

**Calendar No. 519**

116TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
116-258 }

SCIENTIFIC ASSISTANCE FOR VERY ENDAN-  
GERED NORTH ATLANTIC RIGHT WHALES  
ACT OF 2019

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 2453



AUGUST 13, 2020.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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### SCIENTIFIC ASSISTANCE FOR VERY ENDANGERED NORTH ATLANTIC RIGHT WHALES ACT OF 2019

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AUGUST 13, 2020.—Ordered to be printed  
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Mr. WICKER, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### R E P O R T

[To accompany S. 2453]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (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, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

The purpose of S. 2453, the Scientific Assistance for Very Endangered North Atlantic Right Whales Act (SAVE Right Whales Act), is to authorize appropriations to fund projects for the conservation of North Atlantic right whales, to require a report to Congress on the effectiveness of projects under the Act, and to designate a continuous plankton recorder survey.

#### BACKGROUND AND NEEDS

North Atlantic right whales are baleen whales, which feed on krill and small fish by straining large amounts of ocean water

through baleen plates.<sup>1</sup> North Atlantic right whales are generally found in the northeast Atlantic, up the coast to Canada, but their migratory pattern ranges to the southeastern European coast.<sup>2</sup> The North Atlantic right whale has been listed as endangered under the Endangered Species Act (ESA) since 1970 and is currently designated depleted by the Marine Mammal Protection Act (MMPA).<sup>3</sup> The North Atlantic right whale is “one of the world’s most endangered large whale species, with only about 400 whales remaining.”<sup>4</sup>

While the North Atlantic right whale population was decimated in the early 1800s by the whaling industry, today the biggest threat to the North Atlantic right whale population is human activity.<sup>5</sup> Vessel collisions and entanglement are the two leading causes of whale mortality.<sup>6</sup> North Atlantic right whale migration routes and habitats are near major ports in the Atlantic Ocean and often cross over highly traveled shipping lanes.<sup>7</sup> Vessel collisions cause death by blunt force trauma and propeller cuts.<sup>8</sup> Entanglement in fishing gear can injure or stress a whale, leading to decreased fertility and, in many cases, death.<sup>9</sup> “[M]ore than 85 percent of right whales have been entangled in fishing gear at least once, and about 60 percent have been entangled multiple times.”<sup>10</sup> Entanglements and strikes which do not cause immediate death often have long-lasting negative effects which later develop into conditions which result in slow, painful deaths.<sup>11</sup>

North Atlantic right whales are also threatened by small population numbers.<sup>12</sup> Of the approximately 400 right whales left, fewer than 100 of them are breeding females.<sup>13</sup> There have been only 12 births recorded by North Atlantic right whales since 2017.<sup>14</sup> Conversely, there has been a record 30 right whale mortalities since 2017, which was declared an Unusual Mortality Event under the MMPA.<sup>15</sup> Right whales give birth to a single calf after a 12-month long pregnancy.<sup>16</sup> Normally, there is a 3-year interval between right whale calving events, but recent studies have revealed that female North Atlantic right whales are only having calves every 6 to 10 years.<sup>17</sup> Some biologists cite “additional stress caused by en-

<sup>1</sup> NOAA Fisheries, “North Atlantic Right Whale” (<https://www.fisheries.noaa.gov/species/north-atlantic-right-whale>) (accessed Mar. 5, 2020).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> NOAA Fisheries, “North Atlantic Right Whale: Conservation and Management” (<https://www.fisheries.noaa.gov/species/north-atlantic-right-whale#conservation-management>) (accessed Mar. 5, 2020).

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Sharon Livermore, “Ship Strikes and Whales: Preventing a Collision Course,” International Fund for Animal Welfare, Nov. 4, 2019 (<https://www.ifaw.org/people-and-ideas/opinions/ship-strikes-whales-preventing-collision>); Ed Yong, “North Atlantic Right Whales Are Dying in Horrific Ways,” *The Atlantic*, Jun. 27, 2019 (<https://www.theatlantic.com/science/archive/2019/06/1-north-atlantic-right-whales-have-died-month/592840/>). See also Russ Bynum (AP), “Injured Baby Right Whale Given Grim Prognosis After 2nd Look,” *Seattle Times*, Jan. 13, 2020 (<https://www.seattletimes.com/nation-world/nation/injured-baby-right-whale-given-grim-prognosis-after-2nd-look/>).

<sup>12</sup> “North Atlantic Right Whale,” *supra* note 1.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> NOAA Fisheries, “2017–2020 North Atlantic Right Whale Unusual Mortality Event” (<https://www.fisheries.noaa.gov/national/marine-life-distress/2017-2020-north-atlantic-right-whale-unusual-mortality-event>) (accessed Mar. 5, 2020).

<sup>16</sup> Id.

<sup>17</sup> Id.

tanglement [as] one of the reasons that females are calving less often.”<sup>18</sup>

NOAA Fisheries designated critical habitat for the North Atlantic right whale in 1994, which was revised in 2016.<sup>19</sup> It includes “a foraging area in the Northeast and a calving area in the Southeast.”<sup>20</sup> Researchers have estimated that the number of right whales that can be killed each year while still maintaining a stable population is 0.9.<sup>21</sup> There were 10 North Atlantic right whale deaths recorded in 2019.<sup>22</sup>

The SAVE Right Whales Act would support collaborative projects between States, nongovernmental organizations, and members of the fishing and shipping industries to reduce the impacts of human activities on North Atlantic right whales.

#### SUMMARY OF PROVISIONS

S. 2453, the SAVE Right Whales Act, would do the following:

- Provide for a \$5 million appropriation for each of fiscal years 2019–2029 to fund projects for the conservation of North Atlantic right whales.
- Require a report to Congress on the effectiveness of projects under the Act.
- Designate a continuous plankton recorder survey.

#### LEGISLATIVE HISTORY

S. 2453 was introduced on September 10, 2019, by Senator Booker (for himself and Senators Isakson and Carper) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. Senators Roberts, Blumenthal, and Markey are additional cosponsors. On November 13, 2019, the Committee met in open Executive Session and, by voice vote, ordered S. 2453 reported favorably with an amendment (in the nature of a substitute).

A related bill, H.R. 1568, was introduced on March 6, 2019, by Representative Moulton (for himself and Representatives Huffman, Keating, Posey, and Rutherford) and was referred to the Committee on Natural Resources (in addition to the Committee on the Budget) of the House of Representatives. There are 49 additional cosponsors. On October 18, 2019, H.R. 1568 was reported favorably with an amendment (in the nature of a substitute) and was discharged by the Committee on the Budget.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

<sup>18</sup> Id.

<sup>19</sup> “North Atlantic Right Whale: Conservation and Management,” supra note 8.

<sup>20</sup> Id.

<sup>21</sup> Yong, supra note 11.

<sup>22</sup> “2017–2019 North Atlantic Right Whale Unusual Mortality Event,” supra note 15.

<b>S. 2453, SAVE Right Whales Act</b>			
As ordered reported by the Senate Committee on Commerce, Science, and Transportation on November 13, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	*	*
Spending Subject to Appropriation (Outlays)	*	25	53
Statutory pay-as-you-go procedures apply?	No	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between -\$500,000 and \$500,000.			

S. 2453 would authorize the appropriation of \$5.3 million annually from 2020 through 2029 for the National Oceanic and Atmospheric Administration (NOAA) to provide competitive grants for projects to conserve a particular species of whale, known as the North Atlantic right whale (\$5.0 million), and to conduct surveys using a device known as a continuous plankton recorder on an ongoing basis (\$0.3 million).

Assuming appropriation of the authorized amounts, CBO estimates that implementing S. 2453 would cost \$25 million over the 2020–2025 period and \$28 million after 2025. The costs of the legislation, detailed in Table 1, fall into budget function 300 (natural resources and environment).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF S. 2453

	By fiscal year, millions of dollars—						
	2020	2021	2022	2023	2024	2025	2020–2025
Increases in Spending Subject to Appropriation							
Authorization .....	5	5	5	5	5	5	32
Estimated Outlays .....	*	4	5	5	5	5	25

Components may not sum to totals because of rounding. \* = between zero and \$500,000.

Under the bill, NOAA also would be authorized to accept and spend monetary gifts to supplement appropriated funds provided for the right whale conservation grants. The receipt and spending of such gifts are recorded in the budget as direct spending. Because any money received would probably be spent soon thereafter, CBO estimates that the net effect on direct spending would be negligible.

On May 13, 2019, CBO transmitted a cost estimate for H.R. 1568, the SAVE Right Whales Act, as ordered reported by the House Committee on Natural Resources on May 1, 2019. H.R. 1568 and S. 2453 are similar and the CBO cost estimates for those pieces of legislation reflect differences only in the time periods over which CBO estimated the costs.

The CBO staff contact for this estimate is Madeleine Fox. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

##### *Number of Persons Covered*

S. 2453, as reported, does not create any new programs or impose any new regulatory requirements and therefore will not subject any individuals or businesses to new regulations.

##### *Economic Impact*

S. 2453 is not expected to have a negative impact on the Nation's economy.

##### *Privacy*

S. 2453, as reported, would have no impact on the personal privacy of individuals.

##### *Paperwork*

S. 2453 would require additional paperwork from grant applicants, but this would be offset by the benefit of receiving the grant for research into right whale conservation.

#### CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

#### SECTION-BY-SECTION ANALYSIS

##### *Sec. 1. Short title.*

This section would provide that the bill may be cited as the "Scientific Assistance for Very Endangered North Atlantic Right Whales Act of 2019" or the "SAVE Right Whales Act".

##### *Sec. 2. Findings; sense of Congress.*

This section would establish a congressional finding that North Atlantic right whales are critically endangered, with approximately 400 whales remaining at the time of introduction.

It would also find that North Atlantic right whales are listed as an endangered species under the Endangered Species Conservation Act of 1969 and designated as depleted under the Marine Mammal Protection Act of 1972 (MMPA). It would find that North Atlantic right whales are highly vulnerable to the impacts of human activity and habitat degradation and that North Atlantic right whales frequently cross paths with major shipping lanes. It would find that the two leading causes of injury and death to the species are vessel collisions and fishing gear entanglements.

This section would find that recent analysis suggests that the species will lose its ability to recover in a few decades if human-caused mortality is not reduced.

It would establish a sense of Congress that the Governments of the United States and Canada must work together to conserve and protect North Atlantic right whales.

*Sec. 3. Purposes.*

This section would establish the purposes of this Act to rebuild healthy populations of the North Atlantic right whale and assist in their conservation and protection by financially supporting right whale conservation programs that minimize conflicts between North Atlantic right whales and human activities.

TITLE I—NORTH ATLANTIC RIGHT WHALE CONSERVATION

*Sec. 101. North Atlantic right whale conservation assistance.*

This section would establish an annual grant program for the conservation of North Atlantic right whales. It would allow for project proposals to be submitted by relevant State and Tribal agencies or any other individual or entity with the expertise required for the conservation of the North Atlantic right whale.

This section would direct the Secretary to approve projects likely to aid in the recovery and sustainability of North Atlantic right whales, and prioritize projects designed to reduce the lethal and sub-lethal affects of human activities on North Atlantic right whales. It would also, in most cases, require a 25 percent non-Federal matching funds requirement, which could be met through in-kind contributions.

*Sec. 102. Report to Congress.*

This section would require the Secretary to submit a report to Congress on the results and efficacy of projects receiving assistance under this Act, including recommendations for improvement, not later than 2 years after enactment, and every 5 years thereafter.

*Sec. 103. Funding.*

This section would authorize \$5 million to be appropriated to the Secretary for each of fiscal years 2019–2029 to carry out this title. It would limit administrative expenses to no more than 5 percent, or \$80,000, whichever is greater.

This section would establish that funds appropriated under this Act would supplement and not supplant other amounts available to the Secretary.

This section would also allow the Secretary to accept and utilize donations to provide assistance under section 101.

TITLE II—CONTINUOUS PLANKTON RECORDER

*Sec. 201. Survey.*

This section would require the Secretary to conduct a continuous plankton recorder survey not later than 180 days after enactment.

The survey would be conducted by the Northeast Fisheries Science Center (NFSC), utilizing the resources of and partnering with research institutions, nonprofits, commercial vessels, and other Federal agencies.



This section would require the NFSC to ensure relevant survey samples and results are made publicly available. It would prioritize the collection of plankton samples and data that inform the conservation of North Atlantic right whales. It would also require the NFSC to coordinate with the Government of Canada to develop a transboundary understanding of plankton abundance and distribution.

This section would authorize \$300,000 to be appropriated to the Secretary for each of fiscal years 2019–2029 for these purposes.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

