

“(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

heads of other relevant Federal agencies, shall, using the best available scientific information, identify and ensure coverage of—

(A) core foraging habitats; and

(B) important feeding, breeding, calving, rearing, or migratory habitats of North Atlantic right whales that co-occur with areas of high risk of mortality or serious injury of such whales from vessels, vessel strikes, or disturbance.

(3) Components

Not later than 3 years after December 23, 2022, the Under Secretary, in consultation with relevant Federal agencies and Tribal governments, and with input from affected stakeholders, shall design and deploy a near real-time monitoring system for North Atlantic right whales that—

(A) comprises the best available detection power, spatial coverage, and survey effort to detect and localize North Atlantic right whales within habitats described in paragraph (2);

(B) is capable of detecting North Atlantic right whales, including visually and acoustically;

(C) uses dynamic habitat suitability models to inform the likelihood of North Atlantic right whale occurrence habitats described in paragraph (2) at any given time;

(D) coordinates with the Integrated Ocean Observing System of the National Oceanic and Atmospheric Administration and Regional Ocean Partnerships to leverage monitoring assets;

(E) integrates historical data;

(F) integrates new near real-time monitoring methods and technologies as such methods and technologies become available;

(G) accurately verifies and rapidly communicates detection data to appropriate ocean users;

(H) creates standards for contributing, and allows ocean users to contribute, data to the monitoring system using comparable near real-time monitoring methods and technologies;

(I) communicates the risks of injury to large cetaceans to ocean users in a manner that is most likely to result in informed decision-making regarding the mitigation of those risks; and

(J) minimizes additional stressors to large cetaceans as a result of the information available to ocean users.

(4) Reports

(A) Preliminary report

(i) In general

Not later than 2 years after December 23, 2022, the Under Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives, and make available to the public, a preliminary report on the pilot project.

(ii) Elements

The report required under clause (i) shall include the following:

(I) A description of the monitoring methods and technology in use or planned for deployment under the pilot project.

(II) An analysis of the efficacy of the methods and technology in use or planned for deployment for detecting North Atlantic right whales.

(III) An assessment of the manner in which the monitoring system designed and deployed under this subsection is directly informing and improving the management, health, and survival of North Atlantic right whales.

(IV) A prioritized identification of technology or research gaps.

(V) A plan to communicate the risks of injury to large cetaceans to ocean users in a manner that is most likely to result in informed decision making regarding the mitigation of such risks.

(VI) Any other information on the potential benefits and efficacy of the pilot project the Under Secretary considers appropriate.

(B) Final report

(i) In general

Not later than 6 years after December 23, 2022, the Under Secretary, in coordination with the heads of other relevant Federal agencies, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Natural Resources of the House of Representatives, and make available to the public, a final report on the pilot project.

(ii) Elements

The report required under clause (i) shall—

(I) address the preliminary report required under subparagraph (A); and

(II) include—

(aa) an assessment of the benefits and efficacy of the pilot project;

(bb) a strategic plan to expand the pilot project to provide near real-time monitoring and mitigation measures—

(AA) to additional large cetaceans of concern for which such measures would reduce risk of serious injury or death; and

(BB) in important feeding, breeding, calving, rearing, or migratory habitats of large cetaceans that co-occur with areas of high risk of mortality or serious injury from vessel strikes or disturbance;

(cc) a budget and description of funds necessary to carry out such plan;

(dd) a prioritized plan for acquisition, deployment, and maintenance of monitoring technologies; and

(ee) the locations or species to which such plan would apply.

(e) Mitigation protocols

The Under Secretary, in consultation with the Secretary, the Secretary of Defense, the Secretary of Transportation, and the Secretary of

the Interior, and with input from affected stakeholders, shall develop and deploy mitigation protocols that make use of any monitoring system designed and deployed under this section to direct sector-specific mitigation measures that avoid and significantly reduce risk of serious injury and mortality to North Atlantic right whales.

(f) Access to data

The Under Secretary shall provide access to data generated by any monitoring system designed and deployed under this section for purposes of scientific research and evaluation and public awareness and education, including through the Right Whale Sighting Advisory System of the National Oceanic and Atmospheric Administration and WhaleMap or other successor public website portals, subject to review for national security considerations.

(g) Additional authority

The Under Secretary may enter into and perform such contracts, leases, grants, or cooperative agreements as may be necessary to carry out this section on such terms as the Under Secretary considers appropriate, consistent with the Federal Acquisition Regulation.

(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.

(i) Funding

From funds otherwise appropriated to the Under Secretary \$5,000,000 is authorized to support development, deployment, application, and ongoing maintenance of the Program and to otherwise carry out this section for each of fiscal years 2023 through 2027.

(Pub. L. 117-263, div. K, title CXIII, §11303, Dec. 23, 2022, 136 Stat. 4072.)

Editorial Notes

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

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.

For definitions of terms used in this section, see section 11301 of div. K of Pub. L. 117-263, set out as a note under section 1390 of this title.

§ 1392. Monitoring ocean soundscapes

(a) In general

The Under Secretary shall maintain and expand an ocean soundscape development program to—

- (1) award grants to expand the deployment of Federal and non-Federal observing and data

management systems capable of collecting measurements of underwater sound for purposes of monitoring and analyzing baselines and trends in the underwater soundscape to protect and manage marine life;

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

- (3) after coordinating with the Secretary of Defense, coordinate and make accessible to the public the datasets, modeling and analysis, and user-driven products and tools resulting from observations of underwater sound funded through grants awarded under paragraph (1).

(b) Coordination

The program described in subsection (a) shall—

- (1) include the Ocean Noise Reference Station Network of the National Oceanic and Atmospheric Administration and the National Park Service;

- (2) use and coordinate with the Integrated Ocean Observing System; and

- (3) coordinate with the Regional Ocean Partnerships and the Director of the United States Fish and Wildlife Service, as appropriate.

(c) Priority

In awarding grants under subsection (a), the Under Secretary shall consider the geographic diversity of the recipients of such grants.

(d) 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.

(e) Funding

From funds otherwise appropriated to the Under Secretary, \$1,500,000 is authorized for each of fiscal years 2023 through 2028 to carry out this section.

(Pub. L. 117-263, div. K, title CXIII, §11305, Dec. 23, 2022, 136 Stat. 4077.)

Editorial Notes

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

DEFINITIONS

For definitions of terms used in this section, see section 11301 of div. K of Pub. L. 117-263, set out as a note under section 1390 of this title.

§ 1393. Conservation and mitigation assistance

(a) Assistance

(1) In general

Not later than 180 days after December 29, 2022, the Secretary of Commerce, acting