

## Calendar No. 323

106TH CONGRESS }  
1st Session }

SENATE

{ REPORT  
106-189

### ESTUARY HABITAT RESTORATION PARTNERSHIP ACT OF 1999

---

OCTOBER 14, 1999.—Ordered to be printed

---

Mr. CHAFEE, from the Committee on Environment and Public  
Works, submitted the following

### REPORT

[to accompany S. 835]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (S. 835) to encourage restoration of estuary habitat through more efficient project financing and enhanced coordination of Federal and non-Federal restoration programs, and for other purposes, having considered the same, reports favorably thereon with an amendment, and recommends the bill, as amended, do pass.

#### GENERAL STATEMENT AND BACKGROUND

##### *Estuaries*

Estuaries are those bays, gulfs, sounds, and inlets where fresh water meets and mixes with salt water from the ocean. They provide some of the most economically and ecologically productive habitat for an extensive variety of species of plants, fish, wildlife, and waterfowl. According to the U.S. Department of Commerce, more than 75 percent of the commercial fish and shellfish catch and 80 to 90 percent of the recreational fish catch in the United States depend on estuaries at some stage in their lifecycles. The commercial fishing industry alone contributes \$111 billion per year to the national economy.

Estuary habitat is the complex of physical and hydrologic features and living organisms within estuaries and their associated ecosystems. The various kinds of estuary habitats—river deltas, sea grass meadows, forested wetlands, shellfish beds, marshes and beaches—support a flourishing range of wildlife and plants. Estuaries are home to a large percentage of endangered and threatened species and half of the neotropical migratory birds in the United States. Because fish and birds migrate, the health of these habitats is intertwined with the health of other ecosystems thousands of miles away.

Estuaries are also essential to the nation's quality of life. Over half the population of the United States lives near a coastal area. In 1993, 180 million Americans, 70 percent of the nation's population, visited estuaries to fish, swim, hunt, dive, view wildlife, bike and learn.

Regrettably, estuaries are in danger. From colonial times until 1990, over 55 million acres of wetlands in the coastal mainland States were degraded or destroyed. This accounts for more than 50 percent of the total wetlands losses throughout the nation. Recent population growth in coastal watersheds; dredging; draining; bulldozing and paving; pollution; dams; sewage discharges and other activities have lead to extensive loss and continuing destruction of estuary habitat, which has reached more than 90 percent over the last 100 years in certain areas of the United States. For instance, since 1900, San Francisco Bay has lost 95 percent of its original wetlands, and Galveston Bay has lost 85 percent of its sea grass meadows.

The latest National Water Quality Inventory Report to Congress by the Environmental Protection Agency shows that as of 1996, almost 40 percent of the nation's surveyed estuarine waters were too polluted for basic uses, such as fishing and swimming. Fish catches are at extremely low levels, many shellfish beds have been closed, and the economic livelihood and quality of life of our coastal communities is threatened.

#### *National Estuary Program*

The National Estuary Program (NEP) was created by the Water Quality Amendments of 1987. Participation in the program is voluntary and emphasizes watershed planning and community involvement. The Environmental Protection Agency (EPA) periodically calls for nominations to the program from State governors. If an estuary meets the agency's criteria, EPA may then designate it to be included in the program. Once designation has been made, a management conference is formed from government agencies at the Federal, State, and local level; community residents; user groups; scientific and technical institutions; business and industry; and environmental groups. The management conference defines the program goals and objectives, identifies estuary problems, and designs action plans to control pollution and restore estuary habitat. The action plans are integrated into a comprehensive conservation and management plan (CCMP). The NEP includes 28 estuaries in 18 States and Puerto Rico. As of 1999, 18 estuaries have completed comprehensive conservation management plans, the other 10 estuaries are expected to complete their plans over the next 2 years.

The NEP provides a framework for conducting a variety of different activities aimed at improving the health of estuaries. In testimony submitted to the Committee on Environment and Public Works, the Association of National Estuary Programs described some of the projects under the NEP. In New Jersey, more than 32,000 acres of critical habitat area have been preserved in Barnegat Bay by the Barnegat Bay National Estuary Program. Maine's Casco Bay Estuary Program collaborated with local lobstermen to study lobster habitat in Portland Harbor. When the Harbor was dredged, the Estuary Program and the lobstermen relocated thousands of lobsters to other areas. The San Francisco Estuary Project has partnered with local land commissions to provide 25 educational workshops for 1400 developers, contractors and local officials. These workshops have helped improve compliance with erosion and sediment control requirements in the San Francisco Bay area, increasing compliance rates from 30–40 percent in the early 1990s to 90 percent in 1998.

#### *Need for Legislation*

Despite the critical need for estuary habitat restoration, there are few programs that specifically address estuaries. The primary program for protecting and restoring estuaries is the NEP. In testimony submitted to the Committee on July 22, Richard Ribb, Director of the Narragansett Bay Estuary Program, indicated that the NEP does not have sufficient resources to adequately address habitat restoration in addition to addressing the broad range of other problems included under its mandate. Furthermore, the NEP can only accommodate a limited number of the estimated 130 estuaries in the United States. Estuaries that are not included in the NEP program must compete for funding with a variety of different waterbodies.

S. 835 is identical to provisions relating to estuary habitat restoration included in S. 1222, a bill introduced by Senator Chafee in the 105 th Congress. S. 1222 passed the Senate by unanimous consent, but was not acted on by the House.

#### OBJECTIVE OF LEGISLATION

The objective of the legislation is to establish a voluntary program to restore 1 million acres of estuary habitat by 2010. The bill also expands EPA's authority to provide grants for the implementation of comprehensive conservation management plans developed under the National Estuary Program.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short Title*

This section provides that the bill may be cited as the "Estuary Habitat Restoration Partnership Act of 1999.

##### *Section 2. Findings*

This section sets forth findings with respect to the economic and ecological value of estuaries.

### *Section 3. Purposes*

The bill establishes a program to restore 1 million acres of estuary habitat by the year 2010. The bill requires the coordination of existing Federal, State and local plans, programs, and studies. It authorizes partnerships among public agencies at all levels of government and between the public and private sectors. The bill also authorizes estuary habitat restoration activities, and requires project participants to possess adequate monitoring and research capabilities to ensure that restoration efforts are based on reliable science.

### *Section 4. Definitions*

This section defines terms used throughout the Act including:

“Estuary” is defined as a body of water and its associated physical, biological, and chemical elements, in which fresh water from a river or stream meets and mixes with salt water from the ocean. An exception to this definition is made for estuary-like areas in the Great Lakes biogeographic regions that are part of the National Estuarine Research Reserve system at the time of enactment of this legislation.

“Estuary Habitat” is defined as the complex of physical and hydrologic features within estuaries and their associated ecosystems, including salt and fresh water coastal marshes, coastal forested wetlands and other coastal wetlands, tidal flats, natural shoreline areas, sea grass meadows, kelp beds, river deltas, and river and stream banks under tidal influence.

“Estuary Habitat Restoration Activities” is defined as an activity that results in improving an estuary’s habitat, including both physical and functional restoration, with a goal toward a self-sustaining ecologically-based system that is integrated with the surrounding landscape. Eligible activities include: the control of non-native and invasive species, such as phragmites; the reestablishment of physical features and biological and hydrologic functions; the cleanup of contamination; and the reintroduction of native species, such as the planting of eel grass.

### *Section 5. Establishment of the Collaborative Council*

This section establishes an interagency Collaborative Council chaired by the Secretary of the Army, with the participation of the Under Secretary for Oceans and Atmosphere, Department of Commerce; the Administrator of the Environmental Protection Agency; and the Secretary of the Interior, through the Fish and Wildlife Service. The two principal functions of the Council are: (1) to develop a national strategy to restore estuary habitat; and (2) to select habitat restoration projects that will receive the funds provided in the bill. The Army Corps of Engineers is to chair the Council and to work cooperatively with the other members of the Council.

### *Section 6. Duties of the Collaborative Council*

This section establishes a process to coordinate existing Federal, State and local resources and activities directed toward estuary habitat restoration. It also sets forth the process by which projects are to be selected by the Council for funding under this title.

*Habitat Restoration Strategy.*—Subsection (a) requires the Council to draft a strategy that will serve as a national framework for restoring estuaries. The strategy should coordinate Federal, State, and local estuary plans programs and studies. In developing the strategy, the Council should consult with State, local and tribal governments and other non-Federal entities, including representatives from coastal States representing the Atlantic, Pacific, and the Gulf of Mexico; local governments from coastal communities; and nonprofit organizations that are actively participating in carrying out estuary habitat restoration projects.

*Selection of Projects.*—This section also requires the Council to establish application criteria for restoration projects. The Council is required to consider a number of factors in developing criteria. In addition to the factors mentioned in the legislation, the Council is to consider both the quantity and quality of habitat restored in relation to the overall cost of a project. The consideration of these factors will provide the information required to evaluate performance, at both the project and program levels, and facilitate the production of biennial reports in the strategy. Subsection (b)(1) requires the project applicant to obtain the approval of State or local agencies, where such approval is appropriate. In States such as Oregon, where coastal beaches and estuaries are publicly-owned and managed, proposals for estuary habitat restoration projects require the approval of the State before being submitted to the Council.

*Priority Projects.*—Among the projects that meet the criteria listed above, the Council shall give priority for funding to those projects that meet any of the factors cited in subsection (b)(3) of this section.

One of the priority factors is that the project be part of an approved estuary management or restoration plan. It is envisioned that funding provided through this legislation would assist all local communities in meeting the goals and objectives of estuary restoration, with priority given to those areas that have approved estuary management plans. For example, the Sarasota Bay area in Florida is presently implementing a comprehensive conservation management plan (CCMP), which focuses on restoring lost habitat. This is being accomplished by: reducing nitrogen pollution to increase sea grass coverage; constructing salt water wetlands; and building artificial reefs for juvenile fish habitat. Narragansett Bay in Rhode Island also is in the process of implementing a CCMP. Current efforts to improve the Bay's water quality and restore its habitat address the uniqueness of the Narragansett Bay watershed.

#### *Section 7. Cost Sharing of Estuary Habitat Restoration Projects*

This section strengthens local and private sector participation in estuary restoration efforts by building public-private restoration partnerships. This section establishes a Federal cost-share requirement of no more than 65 percent of the cost of a project. The non-Federal share is required to be at least 35 percent of the cost of a project. Lands, easements, services, or other in-kind contributions may be used to meet non-Federal match requirement.

### *Section 8. Monitoring and Maintenance*

This section assures that available information will be used to improve the methods for assuring successful long-term habitat restoration. The Under Secretary for Oceans and Atmosphere (NOAA) shall maintain a database of restoration projects carried out under this Act, including information on project techniques, project completion, monitoring data, and other relevant information.

The Council shall publish a biennial report to Congress that includes program activities, including the number of acres restored; the percent of restored habitat monitored under a plan; the types of restoration methods employed; the activities of governmental and non-governmental entities with respect to habitat restoration; and the effectiveness of the restoration projects.

### *Section 9. Memoranda of Understanding*

This section authorizes the Council to enter into cooperative agreements and execute any memoranda of understanding with Federal and State agencies, private institutions, and tribal entities, necessary to carry out the requirements of the bill.

### *Section 10. Distribution of Appropriations for Estuary Habitat Restoration Activities*

This section authorizes the Secretary to disburse funds to the other agencies responsible for carrying out the requirements of the Act. The Council members are to work together to develop an appropriate mechanism for the disbursement of funds between Council members. For instance, section 8 of the bill requires the Under Secretary to maintain a data base of restoration projects carried out under this legislation. NOAA shall utilize funds disbursed from the Secretary to maintain the data base.

### *Section 11. Authorization of Appropriations*

A total of \$315,000,000 for fiscal years 2000 through 2004 is authorized to carry out estuary habitat restoration projects under this section. The \$315,000,000 would be distributed as follows: \$40,000,000 for fiscal year 2000; \$50,000,000 for fiscal year 2001, and \$75,000,000 for each of fiscal years 2002 through 2004.

### *Section 12. National Estuary Program*

This section amends section 320(g)(2) of the Federal Water Pollution Control Act to provide explicit authority for the Administrator of the Environmental Protection Agency to issue grants for assisting activities necessary for the development of comprehensive conservation and management plans (CCMPs) and for the implementation of CCMPs. Implementation for purposes of this section includes managing and overseeing the implementation of CCMPs consistent with section 320(b)(6) of the Act, which provides that management conferences, among other things, are to “monitor the effectiveness of actions taken pursuant to the CCMP.” Examples of implementation activities include: enhanced monitoring activities; habitat mapping; habitat acquisition; best management practices to reduce urban and rural polluted runoff; and the organization of workshops for local elected officials and professional water quality managers about habitat and water quality issues.

The National Estuary Program is an important partnership among Federal, State, and local governments to protect estuaries of national significance threatened by pollution. A major goal of the program has been to prepare CCMPs for the 28 nationally designated estuaries. To facilitate preparation of the plans, the Federal Government has provided grant funds, while State and local governments have developed the plans. The partnership has been a success in that 18 of 28 nationally designated estuaries have completed plans.

In order to continue and strengthen this partnership, grant funds should be eligible for use in the implementation of the completed plans as well as for their development. The bill authorizes \$25,000,000 annually for fiscal years 2000 and 2001 to develop and implement CCMPs. This increase reflects the growth in the National Estuary Program since the program was last authorized in 1987. In 1991 when the authorization expired, 17 local estuary programs existed; now there are 28 programs. The cost of implementing the 28 estuary programs will require significant resources. However, State and local governments should take primary responsibility for implementing CCMPs.

#### *Section 13. General Provisions*

This section provides the Secretary of the Army with the authority to carry out responsibilities under this Act, and clarifies that habitat restoration is one of the Corps' missions.

#### LEGISLATIVE HISTORY

On April 20, 1999, Senator Chafee introduced S. 835, the Estuary Habitat Restoration Partnership Act of 1999. On Wednesday, September 29, 1999, the Committee on Environment and Public Works held a business meeting to consider S. 835. Senator Voinovich offered an amendment to include the Old Woman's Creek Natural Estuarine Research Reserve in the definition of an estuary. The amendment was adopted by voice vote. S. 835, as amended, was favorably reported by voice vote. No roll call votes were taken on the measure.

#### HEARINGS

On July 22, 1999, the Environment and Public Works Committee held a hearing on coastal legislation in Washington, D.C. The hearing focused on six bills: S. 835, the Estuary Habitat Restoration Partnership Act of 1999; S. 878, a bill to amend the National Estuary Program; S. 492, the Chesapeake Bay Restoration Act of 1999; S. 1119, a bill to reauthorize the Coastal Wetlands Planning, Protection and Restoration Act; S. 522, the Beaches Environmental Assessment, Closure, and Health Act of 1999; and HR 999, the Beaches Environmental Awareness, Cleanup, and Health Act of 1999. Testimony was provided by the Honorable Robert G. Torricelli, New Jersey; the Honorable John B. Breaux, Louisiana; the Honorable Paul Sarbanes, Maryland; the Honorable J. Charles Fox, Assistant Administrator for Water, U.S. Environmental Protection Agency; the Honorable Michael L. Davis, Deputy Assistant Secretary for Civil Works, Department of the Army; Mr. Martin L.

Pagliughi, Mayor, Avalon, New Jersey; Mr. Ted Danson, President, the American Oceans Campaign; Ms. Linda Shead, Executive Director, the Galveston Bay Foundation; Mr. Richard Ribb, Director, Narragansett Bay Estuary Program, Rhode Island Department of Environmental Management; Mr. Michael Hirshfield, Senior Vice President, Chesapeake Bay Foundation; and Dr. Len Bahr, Coastal Advisor to the Governor, State of Louisiana.

#### REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes the following evaluation of the regulatory impact of the reported bill. The reported bill will have no regulatory impact. This bill will not have any effect on the personal privacy of individuals.

#### MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee makes the following evaluation of the Federal mandates contained in the reported bill. S. 835 imposes no Federal intergovernmental unfunded mandates on State, local or tribal governments. All of its governmental directives are imposed on Federal agencies. The bill does not impose any Federal mandates on the private sector.

#### COST ESTIMATE

The Congressional Budget Office has prepared the enclosed cost estimate for S. 835, the Estuary Habitat Restoration Partnership Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for Federal costs), who can be reached at 226-2860, and Shelley Finlayson (for the State and local impact), who can be reached at 225-3220.

S. 835, Estuary Habitat Restoration Partnership, as ordered reported by the Senate Committee on Environment and Public Works on September 29, 1999

#### *Summary*

S. 835 would establish the Estuary Habitat Restoration Collaborative Council, consisting of representatives from multiple Federal agencies, that would develop a strategy for restoring estuary habitats and provide financial assistance to non-Federal entities for restoration projects. The bill also would authorize the appropriation of \$385 million over the 2000-2004 period. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

S. 835 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any expenditures made by State and local governments to satisfy the matching requirements of grants authorized by this bill would be voluntary.



*Estimated Cost to the Federal Government*

CBO estimates that implementing the bill would result in additional outlays of \$329 million over the 2000–2004 period, assuming appropriation of the authorized amounts each year. The estimated budgetary impact of S. 835 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						
	1999	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATION						
Spending Under Current Law:						
Budget Authority <sup>a</sup> .....	14	0	0	0	0	0
Estimated Outlays .....	13	7	3	1	0	0
Proposed Changes:						
Authorization Level .....	0	69	79	79	79	79
Estimated Outlays .....	0	36	61	74	79	79
Spending Under S. 835:						
Authorization Level .....	14	69	79	79	79	79
Estimated Outlays .....	13	43	64	75	79	79

<sup>a</sup> The Environmental Protection Agency's National Estuary Program has not yet received a full-year appropriation for 2000. It received an appropriation of \$14 million for 1999.

*Basis of Estimate*

The bill would authorize the appropriation of \$4 million annually over the 2000–2004 period to the Army Corps of Engineers (Corps) for administering the Collaborative Council and an additional \$40 million in 2000, \$50 million in 2001, and \$75 million annually over the 2002–2004 period for grants to perform restoration projects. No amounts were appropriated for these purposes in 1999, and no amounts have been provided to the Corps for this effort in its 2000 appropriation. The bill also would authorize \$25 million in each of fiscal years 2000 and 2001 to the Environmental Protection Agency for the National Estuary Program.

*Pay-as-you-go Considerations:* None.

*Intergovernmental and Private-Sector Impact:* This bill would impose no intergovernmental or private-sector mandates as defined in UMRA. Any expenditures made by State and local governments to satisfy the matching requirements of grants authorized by this bill would be voluntary.

*Estimate prepared by:* Federal Costs: Susanne S. Mehlman (226–2860) Impact on State, Local, and Tribal Governments: Shelley Finlayson (225–3220).

*Estimate approved by:* Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

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

(33 U.S.C. 1251 et seq.)

[As Amended Through P.L. 105–394, November 13, 1998]

AN ACT To provide for water pollution control activities in the Public Health Service of the Federal Security Agency and in the Federal Works Agency, and for other purposes.

\* \* \* \* \*

**SEC. 320. NATIONAL ESTUARY PROGRAM.**

(a) \* \* \*

\* \* \* \* \*

(g) 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.

(2) PURPOSES.—Grants under this subsection shall be made to pay for assisting research, surveys, studies, and modeling and other technical work necessary for the development *and implementation* of a conservation and management plan under this section.

(3) FEDERAL SHARE.—The amount of grants to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year shall not exceed 75 percent of the costs of such research, survey, studies, and work and shall be made on condition that the non-Federal share of such costs are provided from non-Federal sources.

\* \* \* \* \*

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator not to exceed \$12,000,000 per fiscal year for each of fiscal years [1987, 1988, 1989, 1990, and 1991] *1987 through 1991, such sums as may be necessary for fiscal years 1992 through 1999, and \$25,000,000 for each of fiscal years 2000 and 2001* 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).

\* \* \* \* \*