

Calendar No. 472

111TH CONGRESS
2^D SESSION

H. R. 5301

IN THE SENATE OF THE UNITED STATES

JULY 21, 2010

Received; read twice and placed on the calendar

AN ACT

To extend the period during which the Administrator of the Environmental Protection Agency and States are prohibited from requiring a permit under section 402 of the Federal Water Pollution Control Act for certain discharges that are incidental to normal operation of vessels, to reauthorize the National Estuary Program, and for other purposes.

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

1 **TITLE I—NATIONAL POLLUTANT**
2 **DISCHARGE ELIMINATION**
3 **SYSTEM**

4 **SEC. 101. DISCHARGES INCIDENTAL TO NORMAL OPER-**
5 **ATION OF VESSELS.**

6 Public Law 110–299 (122 Stat. 2995, 33 U.S.C.
7 1342 note) is amended in section 2(a) by striking “during
8 the 2-year period beginning on the date of enactment of
9 this Act” and inserting “during the period beginning on
10 the date of enactment of this Act and ending December
11 18, 2013”.

12 **TITLE II—CLEAN ESTUARIES**

13 **SEC. 201. SHORT TITLE.**

14 This title may be cited as the “Clean Estuaries Act
15 of 2010”.

16 **SEC. 202. NATIONAL ESTUARY PROGRAM AMENDMENTS.**

17 (a) **PURPOSES OF CONFERENCE.—**

18 (1) **DEVELOPMENT OF COMPREHENSIVE CON-**
19 **SERVATION AND MANAGEMENT PLANS.—**Section
20 320(b)(4) of the Federal Water Pollution Control
21 Act (33 U.S.C. 1330(b)(4)) is amended to read as
22 follows:

23 “(4) develop and submit to the Administrator a
24 comprehensive conservation and management plan
25 that—

1 “(A) identifies the estuary and its associ-
2 ated upstream waters to be addressed by the
3 plan, with consideration given to hydrological
4 boundaries;

5 “(B) recommends priority corrective ac-
6 tions and compliance schedules addressing point
7 and nonpoint sources of pollution to restore and
8 maintain the chemical, physical, and biological
9 integrity of the estuary, including restoration
10 and maintenance of water quality, a resilient
11 and diverse indigenous population of shellfish,
12 fish, and wildlife, and recreational activities in
13 the estuary, and assure that the designated
14 uses of the estuary are protected;

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

17 “(D) addresses the impacts of climate
18 change 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 impacts of changes in sea
24 level on estuarine water quality, estuarine

1 habitat, and infrastructure located in the
2 estuary;

3 “(E) 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 “(F) identifies and assesses impairments,
12 including upstream impairments, coming from
13 outside of the area addressed by the plan, and
14 the sources of those impairments;

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

17 “(H) includes a coordinated monitoring
18 strategy for Federal, State, and local govern-
19 ments and other entities.”.

20 (2) MONITORING AND MAKING RESULTS AVAIL-
21 ABLE.—Section 320(b)(6) of such Act (33 U.S.C.
22 1330(b)(6)) is amended to read as follows:

23 “(6) monitor (and make results available to the
24 public regarding)—

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

4 “(B) habitat conditions that relate to the
5 ecological health and water quality conditions of
6 the estuary; and

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

11 (3) INFORMATION AND EDUCATIONAL ACTIVI-
12 TIES.—Section 320(b) of such Act (33 U.S.C.
13 1330(b)) is amended—

14 (A) by redesignating paragraph (7) as
15 paragraph (8); and

16 (B) by inserting after paragraph (6) the
17 following:

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

21 (4) CONFORMING AMENDMENT.—The sentence
22 following section 320(b)(8) of such Act (as so redес-
23 ignated) is amended by striking “paragraph (7)”
24 and inserting “paragraph (8)”.

1 (b) MEMBERS OF CONFERENCE; COLLABORATIVE
2 PROCESSES.—

3 (1) MEMBERS OF CONFERENCE.—Section
4 320(c)(5) of such Act (33 U.S.C. 1330(c)(5)) is
5 amended by inserting after “institutions,” the fol-
6 lowing: “not-for-profit organizations,”.

7 (2) COLLABORATIVE PROCESSES.—Section
8 320(d) of such Act (33 U.S.C. 1330(d)) is amend-
9 ed—

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

13 “(d) UTILIZATION OF EXISTING DATA AND COL-
14 LABORATIVE PROCESSES.—

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

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

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

23 “(A) ensure equitable inclusion of affected
24 interests;

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

3 “(i) the use of consensus-based deci-
4 sion rules; and

5 “(ii) assistance from impartial
6 facilitators, as appropriate;

7 “(C) ensure relevant information, including
8 scientific, technical, and cultural information, is
9 accessible to members;

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

13 “(i) the purposes and objectives of the
14 management conference; and

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

17 “(E) identify the roles and responsibilities
18 of members—

19 “(i) in the management conference
20 proceedings; and

21 “(ii) in the implementation of the
22 plan; and

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

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

4 “(f) ADMINISTRATION OF PLANS.—

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

14 “(2) IMPLEMENTATION.—Upon approval of a
15 comprehensive conservation and management plan
16 under this section, the plan shall be implemented.
17 Funds authorized to be appropriated under titles II
18 and VI and section 319 may be used in accordance
19 with the applicable requirements of this Act to assist
20 States with the implementation of the plan.

21 “(3) EVALUATION.—

22 “(A) IN GENERAL.—Not later than 4 years
23 after the date of enactment of this paragraph,
24 and every 4 years thereafter, the Administrator
25 shall complete an evaluation of the implementa-

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

“(B) REVIEW AND COMMENT BY MANAGEMENT CONFERENCE.—In completing an evaluation under subparagraph (A), the Administrator shall submit the results of the evaluation to the appropriate management conference for review and comment.

“(C) REPORT.—

“(i) IN GENERAL.—In completing an evaluation under subparagraph (A), and after providing an opportunity for a management conference to submit comments under subparagraph (B), the Administrator shall issue a report on the results of the evaluation, including the findings and recommendations of the Administrator and any comments received from the management conference.

“(ii) AVAILABILITY TO PUBLIC.—The Administrator shall make a report issued 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 4 years after the date of such submission
12 and every 4 years thereafter.

13 “(4) 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 (3)(C), a management conference
20 convened under this section shall submit to the
21 Administrator an update of the plan. The up-
22 dated plan shall reflect, to the maximum extent
23 practicable, the results of the program evalua-
24 tion.

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

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

21 (d) FEDERAL AGENCIES.—Section 320 of such Act
22 (33 U.S.C. 1330) is amended—

23 (1) by redesignating subsections (g), (h), (i),
24 (j), and (k) as subsections (h), (i), (j), (k), and (m),
25 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.—The
12 Secretary of the Army (acting through the Chief of
13 Engineers), the Administrator of the National Oce-
14 anic and Atmospheric Administration, the Director
15 of the United States Fish and Wildlife Service, the
16 Chief of the Natural Resources Conservation Serv-
17 ice, and the heads of other appropriate Federal
18 agencies, as determined by the Administrator, shall,
19 to the maximum extent practicable, cooperate and
20 coordinate activities, including monitoring activities,
21 related to the implementation of a comprehensive
22 conservation and management plan approved by the
23 Administrator. The Environmental Protection Agen-
24 cy shall serve as the lead coordinating agency under
25 this paragraph.

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

21 (2) EFFECTS OF PROBATIONARY STATUS.—Sec-
22 tion 320(h) of such Act (as redesignated by sub-
23 section (d) of this section) is further amended by
24 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 the
8 management conference is in probationary sta-
9 tus under subsection (f)(5).

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

1 (f) AUTHORIZATION OF APPROPRIATIONS.—Section
2 320(j) of such Act (as redesignated by subsection (d) of
3 this section) is amended to read as follows:

4 “(j) AUTHORIZATION OF APPROPRIATIONS.—

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

8 “(A) expenses related to the administration
9 of management conferences under this section,
10 except that such expenses shall not exceed 10
11 percent of the amount appropriated under this
12 subsection;

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

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

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

23 “(A) at least \$1,250,000 per fiscal year,
24 subject to the availability of appropriations, for
25 the development, implementation, and moni-

1 toring of each conservation and management
2 plan eligible for grant assistance under sub-
3 section (h); and

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

6 (g) RESEARCH.—Section 320(k)(1)(A) of such Act
7 (as redesignated by subsection (d) of this section) is
8 amended—

9 (1) by striking “paramenters” and inserting
10 “parameters”; and

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

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

19 “(l) NATIONAL ESTUARY PROGRAM EVALUATION.—

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

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

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

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

19 “(C) identify any redundant requirements
20 for reporting by recipients of a grant under this
21 section, and develop and recommend a plan for
22 limiting reporting redundancies.

23 “(3) REPORT.—In completing an evaluation
24 under this subsection, the Administrator shall issue
25 a report on the results of the evaluation, including

1 the findings and recommendations of the Adminis-
 2 trator.

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

8 (i) CONVENING OF CONFERENCE.—Section
 9 320(a)(2) of such Act (33 U.S.C. 1330(a)(2)) is amend-
 10 ed—

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

14 “(2) CONVENING OF CONFERENCE.—In any
 15 case”; and

16 (2) by striking subparagraph (B).

17 (j) GREAT LAKES ESTUARIES.—Section 320(m) of
 18 such Act (as redesignated by subsection (d) of this sec-
 19 tion) is amended by striking the subsection designation
 20 and all that follows through “and those portions of tribu-
 21 taries” and inserting the following:

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

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

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

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

13 “(B) associated aquatic ecosystems; and

14 “(C) those portions of tributaries”.

Passed the House of Representatives July 20, 2010.

Attest:

LORRAINE C. MILLER,

Clerk.

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11TH CONGRESS
2^D Session

H. R. 5301

AN ACT

To extend the period during which the Administrator of the Environmental Protection Agency and States are prohibited from requiring a permit under section 402 of the Federal Water Pollution Control Act for certain discharges that are incidental to normal operation of vessels, to reauthorize the National Estuary Program, and for other purposes.

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