

106TH CONGRESS
1ST SESSION

S. 835

To encourage the restoration of estuary habitat through more efficient project financing and enhanced coordination of Federal and non-Federal restoration programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 20, 1999

Mr. CHAFEE (for himself, Mr. BREAUX, Mr. AKAKA, Mrs. BOXER, Mr. DODD, Mr. EDWARDS, Mrs. FEINSTEIN, Mr. GRAHAM, Mr. KERRY, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LIEBERMAN, Mr. MACK, Mr. MOYNIHAN, Mrs. MURRAY, Mr. REED, Mr. ROBB, Mr. SARBANES, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To encourage the restoration of estuary habitat through more efficient project financing and enhanced coordination of Federal and non-Federal restoration programs, 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 “Estuary Habitat Res-
5 toration Partnership Act of 1999”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) estuaries provide some of the most eco-
4 logically and economically productive habitat for an
5 extensive variety of plants, fish, wildlife, and water-
6 fowl;

7 (2) the estuaries and coastal regions of the
8 United States are home to one-half the population of
9 the United States and provide essential habitat for
10 75 percent of the Nation's commercial fish catch
11 and 80 to 90 percent of its recreational fish catch;

12 (3) estuaries are gravely threatened by habitat
13 alteration and loss from pollution, development, and
14 overuse;

15 (4) successful restoration of estuaries demands
16 the coordination of Federal, State, and local estuary
17 habitat restoration programs; and

18 (5) the Federal, State, local, and private co-
19 operation in estuary habitat restoration activities in
20 existence on the date of enactment of this Act
21 should be strengthened and new public and public-
22 private estuary habitat restoration partnerships es-
23 tablished.

24 **SEC. 3. PURPOSES.**

25 The purposes of this Act are—

1 (1) to establish a voluntary program to restore
2 1,000,000 acres of estuary habitat by 2010;

3 (2) to ensure coordination of Federal, State,
4 and community estuary habitat restoration pro-
5 grams, plans, and studies;

6 (3) to establish effective estuary habitat res-
7 toration partnerships among public agencies at all
8 levels of government and between the public and pri-
9 vate sectors;

10 (4) to promote efficient financing of estuary
11 habitat restoration activities; and

12 (5) to develop and enhance monitoring and re-
13 search capabilities to ensure that restoration efforts
14 are based on sound scientific understanding.

15 **SEC. 4. DEFINITIONS.**

16 In this Act:

17 (1) **COLLABORATIVE COUNCIL.**—The term “Col-
18 laborative Council” means the interagency council
19 established by section 5.

20 (2) **DEGRADED ESTUARY HABITAT.**—The term
21 “degraded estuary habitat” means estuary habitat
22 where natural ecological functions have been im-
23 paired and normal beneficial uses have been reduced.

24 (3) **ESTUARY.**—The term “estuary” means—

1 (A) a body of water in which fresh water
2 from a river or stream meets and mixes with
3 salt water from the ocean; and

4 (B) the physical, biological, and chemical
5 elements associated with such a body of water.

6 (4) ESTUARY HABITAT.—

7 (A) IN GENERAL.—The term “estuary
8 habitat” means the complex of physical and hy-
9 drologic features and living organisms within
10 estuaries and associated ecosystems.

11 (B) INCLUSIONS.—The term “estuary
12 habitat” includes salt and fresh water coastal
13 marshes, coastal forested wetlands and other
14 coastal wetlands, maritime forests, coastal
15 grasslands, tidal flats, natural shoreline areas,
16 shellfish beds, sea grass meadows, kelp beds,
17 river deltas, and river and stream banks under
18 tidal influence.

19 (5) ESTUARY HABITAT RESTORATION ACTIV-
20 ITY.—

21 (A) IN GENERAL.—The term “estuary
22 habitat restoration activity” means an activity
23 that results in improving degraded estuary
24 habitat (including both physical and functional
25 restoration), with the goal of attaining a self-

1 sustaining system integrated into the sur-
2 rounding landscape.

3 (B) INCLUDED ACTIVITIES.—The term
4 “estuary habitat restoration activity”
5 includes—

6 (i) the reestablishment of physical fea-
7 tures and biological and hydrologic func-
8 tions;

9 (ii) except as provided in subpara-
10 graph (C)(ii), the cleanup of contamination
11 related to the restoration of estuary habi-
12 tat;

13 (iii) the control of non-native and
14 invasive species;

15 (iv) the reintroduction of native spe-
16 cies through planting or natural succes-
17 sion; and

18 (v) other activities that improve estu-
19 ary habitat.

20 (C) EXCLUDED ACTIVITIES.—The term
21 “estuary habitat restoration activity” does not
22 include—

23 (i) an act that constitutes mitigation
24 for the adverse effects of an activity regu-

1 lated or otherwise governed by Federal or
2 State law; or

3 (ii) an act that constitutes restitution
4 for natural resource damages required
5 under any Federal or State law.

6 (6) ESTUARY HABITAT RESTORATION
7 PROJECT.—The term “estuary habitat restoration
8 project” means an estuary habitat restoration activ-
9 ity under consideration or selected by the Collabo-
10 rative Council, in accordance with this Act, to re-
11 ceive financial, technical, or another form of assist-
12 ance.

13 (7) ESTUARY HABITAT RESTORATION STRAT-
14 EGY.—The term “estuary habitat restoration strat-
15 egy” means the estuary habitat restoration strategy
16 developed under section 6(a).

17 (8) FEDERAL ESTUARY MANAGEMENT OR HABI-
18 TAT RESTORATION PLAN.—The term “Federal estu-
19 ary management or habitat restoration plan” means
20 any Federal plan for restoration of degraded estuary
21 habitat that—

22 (A) was developed by a public body with
23 the substantial participation of appropriate
24 public and private stakeholders; and

1 (B) reflects a community-based planning
2 process.

3 (9) SECRETARY.—The term “Secretary” means
4 the Secretary of the Army, or a designee.

5 (10) UNDER SECRETARY.—The term “Under
6 Secretary” means the Under Secretary for Oceans
7 and Atmosphere of the Department of Commerce, or
8 a designee.

9 **SEC. 5. ESTABLISHMENT OF COLLABORATIVE COUNCIL.**

10 (a) COLLABORATIVE COUNCIL.—There is established
11 an interagency council to be known as the “Estuary Habi-
12 tat Restoration Collaborative Council”.

13 (b) MEMBERSHIP.—

14 (1) IN GENERAL.—The Collaborative Council
15 shall be composed of the Secretary, the Under Sec-
16 retary, the Administrator of the Environmental Pro-
17 tection Agency, and the Secretary of the Interior
18 (acting through the Director of the United States
19 Fish and Wildlife Service), or their designees.

20 (2) CHAIRPERSON; LEAD AGENCY.—The Sec-
21 retary, or designee, shall chair the Collaborative
22 Council, and the Department of the Army shall
23 serve as the lead agency.

24 (c) CONVENING OF COLLABORATIVE COUNCIL.—The
25 Secretary shall—

1 (1) convene the first meeting of the Collaborative Council not later than 30 days after the date
2 of enactment of this Act; and

3 (2) convene additional meetings as often as appropriate to ensure that this Act is fully carried out,
4 but not less often than quarterly.

5 (d) COLLABORATIVE COUNCIL PROCEDURES.—

6 (1) QUORUM.—Three members of the Collaborative Council shall constitute a quorum.

7 (2) VOTING AND MEETING PROCEDURES.—The Collaborative Council shall establish procedures for
8 voting and the conduct of meetings by the Council.

9 **SEC. 6. DUTIES OF COLLABORATIVE COUNCIL.**

10 (a) ESTUARY HABITAT RESTORATION STRATEGY.—

11 (1) IN GENERAL.—Not later than 1 year after
12 the date of enactment of this Act, the Collaborative
13 Council, in consultation with non-Federal participants, including nonprofit sectors, as appropriate,
14 shall develop an estuary habitat restoration strategy
15 designed to ensure a comprehensive approach to the
16 selection and prioritization of estuary habitat restoration projects and the coordination of Federal
17 and non-Federal activities related to restoration of
18 estuary habitat.

1 (2) INTEGRATION OF PREVIOUSLY AUTHORIZED
2 ESTUARY HABITAT RESTORATION PLANS, PROGRAMS,
3 AND PARTNERSHIPS.—In developing the estuary
4 habitat restoration strategy, the Collaborative Council shall—
5

6 (A) conduct a review of—

7 (i) Federal estuary management or
8 habitat restoration plans; and

9 (ii) Federal programs established
10 under other law that provide funding for
11 estuary habitat restoration activities;

12 (B) develop a set of proposals for—

13 (i) using programs established under
14 this or any other Act to maximize the in-
15 centives for the creation of new public-pri-
16 vate partnerships to carry out estuary
17 habitat restoration projects; and

18 (ii) using Federal resources to encour-
19 age increased private sector involvement in
20 estuary habitat restoration activities; and

21 (C) ensure that the estuary habitat res-
22 toration strategy is developed and will be imple-
23 mented in a manner that is consistent with the
24 findings and requirements of Federal estuary
25 management or habitat restoration plans.

1 (3) ELEMENTS TO BE CONSIDERED.—Con-
2 sistent with the requirements of this section, the
3 Collaborative Council, in the development of the es-
4 tuary habitat restoration strategy, shall consider—

5 (A) the contributions of estuary habitat

6 to—

7 (i) wildlife, including endangered and
8 threatened species, migratory birds, and
9 resident species of an estuary watershed;

10 (ii) fish and shellfish, including com-
11 mercial and sport fisheries;

12 (iii) surface and ground water quality
13 and quantity, and flood control;

14 (iv) outdoor recreation; and

15 (v) other areas of concern that the
16 Collaborative Council determines to be ap-
17 propriate for consideration;

18 (B) the estimated historic losses, estimated
19 current rate of loss, and extent of the threat of
20 future loss or degradation of each type of estu-
21 ary habitat; and

22 (C) the most appropriate method for se-
23 lecting a balance of smaller and larger estuary
24 habitat restoration projects.

1 (4) ADVICE.—The Collaborative Council shall
2 seek advice in restoration of estuary habitat from ex-
3 perts in the private and nonprofit sectors to assist
4 in the development of an estuary habitat restoration
5 strategy.

6 (5) PUBLIC REVIEW AND COMMENT.—Before
7 adopting a final estuary habitat restoration strategy,
8 the Collaborative Council shall publish in the Fed-
9 eral Register a draft of the estuary habitat restora-
10 tion strategy and provide an opportunity for public
11 review and comment.

12 (b) PROJECT APPLICATIONS.—

13 (1) IN GENERAL.—An application for an estu-
14 ary habitat restoration project shall originate from a
15 non-Federal organization and shall require, when ap-
16 propriate, the approval of State or local agencies.

17 (2) FACTORS TO BE TAKEN INTO ACCOUNT.—
18 In determining the eligibility of an estuary habitat
19 restoration project for financial assistance under this
20 Act, the Collaborative Council shall consider the fol-
21 lowing:

22 (A) Whether the proposed estuary habitat
23 restoration project meets the criteria specified
24 in the estuary habitat restoration strategy.

1 (B) The technical merit and feasibility of
2 the proposed estuary habitat restoration
3 project.

4 (C) Whether the non-Federal persons pro-
5 posing the estuary habitat restoration project
6 provide satisfactory assurances that they will
7 have adequate personnel, funding, and author-
8 ity to carry out and properly maintain the estu-
9 ary habitat restoration project.

10 (D) Whether, in the State in which a pro-
11 posed estuary habitat restoration project is to
12 be carried out, there is a State dedicated source
13 of funding for programs to acquire or restore
14 estuary habitat, natural areas, and open spaces.

15 (E) Whether the proposed estuary habitat
16 restoration project will encourage the increased
17 coordination and cooperation of Federal, State,
18 and local government agencies.

19 (F) The amount of private funds or in-
20 kind contributions for the estuary habitat res-
21 toration project.

22 (G) Whether the proposed habitat restora-
23 tion project includes a monitoring plan to en-
24 sure that short-term and long-term restoration
25 goals are achieved.

1 (H) Other factors that the Collaborative
2 Council determines to be reasonable and nec-
3 essary for consideration.

4 (3) PRIORITY ESTUARY HABITAT RESTORATION
5 PROJECTS.—An estuary habitat restoration project
6 shall be given a higher priority in receipt of funding
7 under this Act if, in addition to meeting the selec-
8 tion criteria specified in this section—

9 (A) the estuary habitat restoration project
10 is part of an approved Federal estuary manage-
11 ment or habitat restoration plan;

12 (B) the non-Federal share with respect to
13 the estuary habitat restoration project exceeds
14 50 percent; or

15 (C) there is a program within the water-
16 shed of the estuary habitat restoration project
17 that addresses sources of water pollution that
18 would otherwise re-impair the restored habitat.

19 (c) INTERIM ACTIONS.—

20 (1) IN GENERAL.—Pending completion of the
21 estuary habitat restoration strategy developed under
22 subsection (a), the Collaborative Council may pay
23 the Federal share of the cost of an interim action to
24 carry out an estuary habitat restoration activity.

1 (2) FEDERAL SHARE.—The Federal share shall
2 not exceed 25 percent.

3 (d) COOPERATION OF NON-FEDERAL PARTNERS.—

4 (1) IN GENERAL.—The Collaborative Council
5 shall not select an estuary habitat restoration project
6 until a non-Federal interest has entered into a writ-
7 ten agreement with the Secretary in which it agrees
8 to provide the required non-Federal cooperation for
9 the project.

10 (2) NONPROFIT ENTITIES.—Notwithstanding
11 section 221 of the Flood Control Act of 1970 (42
12 U.S.C. 1962d–5b(b)), for any project undertaken
13 under this section, the Secretary may, after coordi-
14 nation with the official responsible for the political
15 jurisdiction in which a project would occur, allow a
16 nonprofit entity to serve as the non-Federal interest.

17 (3) MAINTENANCE AND MONITORING.—A co-
18 operation agreement entered into under paragraph
19 (1) shall provide for maintenance and monitoring of
20 the estuary habitat restoration project to the extent
21 determined necessary by the Collaborative Council.

22 (e) LEAD COLLABORATIVE COUNCIL MEMBER.—The
23 Collaborative Council shall designate a lead Collaborative
24 Council member for each proposed estuary habitat res-
25 toration project. The lead Collaborative Council member

1 shall have primary responsibility for overseeing and assist-
2 ing others in implementing the proposed project.

3 (f) AGENCY CONSULTATION AND COORDINATION.—

4 In carrying out this section, the Collaborative Council
5 shall, as the Collaborative Council determines it to be nec-
6 essary, consult with, cooperate with, and coordinate its ac-
7 tivities with the activities of other appropriate Federal
8 agencies.

9 (g) BENEFITS AND COSTS OF ESTUARY HABITAT
10 RESTORATION PROJECTS.—The Collaborative Council
11 shall evaluate the benefits and costs of estuary habitat res-
12 toration projects in accordance with section 907 of the
13 Water Resources Development Act of 1986 (33 U.S.C.
14 2284).

15 (h) AUTHORIZATION OF APPROPRIATIONS.—There is
16 authorized to be appropriated to the Department of the
17 Army for the administration and operation of the Collabo-
18 rative Council \$4,000,000 for each of fiscal years 2000
19 through 2004.

20 **SEC. 7. COST SHARING OF ESTUARY HABITAT RESTORA-**
21 **TION PROJECTS.**

22 (a) IN GENERAL.—No financial assistance in car-
23 rying out an estuary habitat restoration project shall be
24 available under this Act from any Federal agency unless

1 the non-Federal applicant for assistance demonstrates
2 that the estuary habitat restoration project meets—

3 (1) the requirements of this Act; and

4 (2) any criteria established by the Collaborative
5 Council under this Act.

6 (b) FEDERAL SHARE.—The Federal share of the cost
7 of an estuary habitat restoration and protection project
8 assisted under this Act shall be not more than 65 percent.

9 (c) NON-FEDERAL SHARE.—The non-Federal share
10 of the cost of an estuary habitat restoration project may
11 be provided in the form of land, easements, rights-of-way,
12 services, or any other form of in-kind contribution deter-
13 mined by the Collaborative Council to be an appropriate
14 contribution equivalent to the monetary amount required
15 for the non-Federal share of the estuary habitat restora-
16 tion project.

17 (d) ALLOCATION OF FUNDS BY STATES TO POLITI-
18 CAL SUBDIVISIONS.—With the approval of the Secretary,
19 a State may allocate to any local government, area-wide
20 agency designated under section 204 of the Demonstration
21 Cities and Metropolitan Development Act of 1966 (42
22 U.S.C. 3334), regional agency, or interstate agency, a por-
23 tion of any funds disbursed in accordance with this Act
24 for the purpose of carrying out an estuary habitat restora-
25 tion project.

1 **SEC. 8. MONITORING AND MAINTENANCE OF ESTUARY**
2 **HABITAT RESTORATION PROJECTS.**

3 (a) DATABASE OF RESTORATION PROJECT INFORMA-
4 TION.—The Under Secretary shall maintain an appro-
5 priate database of information concerning estuary habitat
6 restoration projects funded under this Act, including infor-
7 mation on project techniques, project completion, moni-
8 toring data, and other relevant information.

9 (b) REPORT.—

10 (1) IN GENERAL.—The Collaborative Council
11 shall biennially submit a report to the Committee on
12 Environment and Public Works of the Senate and
13 the Committee on Transportation and Infrastructure
14 of the House of Representatives on the results of ac-
15 tivities carried out under this Act.

16 (2) CONTENTS OF REPORT.—A report under
17 paragraph (1) shall include—

18 (A) data on the number of acres of estuary
19 habitat restored under this Act, including the
20 number of projects approved and completed
21 that comprise those acres;

22 (B) the percentage of restored estuary
23 habitat monitored under a plan to ensure that
24 short-term and long-term restoration goals are
25 achieved;

1 (C) an estimate of the long-term success of
2 varying restoration techniques used in carrying
3 out estuary habitat restoration projects;

4 (D) a review of how the information de-
5 scribed in subparagraphs (A) through (C) has
6 been incorporated in the selection and imple-
7 mentation of estuary habitat restoration
8 projects;

9 (E) a review of efforts made to maintain
10 an appropriate database of restoration projects
11 funded under this Act; and

12 (F) a review of the measures taken to pro-
13 vide the information described in subparagraphs
14 (A) through (C) to persons with responsibility
15 for assisting in the restoration of estuary habi-
16 tat.

17 **SEC. 9. COOPERATIVE AGREEMENTS; MEMORANDA OF UN-**
18 **DERSTANDING.**

19 In carrying out this Act, the Collaborative Council
20 may—

21 (1) enter into cooperative agreements with Fed-
22 eral, State, and local government agencies and other
23 persons and entities; and

24 (2) execute such memoranda of understanding
25 as are necessary to reflect the agreements.

1 **SEC. 10. DISTRIBUTION OF APPROPRIATIONS FOR ESTU-**
2 **ARY HABITAT RESTORATION ACTIVITIES.**

3 The Secretary shall allocate funds made available to
4 carry out this Act based on the need for the funds and
5 such other factors as are determined to be appropriate to
6 carry out this Act.

7 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

8 (a) AUTHORIZATION OF APPROPRIATIONS UNDER
9 OTHER LAW.—Funds authorized to be appropriated
10 under section 908 of the Water Resources Development
11 Act of 1986 (33 U.S.C. 2285) and section 206 of the
12 Water Resources Development Act of 1996 (33 U.S.C.
13 2330) may be used by the Secretary in accordance with
14 this Act to assist States and other non-Federal persons
15 in carrying out estuary habitat restoration projects or in-
16 terim actions under section 6(c).

17 (b) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to the Secretary to carry
19 out estuary habitat restoration activities—

20 (1) \$40,000,000 for fiscal year 2000;

21 (2) \$50,000,000 for fiscal year 2001; and

22 (3) \$75,000,000 for each of fiscal years 2002
23 through 2004.

24 **SEC. 12. NATIONAL ESTUARY PROGRAM.**

25 (a) GRANTS FOR COMPREHENSIVE CONSERVATION
26 AND MANAGEMENT PLANS.—Section 320(g)(2) of the

1 Federal Water Pollution Control Act (33 U.S.C.
2 1330(g)(2)) is amended by inserting “and implementa-
3 tion” after “development”.

4 (b) AUTHORIZATION OF APPROPRIATIONS.—Section
5 320(i) of the Federal Water Pollution Control Act (33
6 U.S.C. 1330(i)) is amended by striking “1987” and all
7 that follows through “1991” and inserting the following:
8 “1987 through 1991, such sums as may be necessary for
9 fiscal years 1992 through 1999, and \$25,000,000 for each
10 of fiscal years 2000 and 2001”.

11 **SEC. 13. GENERAL PROVISIONS.**

12 (a) ADDITIONAL AUTHORITY FOR ARMY CORPS OF
13 ENGINEERS.—The Secretary—

14 (1) may carry out estuary habitat restoration
15 projects in accordance with this Act; and

16 (2) shall give estuary habitat restoration
17 projects the same consideration as projects relating
18 to irrigation, navigation, or flood control.

19 (b) INAPPLICABILITY OF CERTAIN LAW.—Sections
20 203, 204, and 205 of the Water Resources Development
21 Act of 1986 (33 U.S.C. 2231, 2232, 2233) shall not apply
22 to an estuary habitat restoration project selected in ac-
23 cordance with this Act.

1 (c) ESTUARY HABITAT RESTORATION MISSION.—

2 The Secretary shall establish restoration of estuary habi-
3 tat as a primary mission of the Army Corps of Engineers.

4 (d) FEDERAL AGENCY FACILITIES AND PER-
5 SONNEL.—

6 (1) IN GENERAL.—Federal agencies may co-
7 operate in carrying out scientific and other programs
8 necessary to carry out this Act, and may provide fa-
9 cilities and personnel, for the purpose of assisting
10 the Collaborative Council in carrying out its duties
11 under this Act.

12 (2) REIMBURSEMENT FROM COLLABORATIVE
13 COUNCIL.—Federal agencies may accept reimburse-
14 ment from the Collaborative Council for providing
15 services, facilities, and personnel under paragraph
16 (1).

17 (e) ADMINISTRATIVE EXPENSES AND STAFFING.—

18 Not later than 180 days after the date of enactment of
19 this Act, the Comptroller General of the United States
20 shall submit to Congress and the Secretary an analysis
21 of the extent to which the Collaborative Council needs ad-
22 ditional personnel and administrative resources to fully
23 carry out its duties under this Act. The analysis shall in-

- 1 clude recommendations regarding necessary additional
- 2 funding.

