

107TH CONGRESS
1ST SESSION

S. 1380

To coordinate and expand United States and international programs for the conservation and protection of North Atlantic Right Whales.

IN THE SENATE OF THE UNITED STATES

AUGUST 3, 2001

Mr. KERRY (for himself and Mr. HOLLINGS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To coordinate and expand United States and international programs for the conservation and protection 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 “North Atlantic Right
5 Whale Recovery Act of 2001”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) North Atlantic Right Whales are one of the
9 most endangered large whales in the world, with

1 fewer than 350 animals remaining in the western
2 North Atlantic.

3 (2) Anthropogenic causes remain the largest
4 source of mortality for North Atlantic Right Whales.

5 (3) Accidental collisions of ships with right
6 whales have been identified as the leading cause of
7 human-related mortality of right whales, with at
8 least 16 deaths attributable to ship strikes along the
9 east coast of the United States since 1970.

10 (4) Entanglement in fishing gear is the other
11 major cause of right whale mortality, estimated to
12 account for at least 3 deaths from 1970 through
13 2000.

14 (5) The Recovery Plan for Northern Right
15 Whales lists other potential or known anthropogenic
16 sources of mortality such as habitat degradation,
17 contamination by pollutants, ocean noise, and cli-
18 mate change. Although the mortality rate caused by
19 these factors is unknown, they are potentially impor-
20 tant and could affect Northern Right Whale birth
21 rates, distribution patterns, and general health.

22 (6) According to a recent study in the Pro-
23 ceedings of the National Academy of Sciences, un-
24 less human-related mortalities are reduced, the

1 North Atlantic Right Whale is likely to become ex-
2 tinct.

3 (7) The National Marine Fisheries Service of
4 the Department of Commerce is the agency tasked
5 with protecting and recovering right whales under
6 both the Marine Mammal Protection Act of 1972
7 (16 U.S.C. 1631 et seq.) and the Endangered Spe-
8 cies Act of 1973 (16 U.S.C. 1600 bet seq.).

9 (8) Recent research has led to limited success
10 in reducing collisions with ships and interactions
11 with fishing gear.

12 (9) The Mandatory Ship Reporting System, im-
13 plemented in 1999 by the National Marine Fisheries
14 Service and the United States Coast Guard, and ap-
15 proved by the International Maritime Organization,
16 has begun to provide mariners with necessary infor-
17 mation to help prevent ship collisions in North At-
18 lantic Right Whale critical habitat in northeast and
19 southeast coastal waters.

20 (10) The National Marine Fisheries Service
21 along with the Atlantic Large Whale Take Reduc-
22 tion Team have begun to develop gear and methods
23 to reduce right whale interactions with fishing gear
24 along the Atlantic Coast.

1 (11) Recent events have revealed the lack of a
2 coordinated Federal plan for recovering North At-
3 lantic Right Whales, in spite of large funding in-
4 creases by the Congress over the past decade.

5 (12) Greater management and research atten-
6 tion must be focused on reducing mortality caused
7 by ship collisions, entanglement in fishing gear, and
8 other causes of mortality if the population decline of
9 North Atlantic Right Whales is to be reversed.

10 **SEC. 3. NORTH ATLANTIC RIGHT WHALE RECOVERY PRO-**
11 **GRAM.**

12 (a) IN GENERAL.—The Secretary of Commerce shall
13 institute a North Atlantic Right Whale Recovery Program,
14 in coordination with the Secretary of Transportation and
15 appropriate Federal agencies, States, the Southeast and
16 Northeast Northern Right Whale Recovery Plan Imple-
17 mentation Teams and the Atlantic Large Whale Take Re-
18 duction Team, pursuant to the authority provided under
19 the Endangered Species Act of 1973 (16 U.S.C. 1600 et
20 seq.), the Marine Mammal Protection Act of 1972 (16
21 U.S.C. 1631 et seq.), and the Magnuson-Stevens Fishery
22 Conservation and Management Act (16 U.S.C. 1801 et
23 seq.).

1 (b) ELEMENTS.—The program established under
2 subsection (a) shall include the following research, man-
3 agement, and enforcement elements:

4 (1) Activities to reduce mortality and injury due
5 to collisions with vessel traffic.

6 (2) Activities to reduce mortality and injury in
7 fishing gear (including disentanglement and gear de-
8 velopment).

9 (3) Population monitoring, baseline surveys, as-
10 sessment, and database management.

11 (4) Support for regional recovery plan imple-
12 mentation teams, take reduction teams, and such
13 meetings or workshops necessary to develop and pro-
14 vide expert advice on related research and manage-
15 ment activities.

16 (c) SECRETARY TO IDENTIFY AGENCIES, AREAS,
17 AND ACTIVITIES.—The Secretary, in consultation with the
18 teams described in subsection (a), shall identify the fol-
19 lowing:

20 (1) The appropriate governmental agency or
21 other entity to perform each activity covered by the
22 program.

23 (2) The geographic area or areas in which those
24 activities should be conducted.

1 (3) A timeline for initiation and completion of
2 such activity.

3 **SEC. 4. FEDERAL-STATE COOPERATION.**

4 The Secretary of Commerce, acting through the Na-
5 tional Oceanic and Atmospheric Administration, shall—

6 (1) develop cooperative agreements under sec-
7 tion 6 of the Endangered Species Act of 1973 (16
8 U.S.C. 1535(c)) to support State agency involve-
9 ment in recovery programs for North Atlantic Right
10 Whales; and

11 (2) determine annually the funding needs and
12 levels appropriate for Federal support to encourage
13 the establishment of, and to help maintain, such
14 programs.

15 **SEC. 5. NORTH ATLANTIC RIGHT WHALE PRIORITY ACTION**
16 **PROGRAM.**

17 (a) IN GENERAL.—The Secretary of Commerce and
18 the Secretary of Transportation, in consultation with the
19 Southeast and Northeast Northern Right Whale Recovery
20 Plan Implementation Teams and the Atlantic Large
21 Whale Take Reduction Team, shall identify near-term
22 demonstration projects to reduce, or promote reductions,
23 in mortality caused by ship strikes and entanglement in
24 fishing gear.

1 (b) DEMONSTRATION PROJECTS.—Within 9 months
 2 after the date of enactment of this Act, the Secretary of
 3 Commerce shall institute demonstration projects deter-
 4 mined, after consulting with the teams described in sub-
 5 section (a), to have potential for immediate impact on re-
 6 ducing mortality of North Atlantic Right Whales in the
 7 following areas:

8 (1) Detection and tracking of North Atlantic
 9 Right Whales in critical habitat, high use areas, or
 10 along their migration route.

11 (2) Satellite tracking of individual whale move-
 12 ments.

13 (3) Deployment of whale-friendly gear such as
 14 neutrally buoyant line and “weak links” in North
 15 Atlantic Right Whale critical habitat or high use
 16 areas to reduce the possibility of entanglements, in-
 17 cluding provision of such gear to fishermen.

18 (4) Testing or developing innovative methods to
 19 increase the success of disentanglement efforts.

20 (5) Other projects determined under subsection
 21 (b) to have near-term potential of reducing right
 22 whale mortality.

23 **SECTION 6. REDUCING SHIP STRIKES.**

24 (a) VESSEL WARNING AND MANAGEMENT.—The
 25 Secretaries of Commerce and Transportation shall, by

1 January 1, 2003, develop a comprehensive program to
2 prevent ship strikes of Northern Atlantic Right Whales.
3 The program shall include—

4 (1) an Atlantic Coast vessel early warning sys-
5 tem, with participation by the United States Coast
6 Guard, the United States Navy, the Army Corps of
7 Engineers, and State and local government agencies,
8 that includes—

9 (A) collection and analysis of data on At-
10 lantic vessel traffic patterns and operations re-
11 lated to incidents involving ships striking
12 whales;

13 (B) a coordinated communications system
14 for notifications to mariners; and

15 (C) a clearinghouse for whale sightings, in-
16 cluding plans for development of a real-time in-
17 formation system that utilizes existing systems
18 such as aerial and shipboard surveillance and
19 incorporates innovative techniques such as
20 acoustic detection, satellite tags, and predictive
21 modeling, to locate and track right whales; and

22 (2) a coordinated vessel management system
23 that provides—

24 (A) updated information to mariners to ad-
25 vise on best practices based on the analysis of

1 vessel operations and incidents involving ships
2 striking whales;

3 (B) regional risk assessments to identify
4 alternative routing opportunities or speed
5 changes for vessels;

6 (C) vessel management standards for high
7 risk areas during North Atlantic Right Whale
8 migration periods; and

9 (D) for the applicability of standards to a
10 variety of vessel types.

11 (b) DETECTION TECHNOLOGIES PROGRAM.—The
12 Secretary of Commerce, in consultation with the Secretary
13 of Transportation and the Secretary of the Navy, shall
14 create a detection technology program to develop, test, and
15 evaluate technologies that can be used to detect and track
16 North Atlantic Right Whales in critical habitat and along
17 their migration routes during fiscal years 2002 and 2003.
18 The program should evaluate technologies that can be
19 used to track long-term movements of whales, as well as
20 technologies that could be used aboard ships to detect and
21 avoid whales as the ships transit to ports and within ship-
22 ping lanes.

23 (c) SHIP STRIKE ANALYSIS.—Within 1 year after the
24 date of enactment of this Act, the Secretary of Commerce
25 shall incorporate data from “whale alert” aircraft surveys,

1 scientific survey data, confirmed right whale sightings, lo-
 2 cations of observed “close calls”, and ship traffic data
 3 from the mandatory ship reporting system into a geo-
 4 graphic information system for analysis of interactions be-
 5 tween whales and ships. The Secretary shall use the infor-
 6 mation gained from that analysis for education and out-
 7 reach to mariners, fishermen, and ports.

8 (d) GAPS IN AUTHORITY.—The Secretary of Trans-
 9 portation, within 60 days after the date of enactment of
 10 this Act, shall identify any gaps in legislative authority
 11 preventing implementation of regulations affecting vessels
 12 in waters under United States jurisdiction necessary to
 13 promote recovery of North Atlantic Right Whales.

14 (e) INTERNATIONAL MARITIME ORGANIZATION.—
 15 The Secretary of Transportation, acting through the Sec-
 16 retary of State, may propose regulations for adoption at
 17 the International Maritime Organization to further imple-
 18 ment the recommendations contained within the North At-
 19 lantic Right Whale Recovery Plan.

20 **SEC 7. NORTH ATLANTIC RIGHT WHALE RESEARCH GRANT**
 21 **PROGRAM.**

22 (a) COORDINATED RESEARCH FRAMEWORK.—The
 23 Secretary of Commerce, in consultation with the North-
 24 east and Southeast Northern Right Whale Recovery Plan
 25 Implementation Teams, the Atlantic Large Whale Take

1 Reduction Team, and the Marine Mammal Commission,
2 shall design a comprehensive and coordinated right whale
3 research grant program. The program shall include, at the
4 minimum, research on the following subjects:

5 (1) Detection and tracking of North Atlantic
6 Right Whales, including the use of tagging and te-
7 lemetry, to help ships avoid striking whales.

8 (2) Behavior of right whales in proximity to
9 ships.

10 (3) Relationships between vessel speed, size, or
11 design with whale collisions and mortality.

12 (4) Modeling ship traffic in Atlantic shipping
13 lanes and approaches to major United States ports
14 along the Atlantic coast.

15 (5) Population studies.

16 (6) Reproduction and genetic studies.

17 (7) Development of a geographic information
18 system database to identify variables potentially as-
19 sociated with right whale distribution and migration,
20 including temperature, other oceanographic param-
21 eters, and distribution and abundance of planktonic
22 prey species.

23 (8) Response of right whales to ship-avoidance
24 deterrence methods.

1 (9) Habitat quality studies including investiga-
2 tion of food quality, pollution levels, and interaction
3 of ecological components with the food resources of
4 Northern Right Whales.

5 (10) Physiological condition studies, including
6 reproductive fitness measures, and comparison with
7 environmental conditions.

8 (b) PEER REVIEW.—The program shall provide for
9 external review of grant applications. Peer review teams
10 shall include scientists, fishing, shipping, and other appro-
11 priate industry representatives, and technology experts ap-
12 propriate to evaluate the feasibility and scientific merit of
13 each application.

14 **SEC. 8. INTERAGENCY COORDINATION AND COST-SHARING.**

15 (a) IN GENERAL.—The Secretary of Commerce and
16 the Secretary of Transportation shall ensure cooperation
17 of Federal agencies and departments in sharing the costs,
18 vessels, equipment, and other resources (including commu-
19 nications and monitoring equipment) to meet the needs
20 of the updated North Atlantic Right Whale Recovery Plan,
21 particularly with respect to tracking and surveillance of
22 right whales in critical habitat and high use areas.

23 (b) REPORT.—Within 6 months after the date of en-
24 actment of this Act, the Secretary of Transportation, the
25 Secretary of the Navy, and the Secretary of Commerce

1 shall report to the Congress on any further funding re-
2 quirements necessary to implement any requirements of
3 this Act or regulations necessary to implement the North
4 Atlantic Right Whale Recovery Plan.

5 **SEC. 9. INTERNATIONAL ACTION AND COORDINATION.**

6 (a) CANADA.—The Secretary of Commerce, acting
7 through the Secretary of State, shall initiate or continue
8 discussions with Canada to coordinate programs con-
9 cerning North Atlantic Right Whales, including—

- 10 (1) ship traffic management systems;
11 (2) tracking whales in the Gulf of Maine and
12 adjacent areas of the United States and Canadian
13 Exclusive Economic Zone;
14 (3) disentanglement efforts; and
15 (4) sharing of relevant biological and maritime
16 traffic information.

17 (b) FISHERY INTERACTIONS.—The Secretary of
18 Commerce, working through the Department of State,
19 shall begin discussions for the purpose of creating or
20 amending bi- or multi-lateral agreements on management
21 measures to reduce fishery interactions with—

- 22 (1) all relevant management organizations; and
23 (2) nations whose fleets may operate in North
24 Atlantic Right Whales high use areas.

1 (c) SCIENTIFIC INFORMATION.—The Secretary of
 2 Commerce, working through the Department of State,
 3 shall begin discussions for the purpose of facilitating col-
 4 lection of information relevant to development of the pri-
 5 ority action plan or recovery plan with—

6 (1) all relevant scientific organizations, includ-
 7 ing the International Council for the Exploration of
 8 the Sea, Northwestern Atlantic Fisheries Organiza-
 9 tion, the Food and Agricultural Organization; and

10 (2) countries that conduct research in areas
 11 with right whales, including Canada, Greenland
 12 (Denmark), and Iceland.

13 **SEC. 10. REPORT TO CONGRESS.**

14 The National Oceanic and Atmospheric Administra-
 15 tion shall transmit a report to the Congress no later than
 16 March 1 of each year setting forth—

17 (1) actions taken pursuant to the updated
 18 North Atlantic Right Whale Recovery Plan;

19 (2) the amount of Federal and State funds ex-
 20 pended on activities under that Plan;

21 (3) known or suspected incidents of—

22 (A) collisions between vessels and North
 23 Atlantic Right Whales; and

24 (B) entanglements, injuries, or mortalities
 25 of North Atlantic Right Whales;

1 (4) known or suspected causes of incidents de-
2 scribed in paragraph (3);

3 (5) actions taken to prevent or reduce the likeli-
4 hood of such incidents in the preceding year;

5 (6) any new information about calving, feeding,
6 or other high-use areas of North Atlantic Right
7 Whales;

8 (7) the status of any litigation involving North
9 Atlantic Right Whale recovery activity;

10 (8) areas identified for additional action under
11 the North Atlantic Right Whale Recovery Plan;

12 (9) projects funded under section 7;

13 (10) the funding needs and levels determined
14 under paragraph (2) of section 4 appropriate for
15 Federal support to encourage the establishment of,
16 and to help maintain, recovery programs for North
17 Atlantic Right Whales; and

18 (11) the cost of implementing the demonstra-
19 tion projects under section 5(b).

20 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

21 (a) DEPARTMENT OF COMMERCE.—There are au-
22 thorized to be appropriated to the Secretary of Commerce,
23 for purposes of carrying out the Department of Com-
24 merce's functions and responsibilities under this Act,

1 \$4,500,000 for fiscal year 2002 and \$5,000,000 for each
2 of fiscal years 2003 and 2004.

3 (b) DEPARTMENT OF TRANSPORTATION.—There are
4 authorized to be appropriated to the Secretary of Trans-
5 portation, for purposes of carrying out the Department of
6 Commerce’s functions and responsibilities under this Act,
7 \$1,000,000 for each of fiscal years 2002, 2003, and 2004.

8 (c) STATE COOPERATIVE AGREEMENTS.—There are
9 authorized to be appropriated to the Secretary of Com-
10 merce, \$1,500,000 for fiscal year 2002 and \$2,000,000
11 for each of fiscal years 2003 and 2004, for purposes of
12 implementing agreements with Atlantic coastal States
13 under section 6 of the Endangered Species Act of 1973
14 as required by section 4 of this Act.

15 (d) NORTH ATLANTIC RIGHT WHALE RESEARCH
16 GRANT PROGRAM.—There are authorized to be appro-
17 priated to the Secretary of Commerce, for purposes of car-
18 rying out the research program under section 7 of this
19 Act, \$1,000,000 for fiscal year 2002 and \$2,000,000 for
20 each of fiscal years 2003 and 2004.

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