

## Calendar No. 569

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**H. R. 4715****[Report No. 111-293]**


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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

SEPTEMBER 16, 2010

Reported by Mrs. BOXER, with an amendment

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

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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,*

3 **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Clean Estuaries Act  
5 of 2010”.

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

7        (a) **PURPOSES OF CONFERENCE.**—

1           (1) DEVELOPMENT OF COMPREHENSIVE CON-  
2           SERVATION AND MANAGEMENT PLANS.—Section  
3           320(b)(4) of the Federal Water Pollution Control  
4           Act (~~33~~ U.S.C. ~~1330~~(b)(4)) is amended to read as  
5           follows:

6           “(4) develop and submit to the Administrator a  
7           comprehensive conservation and management plan  
8           that—

9           “(A) identifies the estuary and its associ-  
10          ated upstream waters to be addressed by the  
11          plan, with consideration given to hydrological  
12          boundaries;

13          “(B) recommends priority corrective ac-  
14          tions and compliance schedules addressing point  
15          and nonpoint sources of pollution to restore and  
16          maintain the chemical, physical, and biological  
17          integrity of the estuary, including restoration  
18          and maintenance of water quality, a resilient  
19          and diverse indigenous population of shellfish,  
20          fish, and wildlife, and recreational activities in  
21          the estuary, and assure that the designated  
22          uses of the estuary are protected;

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

1           “(D) addresses the impacts of climate  
2 change on the estuary, including—  
3           “(i) the identification and assessment  
4 of vulnerabilities in the estuary;  
5           “(ii) the development and implementa-  
6 tion of adaptation strategies; and  
7           “(iii) the impacts of changes in sea  
8 level on estuarine water quality, estuarine  
9 habitat, and infrastructure located in the  
10 estuary;  
11          “(E) increases public education and aware-  
12 ness with respect to—  
13           “(i) the ecological health of the estu-  
14 ary;  
15           “(ii) the water quality conditions of  
16 the estuary; and  
17           “(iii) ocean, estuarine, land, and at-  
18 mospheric connections and interactions;  
19          “(F) identifies and assesses impairments,  
20 including upstream impairments, coming from  
21 outside of the area addressed by the plan, and  
22 the sources of those impairments;  
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)(6) of such Act (33 U.S.C.  
6           1330(b)(6)) is amended to read as follows:

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

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

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

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

19           (3) INFORMATION AND EDUCATIONAL ACTIVI-  
20           TIES.—Section 320(b) of such Act (33 U.S.C.  
21           1330(b)) is amended—

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

24           (B) by inserting after paragraph (6) the  
25           following:

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

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

8           (b) MEMBERS OF CONFERENCE; COLLABORATIVE  
9 PROCESSES.—

10           (1) MEMBERS OF CONFERENCE.—Section  
11 320(e)(5) of such Act (33 U.S.C. 1330(e)(5)) is  
12 amended by inserting after “institutions,” the fol-  
13 lowing: “not-for-profit organizations,”.

14           (2) COLLABORATIVE PROCESSES.—Section  
15 320(d) of such Act (33 U.S.C. 1330(d)) is amend-  
16 ed—

17                   (A) by striking “(d)” and all that follows  
18 through “In developing” and inserting the fol-  
19 lowing:

20           “(d) UTILIZATION OF EXISTING DATA AND COL-  
21 LABORATIVE PROCESSES.—

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

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

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

6                   “(A) ensure equitable inclusion of affected  
7                   interests;

8                   “(B) engage with members of the manage-  
9                   ment conference, including through—

10                           “(i) the use of consensus-based deci-  
11                           sion rules; and

12                           “(ii) assistance from impartial  
13                           facilitators, as appropriate;

14                   “(C) ensure relevant information, including  
15                   scientific, technical, and cultural information, is  
16                   accessible to members;

17                   “(D) promote accountability and trans-  
18                   parency by ensuring members are informed in  
19                   a timely manner of—

20                           “(i) the purposes and objectives of the  
21                           management conference; and

22                           “(ii) the results of an evaluation con-  
23                           ducted under subsection (f)(3);

24                   “(E) identify the roles and responsibilities  
25                   of members—

1                   “(i) in the management conference  
2                   proceedings; and

3                   “(ii) in the implementation of the  
4                   plan; and

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

7           (e) ADMINISTRATION OF PLANS.—Section 320(f) of  
8 such Act (33 U.S.C. 1330(f)) is amended to read as fol-  
9 lows:

10           “(f) ADMINISTRATION OF PLANS.—

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

20                   “(2) IMPLEMENTATION.—Upon approval of a  
21                   comprehensive conservation and management plan  
22                   under this section, the plan shall be implemented.  
23                   Funds authorized to be appropriated under titles II  
24                   and VI and section 319 may be used in accordance

1 with the applicable requirements of this Act to assist  
2 States with the implementation of the plan.

3 ~~“(3) EVALUATION.—~~

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

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

18 ~~“(C) REPORT.—~~

19 ~~“(i) IN GENERAL.—In completing an~~  
20 ~~evaluation under subparagraph (A), and~~  
21 ~~after providing an opportunity for a man-~~  
22 ~~agement conference to submit comments~~  
23 ~~under subparagraph (B), the Adminis-~~  
24 ~~trator shall issue a report on the results of~~  
25 ~~the evaluation, including the findings and~~

1 recommendations of the Administrator and  
2 any comments received from the manage-  
3 ment conference.

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

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

19 “(4) UPDATES.—

20 “(A) REQUIREMENT.—Not later than 18  
21 months after the date on which the Adminis-  
22 trator makes an evaluation of the implementa-  
23 tion of a comprehensive conservation and man-  
24 agement plan available to the public under  
25 paragraph (3)(C), a management conference

1 convened under this section shall submit to the  
2 Administrator an update of the plan. The up-  
3 dated plan shall reflect, to the maximum extent  
4 practicable, the results of the program evalua-  
5 tion.

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

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

1 (d) FEDERAL AGENCIES.—Section 320 of such Act  
2 (~~33~~ U.S.C. 1330) is amended—

3 (1) by redesignating subsections (g), (h), (i),  
4 (j), and (k) as subsections (h), (i), (j), (k), and (m),  
5 respectively; and

6 (2) by inserting after subsection (f) the fol-  
7 lowing:

8 “(g) FEDERAL AGENCIES.—

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

16 “(2) COORDINATION AND COOPERATION.—The  
17 Secretary of the Army (acting through the Chief of  
18 Engineers), the Administrator of the National Oee-  
19 anic and Atmospheric Administration, the Director  
20 of the United States Fish and Wildlife Service, the  
21 Chief of the Natural Resources Conservation Serv-  
22 ice, and the heads of other appropriate Federal  
23 agencies, as determined by the Administrator, shall,  
24 to the maximum extent practicable, cooperate and  
25 coordinate activities, including monitoring activities,

1 related to the implementation of a comprehensive  
2 conservation and management plan approved by the  
3 Administrator. The Environmental Protection Agency  
4 shall serve as the lead coordinating agency under  
5 this paragraph.

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

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

19 ~~(e) GRANTS.—~~

20 ~~(1) RECIPIENTS.—Section 320(h)(1) of such~~  
21 ~~Act (as redesignated by subsection (d) of this sec-~~  
22 ~~tion) is amended by striking “other public” and all~~  
23 ~~that follows before the period at the end and insert-~~  
24 ~~ing “and other public or nonprofit private agencies,~~  
25 ~~institutions, and organizations”.~~

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

5           “(4) EFFECTS OF PROBATIONARY STATUS.—

6           “(A) REDUCTIONS IN GRANT AMOUNTS.—

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

15          “(B) TERMINATION OF MANAGEMENT CON-  
16          FERENCES.—The Administrator shall terminate

17          a management conference convened under this  
18          section, and cease funding for the implementa-  
19          tion of the comprehensive conservation and  
20          management plan developed by the manage-  
21          ment conference, if the Administrator deter-  
22          mines that the management conference has  
23          been in probationary status for 2 consecutive  
24          years.”.

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

5           ~~(f) AUTHORIZATION OF APPROPRIATIONS.—~~Section  
6 320(j) of such Act (as redesignated by subsection (d) of  
7 this section) is amended to read as follows:

8           ~~“(j) AUTHORIZATION OF APPROPRIATIONS.—~~

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

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

17           ~~“(B) making grants under subsection (h);~~  
18 ~~and~~

19           ~~“(C) monitoring the implementation of a~~  
20 ~~conservation and management plan by the man-~~  
21 ~~agement conference; or by the Administrator in~~  
22 ~~any case in which the conference has been ter-~~  
23 ~~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                   “(1) 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 ease” and inserting the following:

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

20 **SECTION 1. SHORT TITLE.**

21 *This Act may be cited as the “Clean Estuaries Act of*  
22 *2010”.*

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

24 (a) **PURPOSES OF CONFERENCE.**—

1           (1) *DEVELOPMENT OF COMPREHENSIVE CON-*  
2           *SERVATION AND MANAGEMENT PLANS.*—Section  
3           320(b) of the *Federal Water Pollution Control Act* (33  
4           U.S.C. 1330(b)) is amended by striking paragraph  
5           (4) and inserting the following:

6           “(4) develop and submit to the Administrator a  
7           comprehensive conservation and management plan  
8           that—

9           “(A) identifies the estuary and the associ-  
10          ated upstream waters of the estuary to be ad-  
11          dressed by the plan, with consideration given to  
12          hydrological boundaries;

13          “(B) recommends priority corrective actions  
14          and compliance schedules addressing—

15                 “(i) point and nonpoint sources of pol-  
16                 lution; and

17                 “(ii) protection and conservation ac-  
18                 tions—

19                         “(I) to restore and maintain the  
20                         chemical, physical, and biological in-  
21                         tegrity of the estuary, including—

22                                 “(aa) restoration and main-  
23                                 tenance of water quality, wet-  
24                                 lands, and natural hydrologic  
25                                 flows;

1                   “(bb) a resilient and diverse  
2                   indigenous population of shellfish,  
3                   fish, and wildlife; and

4                   “(cc) recreational activities  
5                   in the estuary; and

6                   “(II) to ensure that the designated  
7                   uses of the estuary are protected;

8                   “(C) identifies healthy watershed compo-  
9                   nents for protection and conservation by car-  
10                  rying out integrated assessments, where appro-  
11                  priate, of—

12                  “(i) aquatic habitat and biological in-  
13                  tegrity;

14                  “(ii) water quality; and

15                  “(iii) natural hydrologic flows;

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

18                  “(E) addresses the impacts of climate  
19                  change on the estuary, including—

20                  “(i) the identification and assessment  
21                  of vulnerabilities in the estuary;

22                  “(ii) the development and implementa-  
23                  tion of adaptation strategies; and

24                  “(iii) the impacts of changes in sea  
25                  level on estuarine water quality, estuarine

1           *habitat, and infrastructure located in the*  
2           *estuary;*

3           “(F) *increases public education and aware-*  
4           *ness with respect to—*

5                     “(i) *the ecological health of the estuary;*

6                     “(ii) *the water quality conditions of*  
7                     *the estuary; and*

8                     “(iii) *ocean, estuarine, land, and at-*  
9                     *mospheric connections and interactions;*

10                   “(G)(i) *identifies and assesses impairments,*  
11                   *including significant adverse upstream impair-*  
12                   *ments coming from outside of the area addressed*  
13                   *by the plan, and the sources of those impair-*  
14                   *ments; and*

15                             “(ii) *provides the applicable State with*  
16                             *any information on such impairments or*  
17                             *the sources of such impairments;*

18                             “(H) *includes performance measures and*  
19                             *goals to track implementation of the plan; and*

20                             “(I) *includes a coordinated monitoring*  
21                             *strategy for Federal, State, and local govern-*  
22                             *ments and other entities.”.*

23                   (2) *MONITORING AND MAKING RESULTS AVAIL-*  
24                   *ABLE.—Section 320(b) of the Federal Water Pollution*

1       *Control Act (33 U.S.C. 1330(b)) is amended by strik-*  
2       *ing paragraph (6) and inserting the following:*

3               “(6) monitor (and make results available to the  
4       *public regarding)—*

5                       “(A) water quality conditions in the estu-  
6       *ary and the associated upstream waters of the es-*  
7       *tuary identified under paragraph (4)(A);*

8                       “(B) healthy watershed and habitat condi-  
9       *tions that relate to the ecological health and*  
10       *water quality conditions of the estuary; and*

11                      “(C) the effectiveness of actions taken pursu-  
12       *ant to the comprehensive conservation and man-*  
13       *agement plan developed for the estuary under*  
14       *this subsection;”.*

15       (3) *INFORMATION AND EDUCATIONAL ACTIVI-*  
16       *TIES.—Section 320(b) of the Federal Water Pollution*  
17       *Control Act (33 U.S.C. 1330(b)) is amended—*

18                      (A) *by redesignating paragraph (7) as*  
19       *paragraph (8); and*

20                      (B) *by inserting after paragraph (6) the fol-*  
21       *lowing:*

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

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

6           (b) *MEMBERS OF CONFERENCE; COLLABORATIVE*  
 7           *PROCESSES.*—

8           (1) *MEMBERS OF CONFERENCE.*—*Section*  
 9           *320(c)(5) of the Federal Water Pollution Control Act*  
 10           *(33 U.S.C. 1330(c)(5)) is amended by inserting “not-*  
 11           *for-profit organizations,” after “institutions,”.*

12           (2) *COLLABORATIVE PROCESSES.*—*Section*  
 13           *320(d) of the Federal Water Pollution Control Act (33*  
 14           *U.S.C. 1330(d)) is amended—*

15                   (A) *by striking “(d)” and all that follows*  
 16                   *through “In developing” and inserting the fol-*  
 17                   *lowing:*

18           “(d) *USE OF EXISTING DATA AND COLLABORATIVE*  
 19           *PROCESSES.*—

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

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

23                   “(2) *USE OF COLLABORATIVE PROCESSES.*—*In*  
 24                   *updating a plan under subsection (f)(4) or developing*

1        *a new plan under subsection (b), a management con-*  
2        *ference shall make use of collaborative processes—*

3                *“(A) to ensure equitable inclusion of affected*  
4        *interests;*

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

7                        *“(i) the use of consensus-based decision*  
8        *rules; and*

9                        *“(ii) assistance from impartial*  
10        *facilitators, as appropriate;*

11                *“(C) to ensure relevant information, includ-*  
12        *ing scientific, technical, and cultural informa-*  
13        *tion, is accessible to members;*

14                *“(D) to promote accountability and trans-*  
15        *parency by ensuring members are informed in a*  
16        *timely manner of—*

17                        *“(i) the purposes and objectives of the*  
18        *management conference; and*

19                        *“(ii) the results of an evaluation con-*  
20        *ducted under subsection (f)(3);*

21                *“(E) to identify the roles and responsibil-*  
22        *ities of members—*

23                        *“(i) in the management conference pro-*  
24        *ceedings; and*

1                   “(ii) in the implementation of the  
2                   plan; and

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

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

9           “(f) *ADMINISTRATION OF PLANS.*—

10           “(1) *APPROVAL.*—Not later than 120 days after  
11 *the date on which a management conference submits*  
12 *to the Administrator a comprehensive conservation*  
13 *and management plan under this section, and after*  
14 *providing for public review and comment, the Admin-*  
15 *istrator shall approve the plan, if—*

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

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

19           “(2) *IMPLEMENTATION.*—

20                   “(A) *IN GENERAL.*—On the approval of a  
21 *comprehensive conservation and management*  
22 *plan under this section, the plan shall be imple-*  
23 *mented.*

24                   “(B) *USE OF AUTHORIZED AMOUNTS.*—  
25 *Amounts authorized to be appropriated under ti-*

1 *ties II and VI and section 319 may be used in*  
2 *accordance with the applicable requirements of*  
3 *this Act to assist States with the implementation*  
4 *of a plan approved under paragraph (1).*

5 *“(3) EVALUATION.—*

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

10 *“(i) an evaluation of the implementa-*  
11 *tion of each comprehensive conservation and*  
12 *management plan developed under this sec-*  
13 *tion to determine the degree to which the*  
14 *goals of the plan have been met; and*

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

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

23 *“(C) REPORT.—*

24 *“(i) IN GENERAL.—In completing an*  
25 *evaluation under subparagraph (A), and*

1           *after providing an opportunity for a man-*  
2           *agement conference to submit comments*  
3           *under subparagraph (B), the Administrator*  
4           *shall issue a report on the results of the*  
5           *evaluation, including the findings and rec-*  
6           *ommendations of the Administrator and*  
7           *any comments received from the manage-*  
8           *ment conference.*

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

14          “(D) *SPECIAL RULE FOR NEW PLANS.—Not-*  
15          *withstanding subparagraph (A), if a manage-*  
16          *ment conference submits a new comprehensive*  
17          *conservation and management plan to the Ad-*  
18          *ministrator after the date of enactment of this*  
19          *paragraph, the Administrator shall complete the*  
20          *evaluation of the implementation of the plan re-*  
21          *quired by subparagraph (A) not later than 5*  
22          *years after the date of such submission and every*  
23          *5 years thereafter.*

24          “(4) *UPDATES.—*

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

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

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

1       *before the last day of the 3-year period beginning on*  
2       *the date on which the Administrator makes an eval-*  
3       *uation of the plan available to the public under para-*  
4       *graph (3)(C).”.*

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

8               *(1) by redesignating subsections (g), (h), (i), (j),*  
9       *and (k) as subsections (h), (i), (j), (k), and (m), re-*  
10       *spectively; and*

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

12       *“(g) FEDERAL AGENCIES.—*

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

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

21               *“(A) IN GENERAL.—The Secretary of the*  
22       *Army (acting through the Chief of Engineers),*  
23       *the Administrator of the National Oceanic and*  
24       *Atmospheric Administration, the Director of the*  
25       *United States Fish and Wildlife Service, the Sec-*

1           *retary of the Department of Agriculture, the Di-*  
2           *rector of the United States Geological Survey, the*  
3           *Secretary of the Department of Transportation,*  
4           *the Secretary of the Department of Housing and*  
5           *Urban Development, and the heads of other ap-*  
6           *propriate Federal agencies, as determined by the*  
7           *Administrator, shall, to the maximum extent*  
8           *practicable, cooperate and coordinate activities,*  
9           *including monitoring activities, related to the*  
10          *implementation of a comprehensive conservation*  
11          *and management plan approved by the Adminis-*  
12          *trator.*

13                   “(B) *LEAD COORDINATING AGENCY.—The*  
14                   *Environmental Protection Agency shall serve as*  
15                   *the lead coordinating agency under this para-*  
16                   *graph.*

17                   “(3) *CONSIDERATION OF PLANS IN AGENCY*  
18                   *BUDGET REQUESTS.—In making an annual budget*  
19                   *request for a Federal agency referred to in paragraph*  
20                   *(2), the head of such agency shall consider the respon-*  
21                   *sibilities of the agency under this section, including*  
22                   *under comprehensive conservation and management*  
23                   *plans approved by the Administrator.*

24                   “(4) *MONITORING.—The heads of the Federal*  
25                   *agencies referred to in paragraph (2) shall collaborate*

1        *on the development of tools and methodologies for*  
2        *monitoring the ecological health and water quality*  
3        *conditions of estuaries covered by a management con-*  
4        *ference convened under this section.”.*

5        *(e) GRANTS.—*

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

10            *(A) in paragraph (1), by striking “other*  
11        *public” and all that follows before the period at*  
12        *the end and inserting “and other public or non-*  
13        *profit private agencies, institutions, and organi-*  
14        *zations”; and*

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

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

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

18        *The Administrator shall reduce, by an amount to*  
19        *be determined by the Administrator, grants for*  
20        *the implementation of a comprehensive conserva-*  
21        *tion and management plan developed by a man-*  
22        *agement conference convened under this section,*  
23        *if the Administrator determines that the man-*  
24        *agement conference is in probationary status*  
25        *under subsection (f)(5).*

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

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

14           (f) *AUTHORIZATION OF APPROPRIATIONS.—Section*  
15           *320 of the Federal Water Pollution Control Act (33 U.S.C.*  
16           *1330) (as redesignated by subsection (d)) is amended by*  
17           *striking subsection (j) and inserting the following:*

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

19           “(1) *IN GENERAL.—There is authorized to be ap-*  
20           *propriated to the Administrator \$75,000,000 for each*  
21           *of fiscal years 2011 through 2016 for—*

22           “(A) *expenses relating to the administration*  
23           *of management conferences by the Administrator*  
24           *under this section, except that such expenses*

1           *shall not exceed 10 percent of the amount appro-*  
2           *priated under this subsection;*

3           “(B) *making grants under subsection (h);*  
4           *and*

5           “(C) *monitoring the implementation of a*  
6           *conservation and management plan by the man-*  
7           *agement conference, or by the Administrator in*  
8           *any case in which the conference has been termi-*  
9           *nated.*

10          “(2) *ALLOCATIONS.—Of the sums authorized to*  
11          *be appropriated under this subsection, the Adminis-*  
12          *trator shall provide—*

13                 “(A) *at least \$1,250,000 per fiscal year,*  
14                 *subject to the availability of appropriations, for*  
15                 *the development, implementation, and moni-*  
16                 *toring of each conservation and management*  
17                 *plan eligible for grant assistance under sub-*  
18                 *section (h); and*

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

21          “(g) *RESEARCH.—Section 320(k)(1)(A) of the Federal*  
22          *Water Pollution Control Act (as redesignated by subsection*  
23          *(d)) is amended—*

24                 “(1) *by striking “paramenters” and inserting*  
25                 *“parameters”; and*

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

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

9           “(l) NATIONAL ESTUARY PROGRAM EVALUATION.—

10           “(1) IN GENERAL.—Not later than 5 years after  
11           the date of enactment of this paragraph, and every 5  
12           years thereafter, the Administrator shall complete an  
13           evaluation of the national estuary program estab-  
14           lished under this section.

15           “(2) SPECIFIC ASSESSMENTS.—In conducting an  
16           evaluation under this subsection, the Administrator  
17           shall—

18           “(A) assess the effectiveness of the national  
19           estuary program in improving water quality,  
20           natural resources, and sustainable uses of the es-  
21           tuaries covered by management conferences con-  
22           vened under this section;

23           “(B) identify best practices for improving  
24           water quality, natural resources, and sustainable  
25           uses of the estuaries covered by management con-

1        *ferences convened under this section, including*  
2        *those practices funded through the use of tech-*  
3        *nical assistance from the Environmental Protec-*  
4        *tion Agency and other Federal agencies;*

5                *“(C) assess the reasons why the best prac-*  
6                *tices described in subparagraph (B) resulted in*  
7                *the achievement of program goals;*

8                *“(D) identify any redundant requirements*  
9                *for reporting by recipients of a grant under this*  
10               *section; and*

11               *“(E) develop and recommend a plan for*  
12               *limiting reporting any redundancies.*

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

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

22               *(i) CONVENING OF CONFERENCE.—Section 320(a)(2)*  
23               *of the Federal Water Pollution Control Act (33 U.S.C.*  
24               *1330(a)(2)) is amended—*

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

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

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

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

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

15                 “(1) *the term ‘estuary’ also includes near coastal*  
16                 *waters and other bodies of water within the Great*  
17                 *Lakes that are similar in form and function to the*  
18                 *waters described in the definition of ‘estuary’ in sec-*  
19                 *tion 104(n)(4); and*

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

21                         “(A) *waters within the Great Lakes de-*  
22                         *scribed in paragraph (1) and transitional areas*  
23                         *from such waters that are similar in form and*  
24                         *function to the transitional areas described in*

1            *the definition of ‘estuarine zone’ in section*  
2            *104(n)(4);*  
3            *“(B) associated aquatic ecosystems; and*  
4            *“(C) those portions of tributaries”.*

Calendar No. 569

11<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

**H. R. 4715**

[Report No. 111-293]

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**AN ACT**

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

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SEPTEMBER 16, 2010

Reported with an amendment