

S. 2453 Blumenthal - Substitute



AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.

S. 2453

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, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. Blumenthal

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

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 2019” or the “SAVE Right Whales Act”.

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

8 (a) FINDINGS.—Congress finds that—

1 (1) North Atlantic right whales (*Eubalaena*
2 *glacialis*) are critically endangered, with approxi-
3 mately 400 whales remaining at the time of the in-
4 troduction of this Act;

5 (2) historically, the North Atlantic right whale
6 population was decimated by the whaling industry,
7 although the whale population received protections
8 from such industry in the 1930s;

9 (3) despite a modest recovery prior to 2010, the
10 North Atlantic right whale is one of the most endan-
11 gered whales in the world and has experienced a sig-
12 nificant decline since 2010;

13 (4) the North Atlantic right whale has been
14 listed as an endangered species under the Endan-
15 gered Species Conservation Act of 1969 (Public Law
16 89-669; 80 Stat. 926) and its successor the Endan-
17 gered Species Act of 1973 (16 U.S.C. 1531 et seq.)
18 since 1970 and is designated as depleted under the
19 Marine Mammal Protection Act of 1972 (16 U.S.C.
20 1361 et seq.);

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

1 (6) North Atlantic right whales frequently cross
2 paths with major shipping lanes and fishing
3 grounds, leaving the whales particularly vulnerable
4 to vessel collisions and fishing gear entanglements,
5 the 2 leading causes of injury and death to the spe-
6 cies;

7 (7) even when North Atlantic right whales do
8 not die as a result of fishing gear entanglement,
9 those whales can still experience significant sub-le-
10thal effects such as chronic stress and reproductive
11 failure;

12 (8) in August 2017, the National Marine Fish-
13 eries Service announced an unusual mortality event
14 involving North Atlantic right whales in 2017, with
15 17 known whale deaths that year alone;

16 (9) as of August 2019, such ongoing unusual
17 mortality event includes the loss of at least 28
18 whales, a significant die-off of a population and,
19 under the Marine Mammal Protection Act of 1972
20 (16 U.S.C. 1361 et seq.), demands an immediate re-
21 sponse;

22 (10) based on the current rate of mortality of
23 North Atlantic right whales, and because of the
24 small number of breeding females in the population
25 and low birth rates, recent analysis suggests the spe-

1 cies will lose its ability to recover in merely a few
2 decades if human-caused mortality is not reduced
3 immediately;

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

14 (12) vessels in United States waters that are 65
15 feet or more in length have been required to comply
16 with a seasonal 10-knot speed limit in certain loca-
17 tions to reduce the threat of vessel collisions; and

18 (13) North Atlantic right whales are now mi-
19 grating farther north into Canadian waters and
20 there have been at least 20 North Atlantic right
21 whale deaths in Canada's Gulf of St. Lawrence be-
22 tween 2017 and 2019, as well as 8 documented
23 deaths of such whales in the United States waters
24 in 2017 and 2018.

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

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

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

14 **SEC. 3. PURPOSES.**

15 The purposes of this Act are the following:

16 (1) To rebuild healthy populations of the North
17 Atlantic right whale.

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

1 **TITLE I—NORTH ATLANTIC**
2 **RIGHT WHALE CONSERVATION**

3 **SEC. 101. NORTH ATLANTIC RIGHT WHALE CONSERVATION**
4 **ASSISTANCE.**

5 (a) ASSISTANCE.—

6 (1) IN GENERAL.—Subject to the availability of
7 funds and in consultation with other Federal offi-
8 cials, the Secretary of Commerce (in this title re-
9 ferred to as the “Secretary”) shall provide competi-
10 tive financial assistance, including multiyear grants,
11 for projects designed to reduce the lethal and sub-
12 lethal effects of human activities on North Atlantic
13 right whales for which project proposals are ap-
14 proved by the Secretary in accordance with this sec-
15 tion.

16 (2) USE OF EXISTING AUTHORITIES.—Assist-
17 ance provided under this section shall be carried out
18 in a manner consistent with authorities available to
19 the Secretary under the Endangered Species Act of
20 1973 (16 U.S.C. 1531 et seq.) and the Marine
21 Mammal Protection Act of 1972 (16 U.S.C. 1361 et
22 seq.).

23 (b) PROJECT PROPOSALS.—

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

4 (A) relevant State and tribal agencies, re-
5 search institutions, and nonprofit organizations
6 with expertise required for the conservation of
7 North Atlantic right whales; and

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

19 (2) FEDERAL PARTNERSHIP OPPORTUNITIES.—
20 A Federal agency may not be a lead entity or receive
21 funding for a project under this section, but may be
22 included as a partner or collaborator on a project
23 that receives such funding.

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 time-
9 line that recognizes the urgency of the declining
10 North Atlantic right whale population to deter-
11 mine whether the proposal meets the criteria
12 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 that is likely
8 to aid in the recovery and sustainability of a viable popu-
9 lation of North Atlantic right whales in the wild by assist-
10 ing 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. 102. REPORT TO CONGRESS.**

15 Not later than 2 years after the date of the enact-
16 ment of this Act, and every 5 years thereafter, the Sec-
17 retary shall submit to Congress a report on the results
18 and effectiveness of projects receiving assistance provided
19 under this title, including recommendations concerning
20 how this title might be improved and whether funding for
21 this title should be continued in the future.

22 **SEC. 103. FUNDING.**

23 (a) AUTHORIZATION OF APPROPRIATIONS.—

24 (1) AUTHORIZATION.—There is authorized to
25 be appropriated to the Secretary to carry out this

1 title \$5,000,000 for each of fiscal years 2019
2 through 2029.

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

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

13 (b) ACCEPTANCE AND USE OF DONATIONS.—The
14 Secretary may accept, receive, solicit, hold, administer,
15 and use any gift, devise, or bequest to provide assistance
16 under section 101.

17 **TITLE II—CONTINUOUS**
18 **PLANKTON RECORDER**

19 **SEC. 201. SURVEY.**

20 (a) IN GENERAL.—Not later than 180 days after the
21 date of the enactment of this Act, and on an ongoing basis
22 thereafter, the Secretary of Commerce shall conduct a
23 Continuous Plankton Recorder survey.

1 (b) REQUIRED ELEMENTS.—For the purpose of con-
2 ducting the survey required under subsection (a), the
3 Northeast Fisheries Science Center shall—

4 (1) to the extent possible, utilize the resources
5 of and partner with, on a volunteer basis, research
6 institutions, nonprofit organizations, commercial ves-
7 sels, and other Federal agencies;

8 (2) in as short a time as possible, ensure rel-
9 evant survey samples and results are analyzed,
10 stored, archived, and made publicly available;

11 (3) prioritize the collection of plankton samples
12 and data that inform the conservation of North At-
13 lantic right whales; and

14 (4) to the extent practicable, coordinate with
15 the Government of Canada to develop a transbound-
16 ary understanding of plankton abundance and dis-
17 tribution.

18 (c) AUTHORIZATION OF APPROPRIATIONS.—To carry
19 out this section there is authorized to be appropriated to
20 the Secretary of Commerce \$300,000 for each of fiscal
21 years 2019 through 2029.