

111TH CONGRESS  
1ST SESSION

# H. R. 2455

To amend the Whale Conservation and Protection Study Act to promote international whale conservation, protection, and research, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 18, 2009

Mr. FALDOMAVEGA (for himself, Ms. BORDALLO, Mr. DELAHUNT, and Ms. HIRONO) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committees on Natural Resources, Ways and Means, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Whale Conservation and Protection Study Act to promote international whale conservation, protection, and research, 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. WHALE CONSERVATION AND PROTECTION.**

4 The Whale Conservation and Protection Study Act  
5 (16 U.S.C. 917 et seq.) is amended to read as follows:

1 **“SECTION 1. SHORT TITLE.**

2 “This Act may be cited as the ‘International Whale  
3 Conservation and Protection Act of 2009’.

4 **“SEC. 2. FINDINGS AND PURPOSE.**

5 “(a) FINDINGS.—The Congress finds the following:

6 “(1) Whales are of great aesthetic and scientific  
7 interest to mankind and are a vital part of the ma-  
8 rine ecosystem.

9 “(2) For hundreds of years whales were killed  
10 for commercial purposes, with some whale stocks  
11 hunted to near extinction.

12 “(3) As long-lived and slow-breeding mammals,  
13 whales are particularly vulnerable to the long-lasting  
14 effects from over-exploitation and many whale stocks  
15 have not recovered.

16 “(4) Today whales face an uncertain future due  
17 to a variety of threats, including ozone depletion,  
18 chemical and noise pollution, marine debris, vessel  
19 strikes, entanglements with fishing gear, prey deple-  
20 tion, increasing offshore industrial development, and  
21 escalating threats from climate change, including  
22 ocean acidification.

23 “(5) Because whales migrate throughout the  
24 world’s oceans, international cooperation is required  
25 to successfully conserve and protect them.

1           “(6) The United States has been a world leader  
2           in whale conservation and protection, particularly  
3           through the International Whaling Commission, and  
4           must reassert global leadership in improving and  
5           strengthening whale conservation to ensure that  
6           commercial, scientific, or any other type of lethal  
7           whaling for nonaboriginal subsistence purposes does  
8           not occur.

9           “(7) As a world leader in whale protection, the  
10          United States should increase and strengthen whale  
11          conservation, research, and protection efforts within  
12          its own Exclusive Economic Zone and High Seas  
13          outside the Exclusive Economic Zone, to ensure that  
14          whale stocks that migrate through or reside in these  
15          waters receive full protection.

16          “(b) PURPOSES.—The purposes of this Act are as fol-  
17          lows:

18               “(1) To reassert United States global leader-  
19               ship in whale conservation and protection and renew  
20               the United States commitment to whale conserva-  
21               tion.

22               “(2) To promote international efforts to con-  
23               serve and protect the world’s whales throughout  
24               their range.

1           “(3) To conclude a whale protection Agreement  
2           with the Government of Canada aimed at coordi-  
3           nating and promoting conservation efforts for whales  
4           that migrate through waters of both countries.

5           “(4) To strengthen whale conservation and pro-  
6           tection efforts of relevant international organiza-  
7           tions, including the United Nations Convention on  
8           the Conservation of Migratory Species of Wild Ani-  
9           mals, the International Convention for the Regula-  
10          tion of Whaling, the Convention on International  
11          Trade in Endangered Species of Wild Fauna and  
12          Flora, and the International Maritime Organization.

13          “(5) To ensure that the IWC commercial whal-  
14          ing ban is neither lifted nor weakened, and that any  
15          existing commercial whaling, along with lethal sci-  
16          entific and illegal whaling, is ended.

17          “(6) To reduce, and where possible, eliminate  
18          sources of human-caused death, injury, harassment,  
19          and disturbance of the world’s whales.

20          “(7) To initiate, expand, and fund research to  
21          improve our understanding of the world’s whales,  
22          whale health and reproduction, whale habitats and  
23          the impacts of human activities, and other threats to  
24          whales.

1 **“SEC. 3. INTERNATIONAL WHALE CONSERVATION AND PRO-**  
2 **TECTION.**

3 “(a) COMMERCIAL WHALING RESTRICTIONS AND  
4 THE INTERNATIONAL WHALING COMMISSION.—The Sec-  
5 retary of Commerce, in cooperation with the Secretary of  
6 State, shall—

7 “(1) firmly restate the United States’ strong  
8 opposition to commercial whaling in any form and  
9 refuse to engage in any negotiation or reinterpretation of the IWRC that would weaken the moratorium on commercial whaling, create any new categories of whaling, condone lethal scientific whaling, or otherwise weaken whale conservation and protection;  
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15 “(2) continue to recognize and support subsistence whaling carried out by aboriginal peoples that have a continuing traditional dependence on whaling, as well as support the further development of the Aboriginal Whaling Management Scheme;  
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20 “(3) improve the transparency of the IWC and its committees and working groups, including expanding participation by civil society; and  
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23 “(4) encourage other members of the IWC to—

24 “(A) support amendments to the ICRW  
25 that would eliminate loopholes in Articles V and  
26 VIII of the ICRW;

1           “(B) recognize and adhere to the advice of  
2           the IWC Scientific Committee regarding the en-  
3           vironmental impacts on whale populations and  
4           incorporate that advice into the deliberations of  
5           the IWC;

6           “(C) recognize and adhere to the advice of  
7           the IWC Scientific Committee regarding the  
8           evaluation of vessel strikes and the impacts,  
9           benefits and management of whale watch ves-  
10          sels;

11          “(D) reject proposals that allow for the  
12          continued killing of whales; and

13          “(E) modernize the IWC, consistent with  
14          other international conservation treaties, by ex-  
15          panding participation by civil society, closing  
16          loopholes in the ICRW currently being exploited  
17          by whaling nations, adding meaningful enforce-  
18          ment mechanisms to the ICRW, and pursue any  
19          other action consistent with the goals of this  
20          subsection.

21          “(b) VESSEL NOISE RESTRICTIONS.—

22               “(1) INTERNATIONAL MARITIME ORGANIZA-  
23          TION.—The Secretary, in cooperation with the  
24          United States Coast Guard, shall—

1           “(A) continue to pursue, through the  
2           IMO’s Marine Environment Protection Com-  
3           mittee, the establishment of guidelines for mini-  
4           mizing the introduction of incidental noise from  
5           commercial shipping operations into marine en-  
6           vironments for purposes of reducing the poten-  
7           tial adverse affects on whales and other marine  
8           life; and

9           “(B) identify and promote the use of areas  
10          to be avoided by commercial vessels and other  
11          navigational measures, such as speed reduction  
12          areas in important whale habitats, in order to  
13          minimize the threat of serious injury and to  
14          whales resulting from collisions with commercial  
15          vessels.

16          “(2) REPORT.—The Secretary shall submit a  
17          report to the Congress describing the progress made  
18          by the IMO towards the adoption and implementa-  
19          tion of guidelines for minimizing vessel noise, which  
20          shall include recommendations on any changes in the  
21          laws or regulations of the United States, for the  
22          purpose of implementing or encouraging compliance  
23          with such guidelines.

24          “(c) CONVENTION ON INTERNATIONAL TRADE IN  
25          ENDANGERED SPECIES OF WILD FAUNA AND FLORA.—

1 The Secretary, in cooperation with the Secretary of the  
2 Interior, shall take appropriate actions to encourage all  
3 nations who hold Reservations under the CITES to the  
4 great whales listed on Appendix I of the CITES to with-  
5 draw their reservations and terminate all commercial  
6 trade in whale meat and whale products as such trade un-  
7 dermines the effectiveness of international whale conserva-  
8 tion efforts.

9 “(d) INTERNATIONAL COOPERATION AND COMPLI-  
10 ANCE.—

11 “(1) REPORT ON TAKING OF WHALES BY A  
12 FOREIGN COUNTRY.—No later than March 1, the  
13 Secretary shall publish in the Federal Register an  
14 annual report determining, under the terms of the  
15 Pelly Amendment to the Fishermen’s Protection Act  
16 of 1967 (22 U.S.C. 1978), whether nationals of any  
17 foreign country are engaging in trade or taking  
18 which diminishes the effectiveness of the ICRW,  
19 CITES, or any regulation, resolution, or decision un-  
20 dertaken by the IWC or Conference of the Parties  
21 to CITES with respect to whales.

22 “(2) CERTIFICATION TO THE PRESIDENT.—  
23 Within 15 days of publishing the report pursuant to  
24 paragraph (1), the Secretary shall certify to the  
25 President any instance of trade or taking with re-



1       spect to whales by a foreign country, pursuant to  
2       section 1978 of title 22, United States Code, and  
3       notify the offending country of the activities that re-  
4       sulted in such certification.

5           “(3) APPLICATION OF EXISTING LAW.—Except  
6       as expressly modified by this subsection, all rights,  
7       duties, and provisions set forth in section 1978 of  
8       title 22, United States Code, pursuant to certifi-  
9       cations made under 22 U.S.C. 1978(a)(1) and 1978  
10      (a)(2), shall also apply to certifications made under  
11      paragraph (2).

12          “(4) PUBLICATION OF LIST OF OFFENDING  
13      FOREIGN COUNTRIES.—Where a country has been  
14      the subject of certification under paragraph (2) in  
15      three or more consecutive years, the Secretary  
16      shall—

17           “(A) publish within 180 days after the  
18           most recent certification a notice in the Federal  
19           Register describing the actions the Secretary  
20           has taken to eliminate the facts that required a  
21           certification under paragraph (2); and

22           “(B) if those facts have not changed, rec-  
23           ommending actions that the President may take  
24           with respect to the certified country, consistent  
25           with paragraph (5).

1           “(5) IMPORTATION RESTRICTIONS.—In consid-  
2           ering whether to direct the Secretary of Treasury to  
3           take action pursuant to section 1978(a)(4) of title  
4           22, United States Code, with respect to any country  
5           certified under paragraph (2), the President may di-  
6           rect the Secretary of the Treasury to prohibit the  
7           importation into the United States of any products  
8           from the offending country consistent with section  
9           1978(a)(4) of title 22, United States Code, or to  
10          take any other action sanctioned by the World Trade  
11          Organization (as defined at 19 U.S.C. 3501(8)) or  
12          the multilateral trade agreements (as defined at 19  
13          U.S.C. 3501(4)).

14          “(e) CONSERVATION AGREEMENT BETWEEN THE  
15          UNITED STATES AND CANADA.—

16          “(1) NEGOTIATIONS.—Within 180 days after  
17          date of enactment of this Act, the Secretary, in con-  
18          sultation with the Secretary of State, shall com-  
19          mence negotiations with the Government of Canada  
20          on a North Atlantic Whale Conservation Agreement  
21          with the goal of concluding an Agreement within 18  
22          months. The purpose of such an agreement shall be  
23          to—

24                  “(A) promote scientific research and un-  
25                  derstanding of North Atlantic whales, particu-

1           larly the endangered North Atlantic right  
2           whale;

3                 “(B) identify, coordinate, and implement  
4           independent and complimentary measures nec-  
5           essary to reduce serious injuries and mortalities  
6           to whales from vessel strikes and entanglements  
7           in fishing gear;

8                 “(C) assist in the enforcement of both  
9           country’s laws and regulations concerning  
10          North Atlantic right whale conservation; and

11                “(D) identify actions that could be taken  
12          to further protect the North Atlantic right  
13          whale.

14                “(2) GOVERNMENT COOPERATION REQUIRED.—  
15          The Agreement shall require both governments to  
16          cooperate in—

17                “(A) the identification and coordination of  
18          essential scientific research needed to achieve  
19          the goals of the Agreement;

20                “(B) identifying actions needed to reduce  
21          serious injuries and mortalities to whales, espe-  
22          cially North Atlantic right whales, from vessel  
23          strikes; and

24                “(C) developing methods to reduce injuries  
25          and mortalities to whales, especially North At-

1           lantic right whales, from entanglement in fish-  
2           ing gear, including gear marking schemes and  
3           coordinated disentanglement activities.

4           “(3)     AGREEMENT     SPECIFICATIONS.—The  
5     Agreement shall require each party to make rec-  
6     ommendations to their respective governments on  
7     the results of the consultations and actions or activi-  
8     ties that need to be taken to protect whales, espe-  
9     cially North Atlantic right whales. The Agreement  
10    shall include a commitment by each party to imple-  
11    ment the recommendations resulting from the con-  
12    sultations, to the extent allowed by and consistent  
13    with national laws and the national recovery plans  
14    for North Atlantic right whales. The Agreement may  
15    be expanded to include other shared whale stocks in  
16    the Pacific Ocean.

17           “(4) CONSULTATION REQUIRED.—Prior to, and  
18    during negotiations of the Agreement, the Secretary  
19    shall consult with the Atlantic Large Whale Take  
20    Reduction Team, the Marine Mammal Commission,  
21    the New England Fishery Management Council, the  
22    Atlantic States Marine Fisheries Commission, and  
23    other whale scientists to seek their advice on the  
24    Agreement.

1           “(5) PROGRESS REPORT.—The Secretary shall  
2       submit a report to the Congress describing the re-  
3       sults of the negotiations, the progress made by both  
4       governments in implementing such results or rec-  
5       ommendations and recommendations for changes in  
6       law needed to implement the results, and rec-  
7       ommendations of the Agreement.

8           “(f) OCEAN NOISE.—The Secretary, together with  
9       the Secretary of State, shall support and encourage efforts  
10      of international and intergovernmental organizations to  
11      study and reduce the adverse effects of anthropogenic  
12      noise on whales and other marine life, recognizing the im-  
13      portance of military readiness activities which shall, so far  
14      as is reasonable and practicable, be conducted in a manner  
15      consistent with those efforts.

16          “(g) INTERNATIONAL MARINE PROTECTED AREA  
17      NETWORKS.—

18           “(1) IMA DEVELOPMENT.—The Secretary shall  
19      develop and support international mechanisms, pro-  
20      tocols, and action plans to identify and address  
21      sources of threats to the world’s whales and other  
22      cetaceans and to reduce, with a goal to eliminate,  
23      such threats through [the establishment] of new  
24      International Marine Protected Areas and IMA net-  
25      works.

1           “(2) REQUIREMENTS.—The Secretary’s efforts  
2       in paragraph (1) shall include—

3           “(A) a review of existing national and  
4       international marine protected areas and net-  
5       works and an evaluation of how to improve  
6       their effectiveness, specifically with reference to  
7       protection of whales and the management of  
8       human uses within these areas; and

9           “(B) an identification and mapping of ad-  
10      ditional important whale habitats to maximize  
11      the protection of migratory destinations and  
12      corridors through IMPAs.

13          “(3) REPORT.—The Secretary shall submit to  
14      the Congress a biannual report describing actions  
15      taken to fulfill the purposes of this subsection.

16   **“SEC. 4. WHALE RESEARCH.**

17          “(a) ESTABLISHMENT OF RESEARCH INITIATIVES.—  
18      The Secretary shall establish comprehensive research ini-  
19      tiatives to improve knowledge about the world’s whales in  
20      order to enhance whale conservation efforts. Such initia-  
21      tives shall include—

22          “(1) the monitoring of whale mortality, habitat  
23      use, reproduction, and feeding patterns;

24          “(2) the collection of information on whale  
25      health and causes of deaths obtainable through

1 whale necropsies, particularly of endangered whale  
2 species such as the North Atlantic right whale;

3 “(3) an assessment of the direct and indirect  
4 effects of anthropogenic noise on whale distribution,  
5 behavior, and reproduction;

6 “(4) information on the impacts on reproduc-  
7 tion and immune systems from chemical pollutants,  
8 including polybrominated diphenylethers, pthalates,  
9 bisphenol A, and polycyclic aromatic hydrocarbons;

10 “(5) information on ecosystem changes due to  
11 climate warming;

12 “(6) research and development of more risk  
13 averse fishing gear, fishing methods, and develop-  
14 ment of effective fishing gear marking systems; and

15 “(7) the use of passive acoustic sonar and other  
16 technologies, including vessel design, to reduce mor-  
17 tality of whales from vessel strikes.

18 “(b) CONSULTATION REQUIRED.—In designing these  
19 research initiatives, the Secretary shall consult with the  
20 Marine Mammal Commission and whale experts, including  
21 those from the Pacific Insular Area, that are knowledge-  
22 able about regional issues relating to whale conservation  
23 and management.

1       “(c) REPORT.—The Secretary shall submit a bian-  
2 nual report to the Congress on the progress and findings  
3 of the research initiatives established under this section.

4   **“SEC. 5. DEFINITIONS.**

5       “In this Act:

6           “(1) AGREEMENT.—The term ‘Agreement’  
7 means the North Atlantic Whale Conservation  
8 Agreement.

9           “(2) CITES.—The term ‘CITES’ means the  
10 Convention on International Trade in Endangered  
11 Species of Wild Fauna and Flora.

12          “(3) ICRW.—The term ‘ICRW’ means the  
13 International Convention for the Regulation of  
14 Whaling.

15          “(4) IMO.—The term ‘IMO’ means the Inter-  
16 national Maritime Organization.

17          “(5) IMA.—The term ‘IMA’ means Inter-  
18 national Marine Protected Areas.

19          “(6) IWC.—The term ‘IWC’ means the Inter-  
20 national Whaling Commission.

21          “(7) SECRETARY.—The term ‘Secretary’ means  
22 the Secretary of Commerce or his designee.

23          “(8) WHALES.—The term ‘whales’ includes all  
24 species of whales but not any species of dolphin or  
25 porpoise.



1 **“SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

2 “There is authorized to be appropriated to the Sec-  
3 retary of Commerce \$30,000,000 for each of the fiscal  
4 years 2010 through 2015 to carry out the provisions of  
5 this Act, of which such sums as the Secretary determines  
6 are appropriate shall be made available annually for a  
7 competitive research grants program.”.

8 **SEC. 2. AMENDMENT TO THE MARINE MAMMAL PROTEC-**  
9 **TION ACT OF 1972.**

10 (a) IN GENERAL.—Section 101(f) of the Marine  
11 Mammal Protection Act of 1972 (16 U.S.C. 1371(f)) is  
12 amended—

13 (1) by striking “Secretary of Defense” each  
14 place it appears and inserting “President”;

15 (2) in paragraphs (1) and (3), by striking “or  
16 category of actions”;

17 (3) in paragraphs (2) and (3), by striking “2  
18 years” each place it appears and inserting “1 year”;  
19 and

20 (4) in paragraph (4), by striking “Committee  
21 on Armed Services of the House of Representatives”  
22 and inserting “Committee on Armed Services and  
23 Committee on Natural Resources of the House of  
24 Representatives,” and by striking “Committee on  
25 Armed Services of the Senate” and inserting “Com-

- 1        mittee on Armed Services and Committee on Com-
- 2        merce, Science and Transportation in the Senate”.

○