

Union Calendar No. 464

116TH CONGRESS
2^D SESSION

H. R. 6636

[Report No. 116–566]

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.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 2020

Ms. BONAMICI (for herself, Mr. YOUNG, Mr. HUFFMAN, Miss GONZÁLEZ-COLÓN of Puerto Rico, Mr. NEGUSE, Mr. CASE, Mrs. DINGELL, and Mr. COX of California) introduced the following bill; which was referred to the Committee on Natural Resources

NOVEMBER 2, 2020

Reported with an amendment; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on April 28, 2020]

A BILL

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.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “National Oceanic and*
 5 *Atmospheric Administration Sexual Harassment and As-*
 6 *sault Prevention Improvements Act of 2020”.*

7 **SEC. 2. REFERENCES.**

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

14 **SEC. 3. POLICY ON THE PREVENTION OF AND RESPONSE TO**
 15 **SEXUAL HARASSMENT INVOLVING NATIONAL**
 16 **OCEANIC AND ATMOSPHERIC ADMINISTRA-**
 17 **TION PERSONNEL.**

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

20 *(1) by striking “Not later” and inserting the fol-*
 21 *lowing:*

22 *“(1) IN GENERAL.—Not later”; and*

23 *(2) by adding at the end the following:*

24 *“(2) INCLUDED PERSONNEL.—The individuals*
 25 *who work with or conduct business on behalf of the*

1 Administration referred to in paragraph (1) include
2 the following:

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

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

11 “(ii) protected species or endangered
12 species observation required by the Marine
13 Mammal Protection Act of 1972 (16 U.S.C.
14 1361 et seq.) or the Endangered Species Act
15 of 1973 (16 U.S.C. 1531 et seq.); or

16 “(iii) platform removal observation.

17 “(B) Voting members and executive and ad-
18 ministrative staff of regional fishery manage-
19 ment councils established by section 302 of the
20 Magnuson-Stevens Fishery Conservation and
21 Management Act (16 U.S.C. 1852).”.

22 (b) MECHANISM FOR ANONYMOUS REPORTING OF INCI-
23 DENTS.—Section 3541(b)(3)(B) (130 Stat. 2800) is amend-
24 ed to read as follows:

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

6 (c) *INCLUSION OF EQUAL EMPLOYMENT IN QUAR-*
 7 *TERLY REPORTS.*—Section 3541(f) (130 Stat. 2801) is
 8 amended—

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

11 (2) in paragraph (2)—

12 (A) by redesignating subparagraphs (C)
 13 and (D) as subparagraphs (D) and (E), respec-
 14 tively; and

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

17 “(C) A synopsis of each case and the dis-
 18 ciplinary action taken (if any) in each case.”.

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

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

23 (1) by striking “Not later” and inserting the fol-
 24 lowing:

25 “(1) *IN GENERAL.*—Not later”; and

1 (2) *by adding at the end the following:*

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

6 (b) *MECHANISM FOR ANONYMOUS REPORTING OF INCI-*
 7 *DENTS.—Section 3542(b)(5)(B) (130 Stat. 2801) is amend-*
 8 *ed to read as follows:*

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

12 (c) *VICTIM ADVOCATES.—*

13 (1) *IN GENERAL.—Section 3542(c)(2) (130 Stat.*
 14 *2802) is amended to read as follows:*

15 “(2) *VICTIM ADVOCATES.—For purposes of this*
 16 *subsection, a victim advocate is a full-time permanent*
 17 *employee of the Administration trained in and re-*
 18 *sponsible solely for matters relating to sexual assault*
 19 *and the comprehensive policy developed under sub-*
 20 *section (a).”.*

21 (2) *LOCATION.—Section 3542(c)(4) (130 Stat.*
 22 *2802) is amended by inserting “full time” after “sta-*
 23 *tioned”.*

1 **SEC. 5. INVESTIGATION AND CRIMINAL REFERRAL RE-**
 2 **QUIREMENTS.**

3 (a) *REDESIGNATION*.—Sections 3546 and 3547 (130
 4 Stat. 2804, 2805) are redesignated as sections 3551 and
 5 3552, respectively.

6 (b) *IN GENERAL*.—Inserting the following after section
 7 3545:

8 **“SEC. 3546. INVESTIGATION REQUIREMENT.**

9 “(a) *REQUIREMENT TO INVESTIGATE*.—

10 “(1) *IN GENERAL*.—The Secretary of Commerce,
 11 acting through the Under Secretary for Oceans and
 12 Atmosphere, shall ensure that each allegation of sex-
 13 ual harassment reported under section 3541 and each
 14 allegation of sexual assault reported under section
 15 3542 is investigated thoroughly and promptly.

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

23 “(b) *NOTIFICATION OF DELAY*.—In any case in which
 24 the time between the reporting of an alleged incident of sex-
 25 ual harassment or sexual assault under section 3541 or
 26 3542, respectively, and commencement of an investigation

1 *of the allegation under this section exceeds 48 hours, the*
 2 *Secretary shall notify the Committee on Commerce, Science,*
 3 *and Transportation of the Senate and the Committee on*
 4 *Natural Resources of the House of Representatives of the*
 5 *delay.*

6 **“SEC. 3547. CRIMINAL REFERRAL.**

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

12 **“SEC. 3548. EXCEPTIONS REGARDING ANONYMITY OF SUR-**
 13 **VIVORS IN CERTAIN CASES.**

14 *“(a) IN GENERAL.—In any case in which an employee,*
 15 *member of the commissioned officer corps, or individual*
 16 *conducting business on behalf of the administration elects*
 17 *anonymous reporting under section 3541(b)(3)(B) or*
 18 *3542(b)(5)(B), disclosure of their personally identifying in-*
 19 *formation is authorized to the following persons or organi-*
 20 *zations when disclosure would be for the following reasons:*

21 *“(1) To National Oceanic and Atmospheric Ad-*
 22 *ministration staff or law enforcement personnel, when*
 23 *authorized by the survivor in writing.*

24 *“(2) To National Oceanic and Atmospheric Ad-*
 25 *ministration staff or law enforcement personnel to*

1 *prevent or lessen a serious or imminent threat to the*
 2 *health or safety of the survivor or another person.*

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

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

8 *“(b) NOTICE OF DISCLOSURE AND PRIVACY PROTEC-*
 9 *TION.—In any case in which information is disclosed under*
 10 *subsection (a), the Secretary shall—*

11 *“(1) make reasonable attempts to provide notice*
 12 *to the employee, member, or individual whose person-*
 13 *ally identifying information is disclosed; and*

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

17 **“SEC. 3549. RESTRICTED REPORTING.**

18 *“(a) IN GENERAL.—Not later than 3 years after the*
 19 *date of enactment of the National Oceanic and Atmospheric*
 20 *Administration Sexual Harassment and Assault Prevention*
 21 *Improvements Act of 2020, the Secretary of Commerce, act-*
 22 *ing through the Under Secretary for Oceans and Atmos-*
 23 *phere, shall develop a mechanism to provide a system of*
 24 *restricted reporting.*

1 “(b) *RESTRICTED REPORTING DEFINED.*—*In this sec-*
 2 *tion the term ‘restricted reporting’ means a system of re-*
 3 *porting that allows employees of the National Oceanic and*
 4 *Atmospheric Administration, members of the Commissioned*
 5 *Officer Corps of the Administration, and individuals who*
 6 *work with or conduct business on behalf of the Administra-*
 7 *tion who are sexually assaulted to confidentially disclose*
 8 *the details of their assault to specified individuals and re-*
 9 *ceive the services outlined in this subtitle title—*

10 “(1) *without the dissemination of their person-*
 11 *ally identifying information except as necessary for*
 12 *the provision of such services; and*

13 “(2) *without automatically triggering an inves-*
 14 *tigative process.*

15 **“SEC. 3550. MARINER REFERRAL.**

16 *“The Under Secretary of Commerce for Oceans and At-*
 17 *mosphere, acting through the Director of the Office of Ma-*
 18 *rine and Aviation Operations and in consultation with the*
 19 *Commandant of the Coast Guard, shall, within 180 days*
 20 *after the date of the enactment of the National Oceanic and*
 21 *Atmospheric Administration Sexual Harassment and As-*
 22 *sault Prevention Improvements Act of 2020, develop and*
 23 *implement a policy to report to the Coast Guard Suspen-*
 24 *sion and Revocation National Center of Expertise, the*

1 *names of personnel of the National Oceanic and Atmos-*
 2 *pheric Administration who—*

3 “(1) *are the subject of a claim of an act or of-*
 4 *fense detrimental to good discipline and safety at sea,*
 5 *such as sexual harassment or sexual assault that is*
 6 *substantiated by an investigation under section 3546,*
 7 *or any other substantiated claim of an act or offense*
 8 *for which suspension or revocation of a credential is*
 9 *either mandatory or sought pursuant to part 5 of title*
 10 *46 of the Code of Federal Regulations; and*

11 “(2) *are—*

12 “(A) *employees or contractors of the Admin-*
 13 *istration required to hold a valid merchant mar-*
 14 *iner credential as a condition of employment; or*

15 “(B) *crew of a vessel that, at the time of*
 16 *such act or offence, was operating under a con-*
 17 *tract with the Administration.”.*

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

20 *Section 3551, as redesignated by section 5 of this Act*
 21 *(130 Stat. 2804), is amended—*

22 (1) *by striking the section heading and inserting*
 23 *the following: “ANNUAL REPORT ON SEXUAL AS-*
 24 **SAULTS, SEXUAL HARASSMENT, AND EQUAL**

1 **EMPLOYMENT IN THE NATIONAL OCEANIC AND**
2 **ATMOSPHERIC ADMINISTRATION.”;**

3 (2) *in subsection (a), by inserting “, sexual har-*
4 *assment, and equal employment” after “sexual as-*
5 *saults”;* and

6 (3) *in subsection (b)—*

7 (A) *in paragraph (4), by inserting “, in-*
8 *cluding a synopsis of each case and the discipli-*
9 *nary action taken, if any, in each case” before*
10 *the period at the end; and*

11 (B) *by adding at the end the following:*

12 “(5) *A summary of the number of change of sta-*
13 *tion, unit transfer, and change of work location re-*
14 *quests submitted to the Under Secretary under section*
15 *3544(a), including the number of such requests that*
16 *were denied.*

17 “(6) *A summary of the number of cases referred*
18 *to the Coast Guard under section 5 of National Oce-*
19 *anic and Atmospheric Administration Sexual Har-*
20 *assment and Assault Prevention Improvements Act of*
21 *2020.*

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

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

1 “(B) the disposition of any investigation;
 2 and
 3 “(C) a description of the fishery manage-
 4 ment region and fishery or the geographic region
 5 and type of permitted operation in which the as-
 6 sault or harassment is alleged to have occurred,
 7 as appropriate.”.

8 **SEC. 7. CONFORMING AND CLERICAL AMENDMENTS.**

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

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

14 (2) in section 3541(b)(2)(B), by striking “vic-
 15 tim” and inserting “target of sexual harassment”;

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

18 (4) in section 3543—

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

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

23 (5) in section 3544—

24 (A) in subsection (a)—

1 (i) by striking “VICTIMS” and insert-
2 ing “SURVIVORS”; and

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

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

8 (b) *CLERICAL AMENDMENT.*—Each of the tables of con-
9 tents in section 2(b) and at the beginning of title XXXV
10 of Public Law 114–328 (130 Stat. 2000, 2773) is amend-
11 ed—

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

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

14 (2) by striking the items relating to sections
15 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.*”.

16 **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—

20 (1) by striking “forcibly”; and

1 (2) *by striking “on a vessel”.*

2 **SEC. 9. PROHIBITION ON SERVICE IN THE NOAA COMMIS-**
3 **SIONED OFFICER CORPS BY INDIVIDUALS**
4 **CONVICTED OF CERTAIN SEXUAL OFFENSES.**

5 *Section 261(a) of the National Oceanic and Atmos-*
6 *pheric Administration Commissioned Officer Corps Act of*
7 *2002 (33 U.S.C. 3071(a)) is amended—*

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

10 (2) *by inserting after paragraph (3) the fol-*
11 *lowing:*

12 “(4) *Section 657, relating to prohibition on serv-*
13 *ice by individuals convicted of certain sexual of-*
14 *fenses.”.*

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