

Calendar No. 118112TH CONGRESS
1ST SESSION**S. 1313****[Report No. 112-41]**

To amend the Federal Water Pollution Control Act to reauthorize the National Estuary Program, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 30, 2011

Mr. WHITEHOUSE (for himself, Mr. VITTER, Mr. LIEBERMAN, Mr. CARDIN, Mr. BROWN of Massachusetts, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

JULY 28, 2011

Reported by Mrs. BOXER, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]**A BILL**

To amend the Federal Water Pollution Control Act to reauthorize the National Estuary Program, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Clean Estuaries Act
3 of 2011”.

4 **SEC. 2. NATIONAL ESTUARY PROGRAM AMENDMENTS.**

5 (a) **PURPOSES OF CONFERENCE.—**

6 (1) **DEVELOPMENT OF COMPREHENSIVE CON-**
7 **SERVATION AND MANAGEMENT PLANS.—**Section
8 320(b) of the Federal Water Pollution Control Act
9 (33 U.S.C. 1320(b)) is amended by striking para-
10 graph (4) and inserting the following:

11 “(4) develop and submit to the Administrator a
12 comprehensive conservation and management plan
13 that—

14 “(A) identifies the estuary and the associ-
15 ated upstream waters of the estuary to be ad-
16 dressed by the plan, with consideration given to
17 hydrological boundaries;

18 “(B) recommends priority protection, con-
19 servation, and corrective actions and compliance
20 schedules that address point and nonpoint
21 sources of pollution—

22 “(i) to restore and maintain the chem-
23 ical, physical, and biological integrity of
24 the estuary, including—

1 “(I) restoration and maintenance
2 of water quality, including wetlands
3 and natural hydrological flows;

4 “(II) a resilient and diverse in-
5 digenous population of shellfish, fish,
6 and wildlife; and

7 “(III) recreational activities in
8 the estuary; and

9 “(ii) to ensure that the designated
10 uses of the estuary are protected;

11 “(C)(i) identifies healthy and impaired wa-
12 tershed components, including significant ad-
13 verse impacts to the estuary outside the area
14 addressed by the plan that could affect the
15 water quality and ecological integrity of the es-
16 tuary, and the sources of those adverse impacts,
17 by carrying out integrated assessments that in-
18 clude assessments of—

19 “(I) aquatic habitat and biological in-
20 tegrity;

21 “(II) water quality; and

22 “(III) natural hydrological flows;
23 and

24 “(ii) provides the applicable Federal or
25 State authority with information on any identi-

1 fied adverse impacts and the sources of those
2 adverse impacts;

3 “(D) considers current and future sustain-
4 able commercial activities in the estuary;

5 “(E) addresses the impacts of the chang-
6 ing climate on the estuary, including—

7 “(i) the identification and assessment
8 of vulnerabilities in the estuary;

9 “(ii) the development and implementa-
10 tion of adaptation strategies; and

11 “(iii) the potential impacts of changes
12 in sea level on estuarine water quality, es-
13 tuarine habitat, and infrastructure located
14 in the estuary;

15 “(F) increases public education and aware-
16 ness with respect to—

17 “(i) the ecological health of the estu-
18 ary;

19 “(ii) the water quality conditions of
20 the estuary; and

21 “(iii) ocean, estuarine, land, and at-
22 mospheric connections and interactions;

23 “(G) includes performance measures and
24 goals to track implementation of the plan; and

1 “(H) includes a coordinated monitoring
2 strategy for Federal, State, and local govern-
3 ments and other entities.”

4 (2) MONITORING AND MAKING RESULTS AVAIL-
5 ABLE.—Section 320(b) of the Federal Water Pollu-
6 tion Control Act (33 U.S.C. 1330(b)) is amended by
7 striking paragraph (6) and inserting the following:

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

10 “(A) water quality conditions in the estu-
11 ary and the associated upstream waters of the
12 estuary identified under paragraph (4)(A);

13 “(B) watershed and habitat conditions that
14 relate to the ecological health and water quality
15 conditions of the estuary; and

16 “(C) the effectiveness of actions taken pur-
17 suant to the comprehensive conservation and
18 management plan developed for the estuary
19 under this subsection;”

20 (3) INFORMATION AND EDUCATIONAL ACTIVI-
21 TIES.—Section 320(b) of the Federal Water Pollu-
22 tion Control Act (33 U.S.C. 1330(b)) is amended—

23 (A) by redesignating paragraph (7) as
24 paragraph (8); and

1 (B) by inserting after paragraph (6) the
2 following:

3 “~~(7) provide information and educational activi-~~
4 ties on the ecological health and water quality condi-
5 tions of the estuary; and”.

6 (4) CONFORMING AMENDMENT.—The sentence
7 following section 320(b)(8) of the Federal Water
8 Pollution Control Act (as so redesignated) (~~33~~
9 U.S.C. 1330(b)(8)) is amended by striking “para-
10 graph (7)” and inserting “paragraph (8)”.

11 (b) MEMBERS OF CONFERENCE; COLLABORATIVE
12 PROCESSES.—

13 (1) MEMBERS OF CONFERENCE.—Section
14 320(e)(5) of the Federal Water Pollution Control
15 Act (~~33~~ U.S.C. 1330(e)(5)) is amended by inserting
16 “not-for-profit organizations,” after “institutions,”.

17 (2) COLLABORATIVE PROCESSES.—Section
18 320(d) of the Federal Water Pollution Control Act
19 (~~33~~ U.S.C. 1330(d)) is amended—

20 (A) by striking “(d)” and all that follows
21 through “In developing” and inserting the fol-
22 lowing:

23 “~~(d) USE OF EXISTING DATA AND COLLABORATIVE~~
24 PROCESSES.—

1 “(1) USE OF EXISTING DATA.—In developing”;
2 and

3 (B) by adding at the end the following:

4 “(2) USE OF COLLABORATIVE PROCESSES.—In
5 updating a plan under subsection (f)(4) or devel-
6 oping a new plan under subsection (b), a manage-
7 ment conference shall make use of collaborative
8 processes—

9 “(A) to ensure equitable inclusion of af-
10 fected interests;

11 “(B) to engage with members of the man-
12 agement conference, including through—

13 “(i) the use of consensus-based deci-
14 sion rules; and

15 “(ii) assistance from impartial
16 facilitators, as appropriate;

17 “(C) to ensure relevant information, in-
18 cluding scientific, technical, and cultural infor-
19 mation, is accessible to members;

20 “(D) to promote accountability and trans-
21 parency by ensuring members are informed in
22 a timely manner of—

23 “(i) the purposes and objectives of the
24 management conference; and

1 “(ii) the results of an evaluation con-
2 ducted under subsection (f)(6);

3 “(E) to identify the roles and responsibil-
4 ities of members—

5 “(i) in the management conference
6 proceedings; and

7 “(ii) in the implementation of the
8 plan; and

9 “(F) to seek resolution of conflicts or dis-
10 putes as necessary.”

11 (e) ADMINISTRATION OF PLANS.—Section 320 of the
12 Federal Water Pollution Control Act (33 U.S.C. 1330) is
13 amended by striking subsection (f) and inserting the fol-
14 lowing:

15 “(f) ADMINISTRATION OF PLANS.—

16 “(1) APPROVAL.—Not later than 120 days
17 after the date on which a management conference
18 submits to the Administrator a comprehensive con-
19 servation and management plan under this section,
20 and after providing for public review and comment,
21 the Administrator shall approve the plan, if—

22 “(A) the Administrator determines that
23 the plan meets the requirements of this section;
24 and

25 “(B) each affected Governor concurs.

1 “(2) COMPLETENESS.—

2 “(A) IN GENERAL.—If the Administrator
3 determines that a plan is incomplete under
4 paragraph (1) or (7), the Administrator shall—

5 “(i) provide the management con-
6 ference with written notification of the
7 basis of that finding; and

8 “(ii) allow the management conference
9 to resubmit a revised plan that addresses,
10 to the maximum extent practicable, the
11 comments contained in the written notifi-
12 cation of the Administrator described in
13 clause (i).

14 “(B) RESUBMISSION.—If the Adminis-
15 trator determines that a revised plan submitted
16 under subparagraph (A)(ii) remains incomplete
17 under paragraph (1) or (7), the Administrator
18 shall allow the management conference to re-
19 submit a revised plan in accordance with sub-
20 paragraph (A).

21 “(C) SCOPE OF REVIEW.—In determining
22 whether to approve a comprehensive conserva-
23 tion and management plan under paragraph (1)
24 or (7), the Administrator—

1 “(i) shall limit the scope of review to
 2 a determination of whether the plan meets
 3 the minimum requirements of this section;
 4 and

5 “(ii) may not impose, as a condition
 6 of approval, any additional requirements.

7 ~~“(3) FAILURE OF THE ADMINISTRATOR TO RE-~~
 8 ~~SPOND.—If, by the date that is 120 days after the~~
 9 ~~date on which a plan is submitted or resubmitted~~
 10 ~~under paragraph (1), (2), or (7) the Administrator~~
 11 ~~fails to respond to the submission or resubmission in~~
 12 ~~writing, the plan shall be considered approved.~~

13 ~~“(4) FAILURE TO SUBMIT A PLAN.—If, by the~~
 14 ~~date that is 3 years after the date on which a man-~~
 15 ~~agement conference is convened, that management~~
 16 ~~conference fails to submit a comprehensive conserva-~~
 17 ~~tion and management plan or to secure approval for~~
 18 ~~the comprehensive conservation and management~~
 19 ~~plan under this subsection, the Administrator shall~~
 20 ~~terminate the management conference convened~~
 21 ~~under this section.~~

22 ~~“(5) IMPLEMENTATION.—~~

23 ~~“(A) IN GENERAL.—On the approval of a~~
 24 ~~comprehensive conservation and management~~

1 plan under this section, the plan shall be imple-
2 mented.

3 ~~“(B) USE OF AUTHORIZED AMOUNTS.—~~
4 Amounts authorized to be appropriated under
5 titles II and VI and section 319 may be used
6 in accordance with the applicable requirements
7 of this Act to assist States with the implemen-
8 tation of a plan approved under paragraph (1).

9 ~~“(6) EVALUATION.—~~

10 ~~“(A) IN GENERAL.—~~Not later than 5 years
11 after the date of enactment of this paragraph,
12 and every 5 years thereafter, the Administrator
13 shall carry out an evaluation of the implementa-
14 tion of each comprehensive conservation and
15 management plan developed under this section
16 to determine the degree to which the goals of
17 the plan have been met.

18 ~~“(B) REVIEW AND COMMENT BY MANAGE-~~
19 ~~MENT CONFERENCE.—~~In completing an evalua-
20 tion under subparagraph (A), the Administrator
21 shall submit the results of the evaluation to the
22 appropriate management conference for review
23 and comment.

24 ~~“(C) REPORT.—~~

1 “(i) IN GENERAL.—In completing an
2 evaluation under subparagraph (A), and
3 after providing an opportunity for a man-
4 agement conference to submit comments
5 under subparagraph (B), the Adminis-
6 trator shall issue a report on the results of
7 the evaluation, including the findings and
8 recommendations of the Administrator and
9 any comments received from the manage-
10 ment conference.

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

16 “(D) SPECIAL RULE FOR NEW PLANS.—
17 Notwithstanding subparagraph (A), if a man-
18 agement conference submits a new comprehen-
19 sive conservation and management plan to the
20 Administrator after the date of enactment of
21 this paragraph, the Administrator shall com-
22 plete the evaluation of the implementation of
23 the plan required by subparagraph (A) not later
24 than 5 years after the date of such submission
25 and every 5 years thereafter.

1 “(7) UPDATES.—

2 “(A) REQUIREMENT.—Not later than 18
3 months after the date on which the Adminis-
4 trator makes an evaluation of the implementa-
5 tion of a comprehensive conservation and man-
6 agement plan available to the public under
7 paragraph (6)(C), a management conference
8 convened under this section shall submit to the
9 Administrator an update of the plan that re-
10 flects, to the maximum extent practicable, the
11 results of the program evaluation.

12 “(B) APPROVAL OF UPDATES.—Not later
13 than 120 days after the date on which a man-
14 agement conference submits to the Adminis-
15 trator an updated comprehensive conservation
16 and management plan under subparagraph (A),
17 and after providing for public review and com-
18 ment, the Administrator shall approve the up-
19 dated plan, if the Administrator determines
20 that the updated plan meets the requirements
21 of this section.

22 “(8) PROBATIONARY STATUS.—The Adminis-
23 trator may consider a management conference con-
24 vened under this section to be in probationary sta-
25 tus, if the management conference has not received

1 approval for an updated comprehensive conservation
 2 and management plan under paragraph (7)(B) on or
 3 before the last day of the 5-year period beginning on
 4 the date on which the Administrator makes an eval-
 5 uation of the plan available to the public under para-
 6 graph (6)(C).”.

7 (d) FEDERAL AGENCIES.—Section 320 of the Fed-
 8 eral Water Pollution Control Act (33 U.S.C. 1330) is
 9 amended—

10 (1) by redesignating subsections (g), (h), (i),
 11 (j), and (k) as subsections (h), (i), (j), (k), and (m),
 12 respectively; and

13 (2) by inserting after subsection (f) the fol-
 14 lowing:

15 “(g) FEDERAL AGENCIES.—

16 “(1) ACTIVITIES CONDUCTED WITHIN ESTU-
 17 ARIES WITH APPROVED PLANS.—After approval of a
 18 comprehensive conservation and management plan
 19 by the Administrator, any Federal action or activity
 20 affecting the estuary shall be conducted, to the max-
 21 imum extent practicable, in a manner consistent
 22 with the plan.

23 “(2) COORDINATION AND COOPERATION.—

24 “(A) IN GENERAL.—The Secretary of the
 25 Army (acting through the Chief of Engineers);

1 the Administrator of the National Oceanic and
2 Atmospheric Administration, the Director of the
3 United States Fish and Wildlife Service, the
4 Secretary of the Department of Agriculture, the
5 Director of the United States Geological Sur-
6 vey, the Secretary of the Department of Trans-
7 portation, the Secretary of the Department of
8 Housing and Urban Development, and the
9 heads of other appropriate Federal agencies, as
10 determined by the Administrator, shall, to the
11 maximum extent practicable, cooperate and co-
12 ordinate activities, including monitoring activi-
13 ties, related to the implementation of a com-
14 prehensive conservation and management plan
15 approved by the Administrator.

16 “(B) LEAD COORDINATING AGENCY.—The
17 Environmental Protection Agency shall serve as
18 the lead coordinating agency under this para-
19 graph.

20 “(3) CONSIDERATION OF PLANS IN AGENCY
21 BUDGET REQUESTS.—In making an annual budget
22 request for a Federal agency referred to in para-
23 graph (2), the head of such agency shall consider
24 the responsibilities of the agency under this section,

1 including under comprehensive conservation and
2 management plans approved by the Administrator.

3 “(4) MONITORING.—The heads of the Federal
4 agencies referred to in paragraph (2) shall collabo-
5 rate on the development of tools and methodologies
6 for monitoring the ecological health and water qual-
7 ity conditions of estuaries covered by a management
8 conference convened under this section.”.

9 (c) GRANTS.—

10 (1) IN GENERAL.—Subsection (h) (as redesign-
11 nated by subsection (d)) of section 320 of the Fed-
12 eral Water Pollution Control Act (33 U.S.C. 1330)
13 is amended—

14 (A) in paragraph (1), by striking “other
15 public” and all that follows before the period at
16 the end and inserting “and other public or non-
17 profit private agencies, institutions, and organi-
18 zations”; and

19 (B) by adding at the end the following:

20 “(4) EFFECTS OF PROBATIONARY STATUS.—

21 “(A) REDUCTIONS IN GRANT AMOUNTS.—

22 The Administrator shall reduce, by an amount
23 to be determined by the Administrator, grants
24 for the implementation of a comprehensive con-
25 servation and management plan developed by a

1 management conference convened under this
 2 section, if the Administrator determines that
 3 the management conference is in probationary
 4 status under subsection (f)(8).

5 “(B) TERMINATION OF MANAGEMENT CON-
 6 FERENCES.—The Administrator shall terminate
 7 a management conference convened under this
 8 section, and cease funding for the implementa-
 9 tion of the comprehensive conservation and
 10 management plan developed by the manage-
 11 ment conference, if the Administrator deter-
 12 mines that the management conference has
 13 been in probationary status for 2 consecutive
 14 years.”.

15 (2) CONFORMING AMENDMENT.—Section 320(i)
 16 the Federal Water Pollution Control Act (as redesign-
 17 nated by subsection (d)) is amended by striking
 18 “subsection (g)” and inserting “subsection (h)”.

19 (f) AUTHORIZATION OF APPROPRIATIONS.—Section
 20 320 of the Federal Water Pollution Control Act (33
 21 U.S.C. 1330) (as redesignated by subsection (d)) is
 22 amended by striking subsection (j) and inserting the fol-
 23 lowing:

24 “(j) AUTHORIZATION OF APPROPRIATIONS.—

1 “(1) IN GENERAL.—There is authorized to be
2 appropriated to the Administrator \$35,000,000 for
3 each of fiscal years 2012 through 2017 for—

4 “(A) expenses relating to the administra-
5 tion of management conferences by the Admin-
6 istrator under this section, except that such ex-
7 penses shall not exceed 5 percent of the amount
8 appropriated under this subsection;

9 “(B) making grants under subsection (h);
10 and

11 “(C) monitoring the implementation of a
12 conservation and management plan by the man-
13 agement conference, or by the Administrator in
14 any case in which the conference has been ter-
15 minated.

16 “(2) ALLOCATIONS.—Of the sums authorized to
17 be appropriated under this subsection, the Adminis-
18 trator shall provide at least 80 percent per fiscal
19 year for the development, implementation, and moni-
20 toring of each conservation and management plan el-
21 igible for grant assistance under subsection (h).”.

22 (g) RESEARCH.—Section 320(k)(1)(A) of the Federal
23 Water Pollution Control Act (as redesignated by sub-
24 section (d)) is amended—

1 (1) by striking “paramenters” and inserting
2 “parameters”; and

3 (2) by inserting “(including monitoring of both
4 pathways and ecosystems to track the introduction
5 and establishment of nonnative species)” before “; to
6 provide the Administrator”.

7 (h) NATIONAL ESTUARY PROGRAM EVALUATION.—
8 Section 320 of the Federal Water Pollution Control Act
9 (~~33~~ U.S.C. 1330) is amended by inserting after subsection
10 (k) (as redesignated by subsection (d)) the following:

11 “(1) NATIONAL ESTUARY PROGRAM EVALUATION.—

12 “(1) IN GENERAL.—Not later than 5 years
13 after the date of enactment of this paragraph, and
14 every 5 years thereafter, the Administrator shall
15 complete an evaluation of the national estuary pro-
16 gram established under this section.

17 “(2) SPECIFIC ASSESSMENTS.—In conducting
18 an evaluation under this subsection, the Adminis-
19 trator shall—

20 “(A) assess the effectiveness of the na-
21 tional estuary program in improving water
22 quality, natural resources, and sustainable uses
23 of the estuaries covered by management con-
24 ferences convened under this section;

1 “(B) identify best practices for improving
2 water quality, natural resources, and sustain-
3 able uses of the estuaries covered by manage-
4 ment conferences convened under this section;
5 including those practices funded through the
6 use of technical assistance from the Environ-
7 mental Protection Agency and other Federal
8 agencies;

9 “(C) assess the reasons why the best prac-
10 tices described in subparagraph (B) resulted in
11 the achievement of program goals;

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

15 “(E) develop and recommend a plan for
16 eliminating any redundancies.

17 “(3) REPORT.—In completing an evaluation
18 under this subsection, the Administrator shall issue
19 a report on the results of the evaluation, including
20 the findings and recommendations of the Adminis-
21 trator.

22 “(4) AVAILABILITY.—The Administrator shall
23 make a report issued under this subsection available
24 to management conferences convened under this sec-

1 tion and the public, including through publication in
 2 the Federal Register and on the Internet.”.

3 (i) ~~CONVENING OF CONFERENCE.~~—Section
 4 320(a)(2) of the Federal Water Pollution Control Act (33
 5 U.S.C. 1330(a)(2)) is amended—

6 (1) by striking “(2) ~~CONVENING OF CON-~~
 7 ~~FERENCE.~~—” and all that follows through “In any
 8 ease” and inserting the following:

9 “(2) ~~CONVENING OF CONFERENCE.~~—In any
 10 ease”; and

11 (2) by striking subparagraph (B).

12 (j) ~~GREAT LAKES ESTUARIES.~~—Section 320(m) of
 13 the Federal Water Pollution Control Act (as redesignated
 14 by subsection (d)) is amended by striking the subsection
 15 designation and all that follows through “and those por-
 16 tions of tributaries” and inserting the following:

17 “(m) ~~DEFINITIONS.~~—In this section, the terms ‘estu-
 18 ary’ and ‘estuarine zone’ have the meanings given the
 19 terms in section 104(n)(4), except that—

20 “(1) the term ‘estuary’ also includes near coast-
 21 al waters and other bodies of water within the Great
 22 Lakes that are similar in form and function to the
 23 waters described in the definition of ‘estuary’ in sec-
 24 tion 104(n)(4); and

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

1 “(A) waters within the Great Lakes de-
 2 scribed in paragraph (1) and transitional areas
 3 from such waters that are similar in form and
 4 function to the transitional areas described in
 5 the definition of ‘estuarine zone’ in section
 6 104(n)(4);

7 “(B) associated aquatic ecosystems; and

8 “(C) those portions of tributaries”.

9 **SECTION 1. SHORT TITLE.**

10 *This Act may be cited as the “Clean Estuaries Act of*
 11 *2011”.*

12 **SEC. 2. NATIONAL ESTUARY PROGRAM AMENDMENTS.**

13 (a) *PURPOSES OF CONFERENCE.—*

14 (1) *DEVELOPMENT OF COMPREHENSIVE CON-*
 15 *SERVATION AND MANAGEMENT PLANS.—Section*
 16 *320(b) of the Federal Water Pollution Control Act (33*
 17 *U.S.C. 1330(b)) is amended by striking paragraph*
 18 *(4) and inserting the following:*

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

22 “(A) *identifies the estuary and the associ-*
 23 *ated upstream waters of the estuary to be ad-*
 24 *dressed by the plan, with consideration given to*
 25 *hydrological boundaries;*

1 “(B) recommends priority protection, con-
2 servation, and corrective actions and compliance
3 schedules that address point and nonpoint
4 sources of pollution—

5 “(i) to restore and maintain the chem-
6 ical, physical, and biological integrity of the
7 estuary, including—

8 “(I) restoration and maintenance
9 of water quality, including wetlands
10 and natural hydrological flows;

11 “(II) a resilient and diverse in-
12 digenous population of shellfish, fish,
13 and wildlife; and

14 “(III) recreational activities in
15 the estuary; and

16 “(ii) to ensure that the designated uses
17 of the estuary are protected;

18 “(C)(i) identifies healthy and impaired wa-
19 tershed components, including significant ad-
20 verse impacts to the estuary outside the area ad-
21 dressed by the plan that could affect the water
22 quality and ecological integrity of the estuary,
23 and the sources of those adverse impacts, by car-
24 rying out integrated assessments that include as-
25 sessments of—

1 “(I) aquatic habitat and biological in-
2 tegrity;

3 “(II) water quality; and

4 “(III) natural hydrological flows; and

5 “(ii) provides the applicable Federal or
6 State authority with information on any identi-
7 fied adverse impacts and the sources of those ad-
8 verse impacts;

9 “(D) considers current and future sustain-
10 able commercial activities in the estuary;

11 “(E) addresses the impacts of the changing
12 climate on the estuary, including—

13 “(i) the identification and assessment
14 of vulnerabilities in the estuary;

15 “(ii) the development and implementa-
16 tion of adaptation strategies; and

17 “(iii) the potential impacts of changes
18 in sea level on estuarine water quality, estu-
19 arine habitat, and infrastructure located in
20 the estuary;

21 “(F) increases public education and aware-
22 ness with respect to—

23 “(i) the ecological health of the estuary;

24 “(ii) the water quality conditions of
25 the estuary; and

1 “(iii) ocean, estuarine, land, and at-
2 mospheric connections and interactions;

3 “(G) includes performance measures and
4 goals to track implementation of the plan; and

5 “(H) includes a coordinated monitoring
6 strategy for Federal, State, and local govern-
7 ments and other entities.”.

8 (2) *MONITORING AND MAKING RESULTS AVAIL-*
9 *ABLE.*—Section 320(b) of the Federal Water Pollution
10 Control Act (33 U.S.C. 1330(b)) is amended by strik-
11 ing paragraph (6) and inserting the following:

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

14 “(A) water quality conditions in the estu-
15 ary and the associated upstream waters of the es-
16 tuary identified under paragraph (4)(A);

17 “(B) watershed and habitat conditions that
18 relate to the ecological health and water quality
19 conditions of the estuary; and

20 “(C) the effectiveness of actions taken pursu-
21 ant to the comprehensive conservation and man-
22 agement plan developed for the estuary under
23 this subsection;”.

1 (3) *INFORMATION AND EDUCATIONAL ACTIVITIES.*—Section 320(b) of the Federal Water Pollution
2 Control Act (33 U.S.C. 1330(b)) is amended—
3

4 (A) by redesignating paragraph (7) as
5 paragraph (8); and

6 (B) by inserting after paragraph (6) the fol-
7 lowing:

8 “(7) provide information and educational activi-
9 ties on the ecological health and water quality condi-
10 tions of the estuary; and”.

11 (4) *CONFORMING AMENDMENT.*—The sentence fol-
12 lowing section 320(b)(8) of the Federal Water Pollu-
13 tion Control Act (as so redesignated) (33 U.S.C.
14 1330(b)(8)) is amended by striking “paragraph (7)”
15 and inserting “paragraph (8)”.

16 (b) *MEMBERS OF CONFERENCE; COLLABORATIVE*
17 *PROCESSES.*—

18 (1) *MEMBERS OF CONFERENCE.*—Section
19 320(c)(5) of the Federal Water Pollution Control Act
20 (33 U.S.C. 1330(c)(5)) is amended by inserting “not-
21 for-profit organizations,” after “institutions,”.

22 (2) *COLLABORATIVE PROCESSES.*—Section
23 320(d) of the Federal Water Pollution Control Act (33
24 U.S.C. 1330(d)) is amended—

1 (A) by striking “(d)” and all that follows
 2 through “In developing” and inserting the fol-
 3 lowing:

4 “(d) *USE OF EXISTING DATA AND COLLABORATIVE*
 5 *PROCESSES.*—

6 “(1) *USE OF EXISTING DATA.*—*In developing*”;
 7 and

8 (B) by adding at the end the following:

9 “(2) *USE OF COLLABORATIVE PROCESSES.*—*In*
 10 *updating a plan under subsection (f)(4) or developing*
 11 *a new plan under subsection (b), a management con-*
 12 *ference shall make use of collaborative processes—*

13 “(A) *to ensure equitable inclusion of affected*
 14 *interests;*

15 “(B) *to engage with members of the man-*
 16 *agement conference, including through—*

17 “(i) *the use of consensus-based decision*
 18 *rules; and*

19 “(ii) *assistance from impartial*
 20 *facilitators, as appropriate;*

21 “(C) *to ensure relevant information, includ-*
 22 *ing scientific, technical, and cultural informa-*
 23 *tion, is accessible to members;*

1 “(D) to promote accountability and trans-
2 parency by ensuring members are informed in a
3 timely manner of—

4 “(i) the purposes and objectives of the
5 management conference; and

6 “(ii) the results of an evaluation con-
7 ducted under subsection (f)(6);

8 “(E) to identify the roles and responsibil-
9 ities of members—

10 “(i) in the management conference pro-
11 ceedings; and

12 “(ii) in the implementation of the
13 plan; and

14 “(F) to seek resolution of conflicts or dis-
15 putes as necessary.”.

16 (c) *ADMINISTRATION OF PLANS.*—Section 320 of the
17 *Federal Water Pollution Control Act (33 U.S.C. 1330)* is
18 *amended by striking subsection (f) and inserting the fol-*
19 *lowing:*

20 “(f) *ADMINISTRATION OF PLANS.*—

21 “(1) *APPROVAL.*—Not later than 120 days after
22 the date on which a management conference submits
23 to the Administrator a comprehensive conservation
24 and management plan under this section, and after

1 *providing for public review and comment, the Admin-*
2 *istrator shall approve the plan, if—*

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

5 *“(B) each affected Governor concurs.*

6 *“(2) COMPLETENESS.—*

7 *“(A) IN GENERAL.—If the Administrator*
8 *determines that a plan is incomplete under*
9 *paragraph (1) or (7), the Administrator shall—*

10 *“(i) provide the management con-*
11 *ference with written notification of the basis*
12 *of that finding; and*

13 *“(ii) allow the management conference*
14 *to resubmit a revised plan that addresses, to*
15 *the maximum extent practicable, the com-*
16 *ments contained in the written notification*
17 *of the Administrator described in clause (i).*

18 *“(B) RESUBMISSION.—If the Administrator*
19 *determines that a revised plan submitted under*
20 *subparagraph (A)(ii) remains incomplete under*
21 *paragraph (1) or (7), the Administrator shall*
22 *allow the management conference to resubmit a*
23 *revised plan in accordance with subparagraph*
24 *(A).*

1 “(C) *SCOPE OF REVIEW.*—*In determining*
2 *whether to approve a comprehensive conservation*
3 *and management plan under paragraph (1) or*
4 *(7), the Administrator—*

5 “(i) *shall limit the scope of review to*
6 *a determination of whether the plan meets*
7 *the minimum requirements of this section;*
8 *and*

9 “(ii) *may not impose, as a condition of*
10 *approval, any additional requirements.*

11 “(3) *FAILURE OF THE ADMINISTRATOR TO RE-*
12 *SPOND.*—*If, by the date that is 120 days after the*
13 *date on which a plan is submitted or resubmitted*
14 *under paragraph (1), (2), or (7) the Administrator*
15 *fails to respond to the submission or resubmission in*
16 *writing, the plan shall be considered approved.*

17 “(4) *FAILURE TO SUBMIT A PLAN.*—*If, by the*
18 *date that is 3 years after the date on which a man-*
19 *agement conference is convened, that management*
20 *conference fails to submit a comprehensive conserva-*
21 *tion and management plan or to secure approval for*
22 *the comprehensive conservation and management*
23 *plan under this subsection, the Administrator shall*
24 *terminate the management conference convened under*
25 *this section.*

1 “(5) *IMPLEMENTATION.*—

2 “(A) *IN GENERAL.*—*On the approval of a*
3 *comprehensive conservation and management*
4 *plan under this section, the plan shall be imple-*
5 *mented.*

6 “(B) *USE OF AUTHORIZED AMOUNTS.*—
7 *Amounts authorized to be appropriated under ti-*
8 *ties II and VI and section 319 may be used in*
9 *accordance with the applicable requirements of*
10 *this Act to assist States with the implementation*
11 *of a plan approved under paragraph (1).*

12 “(6) *EVALUATION.*—

13 “(A) *IN GENERAL.*—*Not later than 5 years*
14 *after the date of enactment of this paragraph,*
15 *and every 5 years thereafter, the Administrator*
16 *shall carry out an evaluation of the implementa-*
17 *tion of each comprehensive conservation and*
18 *management plan developed under this section to*
19 *determine the degree to which the goals of the*
20 *plan have been met.*

21 “(B) *REVIEW AND COMMENT BY MANAGE-*
22 *MENT CONFERENCE.*—*In completing an evalua-*
23 *tion under subparagraph (A), the Administrator*
24 *shall submit the results of the evaluation to the*

1 *appropriate management conference for review*
2 *and comment.*

3 “(C) *REPORT.—*

4 “(i) *IN GENERAL.—In completing an*
5 *evaluation under subparagraph (A), and*
6 *after providing an opportunity for a man-*
7 *agement conference to submit comments*
8 *under subparagraph (B), the Administrator*
9 *shall issue a report on the results of the*
10 *evaluation, including the findings and rec-*
11 *ommendations of the Administrator and*
12 *any comments received from the manage-*
13 *ment conference.*

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

19 “(D) *SPECIAL RULE FOR NEW PLANS.—Not-*
20 *withstanding subparagraph (A), if a manage-*
21 *ment conference submits a new comprehensive*
22 *conservation and management plan to the Ad-*
23 *ministrator after the date of enactment of this*
24 *paragraph, the Administrator shall complete the*
25 *evaluation of the implementation of the plan re-*

1 *quired by subparagraph (A) not later than 5*
2 *years after the date of such submission and every*
3 *5 years thereafter.*

4 “(7) *UPDATES.*—

5 “(A) *REQUIREMENT.*—*Not later than 18*
6 *months after the date on which the Adminis-*
7 *trator makes an evaluation of the implementa-*
8 *tion of a comprehensive conservation and man-*
9 *agement plan available to the public under para-*
10 *graph (6)(C), a management conference convened*
11 *under this section shall submit to the Adminis-*
12 *trator an update of the plan that reflects, to the*
13 *maximum extent practicable, the results of the*
14 *program evaluation.*

15 “(B) *APPROVAL OF UPDATES.*—*Not later*
16 *than 120 days after the date on which a manage-*
17 *ment conference submits to the Administrator an*
18 *updated comprehensive conservation and man-*
19 *agement plan under subparagraph (A), and after*
20 *providing for public review and comment, the*
21 *Administrator shall approve the updated plan, if*
22 *the Administrator determines that the updated*
23 *plan meets the requirements of this section.*

24 “(8) *PROBATIONARY STATUS.*—*The Adminis-*
25 *trator may consider a management conference con-*

1 *vened under this section to be in probationary status,*
 2 *if the management conference has not received ap-*
 3 *proval for an updated comprehensive conservation*
 4 *and management plan under paragraph (7)(B) on or*
 5 *before the last day of the 5-year period beginning on*
 6 *the date on which the Administrator makes an eval-*
 7 *uation of the plan available to the public under para-*
 8 *graph (6)(C).”.*

9 *(d) FEDERAL AGENCIES.—Section 320 of the Federal*
 10 *Water Pollution Control Act (33 U.S.C. 1330) is amend-*
 11 *ed—*

12 *(1) by redesignating subsections (g), (h), (i), (j),*
 13 *and (k) as subsections (h), (i), (j), (k), and (m), re-*
 14 *spectively; and*

15 *(2) by inserting after subsection (f) the following:*

16 *“(g) FEDERAL AGENCIES.—*

17 *“(1) ACTIVITIES CONDUCTED WITHIN ESTUARIES*
 18 *WITH APPROVED PLANS.—After approval of a com-*
 19 *prehensive conservation and management plan by the*
 20 *Administrator, any Federal action or activity affect-*
 21 *ing the estuary shall be conducted, to the maximum*
 22 *extent practicable, in a manner consistent with the*
 23 *plan.*

24 *“(2) COORDINATION AND COOPERATION.—*

1 “(A) *IN GENERAL.*—*The Secretary of the*
2 *Army (acting through the Chief of Engineers),*
3 *the Administrator of the National Oceanic and*
4 *Atmospheric Administration, the Director of the*
5 *United States Fish and Wildlife Service, the Sec-*
6 *retary of the Department of Agriculture, the Di-*
7 *rector of the United States Geological Survey, the*
8 *Secretary of the Department of Transportation,*
9 *the Secretary of the Department of Housing and*
10 *Urban Development, and the heads of other ap-*
11 *propriate Federal agencies, as determined by the*
12 *Administrator, shall, to the maximum extent*
13 *practicable, cooperate and coordinate activities,*
14 *including monitoring activities, related to the*
15 *implementation of a comprehensive conservation*
16 *and management plan approved by the Adminis-*
17 *trator.*

18 “(B) *LEAD COORDINATING AGENCY.*—*The*
19 *Environmental Protection Agency shall serve as*
20 *the lead coordinating agency under this para-*
21 *graph.*

22 “(3) *CONSIDERATION OF PLANS IN AGENCY*
23 *BUDGET REQUESTS.*—*In making an annual budget*
24 *request for a Federal agency referred to in paragraph*
25 *(2), the head of such agency shall consider the respon-*

1 *sibilities of the agency under this section, including*
 2 *under comprehensive conservation and management*
 3 *plans approved by the Administrator.*

4 “(4) *MONITORING.*—*The heads of the Federal*
 5 *agencies referred to in paragraph (2) shall collaborate*
 6 *on the development of tools and methodologies for*
 7 *monitoring the ecological health and water quality*
 8 *conditions of estuaries covered by a management con-*
 9 *ference convened under this section.”.*

10 *(e) GRANTS.*—

11 (1) *IN GENERAL.*—*Subsection (h) (as redesign-*
 12 *ated by subsection (d)) of section 320 of the Federal*
 13 *Water Pollution Control Act (33 U.S.C. 1330) is*
 14 *amended—*

15 (A) *in paragraph (1), by striking “other*
 16 *public” and all that follows before the period at*
 17 *the end and inserting “and other public or non-*
 18 *profit private agencies, institutions, and organi-*
 19 *zations”;* and

20 (B) *by adding at the end the following:*

21 “(4) *EFFECTS OF PROBATIONARY STATUS.*—

22 “(A) *REDUCTIONS IN GRANT AMOUNTS.*—

23 *The Administrator shall reduce, by an amount to*
 24 *be determined by the Administrator, grants for*
 25 *the implementation of a comprehensive conserva-*

1 *tion and management plan developed by a man-*
2 *agement conference convened under this section,*
3 *if the Administrator determines that the man-*
4 *agement conference is in probationary status*
5 *under subsection (f)(8).*

6 “(B) *TERMINATION OF MANAGEMENT CON-*
7 *FERENCES.—The Administrator shall terminate*
8 *a management conference convened under this*
9 *section, and cease funding for the implementa-*
10 *tion of the comprehensive conservation and man-*
11 *agement plan developed by the management con-*
12 *ference, if the Administrator determines that the*
13 *management conference has been in probationary*
14 *status for 2 consecutive years.”*

15 (2) *CONFORMING AMENDMENT.—Section 320(i)*
16 *the Federal Water Pollution Control Act (as redesign-*
17 *ated by subsection (d)) is amended by striking “sub-*
18 *section (g)” and inserting “subsection (h)”*.

19 (f) *AUTHORIZATION OF APPROPRIATIONS.—Section*
20 *320 of the Federal Water Pollution Control Act (33 U.S.C.*
21 *1330) (as redesignated by subsection (d)) is amended by*
22 *striking subsection (j) and inserting the following:*

23 “(j) *AUTHORIZATION OF APPROPRIATIONS.—*

1 “(1) *IN GENERAL.*—*There is authorized to be ap-*
2 *propriated to the Administrator \$35,000,000 for each*
3 *of fiscal years 2012 through 2017 for—*

4 “(A) *expenses relating to the administration*
5 *of grants by the Administrator under this sec-*
6 *tion, including the award and oversight of*
7 *grants, except that such expenses shall not exceed*
8 *5 percent of the amount appropriated under this*
9 *subsection;*

10 “(B) *making grants under subsection (h);*
11 *and*

12 “(C) *monitoring the implementation of a*
13 *conservation and management plan by the man-*
14 *agement conference, or by the Administrator in*
15 *any case in which the conference has been termi-*
16 *nated.*

17 “(2) *ALLOCATIONS.*—*The Administrator shall*
18 *provide at least 80 percent of the amounts appro-*
19 *priated under this subsection per fiscal year for the*
20 *development, implementation, and monitoring of each*
21 *conservation and management plan eligible for grant*
22 *assistance under subsection (h).*

23 “(3) *REQUIREMENT.*—*The Administrator shall*
24 *include in the annual budget request of the Environ-*
25 *mental Protection Agency a clear description of the*

1 *amounts requested by the Administrator to make*
2 *grants under paragraph (1)(B).”.*

3 *(g) RESEARCH.—Section 320(k)(1)(A) of the Federal*
4 *Water Pollution Control Act (as redesignated by subsection*
5 *(d)) is amended—*

6 *(1) by striking “paramenters” and inserting*
7 *“parameters”; and*

8 *(2) by inserting “(including monitoring of both*
9 *pathways and ecosystems to track the introduction*
10 *and establishment of nonnative species)” before “, to*
11 *provide the Administrator”.*

12 *(h) NATIONAL ESTUARY PROGRAM EVALUATION.—Sec-*
13 *tion 320 of the Federal Water Pollution Control Act (33*
14 *U.S.C. 1330) is amended by inserting after subsection (k)*
15 *(as redesignated by subsection (d)) the following:*

16 *“(l) NATIONAL ESTUARY PROGRAM EVALUATION.—*

17 *“(1) IN GENERAL.—Not later than 5 years after*
18 *the date of enactment of this paragraph, and every 5*
19 *years thereafter, the Administrator shall complete an*
20 *evaluation of the national estuary program estab-*
21 *lished under this section.*

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

1 “(A) assess the effectiveness of the national
2 estuary program in improving water quality,
3 natural resources, and sustainable uses of the es-
4 tuaries covered by management conferences con-
5 vened under this section;

6 “(B) identify best practices for improving
7 water quality, natural resources, and sustainable
8 uses of the estuaries covered by management con-
9 ferences convened under this section, including
10 those practices funded through the use of tech-
11 nical assistance from the Environmental Protec-
12 tion Agency and other Federal agencies;

13 “(C) assess the reasons why the best prac-
14 tices described in subparagraph (B) resulted in
15 the achievement of program goals;

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

19 “(E) develop and recommend a plan for
20 eliminating any redundancies.

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

1 “(4) *AVAILABILITY.*—*The Administrator shall*
2 *make a report issued under this subsection available*
3 *to management conferences convened under this sec-*
4 *tion and the public, including through publication in*
5 *the Federal Register and on the Internet.”.*

6 (i) *CONVENING OF CONFERENCE.*—*Section 320(a)(2)*
7 *of the Federal Water Pollution Control Act (33 U.S.C.*
8 *1330(a)(2)) is amended—*

9 (1) *by striking “(2) CONVENING OF CON-*
10 *FERENCE.—” and all that follows through “In any*
11 *case” and inserting the following:*

12 “(2) *CONVENING OF CONFERENCE.*—*In any*
13 *case”;* and

14 (2) *by striking subparagraph (B).*

15 (j) *GREAT LAKES ESTUARIES.*—*Section 320(m) of the*
16 *Federal Water Pollution Control Act (as redesignated by*
17 *subsection (d)) is amended by striking the subsection des-*
18 *ignation and all that follows through “and those portions*
19 *of tributaries” and inserting the following:*

20 “(m) *DEFINITIONS.*—*In this section, the terms ‘estu-*
21 *ary’ and ‘estuarine zone’ have the meanings given the terms*
22 *in section 104(n)(4), except that—*

23 “(1) *the term ‘estuary’ also includes near coastal*
24 *waters and other bodies of water within the Great*
25 *Lakes that are similar in form and function to the*

1 *waters described in the definition of ‘estuary’ in sec-*
2 *tion 104(n)(4); and*

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

4 *“(A) waters within the Great Lakes de-*
5 *scribed in paragraph (1) and transitional areas*
6 *from such waters that are similar in form and*
7 *function to the transitional areas described in*
8 *the definition of ‘estuarine zone’ in section*
9 *104(n)(4);*

10 *“(B) associated aquatic ecosystems; and*

11 *“(C) those portions of tributaries”.*

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112TH CONGRESS
1ST Session

S. 1313

[Report No. 112-41]

A BILL

To amend the Federal Water Pollution Control Act to reauthorize the National Estuary Program, and for other purposes.

JULY 28, 2011

Reported with an amendment