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Office of the General Counsel

B-282397; B-282398; B-282399; B-282400

April 7, 1999

The Honorable John McCain  
Chairman  
The Honorable Ernest F. Hollings  
Ranking Minority Member  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable Thomas J. Bliley, Jr.  
Chairman  
The Honorable John D. Dingell  
Ranking Minority Member  
Committee on Commerce  
House of Representatives

Subject: Department of Commerce, National Oceanic and Atmospheric  
Administration: Endangered and Threatened Species of Salmonids

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on four major rules promulgated by the Department of Commerce, National Oceanic and Atmospheric Administration (NOAA). The rules are entitled:

- "Endangered and Threatened Species; Threatened Status for Three Chinook Salmon Evolutionarily Significant Units (ESUs) in Washington and Oregon, and Endangered Status for One Chinook Salmon ESU in Washington" (RIN: 0648-AM54). We received the rule on March 29, 1999. It was published in the Federal Register as a final rule on March 24, 1999. 64 Fed. Reg. 14308.
- "Endangered and Threatened Species: Threatened Status for Ozette Lake Sockeye Salmon in Washington" (RIN: 0648-AK52). We received the rule on March 29, 1999. It was published in the Federal Register as a final rule on March 25, 1999. 64 Fed. Reg. 14528.
- "Endangered and Threatened Species: Threatened Status for Two ESUs of Chum Salmon in Washington and Oregon" (RIN: 0648-AK53). We received the rule on

March 29, 1999. It was published in the Federal Register as a final rule on March 25, 1999. 64 Fed. Reg. 14508.

- "Endangered and Threatened Species: Threatened Status for Two ESUs of Steelhead in Washington and Oregon" (RIN: 0648-AK54). We received the rule on March 29, 1999. It was published in the Federal Register as a final rule on March 25, 1999. 64 Fed. Reg. 14517.

The four major rules add the above-named salmonids to the list of either threatened or endangered species under the Endangered Species Act of 1973, as amended.

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, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Department of Commerce, National Oceanic and Atmospheric Administration, is Victor Rezendes, Director, Energy, Resources, and Science Issues. Mr. Rezendes can be reached at (202) 512-3841.

Robert P. Murphy  
General Counsel

Enclosure

cc: Ms. Hilda Diaz-Soltero  
Director, Office of Protected Resources  
National Marine Fisheries Service  
Department of Commerce

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF FOUR MAJOR RULES  
ISSUED BY  
THE DEPARTMENT OF COMMERCE,  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
ENTITLED  
"ENDANGERED AND THREATENED SPECIES OF SALMONIDS"  
(RIN: 0648-AM54, 0648-AK52, 0648-AK53, 0648-AK54)

(i) Cost-benefit analysis

NOAA did not perform a cost benefit analysis for any of the four rules citing the Conference Report on the 1982 amendments to the Endangered Species Act that economic impacts cannot be considered in assessing the status of a species.

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

NOAA, citing the above reasoning, states that the economic analysis requirements of the Regulatory Flexibility Act are inapplicable to these rules.

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

The final rules will not impose an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in a year under the Unfunded Mandates Reform Act of 1995.

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

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

The four final rules were issued using the notice and comment procedures contained at 5 U.S.C. § 553 and the procedures for public participation contained at 16 U.S.C. § 1533.

All of the final rules were preceded by a Notice of Proposed Rulemaking published in the Federal Register and a total of 21 public hearings were conducted between the publication of the proposed rule and the final determinations.

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

The final rules do not contain new or modified information collections which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Statutory authorization for the rule

The final rules are issued pursuant to the authority contained in 16 U.S.C. § 1531 et seq., 16 U.S.C. § 742a et seq., and 16 U.S.C. § 1361 et seq.

Executive Order No. 12866

The final rules, according to NOAA, are exempt from review under Executive Order No. 12866.