AMENDMENT TO RULES COMMITTEE PRINT 117–13

OFFERED BY MR. LARSEN OF WASHINGTON

Insert after title LIII the following new title:

TITLE LIV—STRENGTHENING MARINE MAMMAL CONSERVATION

SEC. 5401. DEFINITION OF ADMINISTRATOR.

In this title, the term “Administrator” means the Secretary of Commerce, acting through the Administrator of the National Oceanic and Atmospheric Administration.

SEC. 5402. VESSEL SPEED RESTRICTIONS IN MARINE MAMMAL HABITAT.

(a) IN GENERAL.—The Marine Mammal Protection Act of 1974 (16 U.S.C. 1361 et seq.) is amended by inserting after section 120 the following:

“SEC. 121. VESSEL RESTRICTIONS IN MARINE MAMMAL HABITAT.

“(a) IN GENERAL.—The Secretary shall, in coordination with the Marine Mammal Commission and the Commandant of the Coast Guard and applying the best available scientific information—
“(1) designate areas of importance for marine mammals known to experience vessel strikes and establish for each such area seasonal or year-round mandatory vessel speed restrictions to reduce vessel strikes or other vessel-related impacts, as necessary, for vessels operating in such areas; and

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

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

“(1) shall consider including—

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

“(2) may consider including—

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

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

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

“(d) MODIFYING OR DESIGNATING NEW AREAS OF IMPORTANCE.—

“(1) IN GENERAL.—The Secretary shall issue regulations to modify or designate the areas of importance and vessel restrictions under this section within 180 days after the issuance of regulations to establish or to modify critical habitat for marine

“(2) REEXAMINATION.—The Secretary shall—

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

“(B) publish any revisions under subparagraph (A) in the Federal Register after notice and opportunity for public comment within 24 months.

“(3) FINDING.—Not later than 90 days after receiving the petition of an interested person under section 553(e) of title 5, United States Code, to designate, modify, or add an area of importance or vessel restriction under this section, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the petitioned action may be warranted. The Secretary shall promptly publish such finding in the Federal Register for comment. Not later than one year after the close of comments, the Secretary shall publish in
the Federal Register a finding of whether the peti-
tioned action is warranted and, if the Secretary de-
termines that the petitioned action is warranted,
shall publish draft regulations designating or modi-
ifying and vessel restrictions the area of importance.
Not later than 12 months after publication of the
draft regulations, the Secretary shall issue final reg-
ulations designating or modifying the area of impor-
tance and vessel restrictions.

“(e) EXCEPTIONS FOR SAFE MANEUVERING AND
USING AUTHORIZED TECHNOLOGY.—

“(1) IN GENERAL.—The restriction established
under subsection (a) shall not apply to a vessel oper-
ating at a speed necessary to maintain safe maneu-
vering speed if such speed is justified because the
vessel is in an area where oceanographic, hydro-
graphic, or meteorological conditions severely restrict
the maneuverability of the vessel and the need to op-
erate at such speed is confirmed by the pilot on
board or, when a vessel is not carrying a pilot, the
master of the vessel. If a deviation from the applica-
ble speed limit is necessary pursuant to this sub-
section, the reasons for the deviation, the speed at
which the vessel is operated, the latitude and lon-
gitude of the area, and the time and duration of
such deviation shall be entered into the logbook of
the vessel. The master of the vessel shall attest to
the accuracy of the logbook entry by signing and
dating the entry.

“(2) AUTHORIZED TECHNOLOGY.—

“(A) IN GENERAL.—The vessel restrictions
established under subsection (a) shall not apply
to a vessel operating using technology author-
ized by regulations issued by the Secretary
under subparagraph (B).

“(B) REGULATIONS.—The Secretary may
issue regulations authorizing a vessel to operate
using technology specified by the Secretary
under this subparagraph if the Secretary deter-
mines that such operation is at least as effec-
tive as the vessel restrictions authorized by reg-
ulations under subsection (a) in reducing mor-
tality and injury to marine mammals.

“(f) APPLICABILITY.—Any speed restriction estab-
lished under subsection (a)—

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

“(2) shall not apply to—

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

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

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

“(g) STATUTORY CONSTRUCTION.—

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

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

“(C) preempts or supersedes the final rule titled ‘To Implement Speed Restrictions to Reduce the Threat of Ship Collisions With North Atlantic Right Whales’, codified at section 224.105 of title 50, Code of Federal Regulations, except for actions that are more protective than the Final Rule and further reduce the risk of take to North Atlantic right whales.

“(2) INCONSISTENCIES.—The Secretary may determine whether inconsistencies referred to in paragraph (1)(A) exist, but may not determine that any State law is inconsistent with any provision of this title if the Secretary determines that such law gives greater protection to covered marine species and their habitat.

“(h) PRIORITY SPECIES.—For the purposes of this section, the term ‘priority species’ means, at a minimum, all Mysticeti species and species within the genera Physeter and Trichechus.

“(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated—
“(1) to the Secretary to carry out this section, $3,000,000 for each of fiscal years 2022 through 2026; and

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

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

“Sec. 121. Vessel speed restrictions in marine mammal habitat.”.

SEC. 5403. MONITORING OCEAN SOUNDSCAPES.

(a) IN GENERAL.—The Administrator, and the Director of the Fish and Wildlife Service shall maintain and expand an Ocean Noise Reference Station Network, utilizing and coordinating with the Integrated Ocean Observing System, the Office of National Marine Sanctuaries, and the Department of Defense, to—

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

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

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

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

SEC. 5404. GRANTS FOR SEAPORTS TO ESTABLISH PROGRAMS TO REDUCE THE IMPACTS OF VESSEL TRAFFIC AND PORT OPERATIONS ON MARINE MAMMALS.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Administrator and the Director of the Fish and Wildlife Service, in coordination with the Secretary of Defense, shall establish a grant program to provide assistance to up to ten seaports to develop and implement mitigation measures that will lead to a quantifiable reduction in threats to marine mammals from shipping activities and port operations.
(b) ELIGIBLE USES.—A grant under this section may be used to develop, assess, and carry out activities that quantifiably reduce threats and enhance the habitats of marine mammals by—

(1) reducing underwater stressors related to marine traffic;

(2) reducing vessel strike mortality and other physical disturbances;

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

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

(c) PRIORITY.—The Administrator and the Director of the Fish and Wildlife Service shall prioritize assistance under this section for projects that—

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

(2) reduce disturbance from vessel presence or mortality risk from vessel strikes, and are in close proximity to National Marine Sanctuaries, Marine National Monuments, National Parks, National Wildlife Refuges, and other federal, state, and local marine protected areas; and
(3) allow eligible entities to conduct risk assessments, and track progress toward threat reduction and habitat enhancement; including protecting coral reefs from encroachment by commerce and shipping lanes.

(d) OUTREACH.—The Administrator and the Director of the Fish and Wildlife Service shall conduct outreach to seaports to provide information on how to apply for assistance under this section, the benefits of the program under this section, and facilitation of best practices and lessons learned.

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

(1) is—

(A) a port authority for a seaport;

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

(C) a private entity or government entity, applying for a grant awarded under this section in collaboration with another entity described in subparagraph (A) or (B), that owns or operates a maritime terminal; and

(2) is cleared by the Department of Defense.
(f) REPORT.—The Administrator and the Director of the Fish and Wildlife Service shall submit annually to the Committee on Natural Resources of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate, a report that includes the following:

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

(2) Amount of each grant.

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

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

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

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

SEC. 5405. NEAR REAL-TIME MONITORING AND MITIGATION PROGRAM FOR LARGE WHALES.

(a) ESTABLISHMENT OF THE PROGRAM.—The Administrator, in coordination with the Secretary of Defense
and the heads of other relevant Federal departments and agencies, shall design and deploy a Near Real-Time Large Whale Monitoring and Mitigation Program in order to curtail the risk to large whales of vessel collisions, entanglement in commercial fishing gear, and to minimize other impacts, including but not limited to underwater noise from development activities. Such program shall be capable of detecting and alerting ocean users and enforcement agencies of the location of large whales on a near real-time basis, informing sector-specific mitigation protocols that can effectively reduce take of large whales, and continually integrating improved technology. The program shall be informed by the technologies, monitoring methods, and mitigation protocols developed pursuant to the pilot program required in subsection (b).

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

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

(A) core foraging habitats of North Atlantic right whales, including but not limited to—

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

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

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

(iv) the Gulf of Maine; and

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

(2) PILOT PROJECT MONITORING COMPONENTS.—

(A) IN GENERAL.—Within 3 years after the date of the enactment of this Act, the Administrator, in consultation with relevant Federal agencies, Tribal governments, and with input from affected stakeholders, shall design
and deploy a real-time monitoring system for North Atlantic right whales that includes near real-time monitoring methods, technologies, and protocols that—

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

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

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

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

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

(vi) accurately verify and rapidly communicate detection data; and
(vii) allow for ocean users to contribute data that is verified to be collected using comparable near real-time monitoring methods and technologies.

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

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

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

(5) Pilot program reporting.—

(A) Interim report.—Not later than two years after the date of the enactment of this Act, the Administrator shall submit to the Committee on Natural Resources of the House of Representatives, and the Committee on Commerce, Science and Transportation of the Senate, and make available to the public, an interim report that assesses the benefits and efficacy of the North Atlantic right whale near real-time monitoring and mitigation pilot program. The report shall include—

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

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

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

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

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

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

(ii) a budget and description of appro-
priations necessary to carry out the stra-
tegic plan pursuant to the requirements of
clause (i).

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

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

(e) DEFINITIONS.—In this section:
(1) The term “core foraging habitats” means areas with biological and physical oceanographic features that aggregate Calanus finmarchicus and where North Atlantic right whales foraging aggregations have been well documented.

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

(3) The term “large whale” means all Mysticeti species and species within the genera Physeter and Orcinus.

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

SEC. 5406. GRANTS TO SUPPORT TECHNOLOGY THAT REDUCES UNDERWATER NOISE FROM VESSELS.

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

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

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

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

(1) is—

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

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

(C) an academic or research organization;

and

(2) is cleared through the Department of Defense.

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

SEC. 5407. TECHNOLOGY ASSESSMENT FOR QUIETING UNITED STATES GOVERNMENT VESSELS.

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

(1) an identification of existing unclassified technologies that reduce underwater noise; and
(2) an evaluation of the effectiveness and feasibility of incorporating such technologies in the design, procurement, and construction of non-military vessels of the United States Government.

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

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

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