

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.

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 2009

Mr. FALCOMAVAEGA (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

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
10 of the IWRC that would weaken the morato-
11 rium on commercial whaling, create any new cat-
12 egories of whaling, condone lethal scientific whaling,
13 or otherwise weaken whale conservation and protec-
14 tion;

15 "(2) continue to recognize and support subsist-
16 ence whaling carried out by aboriginal peoples that
17 have a continuing traditional dependence on whaling,
18 as well as support the further development of the
19 Aboriginal Whaling Management Scheme;

20 "(3) improve the transparency of the IWC and
21 its committees and working groups, including ex-
22 panding participation by civil society; and

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 mual 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”.

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