

115TH CONGRESS
2D SESSION

S. 3038

To assist in the conservation of the North Atlantic right whale by supporting and providing financial resources for North Atlantic right whale conservation programs and projects of persons with expertise required for the conservation of North Atlantic right whales.

IN THE SENATE OF THE UNITED STATES

JUNE 7, 2018

Mr. BOOKER (for himself, Mr. CARPER, Mr. NELSON, Mr. MENENDEZ, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To assist in the conservation of the North Atlantic right whale by supporting and providing financial resources for North Atlantic right whale conservation programs and projects of persons with expertise required for the conservation of North Atlantic right whales.

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 “Scientific Assistance
5 for Very Endangered North Atlantic Right Whales Act of
6 2018” or the “SAVE Right Whales Act”.

1 **SEC. 2. FINDINGS; SENSE OF CONGRESS.**

2 (a) FINDINGS.—Congress finds that—

3 (1) North Atlantic right whales (*Eubalaena*
4 *glacialis*) are critically endangered, with fewer than
5 450 whales remaining;

6 (2) historically, the North Atlantic right whale
7 population was decimated by the whaling industry;

8 (3) despite protection from whaling beginning
9 in the 1930s, the North Atlantic right whale is one
10 of the most endangered whales in the world and has
11 experienced a significant decline since 2010;

12 (4) the North Atlantic right whale has been
13 listed as an endangered species under the Endan-
14 gered Species Conservation Act of 1969 (Public Law
15 89–669; 80 Stat. 926) and its successor the Endan-
16 gered Species Act of 1973 (16 U.S.C. 1531 et seq.)
17 since 1970 and is designated as depleted under the
18 Marine Mammal Protection Act of 1972 (16 U.S.C.
19 1361 et seq.);

20 (5) because North Atlantic right whales are
21 long-lived and highly migratory, and at present rates
22 females give birth to only a single calf once every 4
23 to 10 years, they are highly vulnerable to the im-
24 pacts of human activity and habitat degradation;

25 (6) North Atlantic right whales frequently cross
26 paths with major shipping lanes and fishing

1 grounds, leaving the whales particularly vulnerable
2 to vessel collisions and fishing gear entanglements,
3 the 2 leading causes of injury and death to the spe-
4 cies;

5 (7) even when North Atlantic right whales do
6 not die as a result of fishing gear entanglement,
7 those whales can still experience significant sub-le-
8 thal effects such as chronic stress and reproductive
9 failure;

10 (8) in August 2017, the National Marine Fish-
11 eries Service announced an Unusual Mortality Event
12 involving North Atlantic right whales in 2017, with
13 17 known whale deaths that year alone;

14 (9) an Unusual Mortality Event involves a sig-
15 nificant die-off of a population and, according to the
16 Marine Mammal Protection Act of 1972 (16 U.S.C.
17 1361 et seq.), demands an immediate response;

18 (10) no North Atlantic right whale calves were
19 observed during the 2017–2018 calving season off
20 the southeastern coast of the United States;

21 (11) based on the current rate of mortality of
22 North Atlantic right whales, and because of the
23 small number of breeding females in the population
24 and low birth rates, recent analysis suggests the spe-
25 cies will lose its ability to recover in less than 20

1 years if human-caused mortality is not reduced im-
2 mediately;

3 (12) under the Marine Mammal Protection Act
4 of 1972 (16 U.S.C. 1361 et seq.), United States
5 fishermen in certain locations have been required to
6 modify their fishing gear and behavior to minimize
7 the likelihood of entanglements, including by using
8 sinking groundlines, having weak links in buoy lines,
9 using multiple traps per buoy, appropriately mark-
10 ing fishing gear, and complying with area closures
11 during North Atlantic right whale migrations;

12 (13) vessels that are 65 feet or longer have
13 been required to comply with a 10-knot speed limit
14 in certain locations during North Atlantic right
15 whale migrations to reduce the threat of vessel colli-
16 sions; and

17 (14) North Atlantic right whales are migrating
18 farther north into Canadian waters and in 2017
19 there were at least 12 North Atlantic right whale
20 deaths in Canada's Gulf of St. Lawrence, in addition
21 to the 6 documented deaths in United States waters
22 in 2017 and 2018.

23 (b) SENSE OF CONGRESS.—It is the sense of Con-
24 gress that—

1 (1) the governments of the United States and
2 Canada must work together to reduce lethal and
3 sub-lethal effects of human activities on North At-
4 lantic right whales; and

5 (2) effectively addressing the threats to the
6 long-term viability of populations of North Atlantic
7 right whales will require a joint commitment and ef-
8 fort from government entities, local communities,
9 marine scientists and conservationists, fishermen,
10 owners and operators of passenger vessels and oth-
11 ers in the shipping industry, and other stakeholders.

12 **SEC. 3. PURPOSES.**

13 The purposes of this Act are the following:

14 (1) To rebuild healthy populations of the North
15 Atlantic right whale.

16 (2) To assist in the conservation and protection
17 of North Atlantic right whales by supporting North
18 Atlantic right whale conservation programs that
19 minimize conflicts between North Atlantic right
20 whales and human activities.

21 (3) To provide financial resources for those pro-
22 grams.

23 **SEC. 4. NORTH ATLANTIC RIGHT WHALE CONSERVATION**
24 **ASSISTANCE.**

25 (a) ASSISTANCE.—

1 (1) IN GENERAL.—Subject to the availability of
2 funds and in consultation with other Federal offi-
3 cials, the Secretary of Commerce (in this Act re-
4 ferred to as the “Secretary”) shall provide competi-
5 tive financial assistance, including multiyear grants,
6 for projects for the conservation of North Atlantic
7 right whales for which project proposals are ap-
8 proved by the Secretary in accordance with this sec-
9 tion.

10 (2) USE OF EXISTING AUTHORITIES.—Assist-
11 ance provided under this section shall be carried out
12 in a manner consistent with authorities available to
13 the Secretary under the Endangered Species Act of
14 1973 (16 U.S.C. 1531 et seq.) and the Marine
15 Mammal Protection Act of 1972 (16 U.S.C. 1361 et
16 seq.).

17 (b) PROJECT PROPOSALS.—

18 (1) ELIGIBLE APPLICANTS.—A project proposal
19 may be submitted to the Secretary under this section
20 by—

21 (A) relevant State and tribal agencies, re-
22 search institutions, and nonprofit organizations
23 with expertise required for the conservation of
24 North Atlantic right whales; and

1 (B) any other individual or entity, as de-
2 termined appropriate by the Secretary, with the
3 expertise required for the conservation of North
4 Atlantic right whales, including large whale
5 disentanglement teams approved by the Na-
6 tional Oceanic and Atmospheric Administration
7 and members in good standing of the National
8 Marine Mammal Health and Stranding Re-
9 sponse Program, sectors of the shipping and
10 fishing industries, fishing gear manufacturers,
11 and rope manufacturers.

12 (2) FEDERAL PARTNERSHIP OPPORTUNITIES.—
13 A Federal agency may not be a lead entity or receive
14 funding for a project under this section, but may be
15 included as a partner or collaborator on a project
16 that receives such funding.

17 (3) REQUIRED ELEMENTS.—A project proposal
18 shall include—

19 (A) a statement of the purposes of the
20 project;

21 (B) the name of the entity or individual
22 with overall responsibility for the project;

23 (C) a description of the qualifications of
24 the entity or individuals that will conduct the
25 project;

- 1 (D) a description of—
- 2 (i) methods for project implementa-
- 3 tion and outcome assessment;
- 4 (ii) staffing and stakeholder engage-
- 5 ment for the project;
- 6 (iii) the logistics of the project;
- 7 (iv) an estimated timeline for the
- 8 project; and
- 9 (v) anticipated outcomes of the
- 10 project;
- 11 (E) a proposed budget for the funds and
- 12 time required to complete the project;
- 13 (F) information regarding the source and
- 14 amount of matching funding available for the
- 15 project;
- 16 (G) information that demonstrates the
- 17 clear potential of the project to contribute to
- 18 the conservation of North Atlantic right whales;
- 19 and
- 20 (H) any other information that the Sec-
- 21 retary considers to be necessary for evaluating
- 22 the eligibility of the project for funding under
- 23 this Act.

24 (c) ANNUAL GRANT PROJECT PROPOSAL SOLICITA-

25 TION, REVIEW, AND APPROVAL.—

1 (1) IN GENERAL.—The Secretary shall annu-
2 ally—

3 (A) solicit project proposals for grants
4 under this section;

5 (B) provide to other Federal officials, as
6 appropriate, copies of each proposal submitted
7 in response to the solicitation; and

8 (C) review each such proposal on a
9 timeline that recognizes the urgency of the de-
10 clining North Atlantic right whale population to
11 determine whether the proposal meets the cri-
12 teria specified in subsection (d).

13 (2) CONSULTATION; APPROVAL OR DIS-
14 APPROVAL.—Subject to the availability of funds, the
15 Secretary shall, with respect to each project proposal
16 submitted under this section, and after consulting
17 with other Federal officials, as appropriate—

18 (A) consult with respect to the proposal
19 with the government of each State and foreign
20 country in which the project is to be conducted;

21 (B) after taking into consideration any
22 comments resulting from the consultation and
23 any potential losses that could be incurred to
24 the fishing industry as a result of the proposal,
25 approve or disapprove the proposal; and

1 (C) provide written notification of the ap-
2 proval or disapproval to the individual or entity
3 that submitted the proposal, other Federal offi-
4 cials, and each State and foreign country de-
5 scribed in subparagraph (A).

6 (d) CRITERIA FOR APPROVAL.—The Secretary may
7 approve a project proposal under this section if the project
8 shows promise for contributing to recovering and sus-
9 taining a viable population of North Atlantic right whales
10 in the wild by assisting efforts to—

11 (1) implement conservation programs;

12 (2) address the unintentional conflicts between
13 humans and North Atlantic right whales through de-
14 velopment, testing, and use of innovative technology
15 or other methods to reduce the lethal and sub-lethal
16 effects on North Atlantic right whales from vessel
17 collisions and fishing gear entanglements;

18 (3) promote cooperative projects on such topics
19 with foreign governments; or

20 (4) promote cooperative projects on such topics
21 with affected local communities, small businesses
22 such as fishermen, others in the private sector, or
23 nongovernmental organizations.

24 (e) PRIORITY.—To the extent practicable, in deter-
25 mining whether to approve project proposals under this

1 section, the Secretary shall prioritize projects that are de-
2 signed to reduce the lethal and sub-lethal effects of human
3 activities on North Atlantic right whales. In prioritizing
4 such projects, the Secretary shall prioritize, among such
5 projects, projects that are cooperative in nature and in-
6 clude fishing or shipping sector participants.

7 (f) MATCHING REQUIREMENT.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (3), the non-Federal share of the costs of an
10 activity conducted with financial assistance under
11 this section shall be 25 percent of such costs.

12 (2) IN-KIND CONTRIBUTIONS.—The Secretary
13 may apply to the non-Federal share of an activity
14 conducted with financial assistance under this sec-
15 tion the amount of funds, and the fair market value
16 of property and services, provided by non-Federal
17 sources and used for the activity.

18 (3) WAIVER OF REQUIREMENTS.—The Sec-
19 retary may waive the application of paragraph (1) if
20 the Secretary finds that such waiver is necessary to
21 support a conservation project that the Secretary
22 has identified as of high priority.

23 (g) PROJECT REPORTING.—

24 (1) IN GENERAL.—Each individual or entity
25 that receives assistance under this section for a

1 project shall submit to the Secretary periodic reports
2 (at such intervals as the Secretary may require) that
3 include all information that the Secretary, after con-
4 sultation with other government officials, determines
5 is necessary to evaluate the progress and success of
6 the project for the purposes of ensuring positive re-
7 sults, assessing problems, and fostering improve-
8 ments.

9 (2) **AVAILABILITY TO THE PUBLIC.**—Reports
10 under paragraph (1), and any other documents re-
11 lating to projects for which financial assistance is
12 provided under this Act, shall be made available to
13 the public in a timely manner.

14 **SEC. 5. NORTH ATLANTIC RIGHT WHALE INTERAGENCY**
15 **BUDGET.**

16 (a) **IN GENERAL.**—The Director of the Office of
17 Management and Budget shall include, in the budget of
18 the President submitted to Congress under section
19 1105(a) of title 31, United States Code, for fiscal year
20 2020 and each fiscal year thereafter, an interagency budg-
21 et that displays for each Federal agency that engages in
22 North Atlantic right whale activities—

23 (1) the amount of appropriations and expendi-
24 tures for the preceding fiscal year for such activities
25 and a description of such activities;

1 (2) the estimated amount to be expended dur-
2 ing the current fiscal year for such activities and a
3 description of such activities; and

4 (3) the amount estimated to be necessary for
5 the next fiscal year for such activities and a descrip-
6 tion of such activities.

7 (b) NORTH ATLANTIC RIGHT WHALE ACTIVITIES
8 DEFINED.—In this section, the term “North Atlantic
9 right whale activities” means any activity of a Federal
10 agency to study, observe, monitor, manage, protect, con-
11 serve, or restore the North Atlantic right whale population
12 through direct or indirect means, including through the
13 provision of competitive financial assistance to non-Fed-
14 eral entities.

15 **SEC. 6. REPORT TO CONGRESS.**

16 Not later than 2 years after the date of the enact-
17 ment of this Act, and annually thereafter, the Secretary
18 shall submit to Congress a report on the results and effec-
19 tiveness of projects receiving assistance provided under
20 this Act, including recommendations concerning how this
21 Act might be improved and whether funding for this Act
22 should be continued in the future.

23 **SEC. 7. FUNDING.**

24 (a) AUTHORIZATION OF APPROPRIATIONS.—

1 (1) AUTHORIZATION.—There is authorized to
2 be appropriated to the Secretary to carry out this
3 Act \$5,000,000 for each of fiscal years 2018
4 through 2028.

5 (2) ADMINISTRATIVE EXPENSES.—Of the
6 amounts authorized to be appropriated under this
7 subsection for a fiscal year, the Secretary may ex-
8 pend not more than 5 percent, or up to \$80,000,
9 whichever is greater, to pay the administrative ex-
10 penses necessary to carry out this Act.

11 (3) SUPPLEMENT NOT SUPPLANT.—The
12 amount authorized to be appropriated by paragraph
13 (1) shall supplement and not supplant other
14 amounts available to the Secretary.

15 (b) ACCEPTANCE AND USE OF DONATIONS.—The
16 Secretary may accept, receive, solicit, hold, administer,
17 and use any gift, devise, or bequest to provide assistance
18 under section 5.

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