

111TH CONGRESS  
2D SESSION

# S. 3540

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

JUNE 28, 2010

Mr. WHITEHOUSE (for himself and Mr. VITTER) 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 2010”.

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

7 (a) PURPOSES OF CONFERENCE.—

8 (1) DEVELOPMENT OF COMPREHENSIVE CON-  
9 SERVATION AND MANAGEMENT PLANS.—Section

1       320(b) of the Federal Water Pollution Control Act  
2       (33 U.S.C. 1330(b)) is amended by striking para-  
3       graph (4) and inserting the following:

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

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

11                      “(B) recommends priority corrective ac-  
12      tions and compliance schedules addressing—

13                               “(i) point and nonpoint sources of pol-  
14      lution; and

15                               “(ii) protection and conservation ac-  
16      tions—

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

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

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

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

6 “(II) to ensure that the des-  
7 ignated uses of the estuary are pro-  
8 tected;

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

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

15 “(ii) water quality; and

16 “(iii) natural hydrologic flows;

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

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

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

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

1 “(iii) the impacts of changes in sea  
2 level on estuarine water quality, estuarine  
3 habitat, and infrastructure located in the  
4 estuary;

5 “(F) increases public education and aware-  
6 ness with respect to—

7 “(i) the ecological health of the estu-  
8 ary;

9 “(ii) the water quality conditions of  
10 the estuary; and

11 “(iii) ocean, estuarine, land, and at-  
12 mospheric connections and interactions;

13 “(G)(i) identifies and assesses impair-  
14 ments, including upstream impairments, coming  
15 from outside of the area addressed by the plan,  
16 and the sources of those impairments; and

17 “(ii) provides the applicable State with any  
18 information on such impairments or the sources  
19 of such impairments;

20 “(H) includes performance measures and  
21 goals to track implementation of the plan; and

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

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

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

7           “(A) water quality conditions in the estu-  
8       ary and the associated upstream waters of the  
9       estuary identified under paragraph (4)(A);

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

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

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

20               (A) by redesignating paragraph (7) as  
21       paragraph (8); and

22               (B) by inserting after paragraph (6) the  
23       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 the Federal Water  
 6 Pollution Control Act (as so redesignated) (33  
 7 U.S.C. 1330(b)(8)) is amended by striking “para-  
 8 graph (7)” and inserting “paragraph (8)”.

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

11 (1) MEMBERS OF CONFERENCE.—Section  
 12 320(c)(5) of the Federal Water Pollution Control  
 13 Act (33 U.S.C. 1330(c)(5)) is amended by inserting  
 14 “not-for-profit organizations,” after “institutions,”.

15 (2) COLLABORATIVE PROCESSES.—Section  
 16 320(d) of the Federal Water Pollution Control Act  
 17 (33 U.S.C. 1330(d)) is amended—

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

21 “(d) USE OF EXISTING DATA AND COLLABORATIVE  
 22 PROCESSES.—

23 “(1) USE OF EXISTING DATA.—In developing”;  
 24 and

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

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

6           “(A) to ensure equitable inclusion of af-  
 7       fected interests;

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

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

12           “(ii) assistance from impartial facili-  
 13       tators, as appropriate;

14           “(C) to ensure relevant information, in-  
 15       cluding scientific, technical, and cultural infor-  
 16       mation, is accessible to members;

17           “(D) to 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) to identify the roles and responsibil-  
 25       ities of members—

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

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

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

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

11 “(f) ADMINISTRATION OF PLANS.—

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

18 “(A) the Administrator determines that  
19 the plan meets the requirements of this section;  
20 and

21 “(B) each affected Governor concurs.

22 “(2) 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  
5 titles II and VI and section 319 may be used  
6 in accordance with the applicable requirements  
7 of this Act to assist States with the implemen-  
8 tation of a plan approved under paragraph (1).

9 “(3) 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—

14 “(i) an evaluation of the implementa-  
15 tion of each comprehensive conservation  
16 and management plan developed under this  
17 section to determine the degree to which  
18 the goals of the plan have been met; and

19 “(ii) a review of the program designed  
20 to implement the plan.

21 “(B) REVIEW AND COMMENT BY MANAGE-  
22 MENT CONFERENCE.—In completing an evalua-  
23 tion under subparagraph (A), the Administrator  
24 shall submit the results of the evaluation to the

1 appropriate management conference for review  
2 and comment.

3 “(C) REPORT.—

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

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

19 “(D) SPECIAL RULE FOR NEW PLANS.—

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

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

4 “(4) UPDATES.—

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

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

1           “(5) 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 (4)(B) on or  
 7           before the last day of the 3-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 (3)(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)(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           (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 \$75,000,000 for  
7 each of fiscal years 2011 through 2016 for—

8 “(A) expenses relating to the administra-  
9 tion of management conferences by the Admin-  
10 istrator under this section, except that such ex-  
11 penses shall not exceed 10 percent of the  
12 amount appropriated under this 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 the Federal  
 7 Water Pollution Control Act (as redesignated by sub-  
 8 section (d)) is 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 the Federal Water Pollution Control Act  
 17 (33 U.S.C. 1330) is amended by inserting after subsection  
 18 (k) (as redesignated by subsection (d)) the following:

19           “(l) NATIONAL ESTUARY PROGRAM EVALUATION.—

20                   “(1) IN GENERAL.—Not later than 5 years  
 21           after the date of enactment of this paragraph, and  
 22           every 5 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;

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

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

23                  “(E) develop and recommend a plan for  
24                  limiting reporting any redundancies.

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

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

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

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

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

19               (2) by striking subparagraph (B).

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

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

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

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

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

16               “(B) associated aquatic ecosystems; and

17               “(C) those portions of tributaries.”.

○