

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4715

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IN THE SENATE OF THE UNITED STATES

APRIL 19, 2010

Received; read twice and referred to the Committee on Environment and  
Public Works

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## AN ACT

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 2010”.

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)(4) of the Federal Water Pollution Control  
9 Act (33 U.S.C. 1330(b)(4)) is amended to read as  
10 follows:

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

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

18 “(B) recommends priority corrective ac-  
19 tions and compliance schedules addressing point  
20 and nonpoint sources of pollution to restore and  
21 maintain the chemical, physical, and biological  
22 integrity of the estuary, including restoration  
23 and maintenance of water quality, a resilient  
24 and diverse indigenous population of shellfish,  
25 fish, and wildlife, and recreational activities in

1 the estuary, and assure that the designated  
2 uses of the estuary are protected;

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

5 “(D) addresses the impacts of climate  
6 change 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 impacts of changes in sea  
12 level on estuarine water quality, estuarine  
13 habitat, and infrastructure located in the  
14 estuary;

15 “(E) 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 “(F) identifies and assesses impairments,  
24 including upstream impairments, coming from

1 outside of the area addressed by the plan, and  
2 the sources of those impairments;

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)(6) of such Act (33 U.S.C.  
10 1330(b)(6)) is amended to read as follows:

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

13 “(A) water quality conditions in the estu-  
14 ary and its associated upstream waters, as iden-  
15 tified under paragraph (4)(A);

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

19 “(C) the effectiveness of actions taken pur-  
20 suant to the comprehensive conservation and  
21 management plan developed for the estuary  
22 under this subsection;”.

23 (3) INFORMATION AND EDUCATIONAL ACTIVI-  
24 TIES.—Section 320(b) of such Act (33 U.S.C.  
25 1330(b)) is amended—

1 (A) by redesignating paragraph (7) as  
2 paragraph (8); and

3 (B) by inserting after paragraph (6) the  
4 following:

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

8 (4) CONFORMING AMENDMENT.—The sentence  
9 following section 320(b)(8) of such Act (as so reded-  
10 igned) is amended by striking “paragraph (7)”  
11 and inserting “paragraph (8)”.

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

14 (1) MEMBERS OF CONFERENCE.—Section  
15 320(c)(5) of such Act (33 U.S.C. 1330(c)(5)) is  
16 amended by inserting after “institutions,” the fol-  
17 lowing: “not-for-profit organizations,”.

18 (2) COLLABORATIVE PROCESSES.—Section  
19 320(d) of such Act (33 U.S.C. 1330(d)) is amend-  
20 ed—

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

24 “(d) UTILIZATION OF EXISTING DATA AND COL-  
25 LABORATIVE PROCESSES.—

1           “(1) UTILIZATION OF EXISTING DATA.—In de-  
2     veloping”; and

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

4           “(2) UTILIZATION OF COLLABORATIVE PROC-  
5     ESSES.—In updating a plan under subsection (f)(4)  
6     or developing a new plan under subsection (b), a  
7     management conference shall make use of collabo-  
8     rative processes to—

9           “(A) ensure equitable inclusion of affected  
10     interests;

11          “(B) engage with members of the manage-  
12     ment 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) ensure relevant information, including  
18     scientific, technical, and cultural information, is  
19     accessible to members;

20          “(D) 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)(3);

3                   “(E) identify the roles and responsibilities  
4                   of members—

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

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

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

11           (c) ADMINISTRATION OF PLANS.—Section 320(f) of  
12 such Act (33 U.S.C. 1330(f)) is amended to read as fol-  
13 lows:

14           “(f) ADMINISTRATION OF PLANS.—

15                   “(1) APPROVAL.—Not later than 120 days  
16 after the date on which a management conference  
17 submits to the Administrator a comprehensive con-  
18 servation and management plan under this section,  
19 and after providing for public review and comment,  
20 the Administrator shall approve the plan if the Ad-  
21 ministrator determines that the plan meets the re-  
22 quirements of this section and the affected Governor  
23 or Governors concur.

24                   “(2) IMPLEMENTATION.—Upon approval of a  
25 comprehensive conservation and management plan

1 under this section, the plan shall be implemented.  
2 Funds authorized to be appropriated under titles II  
3 and VI and section 319 may be used in accordance  
4 with the applicable requirements of this Act to assist  
5 States with the implementation of the plan.

6 “(3) EVALUATION.—

7 “(A) IN GENERAL.—Not later than 4 years  
8 after the date of enactment of this paragraph,  
9 and every 4 years thereafter, the Administrator  
10 shall complete an evaluation of the implementa-  
11 tion of each comprehensive conservation and  
12 management plan developed under this section  
13 to determine the degree to which the goals of  
14 the plan have been met.

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

21 “(C) REPORT.—

22 “(i) IN GENERAL.—In completing an  
23 evaluation under subparagraph (A), and  
24 after providing an opportunity for a man-  
25 agement conference to submit comments



1 under subparagraph (B), the Adminis-  
2 trator shall issue a report on the results of  
3 the evaluation, including the findings and  
4 recommendations of the Administrator and  
5 any comments received from the manage-  
6 ment conference.

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

12 “(D) SPECIAL RULE FOR NEW PLANS.—  
13 Notwithstanding subparagraph (A), if a man-  
14 agement conference submits a new comprehen-  
15 sive conservation and management plan to the  
16 Administrator after the date of enactment of  
17 this paragraph, the Administrator shall com-  
18 plete the evaluation of the implementation of  
19 the plan required by subparagraph (A) not later  
20 than 4 years after the date of such submission  
21 and every 4 years thereafter.

22 “(4) UPDATES.—

23 “(A) REQUIREMENT.—Not later than 18  
24 months after the date on which the Adminis-  
25 trator makes an evaluation of the implementa-

1           tion of a comprehensive conservation and man-  
2           agement plan available to the public under  
3           paragraph (3)(C), a management conference  
4           convened under this section shall submit to the  
5           Administrator an update of the plan. The up-  
6           dated plan shall reflect, to the maximum extent  
7           practicable, the results of the program evalua-  
8           tion.

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

19          “(5) PROBATIONARY STATUS.—The Adminis-  
20          trator may consider a management conference con-  
21          vened under this section to be in probationary status  
22          if the management conference has not received ap-  
23          proval for an updated comprehensive conservation  
24          and management plan under paragraph (4)(B) on or  
25          before the last day of the 3-year period beginning on

1 the date on which the Administrator makes an eval-  
2 uation of the plan available to the public under para-  
3 graph (3)(C).”.

4 (d) FEDERAL AGENCIES.—Section 320 of such Act  
5 (33 U.S.C. 1330) is amended—

6 (1) by redesignating subsections (g), (h), (i),  
7 (j), and (k) as subsections (h), (i), (j), (k), and (m),  
8 respectively; and

9 (2) by inserting after subsection (f) the fol-  
10 lowing:

11 “(g) FEDERAL AGENCIES.—

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

19 “(2) COORDINATION AND COOPERATION.—The  
20 Secretary of the Army (acting through the Chief of  
21 Engineers), the Administrator of the National Oce-  
22 anic and Atmospheric Administration, the Director  
23 of the United States Fish and Wildlife Service, the  
24 Chief of the Natural Resources Conservation Serv-  
25 ice, and the heads of other appropriate Federal

1 agencies, as determined by the Administrator, shall,  
2 to the maximum extent practicable, cooperate and  
3 coordinate activities, including monitoring activities,  
4 related to the implementation of a comprehensive  
5 conservation and management plan approved by the  
6 Administrator. The Environmental Protection Agen-  
7 cy shall serve as the lead coordinating agency under  
8 this paragraph.

9 “(3) CONSIDERATION OF PLANS IN AGENCY  
10 BUDGET REQUESTS.—In making an annual budget  
11 request for a Federal agency referred to in para-  
12 graph (2), the head of such agency shall consider  
13 the responsibilities of the agency under this section,  
14 including under comprehensive conservation and  
15 management plans approved by the Administrator.

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

22 (e) GRANTS.—

23 (1) RECIPIENTS.—Section 320(h)(1) of such  
24 Act (as redesignated by subsection (d) of this sec-  
25 tion) is amended by striking “other public” and all

1 that follows before the period at the end and insert-  
2 ing “and other public or nonprofit private agencies,  
3 institutions, and organizations”.

4 (2) EFFECTS OF PROBATIONARY STATUS.—Sec-  
5 tion 320(h) of such Act (as redesignated by sub-  
6 section (d) of this section) is further amended by  
7 adding at the end the following:

8 “(4) EFFECTS OF PROBATIONARY STATUS.—

9 “(A) REDUCTIONS IN GRANT AMOUNTS.—

10 The Administrator shall reduce, by an amount  
11 to be determined by the Administrator, grants  
12 for the implementation of a comprehensive con-  
13 servation and management plan developed by a  
14 management conference convened under this  
15 section if the Administrator determines that the  
16 management conference is in probationary sta-  
17 tus under subsection (f)(5).

18 “(B) TERMINATION OF MANAGEMENT CON-  
19 FERENCES.—The Administrator shall terminate  
20 a management conference convened under this  
21 section, and cease funding for the implementa-  
22 tion of the comprehensive conservation and  
23 management plan developed by the manage-  
24 ment conference, if the Administrator deter-  
25 mines that the management conference has

1           been in probationary status for 2 consecutive  
2           years.”.

3           (3) CONFORMING AMENDMENT.—Section 320(i)  
4           of such Act (as redesignated by subsection (d) of  
5           this section) is amended by striking “subsection (g)”  
6           and inserting “subsection (h)”.

7           (f) AUTHORIZATION OF APPROPRIATIONS.—Section  
8           320(j) of such Act (as redesignated by subsection (d) of  
9           this section) is amended to read as follows:

10          “(j) AUTHORIZATION OF APPROPRIATIONS.—

11               “(1) IN GENERAL.—There is authorized to be  
12               appropriated to the Administrator \$50,000,000 for  
13               each of fiscal years 2011 through 2016 for—

14                       “(A) expenses related to the administration  
15                       of management conferences under this section,  
16                       except that such expenses shall not exceed 10  
17                       percent of the amount appropriated under this  
18                       subsection;

19                       “(B) making grants under subsection (h);  
20                       and

21                       “(C) monitoring the implementation of a  
22                       conservation and management plan by the man-  
23                       agement conference, or by the Administrator in  
24                       any case in which the conference has been ter-  
25                       minated.

1           “(2) ALLOCATIONS.—Of the sums authorized to  
2           be appropriated under this subsection, the Adminis-  
3           trator shall provide—

4                   “(A) at least \$1,250,000 per fiscal year,  
5                   subject to the availability of appropriations, for  
6                   the development, implementation, and moni-  
7                   toring of each conservation and management  
8                   plan eligible for grant assistance under sub-  
9                   section (h); and

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

12           (g) RESEARCH.—Section 320(k)(1)(A) of such Act  
13 (as redesignated by subsection (d) of this section) is  
14 amended—

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

17                   (2) by inserting “(including monitoring of both  
18                   pathways and ecosystems to track the introduction  
19                   and establishment of nonnative species)” before “, to  
20                   provide the Administrator”.

21           (h) NATIONAL ESTUARY PROGRAM EVALUATION.—  
22 Section 320 of such Act (33 U.S.C. 1330) is amended by  
23 inserting after subsection (k) (as redesignated by sub-  
24 section (d) of this section) the following:

25                   “(l) NATIONAL ESTUARY PROGRAM EVALUATION.—

1           “(1) IN GENERAL.—Not later than 4 years  
2 after the date of enactment of this paragraph, and  
3 every 4 years thereafter, the Administrator shall  
4 complete an evaluation of the national estuary pro-  
5 gram established under this section.

6           “(2) SPECIFIC ASSESSMENTS.—In conducting  
7 an evaluation under this subsection, the Adminis-  
8 trator shall—

9                   “(A) assess the effectiveness of the na-  
10 tional estuary program in improving water  
11 quality, natural resources, and sustainable uses  
12 of the estuaries covered by management con-  
13 ferences convened under this section;

14                   “(B) identify best practices for improving  
15 water quality, natural resources, and sustain-  
16 able uses of the estuaries covered by manage-  
17 ment conferences convened under this section,  
18 including those practices funded through the  
19 use of technical assistance from the Environ-  
20 mental Protection Agency and other Federal  
21 agencies, and assess the reasons why such prac-  
22 tices result in the achievement of program  
23 goals; and

24                   “(C) identify any redundant requirements  
25 for reporting by recipients of a grant under this



1 section, and develop and recommend a plan for  
2 limiting reporting redundancies.

3 “(3) REPORT.—In completing an evaluation  
4 under this subsection, the Administrator shall issue  
5 a report on the results of the evaluation, including  
6 the findings and recommendations of the Adminis-  
7 trator.

8 “(4) AVAILABILITY.—The Administrator shall  
9 make a report issued under this subsection available  
10 to management conferences convened under this sec-  
11 tion and the public, including through publication in  
12 the Federal Register and on the Internet.”.

13 (i) CONVENING OF CONFERENCE.—Section  
14 320(a)(2) of such Act (33 U.S.C. 1330(a)(2)) is amend-  
15 ed—

16 (1) by striking “(2) CONVENING OF CON-  
17 FERENCE.—” and all that follows through “In any  
18 case” and inserting the following:

19 “(2) CONVENING OF CONFERENCE.—In any  
20 case”; and

21 (2) by striking subparagraph (B).

22 (j) GREAT LAKES ESTUARIES.—Section 320(m) of  
23 such Act (as redesignated by subsection (d) of this sec-  
24 tion) is amended by striking the subsection designation

1 and all that follows through “and those portions of tribu-  
2 taries” and inserting the following:

3 “(m) DEFINITIONS.—In this section, the terms ‘estu-  
4 ary’ and ‘estuarine zone’ have the meanings such terms  
5 have in section 104(n)(4), except that—

6 “(1) the term ‘estuary’ also includes near coast-  
7 al waters and other bodies of water within the Great  
8 Lakes that are similar in form and function to the  
9 waters described in the definition of ‘estuary’ con-  
10 tained in section 104(n)(4); and

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

12 “(A) waters within the Great Lakes de-  
13 scribed in paragraph (1) and transitional areas  
14 from such waters that are similar in form and  
15 function to the transitional areas described in  
16 the definition of ‘estuarine zone’ contained in  
17 section 104(n)(4);

18 “(B) associated aquatic ecosystems; and

19 “(C) those portions of tributaries”.

Passed the House of Representatives April 15, 2010.

Attest: LORRAINE C. MILLER,  
*Clerk.*