To reduce risks to marine mammals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

November 12, 2021

Mr. Larsen of Washington (for himself, Mr. Fitzpatrick, Mr. Kilmer, Ms. Strickland, Mr. Grijalva, Ms. Schrier, and Ms. DelBene) introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committees on Transportation and Infrastructure, and Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To reduce risks to marine mammals, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. VESSEL SPEED RESTRICTIONS IN MARINE MAMMAL HABITAT.

3 (a) In general.—The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) is amended by inserting after section 120 the following:
“SEC. 121. VESSEL SPEED RESTRICTIONS IN MARINE MAMMAL HABITAT.

“(a) IN GENERAL.—The Secretary shall, in coordination with the Marine Mammal Commission and the Commandant of the Coast Guard, and applying the best available scientific information—

“(1) designate areas of importance for marine mammals known to experience vessel strikes and establish for each such area seasonal or year-round mandatory vessel speed restrictions to reduce vessel strikes or other vessel-related impacts, as necessary, for vessels operating in such areas; and

“(2) implement for such species, as appropriate, dynamic management area programs incorporating mandatory vessel restrictions to protect marine mammals from vessel strikes or other vessel-related impacts occurring outside designated areas of importance.

“(b) AREAS OF IMPORTANCE.—In designating areas under subsection (a), the Secretary—

“(1) shall consider including—

“(A) the important feeding, breeding, calving, rearing, or migratory habitat for priority species of marine mammals, including all areas designated as critical habitat for such species under section 4 of the Endangered Spe-
cies Act of 1973 (16 U.S.C. 1533) except any area the Secretary determines does not intersect with areas of vessel traffic such that an elevated risk of mortality or injury caused by vessel strikes exists; and

“(B) areas of high marine mammal mortality, injury, or harassment caused by vessel strikes; and

“(2) may consider including—

“(A) any area designated as a National Marine Sanctuary, Marine National Monument, National Park, or National Wildlife Refuge; and

“(B) areas of high marine mammal primary productivity with year-round or seasonal aggregations of marine mammals to which this section applies.

“(c) DEADLINE FOR REGULATIONS.—Not later than 2 years after the date of the enactment of this section, the Secretary shall designate areas and vessel restrictions under subsection (a) and issue such regulations as are necessary to carry out this section, consistent with notice and comment requirements under chapter 5 of title 5, United States Code.

“(d) MODIFYING OR DESIGNATING NEW AREAS OF IMPORTANCE.—
“(1) IN GENERAL.—The Secretary shall issue regulations to modify or designate the areas of importance and vessel restrictions under this section not later than 180 days after the issuance of regulations to establish or to modify critical habitat for marine mammals pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

“(2) REEXAMINATION.—The Secretary shall—

“(A) reexamine the areas of importance designated and vessel restrictions under this section every 5 years following the initial issuance of the regulations to determine if the best available scientific information warrants modification or designation of areas of importance for vessel restrictions; and

“(B) not later then 14 months after any revisions under subparagraph (A), publish such revisions in the Federal Register after notice and opportunity for public comment.

“(3) PETITION; FINDINGS; REGULATIONS.—

“(A) INITIAL FINDING.—Not later than 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to designate, modify, or add an area of importance or vessel restriction under
this section, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the petitioned action may be warranted.

“(B) ADDITIONAL FINDINGS; REGULATIONS.—The Secretary shall—

“(i) promptly publish a finding under subparagraph (A) in the Federal Register for comment;

“(ii) not later than 1 year after the close of comments under clause (i), publish in the Federal Register a finding of whether the petitioned action is warranted;

“(iii) if the Secretary determines that the petitioned action is warranted, publish draft regulations designating or modifying and vessel restrictions the area of importance; and

“(iv) not later than 12 months after publication of draft regulations under clause (iii), issue final regulations designating or modifying the area of importance and vessel restrictions.

“(e) EXCEPTIONS FOR SAFE MANEUVERING AND USING AUTHORIZED TECHNOLOGY.—
“(1) IN GENERAL.—Restrictions established under subsection (a) shall not apply to a vessel operating at a speed necessary to maintain safe maneuvering speed if such speed is justified because the vessel is in an area where oceanographic, hydrographic, or meteorological conditions severely restrict the maneuverability of the vessel and the need to operate at such speed is confirmed by the pilot on board or, when a vessel is not carrying a pilot, the master of the vessel. If a deviation from the applicable speed limit is necessary pursuant to this subsection, the reasons for the deviation, the speed at which the vessel is operated, the latitude and longitude of the area, and the time and duration of such deviation shall be entered into the logbook of the vessel. The master of the vessel shall attest to the accuracy of the logbook entry by signing and dating the entry.

“(2) AUTHORIZED TECHNOLOGY.—

“(A) IN GENERAL.—Vessel restrictions established under subsection (a) shall not apply to a vessel operating using technology authorized by regulations issued by the Secretary under subparagraph (B).
“(B) REGULATIONS.—The Secretary may issue regulations authorizing a vessel to operate using technology specified by the Secretary under this subparagraph if the Secretary determines that such operation is at least as effective as the vessel restrictions established under subsection (a) in reducing mortality and injury to marine mammals.

“(f) APPLICABILITY.—Any speed restriction established under subsection (a)—

“(1) shall apply to all vessels subject to the jurisdiction of the United States, all other vessels entering or departing a port or place subject to the jurisdiction of the United States, and all other vessels within the Exclusive Economic Zone of the United States, regardless of flag; and

“(2) shall not apply to—

“(A) vessels owned, operated, or under contract by the Department of Defense or the Department of Homeland Security, or engaged with such vessels;

“(B) law enforcement vessels of the Federal Government or of a State or political subdivision thereof, when such vessels are engaged in law enforcement or search and rescue duties;
“(C) pilot vessels engaged in support of pilotage operations; or

“(D) vessels with foreign sovereign immunity, as reflected under international law.

“(g) **STATUTORY CONSTRUCTION.**—

“(1) **IN GENERAL.**—Nothing in this section shall be interpreted or implemented in a manner that—

“(A) subject to paragraph (2), preempts or modifies any obligation of any person subject to the provisions of this title to act in accordance with applicable State laws, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency;

“(B) affects or modifies any obligation under Federal law; or

“(C) preempts or supersedes the final rule titled ‘To Implement Speed Restrictions to Reduce the Threat of Ship Collisions With North Atlantic Right Whales’, codified at section 224.105 of title 50, Code of Federal Regulations, except for actions that are more protective than the Final Rule and further reduce the risk of take to North Atlantic right whales.
“(2) INCONSISTENCIES.—The Secretary may determine whether inconsistencies referred to in paragraph (1)(A) exist, but may not determine that any State law is inconsistent with any provision of this title if the Secretary determines that such law gives greater protection to covered marine species and their habitat.

“(h) PRIORITY SPECIES.—For the purposes of this section, the term ‘priority species’ means, at a minimum, all Mysticeti species, species within the genera Physeter and Trichechus, and the Southern Resident Killer Whale distinct population segment of Orcinus orca.

“(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated—

“(1) to the Secretary to carry out this section, $3,000,000 for each of fiscal years 2022 through 2026; and

“(2) to the Commandant of the Coast Guard to carry out this section, $3,000,000 for each of fiscal years 2024 through 2026.”.

(b) CLERICAL AMENDMENT.—The table of contents in the first section of such Act is amended by inserting after the item relating to section 120 the following:

“Sec. 121. Vessel speed restrictions in marine mammal habitat.”.
SEC. 2. MONITORING OCEAN SOUNDSCAPES.

(a) IN GENERAL.—The Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration (hereinafter in this Act referred to as the “Administrator”), and the Director of the United States Fish and Wildlife Service (hereinafter in this Act referred to as the “Director”) shall maintain and expand an Ocean Noise Reference Station Network, using and coordinating with the Integrated Ocean Observing System, the Office of National Marine Sanctuaries, and the Department of Defense, to—

(1) provide grants to expand the deployment of Federal and non-Federal observing and data management systems capable of collecting measurements of underwater sound in high-priority ocean and coastal locations for purposes of monitoring and analyzing baselines and trends in the underwater soundscape to protect and manage marine life;

(2) continue to develop and apply standardized forms of measurements to assess sounds produced by marine animals, physical processes, and anthropogenic activities; and

(3) after coordinating with the Department of Defense, coordinate and make accessible to the public the datasets, modeling and analysis, and user-driven products and tools, resulting from observa-
tions of underwater sound funded through grants authorized by this section.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator, to support integrated ocean observations activities carried out under this section, $1,500,000 for each of fiscal years 2022 through 2026.

SEC. 3. GRANTS FOR SEAPORTS TO ESTABLISH PROGRAMS TO REDUCE THE IMPACTS OF VESSEL TRAFFIC AND PORT OPERATIONS ON MARINE MAMMALS.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Administrator and the Director, in coordination with the Secretary of Defense, shall establish a grant program to provide assistance to up to 10 seaports to develop and implement mitigation measures that will lead to a quantifiable reduction in threats to marine mammals from shipping activities and port operations.

(b) ELIGIBLE USES.—A grant under this section may be used to develop, assess, and carry out activities that quantifiably reduce threats and enhance the habitats of marine mammals by—

(1) reducing underwater stressors related to marine traffic;
(2) reducing vessel strike mortality and other physical disturbances;

(3) enhancing marine mammal habitat, including the habitat for prey of marine mammals; or

(4) monitoring sound, vessel interactions with marine mammals, or other types of monitoring that are consistent with reducing the threats to and enhancing the habitats of marine mammals.

(e) PRIORITY.—The Administrator and the Director shall prioritize assistance under this section for projects that—

(1) assist ports with higher relative threat levels to vulnerable marine mammals from vessel traffic;

(2) reduce disturbance from vessel presence or mortality risk from vessel strikes;

(3) are in close proximity to National Marine Sanctuaries, Marine National Monuments, National Parks, National Wildlife Refuges, and other Federal, State, and local marine protected areas; and

(4) allow eligible entities to conduct risk assessments and track progress toward threat reduction and habitat enhancement, including protecting coral reefs from encroachment by commerce and shipping lanes.
(d) OUTREACH.—The Administrator and the Director shall conduct outreach to seaports to provide information on how to apply for assistance under this section, the benefits of the program under this section, and facilitation of best practices and lessons learned.

(e) ELIGIBLE ENTITIES.—A person shall be eligible for assistance under this section if the person is—

(1) a port authority for a seaport;

(2) a State, regional, local, or Tribal agency that has jurisdiction over a maritime port authority or a seaport; or

(3) a private entity or government entity, applying for a grant awarded under this section in collaboration with another entity described in paragraph (1) or (2), that owns or operates a maritime terminal.

(f) REPORT.—The Administrator and the Director shall jointly submit annually to the Committee on Natural Resources of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate, a report that includes the following:

(1) The name and location of each entity receiving a grant.

(2) The amount of each grant.
(3) The name and location of the seaport in which the activities took place.

(4) A description of the activities carried out with the grant funds.

(5) An estimate of the impact of the project to reduce threats or enhance habitat of marine mammals.

(g) REQUIREMENTS FOR DEPARTMENT OF DEFENSE CONSULTATION.—

(1) IN GENERAL.—Prior to awarding any grants under this section, the Administrator and the Director shall consult with the Secretary of Defense to ensure each eligible entity and its proposed activities do not raise national security concerns.

(2) NOTIFICATION.—In carrying out the requirements of paragraph (1), the Administrator and the Director shall—

(A) provide the Secretary of Defense with a copy of any grant applications being considered for funding; and

(B) ensure such grant applications include any information requested by the Secretary of Defense to conduct a national security review.

(3) DETERMINATION OF POTENTIAL ADVERSE IMPACT.—
(A) REQUIREMENT.—Not later than 60 days after receiving the information requested pursuant to paragraph (2), the Secretary of Defense shall determine whether a proposed activity may have a potential adverse impact with respect to national security. A determination that cannot be completed in the 60-day period may be extended by mutual agreement between the agencies.

(B) NO DETERMINATION MADE.—A determination required under this paragraph that has not been issued within 120 days, and for which the Administrator and the Director have not agreed to further extensions, shall be considered complete for the purposes of this subsection and the proposed activity may move forward.

(C) LIMITATION.—Neither the Administrator or the Director may award any grants until the Secretary of Defense has completed a determination pursuant to this subsection. A proposed activity determined to have a potential adverse impact to national security may not proceed until modifications are made to such
proposed activity to resolve national security concerns.

(h) Authorization of Appropriations.—There is authorized to be appropriated to the Administrator, for carrying out this section, $5,000,000 for each of fiscal years 2022 through 2026, to remain available until expended.

SEC. 4. NEAR REAL-TIME MONITORING AND MITIGATION PROGRAM FOR LARGE WHALES.

(a) Establishment of the Program.—The Administrator, in coordination with the Secretary of Defense and the heads of other relevant Federal departments and agencies, shall design and deploy a Near Real-Time Large Whale Monitoring and Mitigation Program in order to curtail the risk to large whales of vessel collisions, entanglement in commercial fishing gear, and to minimize other impacts, including underwater noise from development activities. Such program shall be capable of detecting and alerting ocean users and enforcement agencies of the location of large whales on a near real-time basis, informing sector-specific mitigation protocols that can effectively reduce take of large whales, and continually integrating improved technology. The program shall be informed by the technologies, monitoring methods, and mitigation proto-
cols developed pursuant to the pilot program required in subsection (b).

(b) PILOT PROJECT.—

(1) Establishment.—In carrying out subsection (a), the Administrator shall first establish a pilot monitoring and mitigation project for North Atlantic right whales for the purposes of informing a cost-effective, efficient, and results-oriented near real-time monitoring and mitigation program for large whales.

(2) Pilot project requirements.—In designing and deploying the monitoring system, the Administrator, in coordination with the heads of other relevant Federal departments and agencies, shall, using best available scientific information, identify and ensure coverage of—

(A) core foraging habitats of North Atlantic right whales, including—

(i) the “South of the Islands” core foraging habitat;

(ii) the “Cape Cod Bay Area” core foraging habitat;

(iii) the “Great South Channel” core foraging habitat; and

(iv) the Gulf of Maine; and
(B) important feeding, breeding, calving, rearing, or migratory habitats of North Atlantic right whales that co-occur with areas of high risk of mortality, injury, or harassment of such whales from vessel strikes, disturbance from development activities, and entanglement in commercial fishing gear.

(3) Pilot Project Monitoring Components.—

(A) In General.—Not later than 3 years after the date of the enactment of this Act, the Administrator, in consultation with relevant Federal agencies, Tribal governments, and with input from affected stakeholders, shall design and deploy a real-time monitoring system for North Atlantic right whales that includes near real-time monitoring methods, technologies, and protocols that—

(i) comprise sufficient detection power, spatial coverage, and survey effort to detect and localize North Atlantic right whales within core foraging habitats;

(ii) are capable of detecting North Atlantic right whales acoustically and vis-
ually, including during periods of poor visibility and darkness;

(iii) take advantage of dynamic habitat suitability models that help to discern the likelihood of North Atlantic right whale occurrence in core foraging habitat at any given time;

(iv) coordinate with the Integrated Ocean Observing System to leverage monitoring assets;

(v) integrate new near real-time monitoring methods and technologies as they become available;

(vi) accurately verify and rapidly communicate detection data; and

(vii) allow for ocean users to contribute data that is verified to be collected using comparable near real-time monitoring methods and technologies.

(B) NATIONAL SECURITY CONSIDERATIONS.—All monitoring methods, technologies, and protocols under subparagraph (A) shall be consistent with national security considerations and interests.
(4) Pilot program mitigation protocols.—

The Secretary shall, in consultation with the Secretary of Homeland Security, Secretary of Defense, Secretary of Transportation, and Secretary of the Interior, and with input from affected stakeholders, develop and deploy mitigation protocols that make use of the near real-time monitoring system to direct sector-specific mitigation measures that avoid and significantly reduce risk of injury and mortality to North Atlantic right whales.

(5) Pilot program access to data.—The Administrator shall provide access to data generated by the monitoring system for purposes of scientific research and evaluation, and public awareness and education, through the NOAA Right Whale Sighting Advisory System and WhaleMap or other successive public web portals, subject to review for national security considerations.

(6) Pilot program reporting.—

(A) Interim report.—Not later than 2 years after the date of the enactment of this Act, the Administrator shall submit to the Committee on Natural Resources of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Sen-
ate, and make available to the public, an in-
terim report that assesses the benefits and effi-
cacy of the North Atlantic right whale near
real-time monitoring and mitigation pilot pro-
gram. The report shall include—

(i) a description of the monitoring
methods and technology in use or planned
for deployment;

(ii) analyses of the efficacy of the
methods and technology in use or planned
for deployment in detecting North Atlantic
right whales both individually and in com-
bination;

(iii) how the monitoring system is di-
rectly informing and improving species
management and mitigation in near real-
time across ocean sectors whose activities
pose a risk to North Atlantic right whales;
and

(iv) a prioritized identification of gaps
in technology or methods requiring future
research and development.

(B) Final report.—Not later than 3
years after the date of the enactment of this
Act, the Administrator, in coordination with the
Secretary of Defense and the heads of other relevant Federal departments and agencies, shall submit to the Committee on Natural Resources of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate, and make available to the public, a final report, addressing the components in subparagraph (A) for the subsequent 1 year following the publication of the interim report, and including the following—

(i) a strategic plan to expand the pilot program to provide near real-time monitoring and mitigation measures to additional large whale species, including a prioritized plan for acquisition, deployment, and maintenance of monitoring technologies, and the locations or species for which the plan would apply; and

(ii) a budget and description of appropriations necessary to carry out the strategic plan pursuant to the requirements of clause (i).

(e) ADDITIONAL AUTHORITY.—In carrying out this section, the Administrator may enter into and perform such contracts, leases, grants, or cooperative agreements
as may be necessary to carry out the purposes of this section on such terms as the Administrator considers appropriate, consistent with Federal acquisition regulations.

(d) REPORTING.—Not later than 1 year after the deployment of the program described in subsection (b) (and after completion of the reporting requirements pursuant to subsection (b)(5)), and annually thereafter through 2029, the Administrator shall submit to the Committee on Natural Resources of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate, and make available to the public, a report that assess the benefits and efficacy of the near real-time monitoring and mitigation program.

(e) DEFINITIONS.—In this section:

(1) CORE FORAGING HABITIS.—The term “core foraging habitats” means areas with biological and physical oceanographic features that aggregate Calanus finmarchicus and where North Atlantic right whales foraging aggregations have been well documented.

(2) LARGE WHALE.—The term “large whale” means all Mysticeti species and species within the genera Physeter and Orcinus.

(3) NEAR REAL-TIME.—The term “near real-time” means that visual, acoustic, or other detec-
tions of North Atlantic right whales are transmitted and reported as soon as technically feasible, and no longer than 24 hours, after they have occurred.

(f) Authorization of Appropriations.—There is authorized to be appropriated to the Administrator, to support development, deployment, application and ongoing maintenance of the monitoring system as required by this section, $5,000,000 for each of fiscal years 2022 through 2026.

SEC. 5. GRANTS TO SUPPORT TECHNOLOGY THAT REDUCES UNDERWATER NOISE FROM VESSELS.

(a) In General.—Not later than 6 months after the date of the enactment of this Act, the Administrator of the Maritime Administration shall establish a grant program, to be administered in consultation with the heads of other appropriate Federal departments and agencies, to provide assistance for the development and implementation of new or improved technologies that quantifiably reduce underwater noise from marine vessels.

(b) Eligible Uses.—Grants provided under this section may be used to develop, assess, and implement new or improved technologies that materially reduce underwater noise from marine vessels.

(c) Outreach.—The Administrator of the Maritime Administration shall conduct outreach to eligible entities
to provide information on how to apply for assistance
under this section, the benefits of the program under this
section, and facilitation of best practices and lessons
learned.

(d) ELIGIBLE ENTITIES.—A person shall be eligible
for assistance under this section if the person is—

(1) a corporation established under the laws of
the United States;

(2) an individual, partnership, association, or-
ganization or any other combination of individuals,
provided that each such individual shall be a citizen
of the United States or lawful permanent resident of
the United States or a protected individual as such
term is defined in section 274B(a)(3) of the Immi-
grantion and Nationality Act (9 U.S.C. 1324b(a)(3));
or

(3) an academic or research organization.

(e) REQUIREMENTS FOR DEPARTMENT OF DEFENSE
CONSULTATION.—

(1) IN GENERAL.—Prior to awarding any
grants under this section, the Administrator of the
Maritime Administration shall consult with the Sec-
retary of Defense to ensure each eligible entity and
its proposed activities do not raise national security
concerns.
(2) Notification.—In carrying out the requirements of paragraph (1), the Administrator of the Maritime Administration shall—

(A) provide the Secretary of Defense with a copy of any grant applications being considered for funding; and

(B) ensure such grant applications include any information requested by the Secretary of Defense to conduct a national security review.

(3) Determination of Potential Adverse Impact.—

(A) Requirement.—Not later than 60 days after receiving the information requested pursuant to paragraph (2), the Secretary of Defense shall determine whether a proposed activity may have a potential adverse impact with respect to national security. A determination that cannot be completed in the 60-day period be extended by mutual agreement between the agencies.

(B) No Determination Made.—A determination required under this paragraph that has not been issued within 120 days, and for which the Administrator of the Maritime Administration has not agreed to further exten-
sions, shall be considered complete for the purposes of this subsection and the proposed activity may move forward.

(C) LIMITATION.—The Administrator of the Maritime Administration may not award any grants until the Secretary of Defense has completed a determination pursuant to this subsection. A proposed activity determined to have a potential adverse impact to national security may not proceed until modifications are made to such proposed activity to resolve national security concerns.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator of the Maritime Administration for carrying out this section, $5,000,000 for each of fiscal years 2022 through 2026, to remain available until expended.

SEC. 6. TECHNOLOGY ASSESSMENT FOR QUIETING UNITED STATES GOVERNMENT VESSELS.

(a) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act, the Administrator of the Maritime Administration, in consultation with the Commandant of the Coast Guard, the Secretary of Defense, the Secretary of Homeland Security, and the Administrator of the National Oceanic and Atmospheric Ad-
ministration, shall submit to the appropriate committees of Congress and publish, a report that includes—

(1) an identification of existing unclassified technologies that reduce underwater noise; and

(2) an evaluation of the effectiveness and feasibility of incorporating such technologies in the design, procurement, and construction of non-military vessels of the United States Government.

(b) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

(1) the Committee on Armed Services, the Committee on Commerce, Science, and Transportation, the Committee on Environment and Public Works, and the Committee on Homeland Security and Governmental Affairs of the Senate; and

(2) the Committee on Armed Services, the Committee on Energy and Commerce, the Committee on Homeland Security, the Committee on Natural Resources, and the Committee on Transportation and Infrastructure of the House of Representatives.