

111TH CONGRESS  
2D SESSION

# S. 3116

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 SENATE OF THE UNITED STATES

MARCH 15, 2010

Mr. KERRY 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 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:

6 **“SECTION 1. SHORT TITLE.**

7 **“This Act may be cited as the ‘International Whale**  
8 **Conservation and Protection Act of 2010’.**

1 **“SEC. 2. FINDINGS, SENSE OF CONGRESS, AND PURPOSES.**

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

3 “(1) Whales are of great aesthetic and scientific  
4 interest to mankind and are a vital part of the ma-  
5 rine ecosystem.

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

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

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

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

23 “(6) The United States has been a world leader  
24 in whale conservation and protection, particularly  
25 through the International Whaling Commission, and  
26 must reassert global leadership in improving and

1 strengthening whale conservation to ensure that  
2 commercial, scientific, or any other type of lethal  
3 whaling for nonindigenous subsistence purposes does  
4 not occur.

5 “(b) SENSE OF CONGRESS.—As a world leader in  
6 whale protection, the United States should increase and  
7 strengthen whale conservation, research, and protection  
8 efforts within its exclusive economic zone and high seas  
9 outside the exclusive economic zone, to ensure that whale  
10 stocks that migrate through or reside in such waters re-  
11 ceive full protection.

12 “(c) PURPOSES.—The purposes of this Act are as fol-  
13 lows:

14 “(1) To reassert United States global leader-  
15 ship in whale conservation and protection and to  
16 renew the United States commitment to whale con-  
17 servation.

18 “(2) To promote international efforts to con-  
19 serve and protect the world’s whales throughout  
20 their range.

21 “(3) To promote a whale protection agreement  
22 between the United States and Canada aimed at co-  
23 ordinating and promoting conservation efforts for  
24 whales that migrate through waters of both coun-  
25 tries.

1           “(4) To strengthen the whale conservation and  
2 protection efforts of relevant international organiza-  
3 tions, including the Convention on the Conservation  
4 of Migratory Species of Wild Animals, done at Bonn  
5 on June 23, 1973, the ICRW, CITES, and the IMO.

6           “(5) To ensure that the IWC commercial whal-  
7 ing ban is not lifted or weakened and that any exist-  
8 ing commercial whaling, along with lethal scientific  
9 or illegal whaling, is ended.

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

13           “(7) To initiate, expand, and fund research to  
14 improve understanding of the world’s whales, whale  
15 health and reproduction, whale habitats, and the im-  
16 pacts of human activities, and other threats to  
17 whales.

18 **“SEC. 3. DEFINITIONS.**

19           “In this Act:

20           “(1) AGREEMENT.—Except as otherwise spe-  
21 cifically provided, the term ‘Agreement’ means the  
22 North Atlantic Whale Conservation Agreement re-  
23 ferred to in section 4(e).

24           “(2) CITES.—The term ‘CITES’ means the  
25 Convention on International Trade in Endangered

1 Species of Wild Fauna and Flora, with appendices,  
2 done at Washington March 3, 1973 (27 UST 1087).

3 “(3) ICRW.—The term ‘ICRW’ means the  
4 International Convention for the Regulation of  
5 Whaling, done at Washington December 2, 1946 (62  
6 Stat. 1716; TIAS 1849).

7 “(4) IMO.—The term ‘IMO’ means the Inter-  
8 national Maritime Organization established pursuant  
9 to a Convention adopted under the auspices of the  
10 United Nations in Geneva on March 17, 1948.

11 “(5) IMPA.—The term ‘IMPA’ means Inter-  
12 national Marine Protected Areas.

13 “(6) IWC.—The term ‘IWC’ means the Inter-  
14 national Whaling Commission established pursuant  
15 to Article III of the ICRW.

16 “(7) MARINE MAMMAL COMMISSION.—The term  
17 ‘Marine Mammal Commission’ means the Marine  
18 Mammal Commission established by section 201 of  
19 the Marine Mammal Protection Act of 1972 (16  
20 U.S.C. 1401).

21 “(8) SECRETARY.—Except as otherwise specifi-  
22 cally provided, the term ‘Secretary’ means the Sec-  
23 retary of Commerce.

24 “(9) WHALES.—The term ‘whales’—

25 “(A) includes all whale species; and

1           “(B) does not include any species of dol-  
2           phin or porpoise.

3           “(10) WORLD TRADE ORGANIZATION.—The  
4           term ‘World Trade Organization’ means the organi-  
5           zation established pursuant to the Marrakesh Agree-  
6           ment Establishing the World Trade Organization  
7           (WTO), done at Marrakesh on April 15, 1994.

8           **“SEC. 4. INTERNATIONAL WHALE CONSERVATION AND PRO-**  
9           **TECTION.**

10          “(a) COMMERCIAL WHALING RESTRICTIONS AND  
11          THE INTERNATIONAL WHALING COMMISSION.—The Sec-  
12          retary, in cooperation with the Secretary of State, shall—

13               “(1) firmly restate the United States strong op-  
14               position to commercial whaling in any form and any  
15               reinterpretation of the ICRW that would weaken the  
16               moratorium on commercial whaling, create any new  
17               categories of whaling, condone lethal scientific whal-  
18               ing, or otherwise weaken whale conservation and  
19               protection;

20               “(2) continue to recognize and support subsist-  
21               ence whaling carried out by indigenous peoples that  
22               have a continuing traditional dependence on whaling,  
23               as well as support the further development of the  
24               Aboriginal Whaling Management Scheme;

1           “(3) improve the transparency of the IWC and  
2 the committees and working groups of the IWC, in-  
3 cluding expanding participation by civil society; and

4           “(4) encourage other members of the IWC to—

5                 “(A) support amendments to the ICRW  
6 that would eliminate loopholes that permit har-  
7 vesting of whales in Articles V and VIII of the  
8 ICRW;

9                 “(B) recognize and adhere to the advice of  
10 the IWC Scientific Committee regarding the en-  
11 vironmental impacts on whale populations and  
12 incorporate that advice into the deliberations of  
13 the IWC;

14                 “(C) recognize and adhere to the advice of  
15 the IWC Scientific Committee regarding the  
16 evaluation of vessel strikes and the impacts,  
17 benefits, and management of whale watch ves-  
18 sels;

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

21                 “(E) modernize the IWC, consistent with  
22 other international conservation treaties, by ex-  
23 panding participation by civil society, closing  
24 loopholes in the ICRW currently being exploited  
25 by whaling nations, adding meaningful enforce-

1           ment mechanisms to the ICRW, and pursue any  
2           other action consistent with the goals of this  
3           subsection.

4           “(b) VESSEL NOISE RESTRICTIONS.—

5           “(1) INTERNATIONAL MARITIME ORGANIZA-  
6           TION.—The Secretary, in cooperation with the Coast  
7           Guard, shall—

8                   “(A) continue to pursue, through the  
9                   IMO’s Marine Environment Protection Com-  
10                  mittee, the establishment of guidelines for mini-  
11                  mizing the introduction of incidental noise from  
12                  commercial shipping operations into marine en-  
13                  vironments for purposes of reducing the poten-  
14                  tial adverse affects on whales and other marine  
15                  life; and

16                   “(B) identify and promote the use of areas  
17                   to be avoided by commercial vessels and other  
18                   navigational measures, such as speed reduction  
19                   areas in important whale habitats, in order to  
20                   minimize the threat of serious injury to whales  
21                   resulting from collisions with commercial ves-  
22                   sels.

23           “(2) REPORT.—

24                   “(A) REQUIREMENT.—The Secretary shall  
25                   submit to Congress a report describing the

1 progress made by the IMO towards the adop-  
2 tion and implementation of guidelines for mini-  
3 mizing vessel noise.

4 “(B) RECOMMENDATIONS.—The report re-  
5 quired by subparagraph (A) shall include the  
6 recommendations of the Secretary, if any, for  
7 changes to the laws or regulations of the United  
8 States to implement or encourage compliance  
9 with the guidelines referred to subparagraph  
10 (A).

11 “(c) CITES.—The Secretary, in cooperation with the  
12 Secretary of the Interior, shall take appropriate actions  
13 to encourage each country that holds a reservation under  
14 CITES to the great whales listed on Appendix I of CITES  
15 to withdraw such reservation and terminate all commercial  
16 trade in whale meat and whale products, as such trade  
17 undermines the effectiveness of international whale con-  
18 servation efforts.

19 “(d) INTERNATIONAL COOPERATION AND COMPLI-  
20 ANCE.—

21 “(1) REPORT ON TAKING OF WHALES BY A  
22 FOREIGN COUNTRY.—Not later than March 1, 2011,  
23 and annually thereafter, the Secretary shall publish  
24 in the Federal Register a report determining, under  
25 the terms of section 8 of the Fishermen’s Protective

1 Act of 1967 (22 U.S.C. 1978), whether nationals of  
2 any foreign country are engaging in trade or taking  
3 which diminishes the effectiveness of the ICRW,  
4 CITES, or any regulation, resolution, or decision un-  
5 dertaken by the IWC or Conference of the Parties  
6 to CITES, with respect to whales.

7 “(2) CERTIFICATION TO THE PRESIDENT.—Not  
8 later than 15 days after publishing the report re-  
9 quired by paragraph (1), the Secretary shall—

10 “(A) certify to the President any instance  
11 of trade or taking of whales by a foreign coun-  
12 try, pursuant to section 8 of the Fishermen’s  
13 Protective Act of 1967 (22 U.S.C. 1978); and

14 “(B) notify each such foreign country of  
15 the activities that resulted in such certification.

16 “(3) APPLICATION OF EXISTING LAW.—All  
17 rights, duties, and provisions of paragraphs (1) and  
18 (2) of section 8(a) of the Fishermen’s Protective Act  
19 of 1967 (22 U.S.C. 1978(a)) shall apply to certifi-  
20 cations made under paragraph (2).

21 “(4) PUBLICATION OF LIST OF OFFENDING  
22 FOREIGN COUNTRIES.—If a foreign country has been  
23 the subject of certification made under paragraph  
24 (2) in 3 or more consecutive years, the Secretary  
25 shall—

1           “(A) not later than 180 days after the date  
2 of the most recent certification, publish a notice  
3 in the Federal Register describing the actions  
4 the Secretary has taken to eliminate the facts  
5 that required a certification under paragraph  
6 (2); and

7           “(B) if those facts have not changed, rec-  
8 ommend actions that the President may take  
9 with respect to such foreign country, consistent  
10 with paragraph (5).

11           “(5) IMPORTATION RESTRICTIONS.—Consistent  
12 with section 8(a)(4) of the Fishermen’s Protective  
13 Act of 1967 (22 U.S.C. 1978(a)(4)), with respect to  
14 any country certified under paragraph (2), the  
15 President may direct the Secretary of the Treas-  
16 ury—

17           “(A) to prohibit the importation into the  
18 United States of any products from the offend-  
19 ing country consistent with such section  
20 8(a)(4); or

21           “(B) to take any other action sanctioned—

22           “(i) by the World Trade Organization;

23           or

24           “(ii) by a multilateral trade agree-  
25 ment (as defined by section 2 of the Uru-

1                   guay Round Agreements Act (19 U.S.C.  
2                   3501)).

3           “(e) CONSERVATION AGREEMENT BETWEEN THE  
4 UNITED STATES AND CANADA.—

5           “(1) NEGOTIATIONS.—Not later than 180 days  
6 after the date of the enactment of this Act, the Sec-  
7 retary, in consultation with the Secretary of State,  
8 shall commence negotiations with the Government of  
9 Canada on a North Atlantic Whale Conservation  
10 Agreement with the goal of concluding an Agree-  
11 ment within 18 months. The purposes of such an  
12 agreement shall be—

13                   “(A) to promote scientific research and un-  
14 derstanding of North Atlantic whales, particu-  
15 larly the endangered North Atlantic right  
16 whale;

17                   “(B) to identify, coordinate, and imple-  
18 ment independent and complimentary measures  
19 necessary to reduce serious injuries and mor-  
20 talities to whales from vessel strikes and entan-  
21 glements in fishing gear;

22                   “(C) to assist in the enforcement of the  
23 laws and regulations of the United States and  
24 of Canada concerning North Atlantic right  
25 whale conservation; and

1           “(D) to identify actions that could be  
2 taken to further protect the North Atlantic  
3 right whale.

4           “(2) GOVERNMENT COOPERATION REQUIRED.—  
5 The Agreement shall require the Government of the  
6 United States and the Government of Canada to co-  
7 operate in—

8           “(A) the identification and coordination of  
9 essential scientific research needed to achieve  
10 the goals of the Agreement;

11           “(B) identifying actions needed to reduce  
12 serious injuries and mortalities to whales, espe-  
13 cially North Atlantic right whales, from vessel  
14 strikes; and

15           “(C) developing methods to reduce injuries  
16 and mortalities to whales, especially North At-  
17 lantic right whales, from entanglement in fish-  
18 ing gear, including gear marking schemes and  
19 coordinated disentanglement activities.

20           “(3) AGREEMENT SPECIFICATIONS.—The  
21 Agreement—

22           “(A) shall require each party to make rec-  
23 ommendations to their respective governments  
24 on the results of the consultations and actions

1 or activities that need to be taken to protect  
2 whales, especially North Atlantic right whales;

3 “(B) shall include a commitment by each  
4 party to implement the recommendations result-  
5 ing from the consultations, to the extent al-  
6 lowed by and consistent with national laws and  
7 the national recovery plans for North Atlantic  
8 right whales; and

9 “(C) may be expanded to include other  
10 shared whale stocks in the Pacific Ocean.

11 “(4) CONSULTATION REQUIRED.—Prior to, and  
12 during negotiations of the Agreement, the Secretary  
13 shall consult with—

14 “(A) the Atlantic Large Whale Take Re-  
15 duction Team established by the National Ma-  
16 rine Fisheries Service;

17 “(B) the Marine Mammal Commission;

18 “(C) the New England Fishery Manage-  
19 ment Council established under section  
20 302(a)(1)(A) of the Magnuson-Stevens Fishery  
21 Conservation and Management Act (16 U.S.C.  
22 1852 (a)(1)(A));

23 “(D) the Atlantic States Marine Fisheries  
24 Commission; and

1           “(E) other whale scientists, as the Sec-  
2           retary determines appropriate.

3           “(5) PROGRESS REPORT.—The Secretary shall  
4           submit to Congress a report describing the results of  
5           the negotiations required by paragraph (1), the  
6           progress made by the Government of the United  
7           States and the Government of Canada to implement  
8           the results or recommendations and recommenda-  
9           tions for changes in law needed to implement the re-  
10          sults, and recommendations of the Agreement.

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

19          “(g) INTERNATIONAL MARINE PROTECTED AREA  
20          NETWORKS.—

21          “(1) IMPA DEVELOPMENT.—The Secretary  
22          shall develop and support international mechanisms,  
23          protocols, and action plans to identify and address  
24          sources of threats to the world’s whales and other  
25          cetaceans and to reduce, with a goal to eliminate,

1 such threats through the establishment of new Inter-  
2 national Marine Protected Areas and IMPA net-  
3 works.

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

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

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

16 “(3) REPORT.—The Secretary shall submit to  
17 Congress a biannual report describing actions taken  
18 to carry out this subsection.

19 **“SEC. 5. WHALE RESEARCH.**

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

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

3           “(2) the collection of information on whale  
4 health and causes of deaths obtainable through  
5 whale necropsies, particularly of endangered whale  
6 species such as the North Atlantic right whale;

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

10          “(4) information on the impacts on reproduc-  
11 tive and immune systems from chemical pollutants,  
12 including polybrominated diphenylethers, pthalates,  
13 bisphenol A, and polycyclic aromatic hydrocarbons;

14          “(5) information on ecosystem changes due to  
15 climate warming;

16          “(6) research and development of more risk  
17 averse fishing gear, fishing methods, and develop-  
18 ment of effective fishing gear marking systems; and

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

22          “(b) CONSULTATION REQUIRED.—In designing the  
23 research initiatives required by subsection (a), the Sec-  
24 retary shall consult with the Marine Mammal Commission  
25 and whale experts, including those from the Pacific insular

1 area, who are knowledgeable about regional issues relating  
2 to whale conservation and management.

3 “(c) REPORT.—The Secretary shall submit to Con-  
4 gress a biannual report on the progress and findings of  
5 the research initiatives established under subsection (a).

6 **“SEC. 6. AUTHORITY FOR GRANTS.**

7 “The Secretary is authorized to conduct a competitive  
8 research grant program to carry out the provisions and  
9 purposes of this Act.

10 **“SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

11 “There is authorized to be appropriated to the Sec-  
12 retary such sum as may be necessary for each of the fiscal  
13 years 2010 through 2015 to carry out the provisions of  
14 this Act, of which such sums as the Secretary determines  
15 are appropriate shall be made available annually for the  
16 competitive research grant program authorized by section  
17 6.”.

○