

Calendar No. 323

106TH CONGRESS
1ST SESSION

S. 835

[Report No. 106-189]

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.

OCTOBER 14, 1999

Reported with an amendment

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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, Mr. WARNER, Mr. SCHUMER, Mr. WYDEN, and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

OCTOBER 14, 1999

Reported by Mr. CHAFEE, with an amendment

[Insert the part printed in *italic*]

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”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) estuaries provide some of the most eco-
9 logically and economically productive habitat for an
10 extensive variety of plants, fish, wildlife, and water-
11 fowl;

12 (2) the estuaries and coastal regions of the
13 United States are home to one-half the population of
14 the United States and provide essential habitat for
15 75 percent of the Nation’s commercial fish catch
16 and 80 to 90 percent of its recreational fish catch;

17 (3) estuaries are gravely threatened by habitat
18 alteration and loss from pollution, development, and
19 overuse;

20 (4) successful restoration of estuaries demands
21 the coordination of Federal, State, and local estuary
22 habitat restoration programs; and

23 (5) the Federal, State, local, and private co-
24 operation in estuary habitat restoration activities in
25 existence on the date of enactment of this Act

1 should be strengthened and new public and public-
2 private estuary habitat restoration partnerships es-
3 tablished.

4 **SEC. 3. PURPOSES.**

5 The purposes of this Act are—

6 (1) to establish a voluntary program to restore
7 1,000,000 acres of estuary habitat by 2010;

8 (2) to ensure coordination of Federal, State,
9 and community estuary habitat restoration pro-
10 grams, plans, and studies;

11 (3) to establish effective estuary habitat res-
12 toration partnerships among public agencies at all
13 levels of government and between the public and pri-
14 vate sectors;

15 (4) to promote efficient financing of estuary
16 habitat restoration activities; and

17 (5) to develop and enhance monitoring and re-
18 search capabilities to ensure that restoration efforts
19 are based on sound scientific understanding.

20 **SEC. 4. DEFINITIONS.**

21 In this Act:

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

1 (2) DEGRADED ESTUARY HABITAT.—The term
2 “degraded estuary habitat” means estuary habitat
3 where natural ecological functions have been im-
4 paired and normal beneficial uses have been reduced.

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

6 (A) a body of water in which fresh water
7 from a river or stream meets and mixes with
8 salt water from the ocean, *including the area lo-*
9 *located in the Great Lakes Biogeographic Region*
10 *and designated as a National Estuarine Re-*
11 *search Reserve under the Coastal Zone Manage-*
12 *ment Act of 1972 (16 U.S.C. 1451 et seq.) as of*
13 *the date of enactment of this Act; and*

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

16 (4) ESTUARY HABITAT.—

17 (A) IN GENERAL.—The term “estuary
18 habitat” means the complex of physical and hy-
19 drologic features and living organisms within
20 estuaries and associated ecosystems.

21 (B) INCLUSIONS.—The term “estuary
22 habitat” includes salt and fresh water coastal
23 marshes, coastal forested wetlands and other
24 coastal wetlands, maritime forests, coastal
25 grasslands, tidal flats, natural shoreline areas,

1 shellfish beds, sea grass meadows, kelp beds,
2 river deltas, and river and stream banks under
3 tidal influence.

4 (5) ESTUARY HABITAT RESTORATION ACTIV-
5 ITY.—

6 (A) IN GENERAL.—The term “estuary
7 habitat restoration activity” means an activity
8 that results in improving degraded estuary
9 habitat (including both physical and functional
10 restoration), with the goal of attaining a self-
11 sustaining system integrated into the sur-
12 rounding landscape.

13 (B) INCLUDED ACTIVITIES.—The term
14 “estuary habitat restoration activity”
15 includes—

16 (i) the reestablishment of physical fea-
17 tures and biological and hydrologic func-
18 tions;

19 (ii) except as provided in subpara-
20 graph (C)(ii), the cleanup of contamination
21 related to the restoration of estuary habi-
22 tat;

23 (iii) the control of non-native and
24 invasive species;

1 (iv) the reintroduction of native spe-
2 cies through planting or natural succes-
3 sion; and

4 (v) other activities that improve estu-
5 ary habitat.

6 (C) EXCLUDED ACTIVITIES.—The term
7 “estuary habitat restoration activity” does not
8 include—

9 (i) an act that constitutes mitigation
10 for the adverse effects of an activity regu-
11 lated or otherwise governed by Federal or
12 State law; or

13 (ii) an act that constitutes restitution
14 for natural resource damages required
15 under any Federal or State law.

16 (6) ESTUARY HABITAT RESTORATION
17 PROJECT.—The term “estuary habitat restoration
18 project” means an estuary habitat restoration activ-
19 ity under consideration or selected by the Collabo-
20 rative Council, in accordance with this Act, to re-
21 ceive financial, technical, or another form of assist-
22 ance.

23 (7) ESTUARY HABITAT RESTORATION STRAT-
24 EGY.—The term “estuary habitat restoration strat-

1 egy” means the estuary habitat restoration strategy
2 developed under section 6(a).

3 (8) FEDERAL ESTUARY MANAGEMENT OR HABITAT RESTORATION PLAN.—The term “Federal estuary management or habitat restoration plan” means
4 any Federal plan for restoration of degraded estuary
5 habitat that—
6 habitat that—

7 (A) was developed by a public body with
8 the substantial participation of appropriate
9 public and private stakeholders; and
10 public and private stakeholders; and

11 (B) reflects a community-based planning
12 process.

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

15 (10) UNDER SECRETARY.—The term “Under
16 Secretary” means the Under Secretary for Oceans
17 and Atmosphere of the Department of Commerce, or
18 a designee.

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

20 (a) COLLABORATIVE COUNCIL.—There is established
21 an interagency council to be known as the “Estuary Habitat
22 Restoration Collaborative Council”.

23 (b) MEMBERSHIP.—

24 (1) IN GENERAL.—The Collaborative Council
25 shall be composed of the Secretary, the Under Sec-

1 retary, the Administrator of the Environmental Pro-
2 tection Agency, and the Secretary of the Interior
3 (acting through the Director of the United States
4 Fish and Wildlife Service), or their designees.

5 (2) CHAIRPERSON; LEAD AGENCY.—The Sec-
6 retary, or designee, shall chair the Collaborative
7 Council, and the Department of the Army shall
8 serve as the lead agency.

9 (c) CONVENING OF COLLABORATIVE COUNCIL.—The
10 Secretary shall—

11 (1) convene the first meeting of the Collabo-
12 rative Council not later than 30 days after the date
13 of enactment of this Act; and

14 (2) convene additional meetings as often as ap-
15 propriate to ensure that this Act is fully carried out,
16 but not less often than quarterly.

17 (d) COLLABORATIVE COUNCIL PROCEDURES.—

18 (1) QUORUM.—Three members of the Collabo-
19 rative Council shall constitute a quorum.

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

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

24 (a) ESTUARY HABITAT RESTORATION STRATEGY.—

1 (1) IN GENERAL.—Not later than 1 year after
2 the date of enactment of this Act, the Collaborative
3 Council, in consultation with non-Federal partici-
4 pants, including nonprofit sectors, as appropriate,
5 shall develop an estuary habitat restoration strategy
6 designed to ensure a comprehensive approach to the
7 selection and prioritization of estuary habitat res-
8 toration projects and the coordination of Federal
9 and non-Federal activities related to restoration of
10 estuary habitat.

11 (2) INTEGRATION OF PREVIOUSLY AUTHORIZED
12 ESTUARY HABITAT RESTORATION PLANS, PROGRAMS,
13 AND PARTNERSHIPS.—In developing the estuary
14 habitat restoration strategy, the Collaborative Coun-
15 cil shall—

16 (A) conduct a review of—

17 (i) Federal estuary management or
18 habitat restoration plans; and

19 (ii) Federal programs established
20 under other law that provide funding for
21 estuary habitat restoration activities;

22 (B) develop a set of proposals for—

23 (i) using programs established under
24 this or any other Act to maximize the in-
25 centives for the creation of new public-pri-

1 vate partnerships to carry out estuary
2 habitat restoration projects; and

3 (ii) using Federal resources to encour-
4 age increased private sector involvement in
5 estuary habitat restoration activities; and

6 (C) ensure that the estuary habitat res-
7 toration strategy is developed and will be imple-
8 mented in a manner that is consistent with the
9 findings and requirements of Federal estuary
10 management or habitat restoration plans.

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

15 (A) the contributions of estuary habitat
16 to—

17 (i) wildlife, including endangered and
18 threatened species, migratory birds, and
19 resident species of an estuary watershed;

20 (ii) fish and shellfish, including com-
21 mercial and sport fisheries;

22 (iii) surface and ground water quality
23 and quantity, and flood control;

24 (iv) outdoor recreation; and

1 (v) other areas of concern that the
2 Collaborative Council determines to be ap-
3 propriate for consideration;

4 (B) the estimated historic losses, estimated
5 current rate of loss, and extent of the threat of
6 future loss or degradation of each type of estu-
7 ary habitat; and

8 (C) the most appropriate method for se-
9 lecting a balance of smaller and larger estuary
10 habitat restoration projects.

11 (4) ADVICE.—The Collaborative Council shall
12 seek advice in restoration of estuary habitat from ex-
13 perts in the private and nonprofit sectors to assist
14 in the development of an estuary habitat restoration
15 strategy.

16 (5) PUBLIC REVIEW AND COMMENT.—Before
17 adopting a final estuary habitat restoration strategy,
18 the Collaborative Council shall publish in the Fed-
19 eral Register a draft of the estuary habitat restora-
20 tion strategy and provide an opportunity for public
21 review and comment.

22 (b) PROJECT APPLICATIONS.—

23 (1) IN GENERAL.—An application for an estu-
24 ary habitat restoration project shall originate from a

1 non-Federal organization and shall require, when ap-
2 propriate, the approval of State or local agencies.

3 (2) FACTORS TO BE TAKEN INTO ACCOUNT.—

4 In determining the eligibility of an estuary habitat
5 restoration project for financial assistance under this
6 Act, the Collaborative Council shall consider the fol-
7 lowing:

8 (A) Whether the proposed estuary habitat
9 restoration project meets the criteria specified
10 in the estuary habitat restoration strategy.

11 (B) The technical merit and feasibility of
12 the proposed estuary habitat restoration
13 project.

14 (C) Whether the non-Federal persons pro-
15 posing the estuary habitat restoration project
16 provide satisfactory assurances that they will
17 have adequate personnel, funding, and author-
18 ity to carry out and properly maintain the estu-
19 ary habitat restoration project.

20 (D) Whether, in the State in which a pro-
21 posed estuary habitat restoration project is to
22 be carried out, there is a State dedicated source
23 of funding for programs to acquire or restore
24 estuary habitat, natural areas, and open spaces.

1 (E) Whether the proposed estuary habitat
2 restoration project will encourage the increased
3 coordination and cooperation of Federal, State,
4 and local government agencies.

5 (F) The amount of private funds or in-
6 kind contributions for the estuary habitat res-
7 toration project.

8 (G) Whether the proposed habitat restora-
9 tion project includes a monitoring plan to en-
10 sure that short-term and long-term restoration
11 goals are achieved.

12 (H) Other factors that the Collaborative
13 Council determines to be reasonable and nec-
14 essary for consideration.

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

20 (A) the estuary habitat restoration project
21 is part of an approved Federal estuary manage-
22 ment or habitat restoration plan;

23 (B) the non-Federal share with respect to
24 the estuary habitat restoration project exceeds
25 50 percent; or

1 (C) there is a program within the water-
2 shed of the estuary habitat restoration project
3 that addresses sources of water pollution that
4 would otherwise re-impair the restored habitat.

5 (c) INTERIM ACTIONS.—

6 (1) IN GENERAL.—Pending completion of the
7 estuary habitat restoration strategy developed under
8 subsection (a), the Collaborative Council may pay
9 the Federal share of the cost of an interim action to
10 carry out an estuary habitat restoration activity.

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

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

14 (1) IN GENERAL.—The Collaborative Council
15 shall not select an estuary habitat restoration project
16 until a non-Federal interest has entered into a writ-
17 ten agreement with the Secretary in which it agrees
18 to provide the required non-Federal cooperation for
19 the project.

20 (2) NONPROFIT ENTITIES.—Notwithstanding
21 section 221 of the Flood Control Act of 1970 (42
22 U.S.C. 1962d–5b(b)), for any project undertaken
23 under this section, the Secretary may, after coordi-
24 nation with the official responsible for the political

1 jurisdiction in which a project would occur, allow a
2 nonprofit entity to serve as the non-Federal interest.

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

8 (e) LEAD COLLABORATIVE COUNCIL MEMBER.—The
9 Collaborative Council shall designate a lead Collaborative
10 Council member for each proposed estuary habitat res-
11 toration project. The lead Collaborative Council member
12 shall have primary responsibility for overseeing and assist-
13 ing others in implementing the proposed project.

14 (f) AGENCY CONSULTATION AND COORDINATION.—
15 In carrying out this section, the Collaborative Council
16 shall, as the Collaborative Council determines it to be nec-
17 essary, consult with, cooperate with, and coordinate its ac-
18 tivities with the activities of other appropriate Federal
19 agencies.

20 (g) BENEFITS AND COSTS OF ESTUARY HABITAT
21 RESTORATION PROJECTS.—The Collaborative Council
22 shall evaluate the benefits and costs of estuary habitat res-
23 toration projects in accordance with section 907 of the
24 Water Resources Development Act of 1986 (33 U.S.C.
25 2284).

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

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

8 (a) IN GENERAL.—No financial assistance in car-
9 rying out an estuary habitat restoration project shall be
10 available under this Act from any Federal agency unless
11 the non-Federal applicant for assistance demonstrates
12 that the estuary habitat restoration project meets—

13 (1) the requirements of this Act; and

14 (2) any criteria established by the Collaborative
15 Council under this Act.

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

19 (c) NON-FEDERAL SHARE.—The non-Federal share
20 of the cost of an estuary habitat restoration project may
21 be provided in the form of land, easements, rights-of-way,
22 services, or any other form of in-kind contribution deter-
23 mined by the Collaborative Council to be an appropriate
24 contribution equivalent to the monetary amount required

1 for the non-Federal share of the estuary habitat restora-
2 tion project.

3 (d) ALLOCATION OF FUNDS BY STATES TO POLIT-
4 ICAL SUBDIVISIONS.—With the approval of the Secretary,
5 a State may allocate to any local government, area-wide
6 agency designated under section 204 of the Demonstration
7 Cities and Metropolitan Development Act of 1966 (42
8 U.S.C. 3334), regional agency, or interstate agency, a por-
9 tion of any funds disbursed in accordance with this Act
10 for the purpose of carrying out an estuary habitat restora-
11 tion project.

12 **SEC. 8. MONITORING AND MAINTENANCE OF ESTUARY**
13 **HABITAT RESTORATION PROJECTS.**

14 (a) DATABASE OF RESTORATION PROJECT INFORMA-
15 TION.—The Under Secretary shall maintain an appro-
16 priate database of information concerning estuary habitat
17 restoration projects funded under this Act, including infor-
18 mation on project techniques, project completion, moni-
19 toring data, and other relevant information.

20 (b) REPORT.—

21 (1) IN GENERAL.—The Collaborative Council
22 shall biennially submit a report to the Committee on
23 Environment and Public Works of the Senate and
24 the Committee on Transportation and Infrastructure

1 of the House of Representatives on the results of ac-
2 tivities carried out under this Act.

3 (2) CONTENTS OF REPORT.—A report under
4 paragraph (1) shall include—

5 (A) data on the number of acres of estuary
6 habitat restored under this Act, including the
7 number of projects approved and completed
8 that comprise those acres;

9 (B) the percentage of restored estuary
10 habitat monitored under a plan to ensure that
11 short-term and long-term restoration goals are
12 achieved;

13 (C) an estimate of the long-term success of
14 varying restoration techniques used in carrying
15 out estuary habitat restoration projects;

16 (D) a review of how the information de-
17 scribed in subparagraphs (A) through (C) has
18 been incorporated in the selection and imple-
19 mentation of estuary habitat restoration
20 projects;

21 (E) a review of efforts made to maintain
22 an appropriate database of restoration projects
23 funded under this Act; and

24 (F) a review of the measures taken to pro-
25 vide the information described in subparagraphs

1 (A) through (C) to persons with responsibility
2 for assisting in the restoration of estuary habi-
3 tat.

4 **SEC. 9. COOPERATIVE AGREEMENTS; MEMORANDA OF UN-**
5 **DERSTANDING.**

6 In carrying out this Act, the Collaborative Council
7 may—

8 (1) enter into cooperative agreements with Fed-
9 eral, State, and local government agencies and other
10 persons and entities; and

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

13 **SEC. 10. DISTRIBUTION OF APPROPRIATIONS FOR ESTU-**
14 **ARY HABITAT RESTORATION ACTIVITIES.**

15 The Secretary shall allocate funds made available to
16 carry out this Act based on the need for the funds and
17 such other factors as are determined to be appropriate to
18 carry out this Act.

19 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

20 (a) **AUTHORIZATION OF APPROPRIATIONS UNDER**
21 **OTHER LAW.**—Funds authorized to be appropriated
22 under section 908 of the Water Resources Development
23 Act of 1986 (33 U.S.C. 2285) and section 206 of the
24 Water Resources Development Act of 1996 (33 U.S.C.
25 2330) may be used by the Secretary in accordance with

1 this Act to assist States and other non-Federal persons
2 in carrying out estuary habitat restoration projects or in-
3 terim actions under section 6(c).

4 (b) AUTHORIZATION OF APPROPRIATIONS.—There
5 are authorized to be appropriated to the Secretary to carry
6 out estuary habitat restoration activities—

7 (1) \$40,000,000 for fiscal year 2000;

8 (2) \$50,000,000 for fiscal year 2001; and

9 (3) \$75,000,000 for each of fiscal years 2002
10 through 2004.

11 **SEC. 12. NATIONAL ESTUARY PROGRAM.**

12 (a) GRANTS FOR COMPREHENSIVE CONSERVATION
13 AND MANAGEMENT PLANS.—Section 320(g)(2) of the
14 Federal Water Pollution Control Act (33 U.S.C.
15 1330(g)(2)) is amended by inserting “and implementa-
16 tion” after “development”.

17 (b) AUTHORIZATION OF APPROPRIATIONS.—Section
18 320(i) of the Federal Water Pollution Control Act (33
19 U.S.C. 1330(i)) is amended by striking “1987” and all
20 that follows through “1991” and inserting the following:
21 “1987 through 1991, such sums as may be necessary for
22 fiscal years 1992 through 1999, and \$25,000,000 for each
23 of fiscal years 2000 and 2001”.

1 **SEC. 13. GENERAL PROVISIONS.**

2 (a) **ADDITIONAL AUTHORITY FOR ARMY CORPS OF**
3 **ENGINEERS.—**The Secretary—

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

6 (2) shall give estuary habitat restoration
7 projects the same consideration as projects relating
8 to irrigation, navigation, or flood control.

9 (b) **INAPPLICABILITY OF CERTAIN LAW.—**Sections
10 203, 204, and 205 of the Water Resources Development
11 Act of 1986 (33 U.S.C. 2231, 2232, 2233) shall not apply
12 to an estuary habitat restoration project selected in ac-
13 cordance with this Act.

14 (c) **ESTUARY HABITAT RESTORATION MISSION.—**
15 The Secretary shall establish restoration of estuary habi-
16 tat as a primary mission of the Army Corps of Engineers.

17 (d) **FEDERAL AGENCY FACILITIES AND PER-**
18 **SONNEL.—**

19 (1) **IN GENERAL.—**Federal agencies may co-
20 operate in carrying out scientific and other programs
21 necessary to carry out this Act, and may provide fa-
22 cilities and personnel, for the purpose of assisting
23 the Collaborative Council in carrying out its duties
24 under this Act.

25 (2) **REIMBURSEMENT FROM COLLABORATIVE**
26 **COUNCIL.—**Federal agencies may accept reimburse-

1 ment from the Collaborative Council for providing
2 services, facilities, and personnel under paragraph
3 (1).

4 (e) ADMINISTRATIVE EXPENSES AND STAFFING.—
5 Not later than 180 days after the date of enactment of
6 this Act, the Comptroller General of the United States
7 shall submit to Congress and the Secretary an analysis
8 of the extent to which the Collaborative Council needs ad-
9 ditional personnel and administrative resources to fully
10 carry out its duties under this Act. The analysis shall in-
11 clude recommendations regarding necessary additional
12 funding.