

117TH CONGRESS  
2D SESSION

# S. 3664

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.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 16, 2022

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

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## 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, and for other purposes.

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 “Right Whale Coexist-  
5 ence Act of 2022”.

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  
5 340 remaining at the time of the introduction of this  
6 Act;

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

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

15 (4) the North Atlantic right whale has been  
16 listed as an endangered species under the Endan-  
17 gered Species Conservation Act of 1969 (Public Law  
18 89–669; 80 Stat. 926) and its successor the Endan-  
19 gered Species Act of 1973 (16 U.S.C. 1531 et seq.)  
20 since 1970 and is designated as depleted under the  
21 Marine Mammal Protection Act of 1972 (16 U.S.C.  
22 1361 et seq.);

23 (5) because North Atlantic right whales are  
24 long-lived and highly migratory, and at present rates  
25 females give birth to a single calf only once every 5  
26 to 10 years, they are highly vulnerable to the im-

1 pacts of human activity and habitat degradation,  
2 with female whales and calves particularly vulnerable  
3 to vessel strikes;

4 (6) North Atlantic right whales frequently cross  
5 paths with high vessel traffic areas and fishing  
6 grounds, leaving the whales particularly vulnerable  
7 to vessel collisions and fishing gear entanglements,  
8 the leading causes of injury and death to the species;

9 (7) even when North Atlantic right whales do  
10 not die as a result of fishing gear entanglement or  
11 vessel strike, those whales can still experience sig-  
12 nificant sub-lethal effects such as chronic stress and  
13 reproductive failure;

14 (8) this ongoing decline due to human impacts  
15 resulted in a further 30 percent decline in the popu-  
16 lation between 2019 and 2020 resulting in the low-  
17 est population estimate in the past 2 decades;

18 (9) based on the current rate of mortality of  
19 North Atlantic right whales, and because of the  
20 small number of breeding females in the population  
21 and low birth rates, recent analysis suggests the spe-  
22 cies will lose its ability to recover in merely a few  
23 decades if human-caused mortality is not reduced  
24 immediately;

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

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

15          (12) ongoing mortalities, driven in part by  
16          shifts in North Atlantic right whale distribution  
17          caused by climate change, indicate that additional  
18          actions are necessary to reverse this species' popu-  
19          lation decline.

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

22                (1) the Governments of the United States and  
23                Canada must work together to reduce lethal and  
24                sub-lethal effects of human activities on North At-  
25                lantic right whales; and

1           (2) effectively addressing the threats to the  
2 long-term viability of the North Atlantic right  
3 whales will require a joint commitment and effort  
4 from government entities, local communities, marine  
5 scientists and conservationists, fishermen, owners  
6 and operators of commercial and recreational vessels  
7 and others in the boating and shipping industries,  
8 and other stakeholders.

9 **SEC. 3. PURPOSES.**

10       The purposes of this Act are the following:

11           (1) To rebuild healthy populations of the North  
12 Atlantic right whale.

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

18           **TITLE I—NORTH ATLANTIC**  
19           **RIGHT WHALE CONSERVATION**

20 **SEC. 101. NORTH ATLANTIC RIGHT WHALE CONSERVATION**

21           **ASSISTANCE.**

22           (a) ASSISTANCE.—

23           (1) IN GENERAL.—Subject to the availability of  
24 funds and in consultation with other Federal offi-  
25 cials, the Secretary of Commerce (in this title re-

1       ferred to as the “Secretary”) shall provide competi-  
2       tive financial assistance, including multiyear grants,  
3       for projects designed to reduce the lethal and sub-  
4       lethal effects of human activities on North Atlantic  
5       right whales for which project proposals are ap-  
6       proved by the Secretary in accordance with this sec-  
7       tion.

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

15      (b) PROJECT PROPOSALS.—

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

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

23              (B) any other individual or entity, as de-  
24      termined appropriate by the Secretary, with the

1 expertise required for the conservation of North  
2 Atlantic right whales, including—

3 (i) large whale disentanglement teams  
4 approved by the National Oceanic and At-  
5 mospheric Administration and members in  
6 good standing of the National Marine  
7 Mammal Health and Stranding Response  
8 Program;

9 (ii) an owner or operator of a vessel,  
10 as defined under section 3 of title 1,  
11 United States Code; and

12 (iii) participants within sectors of the  
13 maritime industry, such as boating, ship-  
14 ping, fishing, fishing gear and rope manu-  
15 facturing, and other maritime activities.

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

21 (c) ANNUAL GRANT PROJECT PROPOSAL SOLICITA-  
22 TION, REVIEW, AND APPROVAL.—

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

1 (A) solicit project proposals for grants  
2 under this section;

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

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

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

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

19 (B) take into consideration any comments  
20 resulting from the consultation and input from  
21 fishing and other stakeholders on the potential  
22 impacts as a result of the proposal; and

23 (C) approve or disapprove the proposal in  
24 accordance with subsections (d) and (e) and  
25 provide written notification of the approval or

1 disapproval to the individual or entity that sub-  
2 mitted the proposal, other Federal officials, and  
3 each State and foreign country described in  
4 subparagraph (A).

5 (d) CRITERIA FOR APPROVAL.—The Secretary may  
6 approve a project proposal under this section that is likely  
7 to aid in the recovery and sustainability of a viable popu-  
8 lation of North Atlantic right whales in the wild. Such  
9 projects shall—

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

16 (2)(A) promote cooperative projects on such  
17 topics with foreign governments; or

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

22 (e) PRIORITY.—In determining whether to fund  
23 project proposals under this section, the Secretary shall  
24 prioritize projects—

1           (1) with a substantial likelihood of reducing le-  
2           thal and sub-lethal effects on North Atlantic right  
3           whales from fishing gear entanglements or vessel  
4           collisions;

5           (2) that include cooperation with private sector  
6           stakeholders; and

7           (3) that demonstrate, or have the potential to  
8           provide, economic benefits to small businesses based  
9           in the United States.

10       (f) MATCHING REQUIREMENT.—

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

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

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

1 (g) PROJECT REPORTING.—

2 (1) IN GENERAL.—Each individual or entity  
3 that receives assistance under this section for a  
4 project shall submit to the Secretary periodic reports  
5 (at such intervals as the Secretary may require) that  
6 include all information that the Secretary, after con-  
7 sultation with other government officials, determines  
8 is necessary to evaluate the progress and success of  
9 the project for the purposes of ensuring positive re-  
10 sults, assessing problems, and fostering improve-  
11 ments.

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

17 **SEC. 102. REPORT TO CONGRESS.**

18 Not later than 2 years after the date of enactment  
19 of this Act, and every 5 years thereafter, the Secretary  
20 shall submit to Congress a report on the results and effec-  
21 tiveness of projects receiving assistance provided under  
22 this title, including recommendations concerning how this  
23 title might be improved and whether funding for this title  
24 should be continued in the future.

1 **SEC. 103. FUNDING.**

2 (a) AUTHORIZATION OF APPROPRIATIONS.—

3 (1) AUTHORIZATION.—There is authorized to  
4 be appropriated to the Secretary to carry out this  
5 title \$15,000,000 for each of fiscal years 2022  
6 through 2032.

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

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

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

21 **TITLE II—CONTINUOUS**  
22 **PLANKTON RECORDER**

23 **SEC. 201. SURVEY.**

24 (a) IN GENERAL.—Not later than 180 days after the  
25 date of enactment of this Act, and on an ongoing basis

1 thereafter, the Secretary of Commerce shall conduct a  
2 Continuous Plankton Recorder survey.

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

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

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

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

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

20 (c) AUTHORIZATION OF APPROPRIATIONS.—To carry  
21 out this section there is authorized to be appropriated to  
22 the Secretary of Commerce \$300,000 for each of fiscal  
23 years 2022 through 2032.

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