject to the quality control measures and pre-dissemination review pursuant to [Section 515 of Public Law 106-554](#).

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

There will be no electronic, automated, or mechanical techniques used in this information collection.

4. Describe efforts to identify duplication.

The restrictions being promulgated by this rulemaking are new. No such restrictions exist. Therefore, duplication of this type of recordkeeping is not possible.

Captains need only make a single entry for each circumstance in which conditions did not allow compliance with restrictions. So, in this regard, there will be no duplication. Records will be kept by NMFS as to when and where ships were boarded to review logbooks, thereby ensuring duplication will not occur.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Involvement of small businesses and other small entities is described in the Final Regulatory Flexibility Act (FRFA) analysis described in the final rule and environmental impact statement. The collection of information will not constitute a significant burden to small businesses.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

This recordkeeping is essential to the program's ability to implement this rulemaking and to the protection of endangered north Atlantic right whales.

As noted above, vessel speed restrictions are vital to reducing the threat of ship strikes to right whales. Exceptions have been granted in certain circumstances. Logbook notations will be the only means to assess if, when and how often restrictions were not adhered to due to poor weather or high sea state. Also, it is the only means through which NMFS will be able to assess whether a lack of compliance was legitimate. Without this measure, ship's captains may choose not to comply, and the promulgating and regulation enforcing agency would have no recourse. Conducting the recordkeeping less frequently would significantly undermine the effectiveness of enforcing the exemption conditions.

As noted below, logbook entries for this purpose are expected to take on the order of minutes, in situations and by means that are routinely and periodically made by ships' crews. Therefore, the requirement is not expected to be overly burdensome and conducting it less frequently is not expected to significantly relieve burden to recordkeepers.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

None.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

No proposed rulemaking, or any other process for public comment, sought comment on this recordkeeping.

The recordkeeping requirement is new and was necessitated by a change in the rulemaking between the proposed and final rules. The need was identified as a result of public and interagency comment on the proposed rule. That is, the exemption to the speed restrictions, and therefore the need for the new recordkeeping, was not contemplated until the need to modify the

rule arose during public comment on Proposed Rule 0648-AS36.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

None.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

Information provided by respondents will not include personal or other confidential or private data; thus, there is no need for assurance of confidentiality.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No such information will be collected.

12. Provide an estimate in hours of the burden of the collection of information.

USCG vessel arrival data were used to determine the number of arrivals affected by this rule. Based upon that determination, an estimated 3,047 respondents are expected to make a total of 3,047 responses*, with an estimated burden of 5 minutes per entry, for an annualized total burden of 254 hours (3,047 x 5/60).

* These records do not identify vessels making the trips, only the number of trips; therefore we are assuming a one-to-one correspondence between vessels and trips.

At an estimated \$25 per hour in labor costs, total annual labor costs would be \$6,350.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

There is no recordkeeping/reporting expense expected.

14. Provide estimates of annualized cost to the Federal government.

The recordkeeping requirement in this final rule is expected to have no cost to the Federal government that is not already subsumed in ordinary Federal personnel duties. Ordinary Federal personnel duties would include USCG or NOAA OLE officers/personnel summarizing the logbook information and providing it to NMFS.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

This is a new collection.

16. For collections whose results will be published, outline the plans for tabulation and publication.

The information will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not applicable.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

No exceptions to the certification statement are identified.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

No statistical analysis will be performed on the collected information.