[May 23, 2024 12:23 p.m. Draft]

Testimony of May 24, 2024 by
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For The Senate Appropriations Commerce, Science, Justice Subcommittee for FY 2025
In re: National Oceanic and Atmospheric Administration (NOAA), the White House Office of Science and Technology Policy (OSTP), the U.S. Trade Representative, the International Trade Commission and Administration, The Census Bureau and the Department of Justice

Mr. Chairman and Members of the Subcommittee, in this testimony we address appropriations and directions for the agencies listed above for the recovery of great whales and the climate while enhancing fisheries, and for the protection of our elections, as they will determine the rest.

We have spent much of our careers in wildlife conservation and science, election protection and responsive government. Some of us worked with Senate champion Joe Biden and House sponsor Barbara Boxer, to enact the Dolphin Protection Consumer Information Act (the dolphin-safe labeling act of 1990) (Pub. Law 101-627). We also helped improve the Endangered Species Act in 1988 and recently suggested recovery steps for the North Atlantic Right Whale (NARW).

A Win-Win Solution for Whales, Lobstermen and the Climate: Speed limits, technology, and whale-safe marketing and Greenhouse Gas Removal (GGR). There are several ways that nature removes methane (one of the most powerful climate pollutants) and CO2. One is through natural ocean iron fertilization, a process that we can enhance, with co-benefits in increased populations of phytoplankton, lobster larvae and great whales. A related method uses similar iron aerosols added just over the ocean to oxidize methane out of existence. These are covered below.

The Committee should **ask the relevant agencies for capability statements estimating the cost of the recommended programs and several options for offsetting reductions** in the budget in time to include appropriations and authorizing language for them, **while accounting for the increases in productivity** and thus, tax income, likely to flow from these enhancements.

We recommend that you:

1) **Direct NOAA, in consultation with the EPA and Justice, to conduct further research on GGR including but not limited to that recommended by the National Academy of Sciences to assess and deploy ocean-based methods of removing CO2, methane, and other greenhouse gasses (GHG), and by directly restoring great whales and other ocean life** to perform what even the International Monetary Fund reported would provide billions of dollars in climate services. (https://www.imf.org/en/Publications/fandd/issues/2019/12/natures-solution-to-climate-change-chami#:~:text=We%20estimate%20that%2C%20if%20whales,whales'%20CO2%20sequestration%20efforts.)
2) **Direct NOAA to collaborate with the DOJ, the EPA, The International Maritime Organization and others to propose regulations to ensure the full and proper deployment of Ocean-based GGR and sea life restoration.** The methods recommended by the NAS for further testing include methods that could increase and enhance the food supply of baleen whales, like the NARW, as well as lobster larvae, creating a win-win for the fishing, conservation, and scientific communities. (https://nap.nationalacademies.org/read/26278/chapter/5#99; https://nap.nationalacademies.org/read/26278/chapter/8 and https://www.nationalacademies.org/event/40025_10-2023_atmospheric-methane-removal-needs-challenges-and-opportunitieshttps://www.nationalacademies.org/event/40025_10-2023_atmospheric-methane-removal-needs-challenges-and-opportunities) The NAS sets out budgets for this research, for example Table 3.4 at page 100 in the Ocean CO2 Report -- https://nap.nationalacademies.org/read/26278/chapter/5#99
3) **Direct the U.S. Trade Representative and the International Trade Commission and Administration to assess and propose options for improving** the standards and incentives adopted by all parties under **the Global Methane Pledge and the Montreal Protocol** (which may have jurisdiction over some climate interventions) and **for using trade (tariffs, embargoes, etc.) and aid to expedite and scale up GGR.** And direct OSTP and all of Commerce to cooperate in this work.
4) Direct **the Administrator of NOAA to report to the Committees of jurisdiction on options for governing GGR domestically and internationally** to ensure that such methods are neither underdone, overdone nor improperly done. These should include and assess the governance recommendations **received by** the OSTP regarding its five-year plan and a draft Executive Order to assess, test, expedite and govern climate interventions here and abroad.

The death of any whale by preventable human causes must be avoided, but the deaths of 3 female NARWs in the first 3 months of 2024, means that we have also lost all the calves they could have borne had they not been killed

by ship strikes or fishing gear entanglement. Mothers with calves are especially vulnerable as they spend more time at the surface. Near the Statue of Liberty, a cruise ship carried a dead sei whale on its bow as if to say "This is the welcome we give to whales." (https://www.bbc.com/news/av/world-us-canada-68980345). In 2019 over 100 shipping companies and conservation groups wrote the IMO urging them to adopt speed limits for ships to reduce pollution and increase efficiency.
https://www.transportenvironment.org/wp-content/uploads/2021/07/Joint%20industry_NGO%20speed%20letter%20to%20the%20IMO.pdf

4) We ask that you direct NOAA to:
a) implement mandatory ship speed limits for vessels 35 feet and larger, and
b) aggressively pursue development, refinement, and implementation of ropeless fishing gear for fixed trap fisheries; and
c) propose a whale-safe marketing program for lobster caught with ropeless gear and for ships equipped with effective, automatic speed controls that can be overridden but take effect when whale warnings are in effect.

Suggested Bill Language -- *Under National Oceanic and Atmospheric Administration Operations, Research, and Facilities (Division B — Commerce) add:* Provided further, That of the amount appropriated for the Department, an increase above the amount requested by the Administration for FY2025 of no less than $10,000,000, of the funds made available each year, through the Inflation Reduction Act or otherwise, be used, via reprogramming or otherwise, to establish and enforce mandatory boat and ship speed limits to protect great whales, including but not limited to NARW, from ship strikes, provided further that mandatory enforcement may include fines that may be retained and used for the salaries and expenses associated with such enforcement; Provided further, That any proceeds from seizure and sale of ships violating such mandatory speed limits, and the cargos thereof, may be retained and used by the NOAA for enforcement of speed limits, such proceeds to remain available until expended. An increase above the amount requested by the Administration of no less than $20,000,000 is hereby appropriated to be used by the Administrator to establish a program for the development, assessment and field testing of methods of GGR through the use of ocean fertilization and enhanced atmospheric methane oxidation using iron and, as the Administrator may determine, other micronutrients in areas found to be lacking. This complements $36 million awarded by ARPA-E for marine CO2 removal in 2023. The Administrator shall report quarterly on the progress and results of such program and recommend changes to enhance the program.

Under Coast Guard (Division F — Homeland Security) in the full Committee or as a pass-through in the CJS bill add: Provided, That of the amount appropriated for the Department, for FY2025 or from the IRA, no less than $10,000,000 above the amount requested shall be available, in consultation with the Secretary of Homeland Security, to enforce mandatory boat speed limits and other regulations to protect great whales from ship strikes, provided further that such enforcement may include fines that may be retained and used for expenses associated with such enforcement; Provided further, That proceeds from seizure and sale of ships violating such mandatory boat speed limits or other regulations for NARW conservation, and the cargos thereof, may be retained and used by the Coast Guard in cooperation with NOAA for expenses associated with enforcing such boat and ship speed limits, proceeds to remain available until expended.

Division B – Commerce, Justice, Science, and Related Agencies -- Title I – Department of Commerce -- Under Scientific and Technical Research and Services, within the support for Climate and Energy Measurement, Tools, and Testbeds: The National Institute of Standards and Technology (NIST) shall direct such funds from the amounts appropriated as necessary to expand its research on ocean-based destruction and removal of the greenhouse gasses including but not limited to methane and CO2. NIST shall report to the Committees on its progress within six months and annually thereafter.

Under Division JJ — North Atlantic Right Whales: Given the recently documented deaths and injuries of NARWs due to lobster rope entanglement, we recommend that Congress direct the Administrator to provide a buy-out option for each of the years up to 2029. We suggest bill language here in a new Subsection (c):

To the previously enacted provision beginning with "SEC. 101. NORTH ATLANTIC RIGHT WHALES AND REGULATIONS." add a new subsection (c) below:

(a) IN GENERAL.—Notwithstanding any other provision of law except as provided in subsection (b), for the period … the Final Rule amending the regulations implementing the Atlantic Large Whale Take Reduction Plan (86 Fed. Reg. 51970) shall be deemed sufficient to ensure …

(b) EXCEPTION.—…

(c) **Compensation for Voluntarily Ending or Suspending Rope Use:** The Administrator is hereby directed to provide a buy-out option for each of the years up to 2029 to pay lobstermen and Jonah Crab fishermen their average net annual profit from their fishing operations as reported to the Maine and Federal revenue services, made using roped gear for the previous three years if they remove their gear from the water for that full season, or to pay in proportion to the part of the season not so fished when great whales are likely to be present, if the Administrator confirms throughout that period in

consultation with state authorities that they have complied and that there is a parallel reduction in the fleet using ropes and that the number of ropes in the water of or off each state used by NARWs has been reduced accordingly. The Administrator shall assess fines for violating the agreements at treble damages. The Administrator is hereby authorized to provide, in consultation with the Secretary of the Treasury, a refundable tax credit in lieu of direct payment, for documented compliance with such buy-out terms as the Administrator may prescribe. In exchange for such payment, the Administrator shall require fishermen accepting the buy-out to participate in a program of testing ropeless fishing gear which allows them to keep and sell such lobster or crab as they may catch with only a 50% reduction in the payments they have received for each dollar of net profit from the sale of that catch and prepare to market such seafood as "Whale Safe" under a program the Administrator shall prepare. Administrator of NOAA shall within 30 days of the date of enactment implement its proposed mandatory speed limit, making it applicable to all boats 35 feet and longer in any areas and times where great whales are likely to be present. The Administrator and the Commandant of the Coast Guard shall enforce the speed limits through means such as fines, confiscation of vessels and cargo, and suspension or, upon a second violation, permanent loss of captains' and pilots' licenses. NOAA Fisheries shall use such FY2025 or IRA funds as necessary but no less than $5,000,000 more than requested to expand its Gear Lending Library and training program for fixed trap fisheries, and award grants to address any existing technological deficiencies of ropeless technology that discourages adoption.

Protecting Elections - Direct the Census Bureau, the Election Assistance Commission and the Attorney General to report jointly to the Committees on Appropriations, Oversight, and Administration and the public within thirty days, to the extent possible, every month thereafter in 2024 **on the extent to which the right to vote has "in any way" been abridged by any state or jurisdiction by changes in the law, the administration thereof, and court decisions since 2012.** The report should apply the stipulations of Section 2 of the 14th Amendment to the delegations to the House of any state that has adopted de jure or de facto measures that are likely to abridge, limit or impede "in any way" voting age residents, including but not limited to racial and ethnic minorities, the elderly, handicapped, those without drivers' licenses, those stationed or enrolled for a limited time in state, and others, from exercising their right to vote. **The report should provide for each state the number of Members of Congress, and thus electors, who would no longer be eligible to serve after the 2024 election if Section 2 were to be fully implemented and a list of states that would receive those redirected House seats and electors.**

Direct the DOJ and Election Assistance Commission, in consultation with the Cyber Security and Infrastructure Security Agency's Project 2024 (https://www.cisa.gov/topics/election-security/protect2024) to report within 30 days of your request, on:

a) **the extent to which each state and jurisdiction managing its own elections has installed or instituted state of the art physical and technical security and transparent auditing procedures,** such as preserving ballot images to help avoid the need for expensive recounts;
b) recommendations for legislation and other steps to incorporate by statute (amending 52 U.S.C. §10701), the specific **requirement that electronic election records, including original digital ballot images, be preserved** for 22 months (like all other election records) and that they be posted online (as is already done in some jurisdictions) as issued in the July 19, 2021, DOJ directive that all electronic voting and election records must be preserved just as paper records must, and
c) recommendations for legislation and other steps to **provide a private right of action to enforce the election laws** with awards of reasonable attorneys and expert witness' fees to substantially successful plaintiffs so that voters need not rely on any Department of Justice that may not have the resources or the inclination to enforce the law.