

113TH CONGRESS
1ST SESSION

S. 646

To create the National Endowment for the Oceans to promote the protection and conservation of United States ocean, coastal, and Great Lakes ecosystems, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 21, 2013

Mr. WHITEHOUSE (for himself, Ms. CANTWELL, Mr. BLUMENTHAL, and Mr. NELSON) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To create the National Endowment for the Oceans to promote the protection and conservation of United States ocean, coastal, and Great Lakes ecosystems, 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 “National Endowment
5 for the Oceans Act”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are to protect, conserve, re-
8 store, and understand the oceans, coasts, and Great Lakes

1 of the United States, ensuring present and future genera-
2 tions will benefit from the full range of ecological, eco-
3 nomic, educational, social, cultural, nutritional, and rec-
4 reational opportunities and services these resources are ca-
5 pable of providing.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8 (1) COASTAL SHORELINE COUNTY.—The term
9 “coastal shoreline county” has the meaning given
10 the term by the Administrator of the Federal Emer-
11 gency Management Agency for purposes of admin-
12 istering the National Flood Insurance Act of 1968
13 (42 U.S.C. 4001 et seq.).

14 (2) COASTAL STATE.—The term “coastal
15 State” has the meaning given the term “coastal
16 state” in section 304 of the Coastal Zone Manage-
17 ment Act of 1972 (16 U.S.C. 1453).

18 (3) CORPUS.—The term “corpus”, with respect
19 to the Endowment fund, means an amount equal to
20 the Federal payments to such fund, amounts con-
21 tributed to the fund from non-Federal sources, and
22 appreciation from capital gains and reinvestment of
23 income.

1 (4) ENDOWMENT.—The term “Endowment”
2 means the endowment established under subsection
3 (a).

4 (5) ENDOWMENT FUND.—The term “Endow-
5 ment fund” means a fund, or a tax-exempt founda-
6 tion, established and maintained pursuant to this
7 Act by the Foundation for the purposes described in
8 section 4(a).

9 (6) FOUNDATION.—The term “Foundation”
10 means the National Fish and Wildlife Foundation
11 established by section 2(a) of the National Fish and
12 Wildlife Foundation Establishment Act (16 U.S.C.
13 3701(a)).

14 (7) INCOME.—The term “income”, with respect
15 to the Endowment fund, means an amount equal to
16 the dividends and interest accruing from investments
17 of the corpus of such fund.

18 (8) INDIAN TRIBE.—The term “Indian tribe”
19 has the meaning given that term in section 4 of the
20 Indian Self-Determination and Education Assistance
21 Act (25 U.S.C. 450b).

22 (9) SECRETARY.—The term “Secretary” means
23 the Secretary of Commerce.

24 (10) TIDAL SHORELINE.—The term “tidal
25 shoreline” has the meaning given that term pursu-

1 ant to section 923.110(c)(2)(i) of title 15, Code of
2 Federal Regulations, or a similar successor regula-
3 tion.

4 **SEC. 4. NATIONAL ENDOWMENT FOR THE OCEANS.**

5 (a) ESTABLISHMENT.—The Secretary and the Foun-
6 dation are authorized to establish the National Endow-
7 ment for the Oceans as a permanent Endowment fund,
8 in accordance with this section, to further the purposes
9 of this Act and to support the programs established under
10 this Act.

11 (b) AGREEMENTS.—The Secretary and the Founda-
12 tion may enter into such agreements as may be necessary
13 to carry out the purposes of this Act.

14 (c) INVESTMENTS.—The Foundation shall invest the
15 Endowment fund corpus and income for the benefit of the
16 Endowment.

17 (d) REQUIREMENTS.—Any amounts received by the
18 Foundation pursuant to this Act shall be subject to the
19 provisions of the National Fish and Wildlife Establish-
20 ment Act (16 U.S.C. 3701 et seq.), except the provisions
21 of section 10(a) of that Act (16 U.S.C. 3709(a)).

22 (e) WITHDRAWALS AND EXPENDITURES.—

23 (1) ALLOCATION OF FUNDS.—Each fiscal year,
24 the Foundation shall, in consultation with the Sec-
25 retary, allocate an amount equal to not less than 3

1 percent and not more than 7 percent of the corpus
2 of the Endowment fund and the income generated
3 from the Endowment fund from the current fiscal
4 year.

5 (2) EXPENDITURE.—Of the amounts allocated
6 under paragraph (1) for each fiscal year—

7 (A) at least 59 percent shall be used by the
8 Foundation to award grants to coastal States
9 under section 6(b);

10 (B) at least 39 percent shall be allocated
11 by the Foundation to award grants under sec-
12 tion 6(c); and

13 (C) no more than 2 percent may be used
14 by the Secretary and the Foundation for ad-
15 ministrative expenses to carry out this Act,
16 which amount shall be divided between the Sec-
17 retary and the Foundation pursuant to an
18 agreement reached and documented by both the
19 Secretary and the Foundation.

20 (f) RECOVERY OF PAYMENTS.—After notice and an
21 opportunity for a hearing, the Secretary is authorized to
22 recover any Federal payments under this section if the
23 Foundation—

24 (1) makes a withdrawal or expenditure of the
25 corpus of the Endowment fund or the income of the

1 Endowment fund that is not consistent with the re-
2 quirements of section 5; or

3 (2) fails to comply with a procedure, measure,
4 method, or standard established under section
5 6(a)(1).

6 **SEC. 5. ELIGIBLE USES.**

7 (a) IN GENERAL.—Amounts in the Endowment may
8 be allocated by the Foundation to support programs and
9 activities intended to restore, protect, maintain, or under-
10 stand living marine resources and their habitats and
11 ocean, coastal, and Great Lakes resources, including base-
12 line scientific research, ocean observing, and other pro-
13 grams and activities carried out in coordination with Fed-
14 eral and State departments or agencies, that are con-
15 sistent with Federal environmental laws and that avoid en-
16 vironmental degradation, including the following:

17 (1) Ocean, coastal, and Great Lakes restoration
18 and protection, including the protection of the envi-
19 ronmental integrity of such areas, and their related
20 watersheds, including efforts to mitigate potential
21 impacts of sea level change, changes in ocean chem-
22 istry, and changes in ocean temperature.

23 (2) Restoration, protection, or maintenance of
24 living ocean, coastal, and Great Lakes resources and
25 their habitats, including marine protected areas and

1 riparian migratory habitat of coastal and marine
2 species.

3 (3) Planning for and managing coastal develop-
4 ment to enhance ecosystem integrity or minimize im-
5 pacts from sea level change and coastal erosion.

6 (4) Analyses of current and anticipated impacts
7 of ocean acidification and assessment of potential ac-
8 tions to minimize harm to ocean, coastal, and Great
9 Lakes ecosystems.

10 (5) Analyses of, and planning for, current and
11 anticipated uses of ocean, coastal, and Great Lakes
12 areas.

13 (6) Regional, subregional, or site-specific man-
14 agement efforts designed to manage, protect, or re-
15 store ocean, coastal, and Great Lakes resources and
16 ecosystems.

17 (7) Research, assessment, monitoring, observa-
18 tion, modeling, and sharing of scientific information
19 that contribute to the understanding of ocean, coast-
20 al, and Great Lakes ecosystems and support the
21 purposes of this Act.

22 (8) Efforts to understand better the processes
23 that govern the fate and transport of petroleum hy-
24 drocarbons released into the marine environment

1 from natural and anthropogenic sources, including
2 spills.

3 (9) Efforts to improve spill response and pre-
4 paredness technologies.

5 (10) Acquiring property or interests in property
6 in coastal and estuarine areas, if such property or
7 interest is acquired in a manner that will ensure
8 such property or interest will be administered to
9 support the purposes of this Act.

10 (11) Protection and relocation of critical coastal
11 public infrastructure affected by erosion or sea level
12 change.

13 (b) MATCHING REQUIREMENT.—An amount from the
14 Endowment may not be allocated to fund a project or ac-
15 tivity described in paragraph (10) or (11) of subsection
16 (a) unless non-Federal contributions in an amount equal
17 to 30 percent or more of the cost of such project or activity
18 is made available to carry out such project or activity.

19 (c) CONSIDERATIONS FOR GREAT LAKES STATES.—
20 Programs and activities funded in Great Lakes States
21 shall also seek to attain the goals embodied in the Great
22 Lakes Restoration Initiative Plan, the Great Lakes Re-
23 gional Collaboration Strategy, the Great Lakes Water
24 Quality Agreement, or other collaborative planning efforts
25 of the Great Lakes Region.

1 (d) PROHIBITION ON USE OF FUNDS FOR LITIGA-
 2 TION.—No funds made available under this Act may be
 3 used to fund litigation over any matter.

4 **SEC. 6. GRANTS.**

5 (a) ADMINISTRATION OF GRANTS.—

6 (1) IN GENERAL.—Not later than 90 days after
 7 the date of the enactment of this Act, the Founda-
 8 tion shall establish the following:

9 (A) Application and review procedures for
 10 the awarding of grants under this section, in-
 11 cluding requirements ensuring that any
 12 amounts awarded under such subsections may
 13 only be used for an eligible use described under
 14 section 5.

15 (B) Approval procedures for the awarding
 16 of grants under this section that require con-
 17 sultation with the Secretary of Commerce and
 18 the Secretary of the Interior.

19 (C) Eligibility criteria for awarding
 20 grants—

21 (i) under subsection (b) to coastal
 22 States; and

23 (ii) under subsection (c) to entities in-
 24 cluding States, Indian tribes, regional bod-

1 ies, associations, non-governmental organi-
2 zations, and academic institutions.

3 (D) Performance accountability and moni-
4 toring measures for programs and activities
5 funded by a grant awarded under subsection (b)
6 or (c).

7 (E) Procedures and methods to ensure ac-
8 curate accounting and appropriate administra-
9 tion of grants awarded under this section, in-
10 cluding standards of record keeping.

11 (F) Procedures to carry out audits of the
12 Endowment as necessary, but not less fre-
13 quently than once every 5 years.

14 (G) Procedures to carry out audits of the
15 recipients of grants under this section.

16 (2) APPROVAL PROCEDURES.—

17 (A) SUBMITTAL.—The Foundation shall
18 submit to the Secretary each procedure, meas-
19 ure, method, and standard established under
20 paragraph (1).

21 (B) DETERMINATION AND NOTICE.—Not
22 later than 90 days after receiving the proce-
23 dures, measures, methods, and standards under
24 subparagraph (A), the Secretary shall—

1 (i) determine whether to approve or
2 disapprove of such procedures, measures,
3 methods, and standards; and

4 (ii) notify the Foundation of such de-
5 termination.

6 (C) JUSTIFICATION OF DISAPPROVAL.—If
7 the Secretary disapproves of the procedures,
8 measures, methods, and standards under sub-
9 paragraph (B), the Secretary shall include in
10 notice submitted under clause (ii) of such sub-
11 paragraph the rationale for such disapproval.

12 (D) RESUBMITTAL.—Not later than 30
13 days after the Foundation receives notification
14 under subparagraph (B)(ii) that the Secretary
15 has disapproved the procedures, measures,
16 methods, and standards, the Foundation shall
17 revise such procedures, measures, methods, and
18 standards and submit such revised procedures,
19 measures, methods, and standards to the Sec-
20 retary.

21 (E) REVIEW OF RESUBMITTAL.—Not later
22 than 30 days after receiving revised procedures,
23 measures, methods, and standards resubmitted
24 under subparagraph (D), the Secretary shall—

- 1 (i) determine whether to approve or
2 disapprove the revised procedures, meas-
3 ures, methods, and standards; and
4 (ii) notify the Foundation of such de-
5 termination.

6 (b) GRANTS TO COASTAL STATES.—

7 (1) IN GENERAL.—Subject to paragraphs (2)
8 and (3), the Foundation shall award grants of
9 amounts allocated under section 4(e)(2)(A) to coast-
10 al States that have a coastal management program
11 approved under the Coastal Zone Management Act
12 of 1972 (16 U.S.C. 1451 et seq.), based on the fol-
13 lowing formula:

14 (A) Fifty percent of the funds are allocated
15 equally among such coastal States.

16 (B) Twenty-five percent of the funds are
17 allocated on the basis of the ratio of tidal shore-
18 line miles in a coastal State to the tidal shore-
19 line miles of all coastal States.

20 (C) Twenty-five percent of the funds are
21 allocated on the basis of the ratio of population
22 density of the coastal shoreline counties of a
23 coastal State to the population density of all
24 coastal shoreline counties.

1 (2) MAXIMUM ALLOCATION TO STATES.—Not-
 2 withstanding paragraph (1), not more than 10 per-
 3 cent of the total funds distributed under this sub-
 4 section may be allocated to any single State. Any
 5 amount exceeding this limit shall be redistributed
 6 among the remaining States according to the for-
 7 mula established under paragraph (1).

8 (3) MAXIMUM ALLOCATION TO CERTAIN GEO-
 9 GRAPHIC AREAS.—

10 (A) IN GENERAL.—Notwithstanding para-
 11 graph (1), each geographic area described in
 12 subparagraph (B) may not receive more than 1
 13 percent of the total funds distributed under this
 14 subsection. Any amount exceeding this limit
 15 shall be redistributed among the remaining
 16 States according to the formula established
 17 under paragraph (1).

18 (B) GEOGRAPHIC AREAS DESCRIBED.—
 19 The geographic areas described in this subpara-
 20 graph are the following:

- 21 (i) American Samoa.
- 22 (ii) The Commonwealth of the North-
- 23 ern Mariana Islands.
- 24 (iii) Guam.
- 25 (iv) Puerto Rico.

(v) The Virgin Islands.

(4) REQUIREMENT TO SUBMIT PLANS.—

(A) IN GENERAL.—To be eligible to receive a grant under this subsection, a coastal State shall submit to the Secretary, and the Secretary shall review, a 5-year plan, which shall include the following:

(i) A prioritized list of goals the coastal State intends to achieve during the time period covered by the 5-year plan.

(ii) Identification and general descriptions of existing State projects or activities that contribute to realization of such goals, including a description of the entities conducting those projects or activities.

(iii) General descriptions of projects or activities, consistent with the eligible uses described in section 5, applicable provisions of law relating to the environment, and existing Federal ocean policy, that could contribute to realization of such goals.

(iv) Criteria to determine eligibility for entities which may receive grants under this subsection.

1 (v) A description of the competitive
2 process the coastal State will use in allo-
3 cating funds received from the Endow-
4 ment, except in the case of allocating funds
5 under paragraph (7), which shall include—

6 (I) a description of the relative
7 roles in the State competitive process
8 of the State coastal zone management
9 program approved under the Coastal
10 Zone Management Act of 1972 (16
11 U.S.C. 1451 et seq.) and any State
12 Sea Grant Program; and

13 (II) a demonstration that such
14 competitive process is consistent with
15 the application and review procedures
16 established by the Foundation under
17 subsection (a)(1).

18 (B) UPDATES.—As a condition of receiving
19 a grant under this subsection, a coastal State
20 shall submit to the Secretary, not less fre-
21 quently than once every 5 years, an update to
22 the plan submitted by the coastal State under
23 subparagraph (A) for the 5-year period imme-
24 diately following the most recent submittal
25 under this paragraph.

1 (5) OPPORTUNITY FOR PUBLIC COMMENT.—In
 2 determining whether to approve a plan or an update
 3 to a plan described in subparagraph (A) or (B) of
 4 paragraph (4), the Secretary shall provide the oppor-
 5 tunity for, and take into consideration, public input
 6 and comment on the plan.

7 (6) APPROVAL PROCEDURE.—

8 (A) IN GENERAL.—Not later than 30 days
 9 after the opportunity for public comment on a
 10 plan or an update to a plan of a coastal State
 11 under paragraph (5), the Secretary shall notify
 12 such coastal State that the Secretary—

13 (i) approves the plan as submitted; or

14 (ii) disapproves the plan as submitted.

15 (B) DISAPPROVAL.—If the Secretary dis-
 16 approves a proposed plan or an update of a
 17 plan submitted under subparagraph (A) or (B)
 18 of paragraph (4), the Secretary shall provide
 19 notice of such disapproval to the submitting
 20 coastal State in writing, and include in such no-
 21 tice the rationale for the Secretary's decision.

22 (C) RESUBMITTAL.—If the Secretary dis-
 23 approves a plan of a coastal State under sub-
 24 paragraph (A), the coastal State shall resubmit
 25 the plan to the Secretary not later than 30 days

1 after receiving the notice of disapproval under
2 subparagraph (B).

3 (D) REVIEW OF RESUBMITTAL.—Not later
4 than 60 days after receiving a plan resubmitted
5 under subparagraph (C), the Secretary shall re-
6 view the plan.

7 (7) INDIAN TRIBES.—As a condition on receipt
8 of a grant under this subsection, a State that re-
9 ceives a grant under this subsection shall ensure
10 that Indian tribes in the State are eligible to partici-
11 pate in the competitive process described in the
12 State’s plan under paragraph (4)(A)(v).

13 (c) NATIONAL GRANTS FOR OCEANS, COASTS, AND
14 GREAT LAKES.—

15 (1) IN GENERAL.—The Foundation may use
16 amounts allocated under section 4(e)(2)(B) to award
17 grants according to the procedures established in
18 subsection (a) to support activities consistent with
19 section 5.

20 (2) ADVISORY PANEL.—

21 (A) IN GENERAL.—The Foundation shall
22 establish an advisory panel to conduct reviews
23 of applications for grants under paragraph (1)
24 and the Foundation shall consider the rec-

1 ommendations of the Advisory Panel with re-
2 spect to such applications.

3 (B) MEMBERSHIP.—The advisory panel es-
4 tablished under subparagraph (A) shall include
5 persons representing a balanced and diverse
6 range, as determined by the Foundation, of—

7 (i) ocean, coastal, and Great Lakes
8 dependent industries;

9 (ii) geographic regions;

10 (iii) nonprofit conservation organiza-
11 tions with a mission that includes the con-
12 servation and protection of living marine
13 resources and their habitats; and

14 (iv) academic institutions with strong
15 scientific or technical credentials and expe-
16 rience in marine science or policy.

17 **SEC. 7. ANNUAL REPORT.**

18 (a) REQUIREMENT FOR ANNUAL REPORT.—Begin-
19 ning with fiscal year 2014, not later than 60 days after
20 the end of each fiscal year, the Foundation shall submit
21 to the Committee on Commerce, Science, and Transpor-
22 tation of the Senate and the Committee on Natural Re-
23 sources of the House of Representatives a report on the
24 operation of the Endowment during the fiscal year.

1 (b) CONTENT.—Each annual report submitted under
 2 subsection (a) for a fiscal year shall include—

3 (1) a statement of the amounts deposited in the
 4 Endowment and the balance remaining in the En-
 5 dowment at the end of the fiscal year; and

6 (2) a description of the expenditures made from
 7 the Endowment for the fiscal year, including the
 8 purpose of the expenditures.

9 **SEC. 8. FUNDING.**

10 (a) OUTER CONTINENTAL SHELF LEASE REV-
 11 ENUE.—Section 8 of the Outer Continental Shelf Lands
 12 Act (43 U.S.C. 1337) is amended by adding at the end
 13 the following:

14 “(q) DEPOSITS IN THE NATIONAL ENDOWMENT FOR
 15 THE OCEANS.—

16 “(1) IN GENERAL.—Beginning with the first
 17 fiscal year beginning after the date of the enactment
 18 of the National Endowment for the Oceans Act, the
 19 Secretary shall deposit 12.5 percent of the revenue
 20 paid to the United States under this section in the
 21 National Endowment for the Oceans established
 22 pursuant to section 4 of that Act.

23 “(2) FINES COLLECTED FOR VIOLATIONS OF
 24 FEDERAL LAW.—

1 “(A) IN GENERAL.—Beginning with the
2 first fiscal year beginning after the date of the
3 enactment of the National Endowment for the
4 Oceans Act, the President shall ensure that 10
5 percent of the civil penalties paid to the United
6 States for a violation of a law set out under
7 subparagraph (B) or for a violation of any re-
8 quirement or prohibition of any rule, order, or
9 permit promulgated, issued, or approved under
10 such a law that occurs on the outer Continental
11 Shelf are deposited in the National Endowment
12 for the Oceans referred to in paragraph (1).

13 “(B) LAWS.—The laws set out under this
14 subparagraph are the following:

15 “(i) The Federal Water Pollution
16 Control Act (33 U.S.C. 1251 et seq.) (com-
17 monly referred to as the ‘Clean Water
18 Act’) other than penalties provided for
19 under section 311 of such Act (33 U.S.C.
20 1321).

21 “(ii) The Comprehensive Environ-
22 mental Response, Compensation, and Li-
23 ability Act of 1980 (42 U.S.C. 9601 et
24 seq.).

1 “(iii) Chapter 601 of title 49, United
2 States Code.

3 “(iv) The Act of March 3, 1899 (30
4 Stat. 1151, chapter 425; 33 U.S.C. 401 et
5 seq.).”.

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