

Blumenthal_Substitute



AMENDMENT NO. _____

Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—117th Cong., 2d Sess.**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.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Right Whale Coexist-
5 ence Act of 2022”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are the following:

8 (1) To rebuild a healthy population of the
9 North Atlantic right whale.

1 (2) To assist in the conservation and protection
2 of North Atlantic right whales by supporting North
3 Atlantic right whale conservation programs that re-
4 duce conflicts between North Atlantic right whales
5 and human activities to sustainable levels.

6 **TITLE I—NORTH ATLANTIC**
7 **RIGHT WHALE CONSERVATION**

8 **SEC. 101. NORTH ATLANTIC RIGHT WHALE CONSERVATION**
9 **ASSISTANCE.**

10 (a) ASSISTANCE.—

11 (1) IN GENERAL.—Subject to the availability of
12 funds and in consultation with other Federal offi-
13 cials, the Secretary of Commerce (in this title re-
14 ferred to as the “Secretary”) shall provide competi-
15 tive financial assistance, including multiyear grants,
16 for projects designed to reduce the lethal and sub-
17 lethal effects of human activities on North Atlantic
18 right whales for which project proposals are ap-
19 proved by the Secretary in accordance with this sec-
20 tion.

21 (2) USE OF EXISTING AUTHORITIES.—Assist-
22 ance provided under this section shall be carried out
23 in a manner consistent with authorities available to
24 the Secretary under the Endangered Species Act of
25 1973 (16 U.S.C. 1531 et seq.) and the Marine

1 Mammal Protection Act of 1972 (16 U.S.C. 1361 et
2 seq.).

3 (b) PROJECT PROPOSALS.—

4 (1) ELIGIBLE APPLICANTS.—A project proposal
5 may be submitted to the Secretary under this section
6 by—

7 (A) relevant State and Tribal governments,
8 research institutions, and nonprofit organiza-
9 tions with expertise required for the conserva-
10 tion of North Atlantic right whales; and

11 (B) any other individual or entity, as de-
12 termined appropriate by the Secretary, with the
13 expertise required for the conservation of North
14 Atlantic right whales, including—

15 (i) large whale disentanglement teams
16 approved by the National Oceanic and At-
17 mospheric Administration and members in
18 good standing of the National Marine
19 Mammal Health and Stranding Response
20 Program;

21 (ii) an owner or operator of a vessel,
22 as defined under section 3 of title 1,
23 United States Code; and

24 (iii) participants within sectors of the
25 maritime industry, such as boating, ship-

1 ping, fishing, fishing gear and rope manu-
2 facturing, and other maritime activities.

3 (2) FEDERAL PARTNERSHIP OPPORTUNITIES.—

4 A Federal agency may not be a lead entity or receive
5 funding for a project under this section, but may be
6 included as a partner or collaborator on a project
7 that receives such funding.

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

10 (1) IN GENERAL.—The Secretary shall annu-
11 ally—

12 (A) solicit project proposals for grants
13 under this section;

14 (B) provide to other Federal officials, as
15 appropriate, copies of each proposal submitted
16 in response to the solicitation; and

17 (C) review each such proposal on a
18 timeline that recognizes the urgency of the de-
19 clining North Atlantic right whale population to
20 determine whether the proposal meets the cri-
21 teria specified in subsection (d).

22 (2) CONSULTATION; APPROVAL OR DIS-
23 APPROVAL.—Subject to the availability of funds, the
24 Secretary shall, with respect to each project proposal
25 submitted under this section, and after consulting

1 with other Federal officials, such as the Marine
2 Mammal Commission, as appropriate—

3 (A) consult, with respect to the proposal,
4 with the government of each State, Tribal gov-
5 ernment, and foreign country in which the
6 project is to be conducted;

7 (B) take into consideration any comments
8 resulting from the consultation and input from
9 fishing and other stakeholders on the potential
10 impacts as a result of the proposal; and

11 (C) approve or disapprove the proposal in
12 accordance with subsections (d) and (e) and
13 provide written notification of the approval or
14 disapproval to the individual or entity that sub-
15 mitted the proposal, other Federal officials, and
16 each State, Tribal government, and foreign
17 country described in subparagraph (A).

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

23 (1) address the unintentional conflicts between
24 humans and North Atlantic right whales through de-
25 velopment, testing, and use of innovative technology

1 or other methods to reduce the lethal and sub-lethal
2 effects on North Atlantic right whales from fishing
3 gear entanglements and vessel collisions; and

4 (2)(A) promote cooperative projects on such
5 topics with foreign governments; or

6 (B) promote cooperative projects on such topics
7 with affected local communities, small businesses
8 such as fishermen, others in the maritime private
9 sector, or nongovernmental organizations.

10 (e) PRIORITY.—In determining whether to fund
11 project proposals under this section, the Secretary shall
12 prioritize projects—

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

17 (2) that include cooperation with private sector
18 stakeholders; and

19 (3) that demonstrate, or have the potential to
20 provide, economic benefits to small businesses based
21 in the United States.

22 (f) MATCHING REQUIREMENT.—

23 (1) IN GENERAL.—Except as provided in para-
24 graph (3), the non-Federal share of the costs of an

1 activity conducted with financial assistance under
2 this section shall be 25 percent of such costs.

3 (2) IN-KIND CONTRIBUTIONS.—The Secretary
4 may apply to the non-Federal share of an activity
5 conducted with financial assistance under this sec-
6 tion the amount of funds, and the fair market value
7 of property and services, provided by non-Federal
8 sources and used for the activity.

9 (3) WAIVER OF REQUIREMENTS.—The Sec-
10 retary may waive the application of paragraph (1) if
11 the Secretary finds that such waiver is necessary to
12 support a conservation project that the Secretary
13 has identified as of high priority.

14 (g) PROHIBITED USES.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), funds awarded under this section may not
17 be used to distribute resources to an entity or indi-
18 vidual that is not a United States person (as defined
19 in section 7701(a)(3) of the Internal Revenue Code
20 of 1986).

21 (2) EXCEPTION.—Funds awarded under this
22 section may be used to distribute resources to a
23 partnership that includes an entity or individual that
24 is not a United States person (as defined in section
25 7701(a)(30) of the Internal Revenue Code of 1986)

1 if the resources are distributed directly to a partner
2 in the partnership that is a United States person (as
3 so defined).

4 (h) PROJECT REPORTING.—

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

15 (2) AVAILABILITY TO THE PUBLIC.—Reports
16 under paragraph (1) shall be made available to the
17 public in a timely manner.

18 **SEC. 102. REPORT TO CONGRESS.**

19 Not later than 2 years after the date of enactment
20 of this Act, and every 5 years thereafter, the Secretary
21 shall submit to the Committee on Commerce, Science, and
22 Transportation of the Senate and the Committee on Nat-
23 ural Resources of the House of Representatives a report
24 on the results and effectiveness of projects receiving as-
25 sistance provided under this title, including recommenda-

1 tions concerning how this title might be improved and
2 whether funding for this title should be continued in the
3 future.

4 **SEC. 103. FUNDING.**

5 (a) AUTHORIZATION OF APPROPRIATIONS.—

6 (1) AUTHORIZATION.—There is authorized to
7 be appropriated to the Secretary to carry out this
8 title \$15,000,000 for each of fiscal years 2023
9 through 2032.

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

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

20 (b) ACCEPTANCE AND USE OF DONATIONS.—The
21 Secretary may accept, receive, solicit, hold, administer,
22 and use any gift, devise, or bequest, consistent with policy
23 of the Department of Commerce in effect on the date of
24 enactment of this Act, to provide assistance under section
25 101.

1 **TITLE II—CONTINUOUS**
2 **PLANKTON RECORDER**

3 **SEC. 201. SURVEY.**

4 (a) **IN GENERAL.**—Not later than 180 days after the
5 date of enactment of this Act, and on an ongoing basis
6 thereafter, the Secretary of Commerce shall conduct a
7 Continuous Plankton Recorder survey.

8 (b) **REQUIRED ELEMENTS.**—For the purpose of con-
9 ducting the survey required under subsection (a), the
10 Northeast Fisheries Science Center shall—

11 (1) to the extent possible, utilize the resources
12 of and partner with, on a volunteer basis, research
13 institutions, nonprofit organizations, commercial ves-
14 sels, and other Federal agencies;

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

18 (3) prioritize the collection of plankton samples
19 and data that inform the conservation of North At-
20 lantic right whales; and

21 (4) to the extent practicable, coordinate with
22 the Government of Canada to develop a transbound-
23 ary understanding of plankton abundance and dis-
24 tribution.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—To carry
2 out this section there is authorized to be appropriated to
3 the Secretary of Commerce \$300,000 for each of fiscal
4 years 2023 through 2032.