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113TH CONGRESS
2^D SESSION

S. 2042

[Report No. 113-239]

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 2014

Mr. WHITEHOUSE (for himself and Mr. CARDIN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

JULY 31, 2014

Reported by Mrs. BOXER, with an amendment

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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 ~~This Act~~ may be cited as the “~~Clean Estuaries Act~~
5 of 2014”.

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

2 (a) PURPOSES OF CONFERENCE.—

3 (1) DEVELOPMENT OF COMPREHENSIVE CON-
4 SERVATION AND MANAGEMENT PLANS.—Section
5 320(b) of the Federal Water Pollution Control Act
6 (33 U.S.C. 1320(b)) is amended by striking para-
7 graph (4) and inserting the following:

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

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

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

19 “(i) to restore and maintain the chem-
20 ical, physical, and biological integrity of
21 the estuary, including—

22 “(I) restoration and maintenance
23 of water quality, including wetlands
24 and natural hydrological flows;

1 “(H) a resilient and diverse in-
2 digenous population of shellfish, fish,
3 and wildlife; and

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

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

8 “(C) identifies healthy and impaired water-
9 shed components by carrying out integrated as-
10 sessments that include assessments of—

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

13 “(ii) water quality; and

14 “(iii) natural hydrological flows;

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

17 “(E) addresses the effects of climate varia-
18 bility on the estuary, including—

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

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

23 “(iii) the potential impacts of changes
24 in sea level on estuarine water quality; es-

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

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

5 “(i) the ecological health of the estu-
6 ary;

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

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

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

13 “(H) includes a coordinated monitoring
14 strategy for Federal, State, and local govern-
15 ments and other entities.”.

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

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

22 “(A) water quality conditions in the estu-
23 ary and the associated upstream waters of the
24 estuary identified under paragraph (4)(A);

1 “(B) watershed and habitat conditions that
2 relate to the ecological health and water quality
3 conditions of the estuary; and

4 “(C) the effectiveness of actions taken pur-
5 suant to the comprehensive conservation and
6 management plan developed for the estuary
7 under this subsection;”.

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

11 (A) by redesignating paragraph (7) as
12 paragraph (8); and

13 (B) by inserting after paragraph (6) the
14 following:

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

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

23 (b) MEMBERS OF CONFERENCE; COLLABORATIVE
24 PROCESSES.—

1 (1) MEMBERS OF CONFERENCE.—Section
 2 320(e)(5) of the Federal Water Pollution Control
 3 Act (~~33~~ U.S.C. ~~1330~~(e)(5)) is amended by inserting
 4 “not-for-profit organizations,” after “institutions.”

5 (2) COLLABORATIVE PROCESSES.—Section
 6 320(d) of the Federal Water Pollution Control Act
 7 (~~33~~ U.S.C. ~~1330~~(d)) is amended—

8 (A) by striking “(d)” and all that follows
 9 through “In developing” and inserting the fol-
 10 lowing:

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

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

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

16 “(2) USE OF COLLABORATIVE PROCESSES.—In
 17 updating a plan under subsection (f)(4) or devel-
 18 oping a new plan under subsection (b), a manage-
 19 ment conference shall make use of collaborative
 20 processes—

21 “(A) to ensure equitable inclusion of af-
 22 fected interests;

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

1 “(i) the use of consensus-based deci-
2 sion rules; and

3 “(ii) assistance from impartial
4 facilitators, as appropriate;

5 “(C) to ensure relevant information, in-
6 cluding scientific, technical, and cultural infor-
7 mation, is accessible to members;

8 “(D) to promote accountability and trans-
9 parency by ensuring members are informed in
10 a timely manner of—

11 “(i) the purposes and objectives of the
12 management conference; and

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

15 “(E) to identify the roles and responsibil-
16 ities of members—

17 “(i) in the management conference
18 proceedings; and

19 “(ii) in the implementation of the
20 plan; and

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

23 (e) ADMINISTRATION OF PLANS.—Section 320 of the
24 Federal Water Pollution Control Act (33 U.S.C. 1330) is

1 amended by striking subsection (f) and inserting the fol-
 2 lowing:

3 ~~“(f) ADMINISTRATION OF PLANS.—~~

4 ~~“(1) APPROVAL.—Not later than 120 days~~
 5 ~~after the date on which a management conference~~
 6 ~~submits to the Administrator a comprehensive con-~~
 7 ~~servation and management plan under this section,~~
 8 ~~and after providing for public review and comment,~~
 9 ~~the Administrator shall approve the plan, if—~~

10 ~~“(A) the Administrator determines that~~
 11 ~~the plan meets the requirements of this section;~~
 12 ~~and~~

13 ~~“(B) each affected Governor concurs.~~

14 ~~“(2) COMPLETENESS.—~~

15 ~~“(A) IN GENERAL.—If the Administrator~~
 16 ~~determines that a plan is incomplete under~~
 17 ~~paragraph (1) or (7), the Administrator shall—~~

18 ~~“(i) provide the management con-~~
 19 ~~ference with written notification of the~~
 20 ~~basis of that finding; and~~

21 ~~“(ii) allow the management conference~~
 22 ~~to resubmit a revised plan that addresses,~~
 23 ~~to the maximum extent practicable, the~~
 24 ~~comments contained in the written notifi-~~

1 cation of the Administrator described in
2 clause (i).

3 “(B) RESUBMISSION.—If the Adminis-
4 trator determines that a revised plan submitted
5 under subparagraph (A)(ii) remains incomplete
6 under paragraph (1) or (7), the Administrator
7 shall allow the management conference to re-
8 submit a revised plan in accordance with sub-
9 paragraph (A).

10 “(C) SCOPE OF REVIEW.—In determining
11 whether to approve a comprehensive conserva-
12 tion and management plan under paragraph (1)
13 or (7), the Administrator—

14 “(i) shall limit the scope of review to
15 a determination of whether the plan meets
16 the minimum requirements of this section;
17 and

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

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

1 “(4) FAILURE TO SUBMIT A PLAN.—If, by the
2 date that is 3 years after the date on which a man-
3 agement conference is convened, that management
4 conference fails to submit a comprehensive conserva-
5 tion and management plan or to secure approval for
6 the comprehensive conservation and management
7 plan under this subsection, the Administrator shall
8 terminate the management conference convened
9 under this section.

10 “(5) IMPLEMENTATION.—

11 “(A) IN GENERAL.—On the approval of a
12 comprehensive conservation and management
13 plan under this section, the plan shall be imple-
14 mented.

15 “(B) USE OF AUTHORIZED AMOUNTS.—
16 Amounts authorized to be appropriated under
17 titles II and VI and section 319 may be used
18 in accordance with the applicable requirements
19 of this Act to assist States with the implemen-
20 tation of a plan approved under paragraph (1).

21 “(6) EVALUATION.—

22 “(A) IN GENERAL.—Not later than 5 years
23 after the date of enactment of this paragraph,
24 and every 5 years thereafter, the Administrator
25 shall carry out an evaluation of the implementa-

1 tion of each comprehensive conservation and
2 management plan developed under this section
3 to determine the degree to which the goals of
4 the plan have been met.

5 “(B) REVIEW AND COMMENT BY MANAGE-
6 MENT CONFERENCE.—In completing an evalua-
7 tion under subparagraph (A), the Administrator
8 shall submit the results of the evaluation to the
9 appropriate management conference for review
10 and comment.

11 “(C) REPORT.—

12 “(i) IN GENERAL.—In completing an
13 evaluation under subparagraph (A), and
14 after providing an opportunity for a man-
15 agement conference to submit comments
16 under subparagraph (B), the Adminis-
17 trator shall issue a report on the results of
18 the evaluation, including the findings and
19 recommendations of the Administrator and
20 any comments received from the manage-
21 ment conference.

22 “(ii) AVAILABILITY TO PUBLIC.—The
23 Administrator shall make a report issued
24 under this subparagraph available to the

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

3 “(D) SPECIAL RULE FOR NEW PLANS.—

4 Notwithstanding subparagraph (A), if a man-
5 agement conference submits a new comprehen-
6 sive conservation and management plan to the
7 Administrator after the date of enactment of
8 this paragraph, the Administrator shall com-
9 plete the evaluation of the implementation of
10 the plan required by subparagraph (A) not later
11 than 5 years after the date of such submission
12 and every 5 years thereafter.

13 “(7) UPDATES.—

14 “(A) REQUIREMENT.—Not later than 18
15 months after the date on which the Adminis-
16 trator makes an evaluation of the implementa-
17 tion of a comprehensive conservation and man-
18 agement plan available to the public under
19 paragraph (6)(C), a management conference
20 convened under this section shall submit to the
21 Administrator an update of the plan that re-
22 flects, to the maximum extent practicable, the
23 results of the program evaluation.

24 “(B) APPROVAL OF UPDATES.—Not later
25 than 120 days after the date on which a man-

1 agement conference submits to the Adminis-
2 trator an updated comprehensive conservation
3 and management plan under subparagraph (A);
4 and after providing for public review and com-
5 ment, the Administrator shall approve the up-
6 dated plan, if the Administrator determines
7 that the updated plan meets the requirements
8 of this section.

9 “(8) PROBATIONARY STATUS.—The Adminis-
10 trator may consider a management conference con-
11 vened under this section to be in probationary sta-
12 tus, if the management conference has not received
13 approval for an updated comprehensive conservation
14 and management plan under paragraph (7)(B) on or
15 before the last day of the 5-year period beginning on
16 the date on which the Administrator makes an eval-
17 uation of the plan available to the public under para-
18 graph (6)(C).”.

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

22 (1) by redesignating subsections (g), (h), (i),
23 (j), and (k) as subsections (h), (i), (j), (k), and (m),
24 respectively; and

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

3 “~~(g) FEDERAL AGENCIES.—~~

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

11 “~~(2) COORDINATION AND COOPERATION.—~~

12 “~~(A) IN GENERAL.—~~The Secretary of the
13 Army (acting through the Chief of Engineers),
14 the Administrator of the National Oceanic and
15 Atmospheric Administration, the Director of the
16 United States Fish and Wildlife Service, the
17 Secretary of the Department of Agriculture, the
18 Director of the United States Geological Sur-
19 vey, the Secretary of the Department of Trans-
20 portation, the Secretary of the Department of
21 Housing and Urban Development, and the
22 heads of other appropriate Federal agencies, as
23 determined by the Administrator, shall, to the
24 maximum extent practicable, cooperate and co-
25 ordinate activities, including monitoring activi-

1 ties, related to the implementation of a com-
2 prehensive conservation and management plan
3 approved by the Administrator.

4 “~~(B)~~ LEAD COORDINATING AGENCY.—The
5 Environmental Protection Agency shall serve as
6 the lead coordinating agency under this para-
7 graph.

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

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

21 ~~(c)~~ GRANTS.—

22 ~~(1)~~ IN GENERAL.—Subsection (h) (as redesign-
23 ated by subsection (d)) of section 320 of the Fed-
24 eral Water Pollution Control Act (33 U.S.C. 1330)
25 is amended—

1 (A) in paragraph (1), by striking “other
2 public” and all that follows before the period at
3 the end and inserting “and other public or non-
4 profit private agencies, institutions, and organi-
5 zations”; and

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

7 “(4) EFFECTS OF PROBATIONARY STATUS.—

8 “(A) REDUCTIONS IN GRANT AMOUNTS.—

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

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

19 a management conference convened under this
20 section, and cease funding for the implementa-
21 tion of the comprehensive conservation and
22 management plan developed by the manage-
23 ment conference, if the Administrator deter-
24 mines that the management conference has

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

3 ~~(2) CONFORMING AMENDMENT.—Section 320(i)~~
4 the Federal Water Pollution Control Act (as redesignig-
5 nated by subsection (d)) is amended by striking
6 “subsection (g)” and inserting “subsection (h)”.

7 ~~(f) AUTHORIZATION OF APPROPRIATIONS.—Section~~
8 320 of the Federal Water Pollution Control Act (~~33~~
9 U.S.C. 1330) (as redesignated by subsection (d)) is
10 amended by striking subsection (j) and inserting the fol-
11 lowing:

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

13 ~~“(1) IN GENERAL.—There is authorized to be~~
14 appropriated to the Administrator \$35,000,000 for
15 each of fiscal years 2014 through 2018 for—

16 ~~“(A) expenses relating to the administra-~~
17 tion of grants by the Administrator under this
18 section, including the award and oversight of
19 grants, except that such expenses shall not ex-
20 ceed 5 percent of the amount appropriated
21 under this subsection;

22 ~~“(B) making grants under subsection (h);~~
23 and

24 ~~“(C) monitoring the implementation of a~~
25 conservation and management plan by the man-

1 agement conference, or by the Administrator in
2 any case in which the conference has been ter-
3 minated.

4 “(2) ALLOCATIONS.—The Administrator shall
5 provide at least 80 percent of the amounts appro-
6 priated under this subsection per fiscal year for the
7 development, implementation, and monitoring of
8 each conservation and management plan eligible for
9 grant assistance under subsection (h).

10 “(3) REQUIREMENT.—The Administrator shall
11 include in the annual budget request of the Environ-
12 mental Protection Agency a clear description of the
13 amounts requested by the Administrator to make
14 grants under paragraph (1)(B).”.

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

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

20 (2) by inserting “(including monitoring of both
21 pathways and ecosystems to track the introduction
22 and establishment of nonnative species)” before “; to
23 provide the Administrator”.

24 (h) NATIONAL ESTUARY PROGRAM EVALUATION.—
25 Section 320 of the Federal Water Pollution Control Act

1 ~~(33 U.S.C. 1330)~~ is amended by inserting after subsection
2 (k) (as redesignated by subsection (d)) the following:

3 “(1) NATIONAL ESTUARY PROGRAM EVALUATION.—

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

9 “(2) SPECIFIC ASSESSMENTS.—In conducting
10 an evaluation under this subsection, the Adminis-
11 trator shall—

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

17 “(B) identify best practices for improving
18 water quality, natural resources, and sustain-
19 able uses of the estuaries covered by manage-
20 ment conferences convened under this section,
21 including those practices funded through the
22 use of technical assistance from the Environ-
23 mental Protection Agency and other Federal
24 agencies;

1 “(C) assess the reasons why the best prac-
 2 tices described in subparagraph (B) resulted in
 3 the achievement of program goals;

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

7 “(E) develop and recommend a plan for
 8 eliminating any redundancies.

9 “(3) REPORT.—In completing an evaluation
 10 under this subsection, the Administrator shall issue
 11 a report on the results of the evaluation, including
 12 the findings and recommendations of the Adminis-
 13 trator.

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

19 (i) CONVENING OF CONFERENCE.—Section
 20 320(a)(2) of the Federal Water Pollution Control Act (33
 21 U.S.C. 1330(a)(2)) is amended—

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

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

3 (2) by striking subparagraph (B).

4 (j) GREAT LAKES ESTUARIES.—Section 320(m) of
5 the Federal Water Pollution Control Act (as redesignated
6 by subsection (d)) is amended by striking the subsection
7 designation and all that follows through “and those por-
8 tions of tributaries” and inserting the following:

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

12 “(1) the term ‘estuary’ also includes near coast-
13 al waters and other bodies of water within the Great
14 Lakes that are similar in form and function to the
15 waters described in the definition of ‘estuary’ in sec-
16 tion 104(n)(4); and

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

18 “(A) waters within the Great Lakes de-
19 scribed in paragraph (1) and transitional areas
20 from such waters that are similar in form and
21 function to the transitional areas described in
22 the definition of ‘estuarine zone’ in section
23 104(n)(4);

24 “(B) associated aquatic ecosystems; and

25 “(C) those portions of tributaries”.

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Clean Estuaries Act of*
 3 *2014”.*

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

5 *(a) PURPOSES OF CONFERENCE.—*

6 *(1) DEVELOPMENT OF COMPREHENSIVE CON-*
 7 *SERVATION AND MANAGEMENT PLANS.—Section*
 8 *320(b) of the Federal Water Pollution Control Act (33*
 9 *U.S.C. 1330(b)) is amended by striking paragraph*
 10 *(4) and inserting the following:*

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

14 *“(A) identifies the estuary and estuary re-*
 15 *sources to be considered within the plan;*

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

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

23 *“(I) restoration and maintenance*
 24 *of water quality, including wetlands*
 25 *and natural hydrological flows;*

1 “(II) a resilient and diverse in-
2 digenous population of shellfish, fish,
3 and wildlife; and

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

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

8 “(C) identifies healthy and impaired water-
9 shed components by carrying out integrated as-
10 sessments that include assessments of—

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

13 “(ii) water quality; and

14 “(iii) natural hydrological flows;

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

17 “(E) considers the effects of ongoing climate,
18 hydrologic, and geologic changes on the estuary,
19 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 potential impacts of changes
25 in sea level or coastal erosion on estuarine

1 *water quality, estuarine habitat, and infra-*
2 *structure located in the 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) *includes performance measures and*
11 *goals to track implementation of the plan; and*

12 “(H) *includes a coordinated monitoring*
13 *strategy for Federal, State, and local govern-*
14 *ments and other entities.”.*

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

19 “(6) *monitor (and make results available to the*
20 *public regarding)—*

21 “(A) *water quality conditions considered by*
22 *the comprehensive conservation and management*
23 *plan developed under paragraph (4);*

1 “(B) watershed and habitat conditions that
2 relate to the ecological health and water quality
3 conditions of the estuary; and

4 “(C) the effectiveness of actions taken pursu-
5 ant to the comprehensive conservation and man-
6 agement plan developed for the estuary under
7 this subsection;”.

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

11 (A) by redesignating paragraph (7) as
12 paragraph (8); and

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

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

18 (4) *CONFORMING AMENDMENT.*—The sentence fol-
19 lowing section 320(b)(8) of the Federal Water Pollu-
20 tion Control Act (as so redesignated) (33 U.S.C.
21 1330(b)(8)) is amended by striking “paragraph (7)”
22 and inserting “paragraph (8)”.

23 (b) *COLLABORATIVE PROCESSES.*—Section 320(d) of
24 the Federal Water Pollution Control Act (33 U.S.C.
25 1330(d)) is amended—

1 (1) by striking “(d)” and all that follows through
2 *“In developing” and inserting the following:*

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

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

7 (2) by adding at the end the following:

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

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

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

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

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

20 *“(C) to ensure relevant scientific, technical,*
21 *and economic information is accessible to mem-*
22 *bers;*

23 *“(D) to promote accountability and trans-*
24 *parency by ensuring members are informed in a*
25 *timely manner of—*

1 “(i) the purposes and objectives of the
2 management conference; and

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

5 “(E) to identify the roles and responsibil-
6 ities of members—

7 “(i) in the management conference pro-
8 ceedings; and

9 “(ii) in the implementation of the
10 plan; and

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

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

17 “(f) *ADMINISTRATION OF PLANS.*—

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

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

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

2 “(2) *COMPLETENESS.—*

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

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

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

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

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

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

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

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

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

22 “(5) *IMPLEMENTATION.—*

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

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

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

9 “(6) *EVALUATION.—*

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

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

24 “(C) *REPORT.—*

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

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

16 “(D) *SPECIAL RULE FOR NEW PLANS.*—*Not-*
17 *withstanding subparagraph (A), if a manage-*
18 *ment conference submits a new comprehensive*
19 *conservation and management plan to the Ad-*
20 *ministrator after the date of enactment of this*
21 *paragraph, the Administrator shall complete the*
22 *evaluation of the implementation of the plan re-*
23 *quired by subparagraph (A) not later than 5*
24 *years after the date of such submission and every*
25 *5 years thereafter.*

1 “(7) *UPDATES.*—

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

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

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

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

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

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

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

13 *“(g) FEDERAL AGENCIES.—*

14 *“(1) COORDINATION AND COOPERATION.—*

15 *“(A) IN GENERAL.—The Secretary of the*
16 *Army (acting through the Chief of Engineers),*
17 *the Administrator of the National Oceanic and*
18 *Atmospheric Administration, the Director of the*
19 *United States Fish and Wildlife Service, the Sec-*
20 *retary of the Department of Agriculture, the Di-*
21 *rector of the United States Geological Survey, the*
22 *Secretary of the Department of Transportation,*
23 *the Secretary of the Department of Housing and*
24 *Urban Development, and the heads of other ap-*
25 *propriate Federal agencies, as determined by the*

1 *Administrator, shall, to the maximum extent*
2 *practicable, cooperate and coordinate activities,*
3 *including monitoring activities, related to the*
4 *implementation of a comprehensive conservation*
5 *and management plan approved by the Adminis-*
6 *trator.*

7 *“(B) LEAD COORDINATING AGENCY.—The*
8 *Environmental Protection Agency shall serve as*
9 *the lead coordinating agency under this para-*
10 *graph.*

11 *“(2) CONSIDERATION OF PLANS IN AGENCY*
12 *BUDGET REQUESTS.—In making an annual budget*
13 *request for a Federal agency referred to in paragraph*
14 *(1), the head of such agency shall consider the respon-*
15 *sibilities of the agency under this section, including*
16 *under comprehensive conservation and management*
17 *plans approved by the Administrator.*

18 *“(3) MONITORING.—The heads of the Federal*
19 *agencies referred to in paragraph (1) shall collaborate*
20 *on the development of tools and methodologies for*
21 *monitoring the ecological health and water quality*
22 *conditions of estuaries covered by a management con-*
23 *ference convened under this section.”.*

24 *(e) GRANTS.—*

1 (1) *IN GENERAL.*—Subsection (h) (as redesignated by subsection (d)) of section 320 of the Federal
2 *Water Pollution Control Act (33 U.S.C. 1330) is*
3 *amended by adding at the end the following:*

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

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

6 *The Administrator shall reduce, by an amount to*
7 *be determined by the Administrator, grants for*
8 *the implementation of a comprehensive conserva-*
9 *tion and management plan developed by a man-*
10 *agement conference convened under this section,*
11 *if the Administrator determines that the man-*
12 *agement conference is in probationary status*
13 *under subsection (f)(8).*

14 “(B) *TERMINATION OF MANAGEMENT CON-*

15 *FERENCES.*—*The Administrator shall terminate*
16 *a management conference convened under this*
17 *section, and cease funding for the implementa-*
18 *tion of the comprehensive conservation and man-*
19 *agement plan developed by the management con-*
20 *ference, if the Administrator determines that the*
21 *management conference has been in probationary*
22 *status for 2 consecutive years.”.*

23 (2) *CONFORMING AMENDMENT.*—Section 320(i)
24 *the Federal Water Pollution Control Act (as redesignated*
25

1 nated by subsection (d)) is amended by striking “sub-
2 section (g)” and inserting “subsection (h)”.

3 (f) *AUTHORIZATION OF APPROPRIATIONS.*—Section
4 320 of the Federal Water Pollution Control Act (33 U.S.C.
5 1330) (as redesignated by subsection (d)) is amended by
6 striking subsection (j) and inserting the following:

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

8 “(1) *IN GENERAL.*—There is authorized to be ap-
9 propriated to the Administrator \$35,000,000 for each
10 of fiscal years 2015 through 2019 for—

11 “(A) expenses relating to the administration
12 of grants by the Administrator under this sec-
13 tion, including the award and oversight of
14 grants, except that such expenses shall not exceed
15 5 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 termi-
23 nated.

24 “(2) *ALLOCATIONS.*—The Administrator shall
25 provide at least 80 percent of the amounts appro-

1 *prated under this subsection per fiscal year for the*
 2 *development, implementation, and monitoring of each*
 3 *conservation and management plan eligible for grant*
 4 *assistance under subsection (h).*

5 *“(3) REQUIREMENT.—The Administrator shall*
 6 *include in the annual budget request of the Environ-*
 7 *mental Protection Agency a clear description of the*
 8 *amounts requested by the Administrator to make*
 9 *grants under paragraph (1)(B).”.*

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

13 *(1) by striking “paramenters” and inserting*
 14 *“parameters”; and*

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

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

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

24 *“(1) IN GENERAL.—Not later than 5 years after*
 25 *the date of enactment of this paragraph, and every 5*

1 *years thereafter, the Administrator shall complete an*
2 *evaluation of the national estuary program estab-*
3 *lished under this section.*

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

7 “(A) *assess the effectiveness of the national*
8 *estuary program in improving water quality,*
9 *natural resources, and sustainable uses of the es-*
10 *tuaries covered by management conferences con-*
11 *vened under this section;*

12 “(B) *identify best practices for improving*
13 *water quality, natural resources, and sustainable*
14 *uses of the estuaries covered by management con-*
15 *ferences convened under this section, including*
16 *those practices funded through the use of tech-*
17 *nical assistance from the Environmental Protec-*
18 *tion Agency and other Federal agencies;*

19 “(C) *assess the reasons why the best prac-*
20 *tices described in subparagraph (B) resulted in*
21 *the achievement of program goals;*

22 “(D) *identify any redundant requirements*
23 *for reporting by recipients of a grant under this*
24 *section; and*

1 “(E) develop and recommend a plan for
2 eliminating any redundancies.

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

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

12 (i) *CONVENING OF CONFERENCE.*—Section 320(a)(2)
13 of the *Federal Water Pollution Control Act* (33 U.S.C.
14 1330(a)(2)) is amended—

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

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

20 (2) by striking subparagraph (B).

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113TH CONGRESS
2^D SESSION

S. 2042

[Report No. 113-239]

A BILL

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

JULY 31, 2014

Reported with an amendment