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111TH CONGRESS }
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SENATE

{ REPORT
111-293

CLEAN ESTUARIES ACT OF 2010

SEPTEMBER 16, 2010.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany H.R. 4715]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (H.R. 4715) to re-authorize the National Estuaries Program, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

H.R. 4715, the “Clean Estuaries Act of 2010,” amends the Federal Water Pollution Control Act (Clean Water Act or Act) to reauthorize appropriations for the National Estuary Program through fiscal year 2016, and to make programmatic changes to this program.

Estuaries are partially enclosed bodies of water, and the surrounding coastal habitats, where freshwater outflows from rivers and streams meet and mix with tidal inflows from the ocean. These transition zones between land and sea, fresh and salt water, support a wide variety of plant, fish, and wildlife species. Both because of the mix of saline and fresh water and because estuaries shelter plants and animals from the full force of ocean winds and waves, Many fish and shellfish species depend on estuaries to spawn, and for their young to hatch and grow. Estuaries also serve as habitat and breeding areas for hundreds of species of birds and other wildlife, including marine mammals and sea turtles.

Less tangible are the environmental benefits estuaries provide in the form of critical ecosystem services. The marsh land and plants

in estuaries helps control water pollution by filtering out the sediment and pollutants carried by rivers and streams. The plants in estuaries help prevent shoreline erosion. Estuaries also protect inland areas from flooding and storm surges by absorbing the water before it can reach inland areas. These coastal wetlands provide \$23.2 billion worth of storm protection services each year.¹

Estuaries play an important role in the U.S. economy. Coastal and marine waters of the United States account for 28.3 million jobs.² While coastal counties constitute only 13% of the nation's land mass, these counties and their adjacent waters account for over half of the gross domestic product.³

Estuaries contribute to the economy of the nation through the tourism and recreation, including wildlife viewing; energy production, navigation/port industries; and commercial and recreational fishing. On an annual basis, beach-going and recreational fishing generates up to \$30 billion of economic value, and coastal wildlife viewing generates up to \$49 billion.⁴ Much of this activity occurs in and along the coasts of estuaries. The Narragansett Bay tourism and outdoor recreation industry alone is valued at two billion dollars annually. Estuaries also shelter important ports, which are critical to our economy—more than 78% of U.S. overseas trade by volume comes and goes by ship.⁵ In addition, the coastal areas surrounding estuaries are among the most populated areas in the United States. Collectively, the nation's coastal counties account for only 13% of the land mass of the lower 48 states. In 2003, however, 53% of Americans lived in these coastal counties.⁶

Most economically important fish and shellfish species live in estuaries during at least one stage of their life. According to the National Oceanographic and Atmospheric Administration (NOAA) and the National Research Council (NRC), estuaries provide habitat for 75 percent of our national commercial fish catch, and 80 to 90 percent of the recreational fish catch.⁷ In 2006, commercial and recreational fishing accounted for \$185 billion in revenue and more than two million jobs.⁸

The Environmental Protection Agency (EPA) has identified several environmental concerns in the 28 estuaries involved in the National Estuary Program (NEP), such as habitat loss and alteration; declines in fish and wildlife populations; excessive nutrients; toxic chemical contaminations; pathogenic microorganisms; alteration of freshwater flows; and the introduction of invasive species. National Estuary Program (NEP).

¹ Costanza, R. et al., "The Value of Coastal Wetlands for Hurricane Protection," *AMBIO: A Journal of the Human Environment*, June 2008.

² NOAA Economic Statistics 2002.

³ U.S. Commission on Ocean Policy, *An Ocean Blueprint for the 21st Century* 31 (2004).

⁴ Linwood Pendleton, ed., *The Economic and Market Value of Coasts and Estuaries: What's at Stake?* (Restore America's Estuaries), 2008.

⁵ Department of Transportation: Bureau of Transportation Statistics, 2007: *National Transportation Statistics*, Washington, DC.

⁶ Crossett, K.M. et al., *National Oceanic and Atmospheric Administration, Population Trends Along the Coastal United States: 1980–2008* (2004).

⁷ Chambers, J.R., 1992. Coastal Degradation and Fish Population Losses, in Stroud, ed., *Stemming the Tide of Coastal Fish Habitat Loss*. National Coalition for Marine Conservation, Inc., Leesburg, VA. This source was cited in Lellis-Dibble, K.A. et al., *Estuarine Fish and Shellfish Species in U.S. Commercial and Recreational Fisheries: Economic Value as an Incentive to Protect and Restore Estuarine Habitat*, NOAA Technical Memorandum NMFS–F/SPO–90, November 2008, which independently determined that between 2000 and 2004, estuarine species represented 46% by weight and 68% by value of the commercial catch.

⁸ *Fisheries Economics of the US 2006* (Annual Report of NOAA Fisheries).

In 1987, Congress amended the Clean Water Act to add Section 320, which authorized the National Estuary Program. Led by EPA this collaborative, voluntary program addresses water quality problems and habitat degradation in priority estuaries across the nation. It is comprised of approved estuary programs that are, for the most part, administered by state or local governments or non-governmental entities.⁹ These programs lead comprehensive planning efforts to protect.

When Congress first authorized the program, it identified 16 estuaries as estuaries of national significance, including the Long Island Sound in New York and Connecticut, Narragansett Bay in Rhode Island, San Francisco Bay in California, and Puget Sound in Washington. (Six of these estuaries launched their NEP programs that same year.)¹⁰ The Governor of any state may nominate to the EPA Administrator an estuary lying in whole or in part within that state as an estuary of national significance. To date, EPA has approved 28 estuaries for the NEP.

Once approved, each estuary program, led by a management conference that represents the spectrum of stakeholders, conducts long-term planning and management activities to address the unique set of factors contributing to the degradation of that estuary. Under section 320, each approved estuary program is required to develop a Comprehensive Conservation and Management Plan (CCMP). The CCMP is the action plan for protecting and restoring the estuary. The priorities and activities identified in the CCMP are arrived at through the consensus of the management conference: a diverse group of stakeholders consisting of local, state, and Federal government agencies, commercial entities, members of the agricultural community, universities, and non-governmental agencies such as environmental organizations. Once complete, EPA must approve the CCMP and provide financial and technical assistance for its implementation.

Section 320 authorized \$35 million annually for the NEP for fiscal years 2001 through 2010. Congress has appropriated the following amounts for the NEP program over the past three years: \$26.7 million in fiscal year (FY) 2008, \$27.1 million in FY 2009, and \$32.6 million in FY 2010. To leverage Federal resources, EPA requires approved estuary programs to have a specific finance plan and to provide a non-Federal match of between 25 percent and 50 percent. NEP estuaries have secured funding from a variety of sources including the Clean Water State Revolving Fund program, stormwater utility fees, municipal bond funding, fines and settlements, tax abatements and incentives, and sales fees. According to EPA, between 2003 and 2007, the approved estuary programs were collectively able to leverage nearly \$1.3 billion in funding from sources other than appropriations for section 320 of the Clean Water Act. The investment ratio of non-NEP funds to NEP funds is 15.5 to 1.

⁹The estuary program for the Long Island Sound is the only Federally-administered program; it is run by EPA.

¹⁰Bearden, D.M., National Estuary Program: A Collaborative Approach to Protecting Coastal Water Quality, Congressional Research Service, 97-644 (2001).

Program results

On a national scale, the NEP estuaries (collectively) score slightly higher than non-NEP estuaries for water quality indices. The reforms included in H.R. 4715, as amended, will make the NEP still more effective by providing additional resources for improved management and accountability for program participants.

No new estuaries have been added to the program since 1995, but EPA reports that numerous states, local governments, and non-governmental organizations have expressed interest in adding estuaries to the NEP. These 38 estuaries include:

- Alaska: Cook Inlet; Kenai River
- California: Humboldt Bay; Tomales Bay; San Pedro Bay; Newport Bay; San Diego Bay; Tijuana River
- Florida: Lower St. Johns River; Lake Worth; Biscayne Bay; Florida Bay; Crystal River/Homosassa Spring; Apalachicola Bay; St. Andrews Bay; Choctawhatchee Bay; Pensacola Bay
- Georgia: Savannah River
- Hawaii: Hanalei Bay; Kaneohe Bay
- Louisiana: Calcasieu Lake; Atchafalaya Bay; Lake Pontchartrain
- Maine: Penobscot Bay; Gulf of Maine
- Massachusetts: Martha's Vineyard
- Mississippi: Mississippi Sound
- New York: Great South Bay
- North Carolina: Cape Fear River
- Oregon: Coos Bay
- Puerto Rico: Mayaguez Bay
- South Carolina: Charleston Harbor; Port Royal Sound; Savannah River
- Texas: Lavaca Bay-Tres Palacios Bay
- Virginia: Virginia Coastal Bays
- Washington: Grays Harbor; Willapa Bay

If Congress appropriates funding for the NEP at the increased authorization amounts included in H.R. 4715, as amended, EPA will be able to add 26 new estuaries to the National Estuary Program.

OBJECTIVES OF THE LEGISLATION

H.R. 4715, the "Clean Estuaries Act of 2010," will amend the Federal Water Pollution Control Act (Clean Water Act or Act) to reauthorize appropriations for the National Estuary Program through fiscal year 2016 at \$75 million annually and enhance transparency and accountability in participating estuary programs.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section designates the title of the bill as the "Clean Estuaries Act of 2010."

Section 2. National Estuary Program amendments

This section amends section 320 of the Clean Water Act to modify and add new requirements to estuary programs participating in the NEP.

Subsection (a)(1) Summary

Amends section 320(b)(4) of the Act to add additional requirements in the development and revision of an approved estuary's CCMP. These amendments require that each estuary program:

- identify the estuary and upstream waters to be addressed by the program;
- recommend corrective actions and compliance schedules to address point and nonpoint sources of pollution in that estuary, and to propose protection and conservation actions that will restore or maintain key ecological and recreational characteristics of that estuary;
- identify components of healthy watersheds and prioritize actions to protect and maintain that level of health by conducting integrated assessments of the estuary's aquatic habitat and biological integrity, water quality, and natural hydrologic flows;
- consider current and future sustainable commercial activities in the estuary;
- address the impacts of climate change on the estuary by identifying vulnerabilities in the estuary and developing and implementing adaptation strategies;
- increase public education and awareness of the ecological health and water quality conditions of the estuary;
- identify and assess impairments that significantly and adversely affect the estuary but that are located outside of the immediate area addressed by the estuary program;
- identify performance measures and goals to track the degree to which the plan is being implemented successfully; and
- include a coordinated monitoring strategy.

Discussion

The new requirements in this section make important improvements to the national estuary program planning process.

First, this act requires approved estuary programs to clearly identify the areas covered by the CCMP. This requirement will improve program management, help to focus and prioritize resources, help educate the public and stakeholders, and create a better sense of estuary identity. While hydrological boundaries for the estuary must be considered, given the scope of the NEP program the area addressed by a given approved estuary program may not include the entire watershed that ultimately drains into the estuary.

Second, this act requires approved estuary programs to identify and assess healthy components of a watershed for protection in order to ensure a complete assessment of the health of an estuary and to enable estuary programs to prioritize actions that protect as well as restore key habitat. This analysis is an essential component of maintaining the integrity of an estuary.

Third, approved estuary programs are required to consider the role of current and future commercial operations in the estuary and the means by which their activities can be sustained. Commercial activities and the health of the estuaries in which they are located are inextricably linked. Commercial activity can impact the ecological health of estuaries just as the ecological health of estuaries can impact the viability of commercial activities. Given this interrelationship, each approved estuary program must include commer-

cial entities in its CCMP process and work with such entities to develop sustainable operations.

Fourth, this section requires each NEP estuary to address the climate change impacts unique to its region. On June 19, 2008, EPA announced a new pilot program for NEP estuaries, entitled, "Climate Ready Estuaries." According to EPA, each NEP estuary in the Climate Ready Estuaries program received technical assistance to assess and reduce its vulnerability to climate change. This requirement incorporates the ongoing efforts under the Climate Ready Estuaries program into the CCMP process for each approved estuary program.

Fifth, this section requires each approved estuary program to improve public outreach and education in order to increase awareness of the ecological health of the estuary, the economic importance of estuaries, and the positive or negative impacts of individual actions on the estuary's condition.

Sixth, each approved estuary program must identify and assess impairments that are outside the area addressed by a given approved estuary program management plan, which may not include the entire watershed that drains into the estuary. Pollution from upstream sources, as well as those from outside of the watershed, such as atmospheric deposition, may affect the water quality and ecological integrity of the estuary. While these sources lie outside of the formal estuary program area and are therefore beyond the reach of the program, each estuary program is required to identify those sources of impairment to enable stakeholders to better understand the connection between the upstream elements of the watershed and the potential downstream effects to the estuary. In addition, the identification and assessment of these sources of impairment allows the estuary program to better determine the impairment reduction for which it is responsible.

Finally, each estuary program must include performance measures in its CCMP that will be used to track the effectiveness of program implementation as well as a coordinated monitoring strategy. Outcomes against which program performance can be quantitatively measured are essential accountability tools that help ensure federal resources are wisely spent and program goals will be met.

Subsection (a)(2) Summary

Amends section 320(b)(6) to clarify and enhance the monitoring requirements related to an estuary CCMP. Each approved estuary program must monitor water quality, healthy watershed, and habitat conditions in the estuary and its upstream waters. The estuary programs must also monitor the effectiveness of actions taken pursuant to the CCMP. All monitoring results must be made available to the public.

Discussion

Estuary programs must monitor water quality and habitat conditions around the estuary in order to track progress in estuary restoration and protection. Not only does this approach provide more information for program managers on the effectiveness of program activities, it also provides information to nearby communities about the state of their estuary.

Subsection (a)(3) Summary

Amends section 320(b) to require that each estuary program provide information and educational activities on the ecological health and water quality conditions of the estuary to the public.

Discussion

This provision ensures that each approved estuary program fulfills its obligation to educate the public about estuarine conditions, the economic and ecological importance of the estuary, and activities to restore the ecosystem. The programs are well-situated to provide such information, given the collaborative style of management and the diverse interests they represent.

Subsection (b)(1) Summary

Makes a technical change to section 320(c)(5) and adds not-for-profit organizations to the list of entities that can participate in the management conference.

Subsection (b)(2) Summary

Amends section 320(d) by adding a provision entitled, "Use of Existing Data and Collaborative Processes." The new provision attempts to eliminate redundancy in data collection and improve involvement of and collaboration between stakeholders when developing a new CCMP or updating an old CCMP. Existing NEPs attribute successful restoration efforts in part to the successful engagement and inclusion of all estuary stakeholders. The provision requires approved estuary programs make use of collaborative processes to ensure equitable inclusion of affected interests; engage members of the conference; ensure relevant information is accessible to all members; promote accountability and transparency; identify roles and responsibilities in the Conference; and resolve disputes.

Subsection (c) Summary

Amends section 320(f) to require the periodic update and approval of a CCMP. Not later than 5 years of the date of enactment of H.R. 4715, as amended, the EPA Administrator must evaluate the implementation of each CCMP to determine the degree to which the goals of the CCMP have been met. Following the initial evaluation, each estuary program is subject to a subsequent evaluation every five years. The evaluations may be completed by EPA or, at the request of the Administrator, by a third party. An approved estuary program may not be involved in evaluating its own program.

Each estuary program shall be provided the opportunity to respond to EPA's program evaluation. EPA must issue a report on the results of the evaluation, including the findings and recommendations of the Administrator, as well as any comments received from the estuary program. This report shall be made available to the public through publication in the Federal Register and on the Internet. If an estuary program is accepted into the NEP after passage of this Act, that program will be evaluated within five years after the submission of its CCMP to the Administrator, and every five years thereafter.

Each approved estuary program is required to update its CCMP no later than 18 months after the public release of its evaluation. The updated plan must reflect, to the maximum extent practicable, the results of the program evaluation. Within 120 days after receiving an updated CCMP, the Administrator must approve that CCMP if he or she determines that the updated CCMP meets both the goals of the NEP and reflects the results of the program evaluation.

Subsection (c) further allows the Administrator to consider an estuary program to be in probationary status if the estuary program has not received approval for an updated CCMP on or before the last day of the three-year period beginning on the date on which the Administrator makes an evaluation available to the public.

Discussion

EPA currently reviews each of the NEP estuary programs every three years, through an implementation review process. This process is intended to assess how well each estuary program supports the core goals of the Clean Water Act, as well as to evaluate how well each estuary program contributes to accomplishment of the goals of EPA's Strategic Plan. The evaluation requirement instituted by H.R. 4715, as amended, is intended to replace this existing review with a more rigorous program evaluation.

Program implementation and program evaluation will be enhanced through the use of performance measures and goals, as required by this act. The evaluation is intended to assist program managers, in both EPA and the approved estuary program, in their efforts and to identify whether the goals of the CCMP are being achieved and to provide insights as to whether the management plan is successful, whether the management approaches are appropriate, where to focus efforts, and to identify impairments that may be preventing improvements.

The requirements to regularly evaluate and update each estuary's CCMP serve a number of purposes. First, it addresses the fact that a number of estuary programs have never updated their CCMPs. Second, it ensures that each estuary program acknowledges and accounts for any changes in the estuary in its CCMP, for example new impairments, new sources of impairments or newly recovered habitat. Third, it ensures that stakeholders will continue to be active partners in the restoration and protection of the estuary through involvement in CCMP updates. Finally, the linked evaluation and CCMP approval process enhances accountability because an updated CCMP must reflect program evaluation results.

If the evaluation results indicate that the goals of the CCMP have been achieved, or that the program is headed in the right direction, the required update may be minimal. If the evaluation results indicate that CCMP goals are not being met, and the Administrator recommends programmatic changes, the update may be significant. In such a case, the update might require that additional stakeholders be incorporated into the planning process, that a new CCMP be adopted, or that a new management and implementation strategy be applied to ensure that the goals of the NEP program are achieved.

This subsection allows the Administrator to place an estuary program in probationary status, and as described in subsection (d), the designation of probationary status requires the Administrator to reduce grant funding to the estuary program. This designation, in combination with subsequent penalties, provides the estuary programs with added incentive to incorporate evaluation recommendations for program improvement into the CCMP update, in order to receive approval by the Administrator.

Subsection (d) Summary

This subsection amends section 320 to establish new requirements for Federal agencies whose actions or activities affect estuaries in the National Estuary Program. The legislation requires that, following approval of a CCMP, any Federal action or activity affecting an estuary in the NEP shall be conducted, to the maximum extent practicable, in a manner consistent with the CCMP. Federal agencies are also required, to the maximum extent practicable, to cooperate and coordinate their activities related to the implementation of an approved CCMP. The legislation requires that EPA serve as the lead agency in these inter-agency coordination and cooperation efforts. In making their annual budget requests, Federal agencies must consider their CCMP responsibilities. Finally, this subsection requires that Federal agencies collaborate in the development of tools and methodologies for monitoring the ecological health and water quality conditions of estuaries included in the National Estuary Program.

Discussion

The Committee recognizes that the strength of the National Estuary Program lies in its consensus-based, locally driven approach. To fulfill the goals of the program, the Committee expects that Federal agencies not only take part in the CCMP planning process but also, as stakeholders in the respective estuaries, take part in implementing their responsibilities under approved estuary plans. In instances where the actions or activities of multiple Federal agencies affect the estuary, these agencies should coordinate their activities. Not only will this approach result in administrative efficiencies, coordinated planning and implementation will facilitate the protection and restoration of the estuary.

Subsection (e) Summary

This subsection amends section 320(h), as re-designated by subsection (d), which relates to the provision of grants to develop and implement an estuary CCMP. In keeping with the collaborative and cooperative nature of this program, this subsection would disallow individuals to apply for and receive National Estuary Program grant funding. Subsection (e) also outlines the penalties associated with placing a management conference on “probationary status.” First, the Administrator is required to reduce grant funding, in an amount determined by the Administrator, for estuary programs in probationary status. If the Administrator determines that the program has been in probationary status for two consecutive years, the Administrator shall also terminate an estuary program from the National Estuary Program, and cease its grant funding.

Discussion

The Committee believes that estuary programs must be held accountable for updating, receiving approval for, and implementing updated CCMPs. The provisions in this subsection will help provide such accountability.

Subsection (f) Summary

This subsection amends section 320(j), as re-designated by subsection (d), and authorizes an increase in appropriations for the National Estuary Program. Specifically, subsection (f) increases the funding authorization from \$35 million to \$75 million annually for fiscal years 2011 through 2016. This subsection further directs the Administrator to provide grant funding, subject to appropriations, of at least \$1.25 million for each approved estuary program. An authorization level of \$75 million will provide enough funding to add as many as 26 new estuaries under the program while still providing for administrative costs of the program.

Subsection (g) Summary

This subsection makes a technical amendment to section 320(k)(1)(A), as re-designated by subsection (d). This subsection directs the research program established under section 320(k) to include research on the introduction and establishment of invasive species in estuarine environments.

Subsection (h) Summary

This subsection amends section 320 by adding a periodic evaluation of EPA's National Estuary Program. This subsection requires that the Administrator, or a third party at the request of the Administrator, evaluate the overall NEP program (in addition to the requirements that each participating estuary be evaluated) within five years of passage of this legislation, and every five years thereafter. The evaluation shall assess the effectiveness of the NEP program in improving water quality, improving natural resources, and making improvements in sustainable uses of the estuaries covered by estuary programs that are part of the NEP. If improvements have been made, the evaluation should identify the best practices that were in place under that plan, and assess the reasons those practices were effective. Moreover, to encourage the wise use of limited resources, the evaluation should identify redundant reporting requirements and recommend how to limit these redundancies. The findings and recommendations of this evaluation shall be issued by the Administrator in a report published on both the Internet and in the Federal Register.

Discussion

This evaluation will assist the EPA program manager and Congress in determining whether the goals of the National Estuary Program are being achieved, and identifying ways to improve the program where it falls short of the goals. The evaluation results will help identify whether new tools, policies, or funding is needed to better implement the program—with the ultimate objective of restoring and protecting estuaries.

Subsection (j) Summary

This subsection changes the definition of estuary to include Great Lakes coastal waters and other nearby bodies of water that are similar in form and function to estuaries.

LEGISLATIVE HISTORY

On March 2, 2010, Representative Timothy Bishop introduced H.R. 4715, the “Clean Estuaries Act of 2010.”

On March 3, 2010, the Committee on Transportation and Infrastructure met in open session to consider H.R. 4715. The Committee ordered H.R. 4715 reported favorably to the House by voice vote with a quorum present. H.R. 4715 was passed by the House by a vote of 278–128 on April 15, 2010. The bill was received in the Senate, read twice and referred to the Committee on Environment and Public Works on April 19, 2010.

On June 28, 2010, Senators Sheldon Whitehouse and David Vitter introduced a companion bill, S. 3540, the “Clean Estuaries Act of 2010.” The bill was received, read twice, and referred to the Senate Committee on Environment and Public Works.

On June 30, 2010, the Committee on Environment and Public Works met to consider H.R. 4715. Senators Whitehouse and Vitter offered S. 3540 as an amendment in the nature of a substitute to H.R. 4715. The Committee ordered H.R. 4715, as amended by the substitute amendment, reported favorably to the Senate by voice vote with a quorum present.

HEARINGS

On February 24, 2010, the Full Senate Committee on Environment and Public Works and the Subcommittee on Water and Wildlife held a joint legislative hearing on legislative approaches to protection and restoring Great Water bodies. The Committee heard testimony from the EPA Assistant Administrator for Water, Peter Silva, and the Commissioner of the New York State Department of Environmental Conservation, Alexander Grannis, who expressed support for the National Estuary Program.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider H.R. 4715 on June 30, 2010. The bill was ordered to be reported favorably with an amendment in the nature of a substitute (offered by Mr. Whitehouse and Mr. Vitter), by voice vote.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that H.R. 4715, as amended, does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee noted that the Congressional Budget Office (CBO) has found, “H.R. 4715 contains no intergovernmental or private-sector mandates as defined in the Unfunded

Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.”

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JULY 8, 2010.

Hon. BARBARA BOXER, *Chairman,*
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4715, the Clean Estuaries Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 4715—Clean Estuaries Act of 2010

Summary: H.R. 4715 would extend the authorization of appropriations for the Environmental Protection Agency’s (EPA’s) National Estuary Program through fiscal year 2016. Under current law, \$35 million is authorized to be appropriated each year through 2010, and enacting this legislation would increase that level to \$75 million in subsequent years. Under the National Estuary Program, EPA develops plans for attaining or maintaining water quality in an estuary. CBO estimates that implementing this legislation would cost \$323 million over the 2011–2015 period, assuming appropriation of the authorized amounts.

Enacting H.R. 4715 would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

H.R. 4715 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the federal government: The estimated budgetary impact of this legislation is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					2011–2015
	2011	2012	2013	2014	2015	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	75	75	75	75	75	375
Estimated Outlays	34	64	75	75	75	323

Basis of estimate: For this estimate, CBO assumes that H.R. 4715 will be enacted in 2010 and that the amounts authorized will be appropriated each fiscal year beginning in 2011. Estimated outlays are based on historical spending patterns for the National Estuary Program.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 4715 contains no intergovernmental or private-sector mandates as defined in

UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO estimate: On March 9, 2010, CBO transmitted a cost estimate for H.R. 4715, the Clean Estuaries Act of 2010, as ordered reported by the House Committee on Transportation and Infrastructure on March 3, 2010. The two versions of the legislation are similar; however, the legislation ordered reported by the Senate Committee on Environment and Public Works would authorize the appropriation of a greater amount each year over the 2011–2016 period. Those differences in authorization levels are reflected in the CBO cost estimates.

Estimate prepared by: Federal Costs: Susanne S. Mehlman; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Amy Petz.

Estimate approved by: Sam Papenfuss, Unit Chief for Income Security and Education Cost Estimates Unit, Budget Analysis Division.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in italic, existing law in which no change is proposed is shown in roman:

* * * * *

FEDERAL WATER POLLUTION CONTROL ACT

SEC. 301. (a) Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.

(b) * * *

* * * * *

SEC. 320. NATIONAL ESTUARY PROGRAM.

(a) MANAGEMENT CONFERENCE.—

(1) NOMINATION OF ESTUARIES.—* * *

* * * * *

[(2) CONVENING OF CONFERENCE.—

(A) IN GENERAL.—In any case]

(2) *CONVENING OF CONFERENCE.*—*In any case* where the Administrator determines, on his own initiative or upon nomination of a State under paragraph (1), that the attainment or maintenance of that water quality in an estuary which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife and allows recreational activities, in and on the water, requires the control of point and nonpoint sources of pollution to supplement existing controls of pollution in more than one State, the Administrator shall select such estuary and convene a management conference.

[(B) PRIORITY CONSIDERATION.—The Administrator shall give priority consideration under this section to Long Island Sound, New York and Connecticut; Narragansett Bay, Rhode Island; Buzzards Bay, Massachusetts; Massa-

chusetts Bay, Massachusetts (including Cape Cod Bay and Boston Harbor); Puget Sound, Washington; New York-New Jersey Harbor, New York and New Jersey; Delaware Bay, Delaware and New Jersey; Delaware Inland Bays, Delaware; Albermarle Sound, North Carolina; Sarasota Bay, Florida; San Francisco Bay, California; Santa Monica Bay, California; Galveston Bay, Texas; Barataria-Terrebonne Bay estuary complex, Louisiana; Indian River Lagoon, Florida; Lake Pontchartrain Basin, Louisiana and Mississippi; and Peconic Bay, New York.】

(b) PURPOSES OF CONFERENCE.—The purposes of any management conference convened with respect to an estuary under this subsection shall be to—

(1) assess trends in water quality, natural resources, and uses of the estuary;

(2) collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;

(3) develop the relationship between the in-place loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;

【(4) develop a comprehensive conservation and management plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;】

(4) *develop and submit to the Administrator a comprehensive conservation and management plan that—*

(A) *identifies the estuary and the associated upstream waters of the estuary to be addressed by the plan, with consideration given to hydrological boundaries;*

(B) *recommends priority corrective actions and compliance schedules addressing—*

(i) *point and nonpoint sources of pollution; and*

(ii) *protection and conservation actions—*

(I) *to restore and maintain the chemical, physical, and biological integrity of the estuary, including—*

(aa) *restoration and maintenance of water quality, wetlands, and natural hydrologic flows;*

(bb) *a resilient and diverse indigenous population of shellfish, fish, and wildlife; and*

(cc) *recreational activities in the estuary; and*

(II) *to ensure that the designated uses of the estuary are protected;*

(C) *identifies healthy watershed components for protection and conservation by carrying out integrated assessments, where appropriate, of—*

- (i) aquatic habitat and biological integrity;
- (ii) water quality; and
- (iii) natural hydrologic flows;
- (D) considers current and future sustainable commercial activities in the estuary;
- (E) addresses the impacts of climate change on the estuary, including—
 - (i) the identification and assessment of vulnerabilities in the estuary;
 - (ii) the development and implementation of adaptation strategies; and
 - (iii) the impacts of changes in sea level on estuarine water quality, estuarine habitat, and infrastructure located in the estuary;
- (F) increases public education and awareness with respect to—
 - (i) the ecological health of the estuary;
 - (ii) the water quality conditions of the estuary; and
 - (iii) ocean, estuarine, land, and atmospheric connections and interactions;
- (G)(i) identifies and assesses impairments, including significant adverse upstream impairments coming from outside of the area addressed by the plan, and the sources of those impairments; and
- (ii) provides the applicable State with any information on such impairments or the sources of such impairments;
- (H) includes performance measures and goals to track implementation of the plan; and
- (I) includes a coordinated monitoring strategy for Federal, State, and local governments and other entities.

* * * * *

[(6) monitor the effectiveness of actions taken pursuant to the plan; and]

(6) monitor (and make results available to the public regarding)—

- (A) water quality conditions in the estuary and the associated upstream waters of the estuary identified under paragraph (4)(A);
- (B) healthy watershed and habitat conditions that relate to the ecological health and water quality conditions of the estuary; and
- (C) the effectiveness of actions taken pursuant to the comprehensive conservation and management plan developed for the estuary under this subsection;
- (7) provide information and educational activities on the ecological health and water quality conditions of the estuary; and

[(7)](8) review all Federal financial assistance programs and Federal development projects in accordance with the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of the plan prepared under this section.

For purposes of [paragraph (7)]paragraph (8), such programs and projects shall not be limited to the assistance programs and development projects subject to Executive Order 12372, but may include

any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the plan developed under this section.

(c) MEMBERS OF CONFERENCE.—The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of—

- (1) each State and foreign nation located in whole or in part in the estuarine zone of the estuary for which the conference is convened;
- (2) international, interstate, or regional agencies or entities having jurisdiction over all or a significant part of the estuary;
- (3) each interested Federal agency, as determined appropriate by the Administrator;
- (4) local governments having jurisdiction over any land or water within the estuarine zone, as determined appropriate by the Administrator; and
- (5) affected industries, public and private educational institutions, *not for-profit organizations*, and the general public, as determined appropriate by the Administrator.

[(d) UTILIZATION OF EXISTING DATA.—In developing]

(d) USE OF EXISTING DATA AND COLLABORATIVE PROCESSES.—

(1) USE OF EXISTING DATA.—*In developing* a conservation and management plan under this section, the management conference shall survey and utilize existing reports, data, and studies relating to the estuary that have been developed by or made available to Federal, interstate, State, and local agencies.

(2) USE OF COLLABORATIVE PROCESSES.—*In updating a plan under subsection (f)(4) or developing a new plan under subsection (b), a management conference shall make use of collaborative processes—*

- (A) *to ensure equitable inclusion of affected interests;*
- (B) *to engage with members of the management conference, including through—*
 - (i) *the use of consensus-based decision rules; and*
 - (ii) *assistance from impartial facilitators, as appropriate;*
- (C) *to ensure relevant information, including scientific, technical, and cultural information, is accessible to members;*
- (D) *to promote accountability and transparency by ensuring members are informed in a timely manner of—*
 - (i) *the purposes and objectives of the management conference; and*
 - (ii) *the results of an evaluation conducted under subsection (f)(3);*
- (E) *to identify the roles and responsibilities of members—*
 - (i) *in the management conference proceedings; and*
 - (ii) *in the implementation of the plan; and*
- (F) *to seek resolution of conflicts or disputes as necessary.*

* * * * *

[(f) APPROVAL AND IMPLEMENTATION OF PLANS.—

(1) APPROVAL.—Not later than 120 days after the completion of a conservation and management plan and after providing for public review and comment, the Administrator shall

approve such plan if the plan meets the requirements of this section and the affected Governor or Governors concur.

【(2) IMPLEMENTATION.—Upon approval of a conservation and management plan under this section, such plan shall be implemented. Funds authorized to be appropriated under titles II and VI and section 319 of this Act may be used in accordance with the applicable requirements of this Act to assist States with the implementation of such plan.】

(f) ADMINISTRATION OF PLANS.—

(1) APPROVAL.—*Not later than 120 days after the date on which a management conference submits to the Administrator a comprehensive conservation and management plan under this section, and after providing for public review and comment, the Administrator shall approve the plan, if—*

(A) *the Administrator determines that the plan meets the requirements of this section; and*

(B) *each affected Governor concurs.*

(2) IMPLEMENTATION.—

(A) IN GENERAL.—*On the approval of a comprehensive conservation and management plan under this section, the plan shall be implemented.*

(B) USE OF AUTHORIZED AMOUNTS.—*Amounts authorized to be appropriated under titles II and VI and section 319 may be used in accordance with the applicable requirements of this Act to assist States with the implementation of a plan approved under paragraph (1).*

(3) EVALUATION.—

(A) IN GENERAL.—*Not later than 5 years after the date of enactment of this paragraph, and every 5 years thereafter, the Administrator shall carry out—*

(i) *an evaluation of the implementation of each comprehensive conservation and management plan developed under this section to determine the degree to which the goals of the plan have been met; and*

(ii) *a review of the program designed to implement the plan.*

(B) REVIEW AND COMMENT BY MANAGEMENT CONFERENCE.—*In completing an evaluation under subparagraph (A), the Administrator shall submit the results of the evaluation to the appropriate management conference for review and comment.*

(C) REPORT.—

(i) IN GENERAL.—*In completing an evaluation under subparagraph (A), and after providing an opportunity for a management conference to submit comments under subparagraph (B), the Administrator shall issue a report on the results of the evaluation, including the findings and recommendations of the Administrator and any comments received from the management conference.*

(ii) AVAILABILITY TO PUBLIC.—*The Administrator shall make a report issued under this subparagraph available to the public, including through publication in the Federal Register and on the Internet.*

(D) *SPECIAL RULE FOR NEW PLANS.*—Notwithstanding subparagraph (A), if a management conference submits a new comprehensive conservation and management plan to the Administrator after the date of enactment of this paragraph, the Administrator shall complete the evaluation of the implementation of the plan required by subparagraph (A) not later than 5 years after the date of such submission and every 5 years thereafter.

(4) *UPDATES.*—

(A) *REQUIREMENT.*—Not later than 18 months after the date on which the Administrator makes an evaluation of the implementation of a comprehensive conservation and management plan available to the public under paragraph (3)(C), a management conference convened under this section shall submit to the Administrator an update of the plan that reflects, to the maximum extent practicable, the results of the program evaluation.

(B) *APPROVAL OF UPDATES.*—Not later than 120 days after the date on which a management conference submits to the Administrator an updated comprehensive conservation and management plan under subparagraph (A), and after providing for public review and comment, the Administrator shall approve the updated plan, if the Administrator determines that the updated plan meets the requirements of this section.

(5) *PROBATIONARY STATUS.*—The Administrator may consider a management conference convened under this section to be in probationary status, if the management conference has not received approval for an updated comprehensive conservation and management plan under paragraph (4)(B) on or before the last day of the 3-year period beginning on the date on which the Administrator makes an evaluation of the plan available to the public under paragraph (3)(C).

(g) *FEDERAL AGENCIES.*—

(1) *ACTIVITIES CONDUCTED WITHIN ESTUARIES WITH APPROVED PLANS.*—After approval of a comprehensive conservation and management plan by the Administrator, any Federal action or activity affecting the estuary shall be conducted, to the maximum extent practicable, in a manner consistent with the plan.

(2) *COORDINATION AND COOPERATION.*—

(A) *IN GENERAL.*—The Secretary of the Army (acting through the Chief of Engineers), the Administrator of the National Oceanic and Atmospheric Administration, the Director of the United States Fish and Wildlife Service, the Secretary of the Department of Agriculture, the Director of the United States Geological Survey, the Secretary of the Department of Transportation, the Secretary of the Department of Housing and Urban Development, and the heads of other appropriate Federal agencies, as determined by the Administrator, shall, to the maximum extent practicable, cooperate and coordinate activities, including monitoring activities, related to the implementation of a comprehensive conservation and management plan approved by the Administrator.

(B) *LEAD COORDINATING AGENCY.*—*The Environmental Protection Agency shall serve as the lead coordinating agency under this paragraph.*

(3) *CONSIDERATION OF PLANS IN AGENCY BUDGET REQUESTS.*—*In making an annual budget request for a Federal agency referred to in paragraph (2), the head of such agency shall consider the responsibilities of the agency under this section, including under comprehensive conservation and management plans approved by the Administrator.*

(4) *MONITORING.*—*The heads of the Federal agencies referred to in paragraph (2) shall collaborate on the development of tools and methodologies for monitoring the ecological health and water quality conditions of estuaries covered by a management conference convened under this section.*

[(g)](h) *GRANTS.*—

(1) *RECIPIENTS.*—*The Administrator is authorized to make grants to State, interstate, and regional water pollution control agencies and entities, State coastal zone management agencies, interstate agencies, [other public or nonprofit private agencies, institutions, organizations, and individuals]and other public or non-profit private agencies, institutions, and organizations.*

(2) *PURPOSES.*—*Grants under this subsection shall be made to pay for activities necessary for the development and implementation of a comprehensive conservation and management plan under this section.*

(3) *FEDERAL SHARE.*—*The Federal share of a grant to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year—*

(A) *shall not exceed—*

(i) *75 percent of the annual aggregate costs of the development of a comprehensive conservation and management plan; and*

(ii) *50 percent of the annual aggregate costs of the implementation of the plan; and*

(B) *shall be made on condition that the non-Federal share of the costs are provided from non-Federal sources.*

(4) *EFFECTS OF PROBATIONARY STATUS.*—

(A) *REDUCTIONS IN GRANT AMOUNTS.*—*The Administrator shall reduce, by an amount to be determined by the Administrator, grants for the implementation of a comprehensive conservation and management plan developed by a management conference convened under this section, if the Administrator determines that the management conference is in probationary status under subsection (f)(5).*

(B) *TERMINATION OF MANAGEMENT CONFERENCES.*—*The Administrator shall terminate a management conference convened under this section, and cease funding for the implementation of the comprehensive conservation and management plan developed by the management conference, if the Administrator determines that the management conference has been in probationary status for 2 consecutive years.*

[(h)](i) *GRANT REPORTING.*—*Any person (including a State, interstate, or regional agency or entity) that receives a grant under [subsection (g)]subsection (h) shall report to the Administrator not*

later than 18 months after receipt of such grants and biennially thereafter on the progress being made under this section.

[(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator not to exceed \$35,000,000 for each of fiscal years 2001 through 2010 for—

[(1) expenses related to the administration of management conferences under this section, not to exceed 10 percent of the amount appropriated under this subsection;

[(2) making grants under subsection (g); and

[(3) monitoring the implementation of a conservation and management plan by the management conference or by the Administrator, in any case in which the conference has been terminated.

The Administrator shall provide up to \$5,000,000 per fiscal year of the sums authorized to be appropriated under this subsection to the Administrator of the National Oceanic and Atmospheric Administration to carry out subsection (j).]

(j) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—*There is authorized to be appropriated to the Administrator \$75,000,000 for each of fiscal years 2011 through 2016 for—*

(A) expenses relating to the administration of management conferences by the Administrator under this section, except that such expenses shall not exceed 10 percent of the amount appropriated under this subsection;

(B) making grants under subsection (h); and

(C) monitoring the implementation of a conservation and management plan by the management conference, or by the Administrator in any case in which the conference has been terminated.

(2) ALLOCATIONS.—*Of the sums authorized to be appropriated under this subsection, the Administrator shall provide—*

(A) at least \$1,250,000 per fiscal year, subject to the availability of appropriations, for the development, implementation, and monitoring of each conservation and management plan eligible for grant assistance under subsection (h); and

(B) up to \$5,000,000 per fiscal year to carry out subsection (k).

[(j)](k) RESEARCH.—

(1) PROGRAMS.—In order to determine the need to convene a management conference under this section or at the request of such a management conference, the Administrator shall coordinate and implement, through the National Marine Pollution Program Office and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, as appropriate, for one or more estuarine zones—

(A) a long-term program of trend assessment monitoring measuring variations in pollutant concentrations, marine ecology, and other physical or biological environmental [parameters]parameters which may affect estuarine zones(including monitoring of both pathways and ecosystems to track the introduction and establishment of non-native species), to provide the Administrator the capacity

to determine the potential and actual effects of alternative management strategies and measures;

(B) a program of ecosystem assessment assisting in the development of (i) baseline studies which determine the state of estuarine zones and the effects of natural and anthropogenic changes, and (ii) predictive models capable of translating information on specific discharges or general pollutant loadings within estuarine zones into a set of probable effects on such zones;

(C) a comprehensive water quality sampling program for the continuous monitoring of nutrients, chlorine, acid precipitation dissolved oxygen, and potentially toxic pollutants (including organic chemicals and metals) in estuarine zones, after consultation with interested State, local, interstate, or international agencies and review and analysis of all environmental sampling data presently collected from estuarine zones; and

(D) a program of research to identify the movements of nutrients, sediments and pollutants through estuarine zones and the impact of nutrients, sediments, and pollutants on water quality, the ecosystem, and designated or potential uses of the estuarine zones.

(2) REPORTS.—The Administrator, in cooperation with the Administrator of the National Oceanic and Atmospheric Administration, shall submit to the Congress no less often than biennially a comprehensive report on the activities authorized under this subsection including—

(A) a listing of priority monitoring and research needs;

(B) an assessment of the state and health of the Nation's estuarine zones, to the extent evaluated under this subsection;

(C) a discussion of pollution problems and trends in pollutant concentrations with a direct or indirect effect on water quality, the ecosystem, and designated or potential uses of each estuarine zone, to the extent evaluated under this subsection; and

(D) an evaluation of pollution abatement activities and management measures so far implemented to determine the degree of improvement toward the objectives expressed in subsection (b)(4) of this section.

(l) NATIONAL ESTUARY PROGRAM EVALUATION.—

(1) IN GENERAL.—*Not later than 5 years after the date of enactment of this paragraph, and every 5 years thereafter, the Administrator shall complete an evaluation of the national estuary program established under this section.*

(2) SPECIFIC ASSESSMENTS.—*In conducting an evaluation under this subsection, the Administrator shall—*

(A) *assess the effectiveness of the national estuary program in improving water quality, natural resources, and sustainable uses of the estuaries covered by management conferences convened under this section;*

(B) *identify best practices for improving water quality, natural resources, and sustainable uses of the estuaries covered by management conferences convened under this section, including those practices funded through the use of*

technical assistance from the Environmental Protection Agency and other Federal agencies;

(C) assess the reasons why the best practices described in subparagraph (B) resulted in the achievement of program goals;

(D) identify any redundant requirements for reporting by recipients of a grant under this section; and

(E) develop and recommend a plan for limiting reporting any redundancies.

(3) REPORT.—In completing an evaluation under this subsection, the Administrator shall issue a report on the results of the evaluation, including the findings and recommendations of the Administrator.

(4) AVAILABILITY.—The Administrator shall make a report issued under this subsection available to management conferences convened under this section and the public, including through publication in the Federal Register and on the Internet.

[(k) DEFINITIONS.—For purposes of this section, the terms “estuary” and “estuarine zone” have the meanings such terms have in section 104(n)(4) of this Act, except that the term “estuarine zone” shall also include associated aquatic ecosystems and those portions of tributaries]

(m) DEFINITIONS.—In this section, the terms ‘estuary’ and ‘estuarine zone’ have the meanings given the terms in section 104(n)(4), except that—

(1) the term ‘estuary’ also includes near coastal waters and other bodies of water within the Great Lakes that are similar in form and function to the waters described in the definition of ‘estuary’ in section 104(n)(4); and

(2) the term ‘estuarine zone’ also includes—

(A) waters within the Great Lakes described in paragraph (1) and transitional areas from such waters that are similar in form and function to the transitional areas described in the definition of ‘estuarine zone’ in section 104(n)(4);

(B) associated aquatic ecosystems; and

(C) those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.

* * * * *