

113TH CONGRESS  
2D SESSION

# S. 2042

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

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 2014

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

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## 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”.

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

7 (a) PURPOSES OF CONFERENCE.—

8 (1) DEVELOPMENT OF COMPREHENSIVE CON-  
9 SERVATION AND MANAGEMENT PLANS.—Section  
10 320(b) of the Federal Water Pollution Control Act

1 (33 U.S.C. 1330(b)) is amended by striking para-  
2 graph (4) and inserting the following:

3 “(4) develop and submit to the Administrator a  
4 comprehensive conservation and management plan  
5 that—

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

10 “(B) recommends priority protection, con-  
11 servation, and corrective actions and compliance  
12 schedules that address point and nonpoint  
13 sources of pollution—

14 “(i) to restore and maintain the chem-  
15 ical, physical, and biological integrity of  
16 the estuary, including—

17 “(I) restoration and maintenance  
18 of water quality, including wetlands  
19 and natural hydrological flows;

20 “(II) a resilient and diverse in-  
21 digenous population of shellfish, fish,  
22 and wildlife; and

23 “(III) recreational activities in  
24 the estuary; and

1                   “(ii) to ensure that the designated  
2                   uses of the estuary are protected;

3                   “(C) identifies healthy and impaired water-  
4                   shed components by carrying out integrated as-  
5                   sessments that include assessments of—

6                   “(i) aquatic habitat and biological in-  
7                   tegrity;

8                   “(ii) water quality; and

9                   “(iii) natural hydrological flows;

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

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

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

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

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

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

24                  “(i) the ecological health of the estu-  
25                  ary;

1                   “(ii) the water quality conditions of  
2                   the estuary; and

3                   “(iii) ocean, estuarine, land, and at-  
4                   mospheric connections and interactions;

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

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

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

14                  “(6) monitor (and make results available to the  
15                  public regarding)—

16                         “(A) water quality conditions in the estu-  
17                         ary and the associated upstream waters of the  
18                         estuary identified under paragraph (4)(A);

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

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

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

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

6                   (B) by inserting after paragraph (6) the  
7           following:

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

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

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

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

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

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

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

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

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

9 “(2) USE OF COLLABORATIVE PROCESSES.—In  
 10 updating a plan under subsection (f)(4) or devel-  
 11 oping a new plan under subsection (b), a manage-  
 12 ment conference shall make use of collaborative  
 13 processes—

14 “(A) to ensure equitable inclusion of af-  
 15 fected interests;

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

18 “(i) the use of consensus-based deci-  
 19 sion rules; and

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

22 “(C) to ensure relevant information, in-  
 23 cluding scientific, technical, and cultural infor-  
 24 mation, is accessible to members;

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

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

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

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

10                   “(i) in the management conference  
11                   proceedings; and

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

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

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

20           “(f) ADMINISTRATION OF PLANS.—

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

1 and after providing for public review and comment,  
2 the Administrator shall approve the plan, if—

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

6 “(B) each affected Governor concurs.

7 “(2) COMPLETENESS.—

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

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

14 “(ii) allow the management conference  
15 to resubmit a revised plan that addresses,  
16 to the maximum extent practicable, the  
17 comments contained in the written notifi-  
18 cation of the Administrator described in  
19 clause (i).

20 “(B) RESUBMISSION.—If the Adminis-  
21 trator determines that a revised plan submitted  
22 under subparagraph (A)(ii) remains incomplete  
23 under paragraph (1) or (7), the Administrator  
24 shall allow the management conference to re-



1 submit a revised plan in accordance with sub-  
2 paragraph (A).

3 “(C) SCOPE OF REVIEW.—In determining  
4 whether to approve a comprehensive conserva-  
5 tion and management plan under paragraph (1)  
6 or (7), the Administrator—

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

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

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

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

1 terminate the management conference convened  
2 under this section.

3 “(5) IMPLEMENTATION.—

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

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

14 “(6) EVALUATION.—

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

23 “(B) REVIEW AND COMMENT BY MANAGE-  
24 MENT CONFERENCE.—In completing an evalua-  
25 tion under subparagraph (A), the Administrator

1 shall submit the results of the evaluation to the  
2 appropriate management conference for review  
3 and comment.

4 “(C) REPORT.—

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

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

20 “(D) SPECIAL RULE FOR NEW PLANS.—

21 Notwithstanding subparagraph (A), if a man-  
22 agement conference submits a new comprehen-  
23 sive conservation and management plan to the  
24 Administrator after the date of enactment of  
25 this paragraph, the Administrator shall com-

1           plete the evaluation of the implementation of  
2           the plan required by subparagraph (A) not later  
3           than 5 years after the date of such submission  
4           and every 5 years thereafter.

5           “(7) UPDATES.—

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

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

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

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

14                 (1) by redesignating subsections (g), (h), (i),  
15                 (j), and (k) as subsections (h), (i), (j), (k), and (m),  
16                 respectively; and

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

19                 “(g) FEDERAL AGENCIES.—

20                         “(1) ACTIVITIES CONDUCTED WITHIN ESTU-  
21                         ARIES WITH APPROVED PLANS.—After approval of a  
22                         comprehensive conservation and management plan  
23                         by the Administrator, any Federal action or activity  
24                         affecting the estuary shall be conducted, to the max-

1 imum extent practicable, in a manner consistent  
2 with the plan.

3 “(2) COORDINATION AND COOPERATION.—

4 “(A) IN GENERAL.—The Secretary of the  
5 Army (acting through the Chief of Engineers),  
6 the Administrator of the National Oceanic and  
7 Atmospheric Administration, the Director of the  
8 United States Fish and Wildlife Service, the  
9 Secretary of the Department of Agriculture, the  
10 Director of the United States Geological Sur-  
11 vey, the Secretary of the Department of Trans-  
12 portation, the Secretary of the Department of  
13 Housing and Urban Development, and the  
14 heads of other appropriate Federal agencies, as  
15 determined by the Administrator, shall, to the  
16 maximum extent practicable, cooperate and co-  
17 ordinate activities, including monitoring activi-  
18 ties, related to the implementation of a com-  
19 prehensive conservation and management plan  
20 approved by the Administrator.

21 “(B) LEAD COORDINATING AGENCY.—The  
22 Environmental Protection Agency shall serve as  
23 the lead coordinating agency under this para-  
24 graph.

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

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

14 (e) GRANTS.—

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

19           (A) in paragraph (1), by striking “other  
20 public” and all that follows before the period at  
21 the end and inserting “and other public or non-  
22 profit private agencies, institutions, and organi-  
23 zations”; and

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

25           “(4) EFFECTS OF PROBATIONARY STATUS.—

1           “(A) REDUCTIONS IN GRANT AMOUNTS.—  
2           The Administrator shall reduce, by an amount  
3           to be determined by the Administrator, grants  
4           for the implementation of a comprehensive con-  
5           servation and management plan developed by a  
6           management conference convened under this  
7           section, if the Administrator determines that  
8           the management conference is in probationary  
9           status under subsection (f)(8).

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

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

24           (f) AUTHORIZATION OF APPROPRIATIONS.—Section  
25           320 of the Federal Water Pollution Control Act (33



1 U.S.C. 1330) (as redesignated by subsection (d)) is  
2 amended by striking subsection (j) and inserting the fol-  
3 lowing:

4 “(j) AUTHORIZATION OF APPROPRIATIONS.—

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

8 “(A) expenses relating to the administra-  
9 tion of grants by the Administrator under this  
10 section, including the award and oversight of  
11 grants, except that such expenses shall not ex-  
12 ceed 5 percent of the amount appropriated  
13 under this subsection;

14 “(B) making grants under subsection (h);  
15 and

16 “(C) monitoring the implementation of a  
17 conservation and management plan by the man-  
18 agement conference, or by the Administrator in  
19 any case in which the conference has been ter-  
20 minated.

21 “(2) ALLOCATIONS.—The Administrator shall  
22 provide at least 80 percent of the amounts appro-  
23 priated under this subsection per fiscal year for the  
24 development, implementation, and monitoring of

1 each conservation and management plan eligible for  
2 grant assistance under subsection (h).

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

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

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

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

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

21 “(l) NATIONAL ESTUARY PROGRAM EVALUATION.—

22 “(1) IN GENERAL.—Not later than 5 years  
23 after the date of enactment of this paragraph, and  
24 every 5 years thereafter, the Administrator shall

1 complete an evaluation of the national estuary pro-  
2 gram established under this section.

3 “(2) SPECIFIC ASSESSMENTS.—In conducting  
4 an evaluation under this subsection, the Adminis-  
5 trator shall—

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

11 “(B) identify best practices for improving  
12 water quality, natural resources, and sustain-  
13 able uses of the estuaries covered by manage-  
14 ment conferences convened under this section,  
15 including those practices funded through the  
16 use of technical assistance from the Environ-  
17 mental Protection Agency and other Federal  
18 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  
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 the Federal Water Pollution Control Act (33  
15          U.S.C. 1330(a)(2)) is amended—

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          the Federal Water Pollution Control Act (as redesignated  
24          by subsection (d)) is amended by striking the subsection

1 designation and all that follows through “and those por-  
2 tions of tributaries” and inserting the following:

3 “(m) DEFINITIONS.—In this section, the terms ‘estu-  
4 ary’ and ‘estuarine zone’ have the meanings given the  
5 terms 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’ in sec-  
10 tion 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’ in section  
17 104(n)(4);

18 “(B) associated aquatic ecosystems; and

19 “(C) those portions of tributaries”.

○