

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
SEXUAL HARASSMENT AND ASSAULT PREVENTION
IMPROVEMENTS ACT OF 2020

NOVEMBER 2, 2020.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 6636]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 6636) to amend the National Defense Authorization Act for Fiscal Year 2017 to address sexual harassment involving National Oceanic and Atmospheric Administration personnel, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Oceanic and Atmospheric Administration Sexual Harassment and Assault Prevention Improvements Act of 2020”.

SEC. 2. REFERENCES.

Except as otherwise specifically provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a provision, the reference shall be considered to be made to a provision of subtitle C of title XXXV of Public Law 114–328 (130 Stat. 2800 et seq.; 33 U.S.C. 894 et seq.).

SEC. 3. POLICY ON THE PREVENTION OF AND RESPONSE TO SEXUAL HARASSMENT INVOLVING NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION PERSONNEL.

(a) COVERED PERSONNEL.—Section 3541(a) (130 Stat. 2800) is amended—

(1) by striking “Not later” and inserting the following:

“(1) IN GENERAL.—Not later”; and

(2) by adding at the end the following:

“(2) INCLUDED PERSONNEL.—The individuals who work with or conduct business on behalf of the Administration referred to in paragraph (1) include the following:

“(A) Observers and at-sea monitors required by the National Marine Fisheries Service to be aboard commercial fishing vessels and other privately owned vessels, barges, or platforms for—

“(i) commercial fisheries observation required by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

“(ii) protected species or endangered species observation required by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) or the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); or

“(iii) platform removal observation.

“(B) Voting members and executive and administrative staff of regional fishery management councils established by section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852).”.

(b) MECHANISM FOR ANONYMOUS REPORTING OF INCIDENTS.—Section 3541(b)(3)(B) (130 Stat. 2800) is amended to read as follows:

“(B) incidents of sexual harassment can be anonymously reported to the Office of Inclusion and Civil Rights of the National Oceanic and Atmospheric Administration or to the program established under section 3541(b)(1); and”.

(c) INCLUSION OF EQUAL EMPLOYMENT IN QUARTERLY REPORTS.—Section 3541(f) (130 Stat. 2801) is amended—

(1) by inserting “and equal employment” after “sexual harassment” each place it appears; and

(2) in paragraph (2)—

(A) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(B) by inserting after subparagraph (B) the following:

“(C) A synopsis of each case and the disciplinary action taken (if any) in each case.”.

SEC. 4. COMPREHENSIVE POLICY ON PREVENTION OF AND RESPONSE TO SEXUAL ASSAULTS.

(a) COVERED PERSONNEL.—Section 3542(a) (130 Stat. 2801) is amended—

(1) by striking “Not later” and inserting the following:

“(1) IN GENERAL.—Not later”; and

(2) by adding at the end the following:

“(2) INCLUDED PERSONNEL.—The individuals who work with or conduct business on behalf of the Administration referred to in paragraph (1) include the individuals described in section 3541(a)(2).”.

(b) MECHANISM FOR ANONYMOUS REPORTING OF INCIDENTS.—Section 3542(b)(5)(B) (130 Stat. 2801) is amended to read as follows:

“(B) incidents of sexual assault can be anonymously reported to the program established under section 3541(b)(1).”.

(c) VICTIM ADVOCATES.—

(1) IN GENERAL.—Section 3542(c)(2) (130 Stat. 2802) is amended to read as follows:

“(2) VICTIM ADVOCATES.—For purposes of this subsection, a victim advocate is a full-time permanent employee of the Administration trained in and responsible solely for matters relating to sexual assault and the comprehensive policy developed under subsection (a).”.

(2) LOCATION.—Section 3542(c)(4) (130 Stat. 2802) is amended by inserting “full time” after “stationed”.

SEC. 5. INVESTIGATION AND CRIMINAL REFERRAL REQUIREMENTS.

(a) REDESIGNATION.—Sections 3546 and 3547 (130 Stat. 2804, 2805) are redesignated as sections 3551 and 3552, respectively.

(b) IN GENERAL.—Inserting the following after section 3545:

“SEC. 3546. INVESTIGATION REQUIREMENT.

“(a) REQUIREMENT TO INVESTIGATE.—

“(1) IN GENERAL.—The Secretary of Commerce, acting through the Under Secretary for Oceans and Atmosphere, shall ensure that each allegation of sexual harassment reported under section 3541 and each allegation of sexual assault reported under section 3542 is investigated thoroughly and promptly.

“(2) SENSE OF CONGRESS ON COMMENCEMENT OF INVESTIGATION.—It is the sense of Congress that the Secretary should ensure that an investigation of an alleged incident of sexual harassment reported under section 3541 or sexual assault reported under section 3542 commences not later than 48 hours after the time at which the allegation was reported.

“(b) NOTIFICATION OF DELAY.—In any case in which the time between the reporting of an alleged incident of sexual harassment or sexual assault under section 3541

or 3542, respectively, and commencement of an investigation of the allegation under this section exceeds 48 hours, the Secretary shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives of the delay.

“SEC. 3547. CRIMINAL REFERRAL.

“If the Secretary of Commerce finds, pursuant to an investigation under section 3546, evidence that a crime may have been committed, the Secretary shall refer the matter to the appropriate law enforcement authorities, including the appropriate United States Attorney.

“SEC. 3548. EXCEPTIONS REGARDING ANONYMITY OF SURVIVORS IN CERTAIN CASES.

“(a) IN GENERAL.—In any case in which an employee, member of the commissioned officer corps, or individual conducting business on behalf of the administration elects anonymous reporting under section 3541(b)(3)(B) or 3542(b)(5)(B), disclosure of their personally identifying information is authorized to the following persons or organizations when disclosure would be for the following reasons:

“(1) To National Oceanic and Atmospheric Administration staff or law enforcement personnel, when authorized by the survivor in writing.

“(2) To National Oceanic and Atmospheric Administration staff or law enforcement personnel to prevent or lessen a serious or imminent threat to the health or safety of the survivor or another person.

“(3) To a victim advocate or healthcare provider, when required for the provision of victim services.

“(4) To a State or Federal court, when ordered by such court or if disclosure is required by Federal or State statute.

“(b) NOTICE OF DISCLOSURE AND PRIVACY PROTECTION.—In any case in which information is disclosed under subsection (a), the Secretary shall—

“(1) make reasonable attempts to provide notice to the employee, member, or individual whose personally identifying information is disclosed; and

“(2) take such action as is necessary to protect the privacy and safety of the employee, member, or individual.

“SEC. 3549. RESTRICTED REPORTING.

“(a) IN GENERAL.—Not later than 3 years after the date of enactment of the National Oceanic and Atmospheric Administration Sexual Harassment and Assault Prevention Improvements Act of 2020, the Secretary of Commerce, acting through the Under Secretary for Oceans and Atmosphere, shall develop a mechanism to provide a system of restricted reporting.

“(b) RESTRICTED REPORTING DEFINED.—In this section the term ‘restricted reporting’ means a system of reporting that allows employees of the National Oceanic and Atmospheric Administration, members of the Commissioned Officer Corps of the Administration, and individuals who work with or conduct business on behalf of the Administration who are sexually assaulted to confidentially disclose the details of their assault to specified individuals and receive the services outlined in this subtitle—

“(1) without the dissemination of their personally identifying information except as necessary for the provision of such services; and

“(2) without automatically triggering an investigative process.

“SEC. 3550. MARINER REFERRAL.

“The Under Secretary of Commerce for Oceans and Atmosphere, acting through the Director of the Office of Marine and Aviation Operations and in consultation with the Commandant of the Coast Guard, shall, within 180 days after the date of the enactment of the National Oceanic and Atmospheric Administration Sexual Harassment and Assault Prevention Improvements Act of 2020, develop and implement a policy to report to the Coast Guard Suspension and Revocation National Center of Expertise, the names of personnel of the National Oceanic and Atmospheric Administration who—

“(1) are the subject of a claim of an act or offense detrimental to good discipline and safety at sea, such as sexual harassment or sexual assault that is substantiated by an investigation under section 3546, or any other substantiated claim of an act or offense for which suspension or revocation of a credential is either mandatory or sought pursuant to part 5 of title 46 of the Code of Federal Regulations; and

“(2) are—

“(A) employees or contractors of the Administration required to hold a valid merchant mariner credential as a condition of employment; or

“(B) crew of a vessel that, at the time of such act or offense, was operating under a contract with the Administration.”

SEC. 6. ANNUAL REPORT ON SEXUAL ASSAULTS, SEXUAL HARASSMENT, AND EQUAL EMPLOYMENT.

Section 3551, as redesignated by section 5 of this Act (130 Stat. 2804), is amended—

(1) by striking the section heading and inserting the following: “**ANNUAL REPORT ON SEXUAL ASSAULTS, SEXUAL HARASSMENT, AND EQUAL EMPLOYMENT IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.**”;

(2) in subsection (a), by inserting “, sexual harassment, and equal employment” after “sexual assaults”; and

(3) in subsection (b)—

(A) in paragraph (4), by inserting “, including a synopsis of each case and the disciplinary action taken, if any, in each case” before the period at the end; and

(B) by adding at the end the following:

“(5) A summary of the number of change of station, unit transfer, and change of work location requests submitted to the Under Secretary under section 3544(a), including the number of such requests that were denied.

“(6) A summary of the number of cases referred to the Coast Guard under section 5 of National Oceanic and Atmospheric Administration Sexual Harassment and Assault Prevention Improvements Act of 2020.

“(7) The number of alleged sexual assaults and sexual harassment cases involving fisheries, protected species, and endangered species observers, including—

“(A) a synopsis of each case and the status;

“(B) the disposition of any investigation; and

“(C) a description of the fishery management region and fishery or the geographic region and type of permitted operation in which the assault or harassment is alleged to have occurred, as appropriate.”.

SEC. 7. CONFORMING AND CLERICAL AMENDMENTS.

(a) **CONFORMING AMENDMENTS.**—Subtitle C of title XXXV of Public Law 114–328 (130 Stat. 2800 et seq.; 33 U.S.C. 894 et seq.) is amended—

(1) by striking the term “victims” each place it appears and inserting “survivors”;

(2) in section 3541(b)(2)(B), by striking “victim” and inserting “target of sexual harassment”;

(3) in section 3542(c)(5)(A), by striking “victim of” and inserting “survivor of”;

(4) in section 3543—

(A) in the heading, by striking “**VICTIM**” and inserting “**SURVIVOR**”; and

(B) by striking “victim” and inserting “survivor”;

(5) in section 3544—

(A) in subsection (a)—

(i) by striking “**VICTIMS**” and inserting “**SURVIVORS**”; and

(ii) in paragraph (1), by striking “was” each place such term appears and inserting “is”; and

(B) by striking “victim” each place such term appears and inserting “survivor”.

(b) **CLERICAL AMENDMENT.**—Each of the tables of contents in section 2(b) and at the beginning of title XXXV of Public Law 114–328 (130 Stat. 2000, 2773) is amended—

(1) by striking the item relating to section 3543 and inserting the following:

“Sec. 3543. Rights of the survivor of a sexual assault.”; and

(2) by striking the items relating to sections 3546 and 3547 and inserting the following:

“Sec. 3546. Investigation requirement.

“Sec. 3547. Criminal referral.

“Sec. 3548. Exceptions regarding anonymity of survivors in certain cases.

“Sec. 3549. Restricted reporting.

“Sec. 3550. Mariner referral.

“Sec. 3551. Annual report on sexual assaults, sexual harassment, and equal employment in the National Oceanic and Atmospheric Administration.

“Sec. 3552. Sexual assault defined.”.

SEC. 8. PROHIBITED ACTS.

Section 307(1)(L) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857(1)(L)) is amended—

(1) by striking “forcibly”; and

(2) by striking “on a vessel”.

SEC. 9. PROHIBITION ON SERVICE IN THE NOAA COMMISSIONED OFFICER CORPS BY INDIVIDUALS CONVICTED OF CERTAIN SEXUAL OFFENSES.

Section 261(a) of the National Oceanic and Atmospheric Administration Commissioned Officer Corps Act of 2002 (33 U.S.C. 3071(a)) is amended—

(1) by redesignating paragraphs (4) through (16) as paragraphs (5) through (17), respectively; and

(2) by inserting after paragraph (3) the following:

“(4) Section 657, relating to prohibition on service by individuals convicted of certain sexual offenses.”.

PURPOSE OF THE BILL

The purpose of H.R. 6636 is to amend the National Defense Authorization Act for Fiscal Year 2017 to address sexual harassment involving National Oceanic and Atmospheric Administration personnel, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The National Oceanic and Atmospheric Administration (NOAA) employs about 12,000 people globally, including federal civilian workers, 321 officers of the NOAA Commissioned Officer Corps, and contractors and affiliates. Many employees and affiliates work in remote locations and aboard research and survey vessels to collect environmental data as part of NOAA’s missions. The National Defense Authorization Act for Fiscal Year 2017¹ (NDAA FY17) contained provisions to address sexual harassment and assault prevention at NOAA, including direction for NOAA to develop a comprehensive policy on harassment and assault prevention and response and to provide annual reports to Congress.² NOAA developed this policy in 2018 and hired a full-time workplace violence prevention and response program manager to oversee its implementation and to develop an agency-wide program. Based on information provided in the required annual reports, it is clear that NOAA requires additional authorities to fully stand up its prevention and response program; coordinate harassment, equal employment, and assault complaint reporting; and protect certain kinds of non-federal personnel who conduct business on behalf of or required by the agency, especially fisheries observers and fishery management council members and staff.

Fisheries observers and at-sea monitors collect data from commercial fishing vessels and shore-side processing facilities that are used to monitor fisheries, assess fish populations, set fishing quotas, inform management, and support compliance with fishing and safety regulations. Approximately 850 fisheries observers are in the field at any given time, with about 400 of those working in Alaska. Individual observers are usually employed by observer service providers, who are contracted by Regional Observer Programs to conduct observation work required by regulations, which vary by fishery. Most observers are relatively young (with 40 percent between 20–29 years old and 32 percent between 30–39) and

¹Pub. L. No. 114–328, 130 Stat. 2000 (2016), <https://uscode.house.gov/statviewer.htm?volume=130&page=2000> (codified as amended at various, see https://uscode.house.gov/table3/114_328.htm) (statutory compilation as amended through P.L. 116–132 at <https://www.govinfo.gov/content/pkg/COMPS-13740/pdf/COMPS-13740.pdf>).

²*Id.* at div. C, tit. XXXV, subtitle C, 130 Stat. at 2800–05, <https://uscode.house.gov/statviewer.htm?volume=130&page=2800> (codified at 33 U.S.C. §§ 894–94f).

work in the field typically between three and six years.³ Regional Observer Programs are coordinated by the National Observer Program within the National Marine Fisheries Service's Office of Science and Technology. Similarly, protected species observers may be placed on commercial fishing vessels, geophysical survey vessels, and government owned and operated dredges to collect data and report take of protected species such as marine mammals and sea turtles as a condition of a permit or authorization under the authority of the Marine Mammal Protection Act (MMPA) and Endangered Species Act (ESA).

NOAA's Office of Law Enforcement (OLE) is responsible for enforcing the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and has included observer sexual assault and harassment on its list of highest priority violations. Per the MSA, it is illegal to "forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer" while aboard a vessel,⁴ and additional prohibitions against harassment and assault are included in fishery management plan regulations. The modifier "forcibly," however, may preclude prohibition of adverse actions that are not physical or forcible in nature. This language also does not prohibit harassment or intimidation of observers ashore, which can still occur especially in small fishing communities. Furthermore, there is no such specific prohibition against harassment or assault of protected species observers.

According to NOAA's latest report to Congress, OLE received twelve reports of assaults involving fisheries observers in 2018. Of these, ten were alleged to have been perpetrated by male commercial fishing vessel crew members upon observers, one was alleged to have been perpetrated by a male observer upon a female observer, and one was alleged to have been perpetrated by a local individual upon an observer while ashore. Ten of the twelve reports occurred in Alaska. In pursuing punitive action against commercial fishing vessel owners or operators who harass or assault observers, however, NOAA distinguishes between interference with observer duties in order to catch more fish or skirt compliance with other laws or regulations—for which the vessel owner is liable and which could lead to revocation of a fishing permit—and behaviors that are sexual in nature, for which only an individual assailant is liable and which may lead to a fine. This Committee believes that due to the inherent close quarters living and working conditions on fishing vessels and in fishing communities, any form of harassment, assault, or intimidation of observers, whether sexual in nature or otherwise, absolutely interferes with observer duties. Accordingly, the Committee expects NOAA's OLE to pursue appropriate civil and criminal action against both the individual assailant and vessel owner as appropriate.

NOAA maintains a fleet of fifteen research and survey ships operated by the Office of Marine and Aviation Operations (OMAO), and a fleet of more than 400 small boats that are operated by individual programs within NOAA, with some administrative oversight from OMAO's Small Boat Program. Some of these smaller boats are

³ YUNTAO WANG & JANE DICOSIMO, NOAA, NOAA TECHNICAL MEMORANDUM NMFS-F/SPO-186, NATIONAL OBSERVER PROGRAM 2016 FISHERY OBSERVER ATTITUDES AND EXPERIENCES SURVEY 7, 9, 12 (2019), <https://spo.nmfs.noaa.gov/sites/default/files/TMSPO186.pdf>.

⁴ 16 U.S.C. § 1857(1)(L).

operated by contract crews with NOAA staff and affiliates conducting the scientific operations. Individual NOAA line offices and programs also rely on chartering privately owned vessels to meet approximately half of the agency’s total days at sea per year. Professional mariners are licensed and credentialed by the U.S. Coast Guard’s National Maritime Center, and merchant mariner credentials (MMCs) may be revoked or suspended following an administrative hearing by the U.S. Coast Guard’s Suspension and Revocation National Center of Expertise. An MMC may be suspended or revoked in order to promote safety at sea; for a number of acts or offenses, including illegal drug use, incompetence, mutiny, murder, rape or sexual molestation, and “perversion”; or for any other act or offense detrimental to good discipline.⁵ The U.S. Coast Guard does not define “perversion” in its regulations. Unless a mariner has an active application for an MMC renewal and the National Maritime Center is specifically notified of offenses, no consideration of revocation or suspension of the mariner’s MMC will take place. Any employer may at any time notify the U.S. Coast Guard for this purpose.

The Committee believes that sexual harassment and sexual assault are “perverse” actions within the meaning of the regulations such that they are threats to safety at sea and detrimental to good discipline. As a responsible employer of licensed and credentialed mariners, NOAA must notify the U.S. Coast Guard when it knows that its employees or contractors have committed such acts.

H.R. 6636, the National Oceanic and Atmospheric Administration Sexual Harassment and Assault Prevention Improvements Act of 2020, builds on the NDAA FY17 approach for preventing and responding to sexual assault and sexual harassment.

COMMITTEE ACTION

H.R. 6636 was introduced on April 28, 2020, by Representative Suzanne Bonamici (D–OR). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Oceans, and Wildlife. On July 29, 2020, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Chair Raúl M. Grijalva (D–AZ) offered an amendment designated Grijalva #1. The amendment was agreed to by unanimous consent. The bill, as amended, was adopted and ordered favorably reported to the House of Representatives by unanimous consent.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress—the following hearing was used to develop or consider H.R. 6636: hearing by the Subcommittee on Oversight and Investigations held on February 27, 2020.

⁵ 46 C.F.R. § 5.61 (2012), <https://www.govinfo.gov/content/pkg/CFR-2012-title46-vol1/pdf/CFR-2012-title46-vol1-part5.pdf>; *see also* 46 U.S.C. ch. 77.

SECTION-BY-SECTION ANALYSIS

*Section 1. Short title**Section 2. References**Section 3. Policy on the prevention of and response to sexual harassment involving National Oceanic and Atmospheric Administration personnel.*

This section expands coverage of NOAA's sexual harassment prevention and response policy to include additional classes of personnel who were not otherwise covered, including commercial fisheries observers, protected species observers, and platform removal observers—who are neither employees nor contractors, but are instead employees of contractors. This expansion also covers voting members and executive and administrative staff of regional fishery management councils. This section also directs NOAA to provide a mechanism for anonymous reports of sexual harassment to either NOAA's Workplace Violence Prevention and Response Program Manager or the NOAA Office of Inclusion and Civil Rights. Currently, reports can go through different routes and may bypass the Workplace Violence Prevention and Response Program and Office of Inclusion and Civil Rights altogether, in turn hindering their ability to provide services to targets of harassment and to accurately capture and track data. This section also directs NOAA's Director of Civil Rights to include data on equal employment cases in their quarterly sexual harassment reports to the NOAA Administrator.

Section 4. Comprehensive policy on prevention of and response to sexual assaults

This section expands coverage of NOAA's sexual assault prevention and response policy to include the same classes of personnel included in section 3 of this bill and directs NOAA to provide a mechanism for anonymous reports of sexual assault to NOAA's Workplace Violence Prevention and Response Program Manager. As with harassment reports, NOAA's Workplace Violence Prevention and Response Program should not be bypassed in the sexual assault reporting chain. This section also requires that NOAA's victim advocates be full-time employees whose sole jobs are victim advocacy rather than administering such work as a volunteer collateral duty of existing employees.

Section 5. Investigation and criminal referral requirements

This section requires that all allegations of sexual assault and sexual harassment be investigated thoroughly and directs the Secretary of Commerce to refer investigations to law enforcement if there is evidence that a crime may have been committed. This section provides NOAA some specific exceptions to allow disclosure of a survivor's personally identifying information in cases where it is needed to prevent ongoing imminent harm to the survivor or another person, when authorized by the survivor in writing, to healthcare providers when required for the provision of victim services, or when under a court order to do so.

This section also directs NOAA to develop a mechanism to provide restricted reporting that would allow survivors of sexual as-

sault to receive services provided by NOAA without automatically triggering an investigative process, if requested by the survivor. Current Department of Commerce policy requires an investigation of any report, which may discourage some survivors from seeking services.

This section also directs NOAA to develop a policy to refer the names of its employees (or contractors who are required to hold a valid merchant mariner credential as a condition of employment, or crew of a vessel operating under NOAA contract) to the U.S. Coast Guard if they are the subject of substantiated claims of sexual assault, sexual harassment, or other offenses for further consideration of suspension or revocation of their mariner credentials.

Section 6. Annual report on sexual assaults, sexual harassment, and equal employment

This section adds additional requirements to NOAA's annual report to Congress on sexual assault to also include a synopsis of NOAA's cases of sexual harassment and equal employment, a summary of the number of change of station or work location requests initiated to reduce the possibility of retaliation or further sexual assault of employees, and a summary of the number of cases referred to the U.S. Coast Guard for further review of their credentials.

Section 7. Conforming and clerical amendments

This section updates terminology referring to victims of sexual assault and victims of sexual harassment to refer to "survivors" and "targets" respectively.

Section 8. Prohibited acts

This section improves the NOAA Office of Law Enforcement's ability to investigate harassment of fisheries observers by removing limitations in the MSA that instances of harassment be "forcible" and occur on a vessel.

Section 9. Prohibition on service in the NOAA Commissioned Officer Corps by individuals convicted of certain sexual offenses

This section applies a provision of Title 10 of the U.S. Code to the NOAA Corps to prohibit service by individuals convicted of felony offenses or attempts of rape or sexual assault, forcible sodomy, or incest.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has

received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, October 30, 2020.

Hon. RAÚL M. GRIJALVA,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6636, the National Oceanic and Atmospheric Administration Sexual Harassment and Assault Prevention Improvements Act of 2020.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 6636, National Oceanic and Atmospheric Administration Sexual Harassment and Assault Prevention Improvements Act of 2020			
As ordered reported by the House Committee on Natural Resources on July 29, 2020			
By Fiscal Year, Millions of Dollars	2021	2021-2025	2021-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

H.R. 6636 would require the National Oceanic and Atmospheric Administration (NOAA) to allow anonymous reporting of incidents of sexual harassment and sexual assault involving NOAA employees. The bill also would require that an investigation into any such reports begin within 48 hours of the incident being reported and that any evidence of a crime be referred to law enforcement officials.

Additionally, the bill would require NOAA to develop, within three years of enactment, a system that allows for confidential reporting of a sexual assault without dissemination of the person's personally identifiable information, except as necessary for receiving services, and without automatically triggering an investigation.

Using information about NOAA's current sexual assault and sexual harassment policy, CBO estimates that implementing H.R.

6636 would cost less than \$500,000 over the 2020–2025 period. Any spending would be subject to the availability of appropriated funds.

On December 20, 2019, CBO transmitted a cost estimate for S. 2782, a bill to improve provisions of law relating to sexual harassment and assault prevention at the National Oceanic and Atmospheric Administration, and for other purposes, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on November 13, 2019. The two pieces of legislation are similar, and CBO’s estimates of their costs are the same.

The CBO staff contact for this estimate is Robert Reese. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to amend the National Defense Authorization Act for Fiscal Year 2017 to address sexual harassment involving National Oceanic and Atmospheric Administration personnel.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

This bill contains no unfunded mandates.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act. The Committee finds that the legislation’s provisions relating to the terms and conditions of employment do not relate to legislative branch and instead relate to the U.S. Department of Commerce and its employees, contractors, and employees of contractors.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill’s purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2017

(Public Law 114-328)

AN ACT To authorize appropriations for fiscal year 2017 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

* * * * *

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into five divisions as follows:

- (1) Division A—Department of Defense Authorizations.
- (2) Division B—Military Construction Authorizations.
- (3) Division C—Department of Energy National Security Authorizations and Other Authorizations.
- (4) Division D—Funding Tables.
- (5) Division E—Uniform Code of Military Justice Reform.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title.

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DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY AUTHORIZATIONS AND OTHER AUTHORIZATIONS

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TITLE XXXV—MARITIME MATTERS

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Subtitle C—Sexual Harassment and Assault Prevention at the National Oceanic and Atmospheric Administration

Sec. 3541. Actions to address sexual harassment at National Oceanic and Atmospheric Administration.

Sec. 3542. Actions to address sexual assault at National Oceanic and Atmospheric Administration.

[Sec. 3543. Rights of the victim of a sexual assault.]

Sec. 3543. Rights of the survivor of a sexual assault.

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[Sec. 3546. Annual report on sexual assaults in the National Oceanic and Atmospheric Administration.]

[Sec. 3547. Sexual assault defined.]

Sec. 3546. Investigation requirement.

Sec. 3547. Criminal referral.

Sec. 3548. Exceptions regarding anonymity of survivors in certain cases.

Sec. 3549. Restricted reporting.

Sec. 3550. Mariner referral.

Sec. 3551. Annual report on sexual assaults, sexual harassment, and equal employment in the National Oceanic and Atmospheric Administration.

Sec. 3552. Sexual assault defined.

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**DIVISION C—DEPARTMENT OF ENERGY
NATIONAL SECURITY AUTHORIZA-
TIONS AND OTHER AUTHORIZATIONS**

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TITLE XXXV—MARITIME MATTERS

Subtitle A—Maritime Administration, Coast Guard, and Shipping Matters

Sec. 3501. Authorization of the Maritime Administration.

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Subtitle C—Sexual Harassment and Assault Prevention at the National Oceanic and Atmospheric Administration

Sec. 3541. Actions to address sexual harassment at National Oceanic and Atmospheric Administration.

Sec. 3542. Actions to address sexual assault at National Oceanic and Atmospheric Administration.

[Sec. 3543. Rights of the victim of a sexual assault.]

Sec. 3543. Rights of the survivor of a sexual assault.

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[Sec. 3546. Annual report on sexual assaults in the National Oceanic and Atmospheric Administration.]

[Sec. 3547. Sexual assault defined.]

Sec. 3546. Investigation requirement.

Sec. 3547. Criminal referral.

Sec. 3548. Exceptions regarding anonymity of survivors in certain cases.

Sec. 3549. Restricted reporting.

Sec. 3550. Mariner referral.

Sec. 3551. Annual report on sexual assaults, sexual harassment, and equal employment in the National Oceanic and Atmospheric Administration.

Sec. 3552. Sexual assault defined.

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Subtitle C—Sexual Harassment and Assault Prevention at the National Oceanic and Atmospheric Administration

SEC. 3541. ACTIONS TO ADDRESS SEXUAL HARASSMENT AT NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

(a) **REQUIRED POLICY.—[Not later]**

(1) *IN GENERAL.*—*Not later* than 1 year after the date of the enactment of this Act, the Secretary of Commerce shall, acting through the Under Secretary for Oceans and Atmosphere, develop a policy on the prevention of and response to sexual harassment involving employees of the National Oceanic and Atmospheric Administration, members of the commissioned officer corps of the Administration, and individuals who work with or conduct business on behalf of the Administration.

(2) *INCLUDED PERSONNEL.*—*The individuals who work with or conduct business on behalf of the Administration referred to in paragraph (1) include the following:*

(A) *Observers and at-sea monitors required by the National Marine Fisheries Service to be aboard commercial*

fishing vessels and other privately owned vessels, barges, or platforms for—

(i) commercial fisheries observation required by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(ii) protected species or endangered species observation required by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) or the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); or

(iii) platform removal observation.

(B) Voting members and executive and administrative staff of regional fishery management councils established by section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852).

(b) MATTERS TO BE SPECIFIED IN POLICY.—The policy developed under subsection (a) shall include—

(1) establishment of a program to promote awareness of the incidence of sexual harassment;

(2) clear procedures an individual should follow in the case of an occurrence of sexual harassment, including—

(A) a specification of the person or persons to whom an alleged occurrence of sexual harassment should be reported by an individual and options for confidential reporting, including—

(i) options and contact information for after-hours contact; and

(ii) a procedure for obtaining assistance and reporting sexual harassment while working in a remote scientific field camp, at sea, or in another field status; and

(B) a specification of any other person whom the [victim] *target of sexual harassment* should contact;

(3) establishment of a mechanism by which—

(A) questions regarding sexual harassment can be confidentially asked and confidentially answered; and

[(B) incidents of sexual harassment can be confidentially reported; and]

(B) incidents of sexual harassment can be anonymously reported to the Office of Inclusion and Civil Rights of the National Oceanic and Atmospheric Administration or to the program established under section 3541(b)(1); and

(4) a prohibition on retaliation and consequences for retaliatory actions.

(c) CONSULTATION AND ASSISTANCE.—In developing the policy required by subsection (a), the Secretary may consult or receive assistance from such State, local, and national organizations and subject matter experts as the Secretary considers appropriate.

(d) AVAILABILITY OF POLICY.—The Secretary shall ensure that the policy developed under subsection (a) is available to—

(1) all employees of the Administration and members of the commissioned officer corps of the Administration, including those employees and members who conduct field work for the Administration; and

(2) the public.

(e) **GEOGRAPHIC DISTRIBUTION OF EQUAL EMPLOYMENT OPPORTUNITY PERSONNEL.**—The Secretary shall designate out of existing staff at least 1 employee of the Administration who is tasked with handling matters relating to equal employment opportunity or sexual harassment at each marine and aviation center of the Administration.

(f) **QUARTERLY REPORTS.**—

(1) **IN GENERAL.**—Not less frequently than 4 times each year, the Director of the Civil Rights Office of the Administration shall submit to the Under Secretary a report on sexual harassment *and equal employment* in the Administration.

(2) **CONTENTS.**—Each report submitted under paragraph (1) shall include the following:

(A) The number of sexual harassment *and equal employment* cases, both actionable and non-actionable, involving individuals covered by the policy developed under subsection (a).

(B) The number of open actionable sexual harassment *and equal employment* cases and how long the cases have been open.

(C) *A synopsis of each case and the disciplinary action taken (if any) in each case.*

[(C)] (D) Such trends or region-specific issues as the Director may have discovered with respect to sexual harassment *and equal employment* in the Administration.

[(D)] (E) Such recommendations as the Director may have with respect to sexual harassment *and equal employment* in the Administration.

SEC. 3542. ACTIONS TO ADDRESS SEXUAL ASSAULT AT NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

(a) **COMPREHENSIVE POLICY ON PREVENTION OF AND RESPONSE TO SEXUAL ASSAULTS.**—**[Not later]**

(1) **IN GENERAL.**—*Not later* than 1 year after the date of the enactment of this Act, the Secretary of Commerce shall, acting through the Under Secretary for Oceans and Atmosphere, develop a comprehensive policy on the prevention of and response to sexual assaults involving employees of the National Oceanic and Atmospheric Administration, members of the commissioned officer corps of the Administration, and individuals who work with or conduct business on behalf of the Administration.

(2) **INCLUDED PERSONNEL.**—*The individuals who work with or conduct business on behalf of the Administration referred to in paragraph (1) include the individuals described in section 3541(a)(2).*

(b) **ELEMENTS OF COMPREHENSIVE POLICY.**—The comprehensive policy developed under subsection (a) shall, at minimum, address the following matters:

(1) Prevention measures.

(2) Education and training on prevention and response.

(3) A list of support resources an individual may use in the occurrence of sexual assault, including—

(A) options and contact information for after-hours contact; and

- (B) a procedure for obtaining assistance and reporting sexual assault while working in a remote scientific field camp, at sea, or in another field status.
- (4) Easy and ready availability of information described in paragraph (3).
- (5) Establishing a mechanism by which—
- (A) questions regarding sexual assault can be confidentially asked and confidentially answered; and
- [(B) incidents of sexual assault can be confidentially reported.]
- (B) incidents of sexual assault can be anonymously reported to the program established under section 3541(b)(1).*
- (6) Protocols for the investigation of complaints by command and law enforcement personnel.
- (7) Prohibiting retaliation and consequences for retaliatory actions against someone who reports a sexual assault.
- (8) Oversight by the Under Secretary of administrative and disciplinary actions in response to substantiated incidents of sexual assault.
- (9) Victim advocacy, including establishment of and the responsibilities and training requirements for victim advocates as described in subsection (c).
- (10) Availability of resources for [victims] survivors of sexual assault within other Federal agencies and State, local, and national organizations.
- (c) VICTIM ADVOCACY.—
- (1) IN GENERAL.—The Secretary, acting through the Under Secretary, shall establish victim advocates to advocate for [victims] survivors of sexual assaults involving employees of the Administration, members of the commissioned officer corps of the Administration, and individuals who work with or conduct business on behalf of the Administration.
- [(2) VICTIM ADVOCATES.—For purposes of this subsection, a victim advocate is an existing permanent employee of the Administration who—
- [(A) is trained in matters relating to sexual assault and the comprehensive policy developed under subsection (a); and
- [(B) serves as a victim advocate voluntarily and in addition to the employee's other duties as an employee of the Administration.]
- (2) VICTIM ADVOCATES.—*For purposes of this subsection, a victim advocate is a full-time permanent employee of the Administration trained in and responsible solely for matters relating to sexual assault and the comprehensive policy developed under subsection (a).*
- (3) PRIMARY DUTIES.—The primary duties of a victim advocate established under paragraph (1) shall include the following:
- (A) Supporting [victims] survivors of sexual assault and informing them of their rights and the resources available to them as [victims] survivors.
- (B) Acting as a companion in navigating investigative, medical, mental and emotional health, and recovery processes relating to sexual assault.

- (C) Helping to identify resources to ensure the safety of **[victims]** *survivors* of sexual assault.
- (4) LOCATION.—The Secretary shall ensure that at least 1 victim advocate established under paragraph (1) is stationed *full time*—
- (A) in each region in which the Administration conducts operations; and
- (B) in each marine and aviation center of the Administration.
- (5) HOTLINE.—
- (A) IN GENERAL.—In carrying out this subsection, the Secretary shall provide a telephone number at which a **[victim of]** *survivor* of a sexual assault can contact a victim advocate.
- (B) 24-HOUR ACCESS.—The Secretary shall ensure that the telephone number established under subparagraph (A) is monitored at all times.
- (C) PARTNERSHIP.—The Secretary shall, where possible, use established hotlines for purposes of this paragraph.
- (6) FORMAL RELATIONSHIPS WITH OTHER ENTITIES.—The Secretary may enter into formal relationships with other entities to make available additional victim advocates.
- (d) AVAILABILITY OF POLICY.—The Secretary shall ensure that the policy developed under subsection (a) is available to—
- (1) all employees of the Administration and members of the commissioned officer corps of the Administration, including those employees and members who conduct field work for the Administration; and
- (2) the public.
- (e) CONSULTATION AND ASSISTANCE.—In developing the policy required by subsection (a), the Secretary may consult or receive assistance from such State, local, and national organizations and subject matter experts as the Secretary considers appropriate.

SEC. 3543. RIGHTS OF THE [VICTIM] SURVIVOR OF A SEXUAL ASSAULT.

A **[victim]** *survivor* of a sexual assault covered by the comprehensive policy developed under section 3542(a) has the right to be reasonably protected from the accused.

SEC. 3544. CHANGE OF STATION.

(a) CHANGE OF STATION, UNIT TRANSFER, OR CHANGE OF WORK LOCATION OF **[VICTIMS]** *SURVIVORS*.—

(1) TIMELY CONSIDERATION AND ACTION UPON REQUEST.—The Secretary of Commerce, acting through the Under Secretary for Oceans and Atmosphere, shall—

(A) in the case of a member of the commissioned officer corps of the National Oceanic and Atmospheric Administration who **[was]** *is* a **[victim]** *survivor* of a sexual assault, in order to reduce the possibility of retaliation or further sexual assault, provide for timely determination and action on an application submitted by the **[victim]** *survivor* for consideration of a change of station or unit transfer of the **[victim]** *survivor*; and

(B) in the case of an employee of the Administration who **[was]** *is* a **[victim]** *survivor* of a sexual assault, to the de-

gree practicable and in order to reduce the possibility of retaliation against the employee for reporting the sexual assault, accommodate a request for a change of work location of the [victim] survivor.

(2) PROCEDURES.—

(A) PERIOD FOR APPROVAL AND DISAPPROVAL.—The Secretary, acting through the Under Secretary, shall ensure that an application or request submitted under paragraph (1) for a change of station, unit transfer, or change of work location is approved or denied within 72 hours of the submission of the application or request.

(B) REVIEW.—If an application or request submitted under paragraph (1) by a [victim] survivor of a sexual assault for a change of station, unit transfer, or change of work location of the [victim] survivor is denied—

(i) the [victim] survivor may request the Secretary to review the denial; and

(ii) the Secretary, acting through the Under Secretary, shall, not later than 72 hours after receiving such request, affirm or overturn the denial.

(b) CHANGE OF STATION, UNIT TRANSFER, AND CHANGE OF WORK LOCATION OF ALLEGED PERPETRATORS.—

(1) IN GENERAL.—The Secretary, acting through the Under Secretary, shall develop a policy for the protection of [victims] survivors of sexual assault described in subsection (a)(1) by providing the alleged perpetrator of the sexual assault with a change of station, unit transfer, or change of work location, as the case may be, if the alleged perpetrator is a member of the commissioned officer corps of the Administration or an employee of the Administration.

(2) POLICY REQUIREMENTS.—The policy required by paragraph (1) shall include the following:

(A) A means to control access to the [victim] survivor.

(B) Due process for the [victim] survivor and the alleged perpetrator.

(c) REGULATIONS.—

(1) IN GENERAL.—The Secretary shall promulgate regulations to carry out this section.

(2) CONSISTENCY.—When practicable, the Secretary shall make regulations promulgated under this section consistent with similar regulations promulgated by the Secretary of Defense.

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SEC. 3546. INVESTIGATION REQUIREMENT.

(a) REQUIREMENT TO INVESTIGATE.—

(1) IN GENERAL.—*The Secretary of Commerce, acting through the Under Secretary for Oceans and Atmosphere, shall ensure that each allegation of sexual harassment reported under section 3541 and each allegation of sexual assault reported under section 3542 is investigated thoroughly and promptly.*

(2) SENSE OF CONGRESS ON COMMENCEMENT OF INVESTIGATION.—*It is the sense of Congress that the Secretary should ensure that an investigation of an alleged incident of sexual harassment reported under section 3541 or sexual assault reported*

under section 3542 commences not later than 48 hours after the time at which the allegation was reported.

(b) NOTIFICATION OF DELAY.—In any case in which the time between the reporting of an alleged incident of sexual harassment or sexual assault under section 3541 or 3542, respectively, and commencement of an investigation of the allegation under this section exceeds 48 hours, the Secretary shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives of the delay.

SEC. 3547. CRIMINAL REFERRAL.

If the Secretary of Commerce finds, pursuant to an investigation under section 3546, evidence that a crime may have been committed, the Secretary shall refer the matter to the appropriate law enforcement authorities, including the appropriate United States Attorney.

SEC. 3548. EXCEPTIONS REGARDING ANONYMITY OF SURVIVORS IN CERTAIN CASES.

(a) IN GENERAL.—In any case in which an employee, member of the commissioned officer corps, or individual conducting business on behalf of the administration elects anonymous reporting under section 3541(b)(3)(B) or 3542(b)(5)(B), disclosure of their personally identifying information is authorized to the following persons or organizations when disclosure would be for the following reasons:

(1) To National Oceanic and Atmospheric Administration staff or law enforcement personnel, when authorized by the survivor in writing.

(2) To National Oceanic and Atmospheric Administration staff or law enforcement personnel to prevent or lessen a serious or imminent threat to the health or safety of the survivor or another person.

(3) To a victim advocate or healthcare provider, when required for the provision of victim services.

(4) To a State or Federal court, when ordered by such court or if disclosure is required by Federal or State statute.

(b) NOTICE OF DISCLOSURE AND PRIVACY PROTECTION.—In any case in which information is disclosed under subsection (a), the Secretary shall—

(1) make reasonable attempts to provide notice to the employee, member, or individual whose personally identifying information is disclosed; and

(2) take such action as is necessary to protect the privacy and safety of the employee, member, or individual.

SEC. 3549. RESTRICTED REPORTING.

(a) IN GENERAL.—Not later than 3 years after the date of enactment of the National Oceanic and Atmospheric Administration Sexual Harassment and Assault Prevention Improvements Act of 2020, the Secretary of Commerce, acting through the Under Secretary for Oceans and Atmosphere, shall develop a mechanism to provide a system of restricted reporting.

(b) RESTRICTED REPORTING DEFINED.—In this section the term “restricted reporting” means a system of reporting that allows employees of the National Oceanic and Atmospheric Administration, members of the Commissioned Officer Corps of the Administration, and individuals who work with or conduct business on behalf of the

Administration who are sexually assaulted to confidentially disclose the details of their assault to specified individuals and receive the services outlined in this subtitle title—

(1) without the dissemination of their personally identifying information except as necessary for the provision of such services; and

(2) without automatically triggering an investigative process.

SEC. 3550. MARINER REFERRAL.

The Under Secretary of Commerce for Oceans and Atmosphere, acting through the Director of the Office of Marine and Aviation Operations and in consultation with the Commandant of the Coast Guard, shall, within 180 days after the date of the enactment of the National Oceanic and Atmospheric Administration Sexual Harassment and Assault Prevention Improvements Act of 2020, develop and implement a policy to report to the Coast Guard Suspension and Revocation National Center of Expertise, the names of personnel of the National Oceanic and Atmospheric Administration who—

(1) are the subject of a claim of an act or offense detrimental to good discipline and safety at sea, such as sexual harassment or sexual assault that is substantiated by an investigation under section 3546, or any other substantiated claim of an act or offense for which suspension or revocation of a credential is either mandatory or sought pursuant to part 5 of title 46 of the Code of Federal Regulations; and

(2) are—

(A) employees or contractors of the Administration required to hold a valid merchant mariner credential as a condition of employment; or

(B) crew of a vessel that, at the time of such act or offense, was operating under a contract with the Administration.

[SEC. 3546. ANNUAL REPORT ON SEXUAL ASSAULTS IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.]

SEC. 3551. ANNUAL REPORT ON SEXUAL ASSAULTS, SEXUAL HARASSMENT, AND EQUAL EMPLOYMENT IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

(a) **IN GENERAL.**—Not later than January 15 of each year, the Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives a report on the sexual assaults, *sexual harassment, and equal employment* involving employees of the National Oceanic and Atmospheric Administration, members of the commissioned officer corps of the Administration, and individuals who work with or conduct business on behalf of the Administration.

(b) **CONTENTS.**—Each report submitted under subsection (a) shall include, with respect to the previous calendar year, the following:

(1) The number of alleged sexual assaults involving employees, members, and individuals described in subsection (a).

(2) A synopsis of each case and the disciplinary action taken, if any, in each case.

(3) The policies, procedures, and processes implemented by the Secretary, and any updates or revisions to such policies, procedures, and processes.

(4) A summary of the reports received by the Under Secretary for Oceans and Atmosphere under section 3541(f), including a synopsis of each case and the disciplinary action taken, if any, in each case.

(5) A summary of the number of change of station, unit transfer, and change of work location requests submitted to the Under Secretary under section 3544(a), including the number of such requests that were denied.

(6) A summary of the number of cases referred to the Coast Guard under section 5 of National Oceanic and Atmospheric Administration Sexual Harassment and Assault Prevention Improvements Act of 2020.

(7) The number of alleged sexual assaults and sexual harassment cases involving fisheries, protected species, and endangered species observers, including—

(A) a synopsis of each case and the status;

(B) the disposition of any investigation; and

(C) a description of the fishery management region and fishery or the geographic region and type of permitted operation in which the assault or harassment is alleged to have occurred, as appropriate.

(c) PRIVACY PROTECTION.—In preparing and submitting a report under subsection (a), the Secretary shall ensure that no individual involved in an alleged sexual assault can be identified by the contents of the report.

SEC. [3547.] 3552. SEXUAL ASSAULT DEFINED.

In this subtitle, the term “sexual assault” shall have the meaning given such term in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)).

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MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

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TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

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SEC. 307. PROHIBITED ACTS.

It is unlawful—

(1) for any person—

(A) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;

(B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;

(C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 201(c);

(D) to refuse to permit any officer authorized to enforce the provisions of this Act (as provided for in section 311)

to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(E) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (D);

(F) to resist a lawful arrest for any act prohibited by this section;

(G) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(H) to interfere, with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section;

(I) to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act;

(J) to ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live lobster of the species *Homarus americanus*, that—

(i) is smaller than the minimum possession size in effect at the time under the American Lobster Fishery Management Plan, as implemented by regulations published in part 649 of title 50, Code of Federal Regulations, or any successor to that plan implemented under this title, or in the absence of any such plan, is smaller than the minimum possession size in effect at the time under a coastal fishery management plan for American lobster adopted by the Atlantic States Marine Fisheries Commission under the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 et seq.);

(ii) is bearing eggs attached to its abdominal appendages; or

(iii) bears evidence of the forcible removal of extruded eggs from its abdominal appendages;

(K) to knowingly steal, or without authorization, to remove, damage, or tamper with—

(i) fishing gear owned by another person, which is located in the exclusive economic zone, or

(ii) fish contained in such fishing gear;

(L) to **forcibly** assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer **[on a vessel]** under this Act, or any data collector em-

ployed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this Act;

(M) to engage in large-scale driftnet fishing that is subject to the jurisdiction of the United States, including use of a fishing vessel of the United States to engage in such fishing beyond the exclusive economic zone of any nation;

(N) to strip pollock of its roe and discard the flesh of the pollock;

(O) to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required under section 302(j), or to knowingly vote on a Council decision in violation of section 302(j)(7)(A);

(P)(i) to remove any of the fins of a shark (including the tail) at sea;

(ii) to have custody, control, or possession of any such fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;

(iii) to transfer any such fin from one vessel to another vessel at sea, or to receive any such fin in such transfer, without the fin naturally attached to the corresponding carcass; or

(iv) to land any such fin that is not naturally attached to the corresponding carcass, or to land any shark carcass without such fins naturally attached;

(Q) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation or any treaty or in contravention of any binding conservation measure adopted by an international agreement or organization to which the United States is a party; or

(R) to use any fishing vessel to engage in fishing in Federal or State waters, or on the high seas or in the waters of another country, after the Secretary has made a payment to the owner of that fishing vessel under section 312(b)(2).

For purposes of subparagraph (P), there shall be a rebuttable presumption that if any shark fin (including the tail) is found aboard a vessel, other than a fishing vessel, without being naturally attached to the corresponding carcass, such fin was transferred in violation of subparagraph (P)(iii) or that if, after landing, the total weight of shark fins (including the tail) landed from any vessel exceeds five percent of the total weight of shark carcasses landed, such fins were taken, held, or landed in violation of subparagraph (P). In such subparagraph, the term “naturally attached”, with respect to a shark fin, means attached to the corresponding shark carcass through some portion of uncut skin.

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage—

(A) in fishing within the boundaries of any State, except—

(i) recreational fishing permitted under section 201(i);

(ii) fish processing permitted under section 306(c); or

(iii) transshipment at sea of fish or fish products within the boundaries of any State in accordance with a permit approved under section 204(d);

(B) in fishing, except recreational fishing permitted under section 201(i), within the exclusive economic zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone or areas, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204(b), (c), or (d); or

(C) except as permitted under section 306(c), in fish processing (as defined in paragraph (4)(A) of such section) within the internal waters of a State (as defined in paragraph (4)(B) of such section);

(3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer at sea directly or indirectly, or attempt to so transfer at sea, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone or within the boundaries of any State except to the extent that the foreign fishing vessel has been permitted under section 204(d) or section 306(c) to receive such fish;

(4) for any fishing vessel other than a vessel of the United States to operate, and for the owner or operator of a fishing vessel other than a vessel of the United States to operate such vessel, in the exclusive economic zone or within the boundaries of any State or special areas, if—

(A) all fishing gear on the vessel is not stored below deck or in an area where it is not normally used, and not readily available, for fishing; or

(B) all fishing gear on the vessel which is not so stored is not secured and covered so as to render it unusable for fishing;

unless such vessel is authorized to engage in fishing in the area in which the vessel is operating; and

(5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight in the manner described in section 203, or any regulations issued to implement such an agreement; except that the binding provisions of such agreement and implementing regulations shall have been published in the Federal Register prior to such violation.

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**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
COMMISSIONED OFFICER CORPS ACT OF 2002**

**TITLE II—NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION COMMISSIONED OFFICER CORPS**

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Subtitle E—Rights and Benefits

**SEC. 261. APPLICABILITY OF CERTAIN PROVISIONS OF TITLE 10,
UNITED STATES CODE.**

(a) PROVISIONS MADE APPLICABLE TO THE CORPS.—The rules of law that apply to the Armed Forces under the following provisions of title 10, United States Code, as those provisions are in effect from time to time, apply also to the commissioned officer corps of the Administration:

(1) Chapter 40, relating to leave.

(2) Section 533(b), relating to constructive service.

(3) Section 716, relating to transfers between the armed forces and to and from National Oceanic and Atmospheric Administration.

(4) *Section 657, relating to prohibition on service by individuals convicted of certain sexual offenses.*

[(4)] (5) Section 1035, relating to deposits of savings.

[(5)] (6) Section 1036, relating to transportation and travel allowances for escorts for dependents of members.

[(6)] (7) Section 1052, relating to reimbursement for adoption expenses.

[(7)] (8) Section 1174a, relating to special separation benefits (except that benefits under subsection (b)(2)(B) of such section are subject to the availability of appropriations for such purpose and are provided at the discretion of the Secretary of Commerce).

[(8)] (9) Chapter 61, relating to retirement or separation for physical disability.

[(9)] (10) Chapter 69, relating to retired grade, except sections 1370, 1375, and 1376.

[(10)] (11) Chapter 71, relating to computation of retired pay.

[(11)] (12) Chapter 73, relating to annuities based on retired or retainer pay.

[(12)] (13) Subchapter II of chapter 75, relating to death benefits.

[(13)] (14) Section 2634, relating to transportation of motor vehicles for members on permanent change of station.

[(14)] (15) Sections 2731 and 2735, relating to property loss incident to service.

[(15)] (16) Section 2771, relating to final settlement of accounts of deceased members.

[(16)] (17) Such other provisions of subtitle A of that title as may be adopted for applicability to the commissioned officer corps of the National Oceanic and Atmospheric Administration by any other provision of law.

(b) REFERENCES.—The authority vested by title 10, United States Code, in the “military departments”, “the Secretary concerned”, or

“the Secretary of Defense” with respect to the provisions of law referred to in subsection (a) shall be exercised, with respect to the commissioned officer corps of the Administration, by the Secretary of Commerce or the Secretary’s designee.

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SUPPLEMENTAL, MINORITY, ADDITIONAL, OR DISSENTING VIEWS

None.

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