

Government Organization and Employees, and was substantially repealed and restated in chapter 10 (§1001 et seq.) of Title 5 by Pub. L. 117-286, §§3(a), 7, Dec. 27, 2022, 136 Stat. 4197, 4361. For disposition of sections of the Act into chapter 10 of Title 5, see Disposition Table preceding section 101 of Title 5.

AMENDMENTS

2022—Subsec. (i)(1)(B). Pub. L. 117-286 substituted “chapter 10 of title 5.” for “the Federal Advisory Committee Act (5 App. U.S.C.).”

2018—Subsec. (f). Pub. L. 115-329 amended subsec. (f) generally. Prior to amendment, subsec. (f) related to a scientific investigation and report on the impact of California sea lions and Pacific harbor seals.

Statutory Notes and Related Subsidiaries

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Resources of House of Representatives changed to Committee on Natural Resources of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

TREATY RIGHTS OF FEDERALLY RECOGNIZED INDIAN TRIBES

Pub. L. 115-329, §4, Dec. 18, 2018, 132 Stat. 4478, provided that: “Nothing in this Act [see Short Title of 2018 Amendment note set out under section 1361 of this title] or the amendments made by this Act shall be construed to enlarge, confirm, adjudicate, affect, or modify any treaty or other right of an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)).”

§ 1390. Assistance to ports to reduce impacts of vessel traffic and port operations on marine mammals

(a) In general

Not later than 180 days after December 23, 2022, the Under Secretary, in consultation with the Director of the United States Fish and Wildlife Service, the Secretary, the Secretary of Defense, and the Administrator of the Maritime Administration, shall establish a grant program to provide assistance to eligible entities to develop and implement mitigation measures that will lead to a quantifiable reduction in threats to marine mammals from vessel traffic, including shipping activities and port operations.

(b) Eligible uses

Assistance provided under subsection (a) may be used to develop, assess, and carry out activities that reduce threats to marine mammals by—

- (1) reducing underwater stressors related to marine traffic;
- (2) reducing mortality and serious injury from vessel strikes and other physical disturbances;

- (3) monitoring sound;
- (4) reducing vessel interactions with marine mammals;
- (5) conducting other types of monitoring that are consistent with reducing the threats to, and enhancing the habitats of, marine mammals; or
- (6) supporting State agencies and Tribal governments in developing the capacity to receive assistance under this section through education, training, information sharing, and collaboration to participate in the grant program under this section.

(c) Priority

The Under Secretary shall prioritize providing assistance under subsection (a) for projects that—

- (1) are based on the best available science with respect to methods to reduce threats to marine mammals;
- (2) collect data on the effects of such methods and the reduction of such threats;
- (3) assist ports that pose a higher relative threat to marine mammals listed as threatened or endangered under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);
- (4) are in close proximity to areas in which threatened or endangered cetaceans are known to experience other stressors; or
- (5) allow eligible entities to conduct risk assessments and to track progress toward threat reduction.

(d) Outreach

The Under Secretary, in coordination with the Secretary, the Administrator of the Maritime Administration, and the Director of the United States Fish and Wildlife Service, as appropriate, shall conduct coordinated outreach to ports to provide information with respect to—

- (1) how to apply for assistance under subsection (a);
- (2) the benefits of such assistance; and
- (3) facilitation of best practices and lessons, including the best practices and lessons learned from activities carried out using such assistance.

(e) Report required

Not less frequently than annually, the Under Secretary shall make available to the public on a publicly accessible website of the National Oceanic and Atmospheric Administration a report that includes the following information:

- (1) The name and location of each entity to which assistance was awarded under subsection (a) during the year preceding submission of the report.
- (2) The amount of each such award.
- (3) A description of the activities carried out with each such award.
- (4) An estimate of the likely impact of such activities on the reduction of threats to marine mammals.

(f) Definition of eligible entity

In this section, the term “eligible entity” means—

- (1) a port authority for a port;
- (2) a State, regional, local, or Tribal government, or an Alaska Native or Native Hawaiian

entity that has jurisdiction over a maritime port authority or a port;

(3) an academic institution, research institution, or nonprofit organization working in partnership with a port; or

(4) a consortium of entities described in paragraphs (1) through (3).

(g) Funding

From funds otherwise appropriated to the Under Secretary, \$10,000,000 is authorized to carry out this section for each of fiscal years 2023 through 2028.

(h) Savings clause

An activity may not be carried out under this section if the Secretary of Defense, in consultation with the Under Secretary, determines that the activity would negatively impact the defense readiness or the national security of the United States.

(Pub. L. 117–263, div. K, title CXIII, §11302, Dec. 23, 2022, 136 Stat. 4070.)

Editorial Notes

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsec. (c)(3), is Pub. L. 93–205, Dec. 28, 1973, 87 Stat. 884, which is classified principally to chapter 35 (§1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

CODIFICATION

Section was enacted as part of the Don Young Coast Guard Authorization Act of 2022 and also as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, and not as part of the Marine Mammal Protection Act of 1972 which comprises this chapter.

Statutory Notes and Related Subsidiaries

PILOT PROGRAM TO ESTABLISH A CETACEAN DESK FOR PUGET SOUND REGION

Pub. L. 117–263, div. K, title CXIII, §11304, Dec. 23, 2022, 136 Stat. 4075, provided that:

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Dec. 23, 2022], the Secretary, with the concurrence of the Under Secretary, shall carry out a pilot program to establish a Cetacean Desk, which shall be—

“(A) located and manned within the Puget Sound Vessel Traffic Service; and

“(B) designed—

“(i) to improve coordination with the maritime industry to reduce the risk of vessel impacts on large cetaceans, including impacts from vessel strikes, disturbances, and other sources; and

“(ii) to monitor the presence and location of large cetaceans during the months during which such large cetaceans are present in Puget Sound, the Strait of Juan de Fuca, and the United States portion of the Salish Sea.

“(2) DURATION AND STAFFING.—The pilot program required under paragraph (1)—

“(A) shall—

“(i) be for a duration of 4 years; and

“(ii) require not more than 1 full-time equivalent position, who shall also contribute to other necessary Puget Sound Vessel Traffic Service duties and responsibilities as needed; and

“(B) may be supported by other existing Federal employees, as appropriate.

“(b) ENGAGEMENT WITH VESSEL OPERATORS.—

“(1) IN GENERAL.—In carrying out the pilot program required under subsection (a), the Secretary shall require personnel of the Cetacean Desk to engage with vessel operators in areas where large cetaceans have been seen or could reasonably be present to ensure compliance with applicable laws, regulations, and voluntary guidance, to reduce the impact of vessel traffic on large cetaceans.

“(2) CONTENTS.—In engaging with vessel operators as required under paragraph (1), personnel of the Cetacean Desk shall communicate where and when sightings of large cetaceans have occurred.

“(c) MEMORANDUM OF UNDERSTANDING.—The Secretary and the Under Secretary may enter into a memorandum of understanding to facilitate real-time sharing of data relating to large cetaceans between the Quiet Sound program of the State of Washington, the National Oceanic and Atmospheric Administration, the Puget Sound Vessel Traffic Service, and other relevant entities, as appropriate.

“(d) DATA.—The Under Secretary shall leverage existing data collection methods, the program required by section 11303 [16 U.S.C. 1391], and public data to ensure accurate and timely information on the sighting of large cetaceans.

“(e) CONSULTATIONS.—

“(1) IN GENERAL.—In carrying out the pilot program required under subsection (a), the Secretary shall consult with Tribal governments, the State of Washington, institutions of higher education, the maritime industry, ports in the Puget Sound region, and nongovernmental organizations.

“(2) COORDINATION WITH CANADA.—When appropriate, the Secretary shall coordinate with the Government of Canada, consistent with policies and agreements relating to management of vessel traffic in Puget Sound.

“(f) PUGET SOUND VESSEL TRAFFIC SERVICE LOCAL VARIANCE AND POLICY.—The Secretary, with the concurrence of the Under Secretary and in consultation with the Captain of the Port for the Puget Sound region—

“(1) shall implement local variances, as authorized by subsection (c) of section 70001 of title 46, United States Code, to reduce the impact of vessel traffic on large cetaceans; and

“(2) may enter into cooperative agreements, in accordance with subsection (d) of such section, with Federal, State, Tribal, and local officials to reduce the likelihood of vessel interactions with protected large cetaceans, which may include—

“(A) communicating marine mammal protection guidance to vessels;

“(B) training on requirements imposed by local, State, Tribal, and Federal laws and regulations and guidelines concerning—

“(i) vessel buffer zones;

“(ii) vessel speed;

“(iii) seasonal no-go zones for vessels;

“(iv) protected areas, including areas designated as critical habitat, as applicable to marine operations; and

“(v) any other activities to reduce the direct and indirect impact of vessel traffic on large cetaceans;

“(C) training to understand, utilize, and communicate large cetacean location data; and

“(D) training to understand and communicate basic large cetacean detection, identification, and behavior, including—

“(i) cues of the presence of large cetaceans such as spouts, water disturbances, breaches, or presence of prey;

“(ii) important feeding, breeding, calving, and rearing habitats that co-occur with areas of high risk of vessel strikes;

“(iii) seasonal large cetacean migration routes that co-occur with areas of high risk of vessel strikes; and

“(iv) areas designated as critical habitat for large cetaceans.

“(g) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act [Dec. 23, 2022], and every 2 years thereafter for the duration of the pilot program, the Commandant [of the Coast Guard], in coordination with the Under Secretary and the Administrator of the Maritime Administration, shall submit to the appropriate congressional committees a report that—

“(1) evaluates the functionality, utility, reliability, responsiveness, and operational status of the Cetacean Desk established under this section, including a quantification of reductions in vessel strikes to large cetaceans as a result of the pilot program;

“(2) assesses the efficacy of communication between the Cetacean Desk and the maritime industry and provides recommendations for improvements;

“(3) evaluates the integration and interoperability of existing data collection methods, as well as public data, into the Cetacean Desk operations;

“(4) assesses the efficacy of collaboration and stakeholder engagement with Tribal governments, the State of Washington, institutions of higher education, the maritime industry, ports in the Puget Sound region, and nongovernmental organizations; and

“(5) evaluates the progress, performance, and implementation of guidance and training procedures for Puget Sound Vessel Traffic Service personnel, as required under subsection (f).”

[For definition of “Secretary” as used in section 11304 of Pub. L. 117–263, set out above, see section 11002 of div. K of Pub. L. 117–263, set out as a note under section 106 of Title 14, Coast Guard.]

[For definitions of terms as used in section 11304 of Pub. L. 117–263, set out above, see section 11301 of div. K of Pub. L. 117–263, set out as a note below.]

DEFINITIONS

For definition of “Secretary” as used in this section, see section 11002 of div. K of Pub. L. 117–263, set out as a note under section 106 of Title 14, Coast Guard.

Pub. L. 117–263, div. K, title CXIII, §11301, Dec. 23, 2022, 136 Stat. 4069, provided that: “In this subtitle [subtitle A (§§11301–11305) of title CXIII of div. K of Pub. L. 117–263, enacting this section and sections 1391 and 1392 of this title and provisions set out as a note under this section]:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(A) the Committee on Commerce, Science, and Transportation of the Senate; and

“(B) the Committees on Transportation and Infrastructure and Natural Resources of the House of Representatives.

“(2) CORE FORAGING HABITATS.—The term ‘core foraging habitats’ means areas—

“(A) with biological and physical oceanographic features that aggregate *Calanus finmarchicus*; and

“(B) where North Atlantic right whales foraging aggregations have been well documented.

“(3) EXCLUSIVE ECONOMIC ZONE.—The term ‘exclusive economic zone’ has the meaning given that term in section 107 of title 46, United States Code.

“(4) INSTITUTION OF HIGHER EDUCATION.—The term ‘institution of higher education’ has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

“(5) LARGE CETACEAN.—The term ‘large cetacean’ means all endangered or threatened species within—

“(A) the suborder Mysticeti;

“(B) the genera *Physeter*; or

“(C) the genera *Orcinus*.

“(6) NEAR REAL-TIME.—The term ‘near real-time’, with respect to monitoring of whales, means that visual, acoustic, or other detections of whales are processed, transmitted, and reported as close to the time of detection as is technically feasible.

“(7) NONPROFIT ORGANIZATION.—The term ‘nonprofit organization’ means an organization that is described

in section 501(c) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)] and exempt from tax under section 501(a) of such Code [26 U.S.C. 501(a)].

“(8) PUGET SOUND REGION.—The term ‘Puget Sound region’ means the Vessel Traffic Service Puget Sound area described in section 161.55 of title 33, Code of Federal Regulations (as of the date of enactment of this Act [Dec. 23, 2022]).

“(9) TRIBAL GOVERNMENT.—The term ‘Tribal government’ means the recognized governing body of any Indian or Alaska Native Tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of this Act pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

“(10) UNDER SECRETARY.—The term ‘Under Secretary’ means the Under Secretary of Commerce for Oceans and Atmosphere.”

§ 1391. Near real-time monitoring and mitigation program for large cetaceans

(a) Establishment

The Under Secretary, in coordination with the heads of other relevant Federal agencies, shall design and deploy a cost-effective, efficient, and results-oriented near real-time monitoring and mitigation program (referred to in this section as the “Program”) for threatened or endangered cetaceans.

(b) Purpose

The purpose of the Program shall be to reduce the risk to large cetaceans posed by vessel collisions and to minimize other impacts on large cetaceans through the use of near real-time location monitoring and location information.

(c) Requirements

The Program shall—

(1) prioritize species of large cetaceans for which impacts from vessel collisions are of particular concern;

(2) prioritize areas where such impacts are of particular concern;

(3) be capable of detecting and alerting ocean users and enforcement agencies of the probable location of large cetaceans on an actionable real-time basis, including through real-time data whenever possible;

(4) inform sector-specific mitigation protocols to effectively reduce takes (as defined in section 216.3 of title 50, Code of Federal Regulations, or successor regulations) of large cetaceans;

(5) integrate technology improvements; and

(6) be informed by technologies, monitoring methods, and mitigation protocols developed under the pilot project required under subsection (d).

(d) Pilot project

(1) Establishment

In carrying out the Program, the Under Secretary shall first establish a pilot monitoring and mitigation project (referred to in this section as the “pilot project”) for North Atlantic right whales for the purposes of informing the Program.

(2) Requirements

In designing and deploying the pilot project, the Under Secretary, in coordination with the