

CLEAN ESTUARIES ACT OF 2010

MARCH 17, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. OBERSTAR, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 4715]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 4715) to amend the Federal Water Pollution Control Act to reauthorize the National Estuary Program, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

H.R. 4715, the “Clean Estuaries Act of 2010”, amends the Federal Water Pollution Control Act (Clean Water Act or Act) to reauthorize appropriations for the National Estuary Program through fiscal year 2016, and to make programmatic changes.

BACKGROUND AND NEED FOR LEGISLATION

Estuaries are bodies of water that receive both outflows from rivers and tidal inflows from the ocean. They are transition zones between fresh water from rivers and saline water from the ocean. The mixing of fresh and salt water provides a unique environment that supports diverse habitats for a wide variety of living resources, including plants, fish, and wildlife. Many fish and shellfish species depend on the sheltered habitat provided by estuaries, as well as the mix of saline and fresh water. Estuaries are often used as places for these species to spawn, and for their young to grow and develop. These areas also serve as habitat and breeding areas for hundreds of species of birds and other wildlife, including marine mammals.

Estuaries and associated coastal areas are major economic drivers for this nation. From a resource standpoint alone, healthy estuaries are very economically productive. Coastal areas of the United States account for 28 million jobs. The coastal areas surrounding estuaries are among the most populated areas in the nation. Collectively, the nation's coastal counties account for only 13 percent of the total contiguous land area of the United States. However, 43 percent of the population lives in these coastal areas.¹ Furthermore, while estuarine counties constitute only 13 percent of the nation's land area, they account for 49 percent of the gross domestic product.

Most commercially and recreationally important fish and shellfish species, such as striped bass, shad, salmon, sturgeon, shrimp, crabs, lobster, clams, oysters, mussels, and bay scallops, depend on estuaries for stages of their life cycles. Commercial and recreational fishing annually accounts for \$185 billion in revenues, and more than two million jobs. According to the National Oceanographic and Atmospheric Administration (NOAA) and the National Research Council (NRC), estuaries provide habitat for 75 percent of the U.S. commercial fish catch and 80 to 90 percent of the recreational fish catch. The University of Maryland has found that a significant proportion of the ten billion pounds of commercial fish landings in 2004, worth over \$3.8 billion (unprocessed), are dependent on estuaries.

In addition to fishing, estuaries also produce significant economic value for the nation, including through sectors such as tourism, energy production, and navigation. Estuaries also provide cultural and recreational opportunities that include boating, fishing, swimming, surfing, and bird watching, and provide locations for ports and harbors. The University of California and the Ocean Foundation have determined that, on an annual basis, beach-going generates up to \$30 billion of economic value, recreational fishing generates up to \$26 billion, and coastal wildlife viewing generates up to \$49 billion. Louisiana State University's Center for Energy Studies reports that 30 percent of U.S. crude oil production, 20 percent of U.S. natural gas production, and 45 percent of U.S. petroleum refining capacity lies within a few miles of the Gulf of Mexico coastal zone, which includes numerous estuaries. Finally, the Woods Hole Oceanographic Institute's Marine Policy Center reports that U.S. ports handled over \$800 billion in trade in 2003.

Many of the nation's estuaries are in poor ecological health. An impaired estuary not only impacts commercial and recreational fishing, it can also result in decreased tourism revenues, among other factors. Degraded habitat, like coastal wetlands, can also result in increased flooding, shoreline erosion, and damaged infrastructure. The Environmental Protection Agency (EPA) has identified the following environmental concerns among the 28 approved estuaries in EPA's National Estuary Program (NEP): habitat loss and alteration; declines in fish and wildlife populations; excessive nutrients; toxic chemical contaminations; pathogenic microorganisms; alteration of freshwater flows; and the introduction of invasive species. EPA rates estuary health and the following table

¹ These figures are based on only marine coastal counties. Counties bordering the Great Lakes were considered non-coastal counties.

includes EPA's most recent ratings of estuaries included in the NEP.

NATIONAL ESTUARY PROGRAM

| Approved Estuary Programs | State | EPA Rating ¹ |
|--|-----------------------|-------------------------|
| Casco Bay Estuary Partnership | Maine | Good (5.00) |
| Indian River Lagoon National Estuary Program | Florida | Good (5.00) |
| Tillamook Estuaries Partnership | Oregon | Good (4.50) |
| Morro Bay National Estuary Program | California | Good (4.33) |
| Peconic Estuary Program | New York | Good (4.33) |
| Albemarle-Pamlico National Estuary Program | North Carolina | Good to Fair (4.00) |
| Barneгат Bay | New Jersey | Fair (3.50) |
| Maryland Coastal Bays Program | Maryland | Fair (3.50) |
| Piscataqua Region Estuaries Partnership (formerly the New Hampshire Estuaries Project) | New Hampshire, Maine | Fair (3.50) |
| Buzzards Bay | Massachusetts | Fair (3.25) |
| Charlotte Harbor National Estuary Program | Florida | Fair (3.00) |
| Mobile Bay National Estuary Program | Alabama | Fair (3.00) |
| Puget Sound Partnership | Washington | Fair (3.00) |
| Sarasota Bay Estuary Program | Florida | Fair (3.00) |
| Tampa Bay Estuary Program | Florida | Fair (3.00) |
| San Francisco Estuary Partnership | California | Fair (2.75) |
| Barataria-Terrebonne National Estuary Program | Louisiana | Fair (2.50) |
| Center for the Inland Bays | Delaware | Fair (2.50) |
| Galveston Bay Estuary Program | Texas | Fair (2.50) |
| Massachusetts Bays Program | Massachusetts | Fair (2.50) |
| Lower Columbia River Estuary Partnership | Oregon, Washington | Fair (2.33) |
| Santa Monica Bay Restoration Commission | California | Fair (2.33) |
| Coastal Bend Bays and Estuaries Program | Texas | Poor (1.75) |
| Narragansett Bay Estuary Program | Rhode Island | Poor (1.75) |
| Partnership for the Delaware Estuary | Delaware | Poor (1.75) |
| Long Island Sound Study | Connecticut, New York | Poor (1.50) |
| San Juan Bay Estuary Partnership | Puerto Rico | Poor (1.50) |
| NY-NJ Harbor Estuary Program | New York, New Jersey | Poor (1.00) |

Source: EPA, 2006. *National Estuary Program Coastal Condition Report*. (EPA-842/B-06/001 2006).

¹ This rating is a product of the following indices: water quality; sediment quality; benthic; and fish tissue contaminants. The benthic index (or surrogate measure) indicates the condition of the benthic community (organisms living in estuarine sediments) and can include measures of benthic community diversity, the presence and abundance of pollution tolerant species, and the presence and abundance of pollution sensitive species.

THE NATIONAL ESTUARY PROGRAM

EPA's National Estuary Program was authorized in 1987 as an amendment to the Clean Water Act (section 320 of the Act). The NEP promotes comprehensive planning efforts to help protect nationally significant estuaries in the United States that are deemed to be threatened by pollution, development, and overuse. The NEP is a stakeholder-driven, collaborative program to address water quality problems and target habitat restoration. The NEP is composed of approved estuary programs that are, for the most part, non-Federal programs administered by state or local governments or non-governmental entities. Under the program, the Governor of any state may nominate to the EPA Administrator an estuary lying in whole or in part within the state as an estuary of national significance and request a management conference to develop a comprehensive management plan for the estuary. The estuary program in Long Island Sound is the only Federally-administered program it is run by EPA. Through a process of wide-ranging stakeholder engagement, each approved estuary program conducts long-term planning and management activities to address the complex factors that contribute to the degradation of estuaries. Each estuary program relies on the consensus-based participation of a whole range of stakeholders located in the area: local, state, and Federal governments; commercial entities; members of the agricultural community; and non-governmental entities, such as environmental organizations. To date, EPA has approved 28 estuaries as part of the program.

Under section 320, each approved estuary program is required to develop a Comprehensive Conservation and Management Plan (CCMP). The CCMP is the implementation framework for protecting and restoring the estuary. The CCMP identifies discrete activities to address priority problems. Developed by estuary stakeholders, the activities prescribed through the CCMP are based on consensus and will often involve coordination and collaboration between different stakeholder entities. EPA must approve the CCMP.

EPA provides each approved estuary program with financial and technical assistance. Section 320 authorized \$35 million annually for fiscal years 2001 through 2010 for the NEP. Some of this funding has been used to set up individual program offices at each of the 28 approved estuaries. Each program office usually consists of a small staff that is housed in, and is an entity of, a state or local government agency, university, or non-governmental organization. Because each approved estuary program can be located in a number of different types of organizations, the program structure and character of each of the 28 local estuary programs is unique. With the exception of the Long Island Sound estuary program, none of the staff in any of the approved estuary programs are EPA employees. They are usually either employed by non-governmental organizations or state or local government entities (but supported through NEP grants).

NATIONAL ESTUARY PROGRAM FUNDING

Congress has appropriated the following amounts for the NEP program over the past three years: \$26.7 million in fiscal year (FY) 2008; \$27.1 million in FY 2009; and \$32.6 million in FY 2010.

To leverage Federal resources, EPA requires approved estuary programs to have a specific finance plan and to provide a non-Federal match of between 25 percent and 50 percent for funding provided under the program. EPA also encourages non-Federal funding for projects in approved estuaries because it promotes buy-in of non-Federal partners (e.g., state and local governments, non-governmental organizations) and further fosters the collaborative process under the NEP. Estuaries under the program have attracted funding from a variety of sources including the Clean Water State Revolving Fund program, stormwater utility fees, municipal bond funding, fines and settlements, tax abatements and incentives, and sales fees. According to EPA, between 2003 and 2007, the approved estuary programs were collectively able to leverage nearly \$1.3 billion in funding from sources other than appropriations for section 320. The investment ratio of non-NEP funds to NEP funds is 15.5 to 1.

PROGRAMMATIC RESULTS

On the whole, the NEP has resulted in improved estuarine conditions for participating estuaries. For instance, on a national scale, the NEP estuaries (collectively) score slightly higher than non-NEP estuaries for water quality indices. The reforms included in H.R. 4715 will make the NEP more effective by providing additional needed resources for improved management of estuaries and requiring transparency, performance measures and goals, and accountability to determine the impact of the program.

While no new estuaries have been formally included in the program since 1995, EPA reports that numerous states, localities, and non-governmental organizations have expressed interest in 38 additional estuaries being included within the NEP. These estuaries include:

- Alaska: Cook Inlet; Kenai River
- California: Humboldt Bay; Tomales Bay; San Pedro Bay; Newport Bay; San Diego Bay; Tijuana River
- Florida: Lower St. Johns River; Lake Worth; Biscayne Bay; Florida Bay; Crystal River/Homosassa Spring; Apalachicola Bay; St. Andrews Bay; Choctawhatchee Bay; Pensacola Bay
- Georgia: Savannah River
- Hawaii: Hanalei Bay; Kaneohe Bay
- Louisiana: Calcasieu Lake; Atchafalaya Bay; Lake Pontchartrain
- Maine: Penobscot Bay; Gulf of Maine
- Massachusetts: Martha's Vineyard
- Mississippi: Mississippi Sound
- New York: Great South Bay
- North Carolina: Cape Fear River
- Oregon: Coos Bay
- Puerto Rico: Mayaguez Bay
- South Carolina: Charleston Harbor; Port Royal Sound; Savannah River
- Texas: Lavaca Bay-Tres Palacios Bay
- Virginia: Virginia Coastal Bays
- Washington: Grays Harbor; Willapa Bay

If Congress appropriates funding for the NEP at the increased authorization amounts included in H.R. 4715, EPA will be able to add 12 new estuaries to the National Estuary Program.

SUMMARY OF THE LEGISLATION

Section 1. Short title

This section designates the title of the bill as the “Clean Estuaries Act of 2010”.

Sec. 2. National Estuary Program amendments

This section amends section 320 of the Clean Water Act to modify and add new requirements to estuary programs participating in the NEP.

Subsection (a)(1) amends section 320(b)(4) of the Act to add additional requirements in the development and revision of an approved estuary’s CCMP.

First, each estuary program must identify the estuary and upstream waters that will be addressed by the program. Given the scope of the NEP program, the area addressed by a given approved estuary program may not include the entire watershed that ultimately drains into the estuary. For program management purposes, and to educate the public and stakeholders, approved estuary programs should clearly identify the areas covered by a CCMP. This requirement will help to focus and prioritize resources, and create a better sense of estuary identity.

Second, each estuary program must consider current and future sustainable commercial activities in the estuary. Given the location of all estuaries in the NEP program, commercial activities are a necessary and permanent component. Commercial activity can impact the ecological health of estuaries. Similarly, the ecological health of estuaries can impact the viability of commercial activities. Each approved estuary program must include commercial entities in its CCMP process, and work with such entities to create commercial operations that impact the estuary in a sustainable manner.

Third, each estuary program must address the impacts of climate change on the estuary by identifying vulnerabilities in the estuary and developing and implementing adaptation strategies. On June 19, 2008, EPA announced a new pilot program for NEP estuaries, entitled “Climate Ready Estuaries”. According to EPA, each NEP estuary in the Climate Ready Estuaries program received technical assistance to assess and reduce its vulnerability to climate change. This section requires each NEP estuary to address the climate change impacts unique to its region.

Fourth, each estuary program must increase public education and awareness of the ecological health and water quality conditions of the estuary. Many impairments suffered by estuaries are a function of activities by individuals in the watershed. Similarly, only changes in behavior—at the individual level—will decrease some of these harmful activities. Approved estuary programs are well-situated to promote educational activities that will demonstrate to members of surrounding communities the ecological and economic importance of estuaries, and identify activities that can help to restore estuaries, as well as activities that will degrade them.

Fifth, each estuary program must identify and assess impairments that impact the estuary but that are located outside of the immediate area addressed by the estuary. Given the scope of the NEP program, the area addressed by a given approved estuary program may not include the entire watershed that ultimately drains into the estuary. As a result, impairments from upstream sources, as well as those from outside of the watershed, such as atmospheric deposition, may degrade the estuary. Nevertheless, because these sources of impairment lie outside of the formal estuary program area, these sources are outside of the purview of the program. Each estuary program is charged with identifying these sources of impairment to enable stakeholders to better understand the connectivity between the upstream elements of the watershed and the potential downstream impacts to the estuary. In addition, the identification and assessment of these sources of impairment will enable the estuary program to better determine the impairment reduction for which it is ultimately responsible.

Finally, each CCMP must include performance measures and goals to track the degree to which the plan is being implemented successfully. Performance measurement is a tool to determine the effectiveness of a program in achieving program goals. Each estuary program must include program goals and priorities in its CCMP and the performance measures that will be used to track the effectiveness of program implementation.

Subsection (a)(2) amends section 320(b)(6) to clarify and enhance the monitoring requirements related to an estuary CCMP. Each approved estuary program must monitor water quality and habitat conditions in the estuary and its upstream waters. The estuary programs must also monitor the effectiveness of actions taken pursuant to the CCMP. All monitoring results must be made available to the public. To track progress in estuary restoration and protection, estuary programs must monitor water quality and habitat conditions around the estuary. Not only does this approach provide more information for program managers, it also provides information to nearby communities about the state of their estuaries.

Subsection (a)(3) amends section 320(b) to require that each estuary program provide information and educational activities on the ecological health and water quality conditions of the estuary to the public. This provision ensures that the approved estuary program, itself, is participating in educating the public about estuarine conditions and the ecological and economic importance of estuaries, and is identifying activities that can help to restore estuaries, as well as those that will degrade them.

Subsection (b) makes a technical change to section 320(c)(5) and adds not-for-profit organizations to the list of entities that can participate in the management conference.

Subsection (c) amends section 320(f) to require the periodic update and approval of a CCMP. Within four years of the date of enactment of H.R. 4715, the "Clean Estuaries Act of 2010", the EPA Administrator shall evaluate the implementation of each approved estuary program's CCMP to determine whether, and the degree to which, the goals of the CCMP have been met. Following the initial evaluation, each estuary program shall be subject to a subsequent evaluation every four years. The evaluations may be completed by EPA or, at the request of the Administrator, by a third party. How-

ever, an approved estuary program may not be involved in evaluating its own program. Following the completion of an estuary program evaluation, the Administrator shall submit the evaluation results to the estuary program for review and comment. Each estuary program shall be provided the opportunity to respond to EPA's program evaluation. EPA shall issue a report on the results of the evaluation, including the findings and recommendations of the Administrator, as well as any comments received from the estuary program. This report shall be made available to the public through publication in the Federal Register and on the Internet. If an estuary program is accepted into the NEP after passage of this Act, that program will be evaluated within four years of the submission of its CCMP to the Administrator, and every four years thereafter.

EPA currently reviews each of the NEP estuary programs through a process known as the implementation review process. Each estuary program is reviewed every three years. This process is intended to assess how well each estuary program supports the core goals of the Clean Water Act, as well as to evaluate the extent and effectiveness of each estuary program's contribution to meeting the goals of EPA's Strategic Plan. The evaluation requirement instituted by H.R. 4715 is intended to require that more rigorous program evaluations be conducted of the estuary programs. Program implementation and program evaluation will be facilitated through the identification, inclusion, and use of performance measures and goals, as required by this legislation. The evaluation is intended to assist program managers, in both EPA and the approved estuary program, and identify if the goals of the CCMP are being achieved. It will provide insights as to whether the management plan is successful, whether the management approaches are appropriate, whether efforts in particular areas should be intensified, and whether impairments coming from unanticipated sources are hindering positive results.

Each approved estuary program is required to update its CCMP no later than 18 months after the public release of its evaluation. The updated plan shall reflect, to the maximum extent practicable, the results of the program evaluation. The Administrator shall, within 120 days after receiving an updated CCMP, approve that CCMP if the Administrator determines that the updated CCMP meets both the goals of the NEP and reflects the results of the program evaluation.

The CCMP evaluation and update serves a number of purposes. First, it addresses the fact that a number of estuary programs have never updated their CCMPs. Second, it ensures that each estuary program acknowledges and accounts for new impairments and new sources of impairments in its CCMP. Third, it ensures that stakeholders will continue to be active partners in the restoration and protection of the estuary, through involvement in the CCMP updating process. Finally, it provides accountability by linking the evaluation process to implementation of evaluation results. In other words, approval of a CCMP update is contingent upon incorporation by the estuary of evaluation results into its plan.

If the evaluation results indicate that the goals of the CCMP have been achieved, or that the program is headed in the right direction, the update may be *de minimis*. However, if the evaluation results indicate that CCMP goals are not being met, and rec-

ommends that programmatic changes are necessary, the update may be significant. An update, in these circumstances, might require that new stakeholders be incorporated into the planning process, that a new CCMP be adopted, or that a new management and implementation strategy be applied to ensure that the goals of the NEP program—the restoration and protection of the estuary—are achieved.

The Administrator may consider an estuary program to be in probationary status if the estuary program has not received approval for an updated CCMP on or before the last day of the three-year period beginning on the date on which the Administrator makes an evaluation available to the public. As described later in this Committee Report, the designation of probationary status entails a reduction in grant funding to the estuary program by the Administrator. The Committee believes that this designation, in combination with subsequent penalties, provides the estuary programs with an incentive to incorporate evaluation recommendations into their CCMP update, in order to receive approval of an updated CCMP by the Administrator.

Subsection (d) amends section 320 by adding a new subsection that places new requirements on Federal agencies whose actions or activities affect estuaries in the National Estuary Program. The legislation requires that, following approval of a CCMP, any Federal action or activity affecting an estuary in the NEP shall be conducted, to the maximum extent practicable, in a manner consistent with the CCMP. Federal agencies are also required, to the maximum extent practicable, to cooperate and coordinate their activities related to the implementation of an approved CCMP. The legislation requires that EPA shall serve as the lead agency in these inter-agency coordination and cooperation efforts. In making their annual budget requests, Federal agencies shall consider their CCMP responsibilities. Finally, this subsection requires that Federal agencies collaborate in the development of tools and methodologies for monitoring the ecological health and water quality conditions of estuaries included in the National Estuary Program.

The Committee recognizes that the strength of the National Estuary Program lies in its being a consensus-based, locally driven program. As a result, to fulfill the goals of the program, the Committee expects that Federal agencies not only take part in the CCMP planning process, but also, as stakeholders in the respective estuaries, take part in implementing their responsibilities under approved estuary plans. In instances where the actions or activities of multiple Federal agencies affect the estuary, the Committee expects these agencies to coordinate their activities. Not only will this approach result in administrative efficiencies, coordinated planning and implementation will yield results that will facilitate the protection and restoration of the estuary in question.

Subsection (e) amends section 320(h) by adding new grant conditions. The Administrator shall be required to reduce grant funding for those approved estuary programs that are considered to be in probationary status. The grant reduction amount shall be determined by the Administrator. The Administrator shall also terminate an estuary program from the National Estuary Program, and cease its grant funding, if the Administrator determines that the program has been in probationary status for two consecutive years.

The Committee believes that estuary programs must be held accountable for updating, receiving approval for, and implementing updated CCMPs. Decreasing funding and, if necessary, expulsion from the National Estuary Program for a lack of an approved CCMP update will provide such accountability.

Subsection (f) amends section 320(j), as redesignated, and authorizes an increase in appropriations. This subsection increases the authorization of appropriations for the National Estuary Program from \$35 million to \$50 million annually for fiscal years 2011 through 2016. This subsection directs the Administrator to provide grant funding, subject to appropriations, of at least \$1.25 million for each approved estuary program in the National Estuary Program. The Committee believes that a funding level of \$1.25 million per approved estuary program will provide the resources for each estuary program to properly oversee the implementation of its CCMP. This level of funding is a significant increase over existing appropriations to estuaries under the program; in 2008, each estuary received approximately \$592,000 under the program. An authorization level of \$50 million will allow each existing estuary to receive \$1.25 million, and provide enough funding to add 12 new estuaries under the program. If the NEP is funded at fully authorized levels, the Committee expects that an additional 12 estuary programs will be added to the National Estuary Program.

Subsection (g) makes a technical amendment to section 320(k)(1)(A), as redesignated by this legislation.

Subsection (h) amends section 320 by adding a new subsection that requires a periodic evaluation of EPA's National Estuary Program. The legislation requires that the Administrator, or a third party at the request of the Administrator, evaluate the overall NEP program (in addition to the requirement that each participating estuary be evaluated) within four years of passage of this legislation, and every four years thereafter. The evaluation shall determine whether the NEP program has resulted in improved water quality, improved natural resources, and improvements in sustainable uses of the estuaries covered by estuary programs that are part of the NEP. The findings and recommendations of this evaluation shall be issued by the Administrator in a report on both the Internet and in the Federal Register.

The Committee believes that this evaluation will assist EPA program managers and Congress in determining whether the goals of the National Estuary Program are being achieved. The evaluation results will provide insights as to whether the program is successful, and whether new tools, policies, or funding is needed to better implement the program—with the ultimate objective of restoring and protecting estuaries.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

In the 110th Congress, on June 26, 2008, the Subcommittee on Water Resources and Environment held a hearing on "Protecting and Restoring America's Great Waters, Part 1: Coasts and Estuaries". The Subcommittee received testimony from Representative Norman D. Dicks, EPA, the National Oceanic and Atmospheric Administration, the State of Washington, the San Francisco Public Utilities Commission, and representatives of non-governmental organizations.

In the 111th Congress, on October 6, 2009, the Subcommittee on Water Resources and Environment held a hearing on “Protecting and Restoring America’s Great Waters: The Long Island Sound”. The Long Island Sound Study is an approved NEP estuary program. The Subcommittee received testimony from EPA, the States of Connecticut and New York, the Stamford Water Pollution Control Authority (CT), and representatives of non-governmental organizations.

On March 2, 2010, Representative Timothy H. Bishop introduced H.R. 4715, the “Clean Estuaries Act of 2010”.

On March 3, 2010, the Committee on Transportation and Infrastructure met in open session to consider H.R. 4715. The Committee ordered H.R. 4715 reported favorably to the House by voice vote with a quorum present.

RECORD VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no recorded votes taken in connection with consideration of H.R. 4715 or ordering the bill reported. A motion to order H.R. 4715 reported favorably to the House was agreed to by voice vote with a quorum present.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included in the report.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation are to facilitate the protection and restoration of estuaries within the National Estuary Program, including through the use of program evaluations.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the

enclosed cost estimate for H.R. 4715 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 9, 2010.

Hon. JAMES L. Oberstar,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4715, the Clean Estuaries Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 4715—Clean Estuaries Act of 2010

Summary: H.R. 4715 would extend the authorization of appropriations for the Environmental Protection Agency’s (EPA’s) National Estuary Program through fiscal year 2016. Under current law, \$35 million is authorized to be appropriated each year through 2010, and enacting this legislation would increase that authorized annual funding level to \$50 million in subsequent years. Under the National Estuary Program, EPA develops plans for attaining or maintaining water quality in an estuary. CBO estimates that implementing this legislation would cost \$216 million over the 2011–2015 period, assuming appropriation of the authorized amounts.

Enacting H.R. 4715 would not affect direct spending or revenues; therefore, pay-as-you-go procedures would not apply.

H.R. 4715 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the federal government: The estimated budgetary impact of this legislation is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

| | By fiscal year, in millions of dollars— | | | | | |
|--|---|------|------|------|------|---------------|
| | 2011 | 2012 | 2013 | 2014 | 2015 | 2011– 2015 |
| CHANGES IN SPENDING SUBJECT TO APPROPRIATION | | | | | | |
| Authorization Level | 50 | 50 | 50 | 50 | 50 | 250 |
| Estimated Outlays | 23 | 43 | 50 | 50 | 50 | 216 |

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted in 2010 and that the amounts authorized will be appropriated each fiscal year beginning in 2011. Estimated outlays are based on historical spending patterns for the National Estuary Program.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 4715 contains no intergovernmental or private-sector mandates as defined in

UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Susanne S. Mehlman; Impact on state, local, and tribal governments: Ryan Miller; Impact on the Private Sector: Amy Petz.

Estimate approved by:

Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH HOUSE RULE XXI

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits, as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. H.R. 4715 does not contain any earmarks, limited tax benefits, or limited tariff benefits under clause 9(e), 9(f), or 9(g) of rule XXI.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (P.L. 104-4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or tribal law. The Committee states that H.R. 4715 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (P.L. 104-1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL WATER POLLUTION CONTROL ACT

* * * * *

TITLE III—STANDARDS AND ENFORCEMENT

* * * * *

SEC. 320. NATIONAL ESTUARY PROGRAM.

(a) * * *

(b) **PURPOSES OF CONFERENCE.**—The purposes of any management conference convened with respect to an estuary under this subsection shall be to—

(1) * * *

* * * * *

[(4) develop a comprehensive conservation and management plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;]

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

(A) identifies the estuary and its associated upstream waters to be addressed by the plan, with consideration given to hydrological boundaries;

(B) recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a resilient and diverse indigenous population of shellfish, fish, and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;

(C) considers current and future sustainable commercial activities in the estuary;

(D) addresses the impacts of climate change on the estuary, including—

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

(ii) the development and implementation of adaptation strategies;

(E) increases public education and awareness of the ecological health and water quality conditions of the estuary;

(F) identifies and assesses impairments, including upstream impairments, coming from outside of the area addressed by the plan, and the sources of those impairments; and

(G) includes performance measures and goals to track implementation of the plan.

* * * * *

[(6) monitor the effectiveness of actions taken pursuant to the plan; and]

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

(A) water quality conditions in the estuary and its associated upstream waters, as identified under paragraph (4)(A);

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

(C) the effectiveness of actions taken pursuant to the comprehensive conservation and management plan developed for the estuary under this subsection;

(7) provide information and educational activities on the ecological health and water quality conditions of the estuary; and

[(7)] (8) review all Federal financial assistance programs and Federal development projects in accordance with the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of the plan prepared under this section.

For purposes of [paragraph (7)] paragraph (8) , such programs and projects shall not be limited to the assistance programs and development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the plan developed under this section.

(c) MEMBERS OF CONFERENCE.—The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of—

(1) * * *

* * * * *

(5) affected industries, public and private educational institutions, *not-for-profit organizations*, and the general public, as determined appropriate by the Administrator.

* * * * *

[(f) APPROVAL AND IMPLEMENTATION OF PLANS.—

[(1) APPROVAL.—Not later than 120 days after the completion of a conservation and management plan and after providing for public review and comment, the Administrator shall approve such plan if the plan meets the requirements of this section and the affected Governor or Governors concur.

[(2) IMPLEMENTATION.—Upon approval of a conservation and management plan under this section, such plan shall be implemented. Funds authorized to be appropriated under titles II and VI and section 319 of this Act may be used in accordance

with the applicable requirements of this Act to assist States with the implementation of such plan.】

(f) ADMINISTRATION OF PLANS.—

(1) APPROVAL.—Not later than 120 days after the date on which a management conference submits to the Administrator a comprehensive conservation and management plan under this section, and after providing for public review and comment, the Administrator shall approve the plan if the Administrator determines that the plan meets the requirements of this section and the affected Governor or Governors concur.

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

(3) EVALUATION.—

(A) IN GENERAL.—Not later than 4 years after the date of enactment of this paragraph, and every 4 years thereafter, the Administrator shall complete an evaluation of the implementation of each comprehensive conservation and management plan developed under this section to determine the degree to which the goals of the plan have been met.

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

(C) REPORT.—

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

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

(D) SPECIAL RULE FOR NEW PLANS.—Notwithstanding subparagraph (A), if a management conference submits a new comprehensive conservation and management plan to the Administrator after the date of enactment of this paragraph, the Administrator shall complete the evaluation of the plan required by subparagraph (A) not later than 4 years after the date of such submission and every 4 years thereafter.

(4) UPDATES.—

(A) REQUIREMENT.—Not later than 18 months after the date on which the Administrator makes an evaluation of a comprehensive conservation and management plan available to the public under paragraph (3)(C), a management conference convened under this section shall submit to the

Administrator an update of the plan. The updated plan shall reflect, to the maximum extent practicable, the results of the program evaluation.

(B) APPROVAL OF UPDATES.—Not later than 120 days after the date on which a management conference submits to the Administrator an updated comprehensive conservation and management plan under subparagraph (A), and after providing for public review and comment, the Administrator shall approve the updated plan if the Administrator determines that the updated plan meets the requirements of this section.

(5) PROBATIONARY STATUS.—The Administrator may consider a management conference convened under this section to be in probationary status if the management conference has not received approval for an updated comprehensive conservation and management plan under paragraph (4)(B) on or before the last day of the 3-year period beginning on the date on which the Administrator makes an evaluation of the plan available to the public under paragraph (3)(C).

(g) FEDERAL AGENCIES.—

(1) ACTIVITIES CONDUCTED WITHIN ESTUARIES WITH APPROVED PLANS.—After approval of a comprehensive conservation and management plan by the Administrator, any Federal action or activity affecting the estuary shall be conducted, to the maximum extent practicable, in a manner consistent with the plan.

(2) COORDINATION AND COOPERATION.—The Secretary of the Army (acting through the Chief of Engineers), the Administrator of the National Oceanic and Atmospheric Administration, the Director of the United States Fish and Wildlife Service, the Chief of the Natural Resources Conservation Service, and the heads of other appropriate Federal agencies, as determined by the Administrator, shall, to the maximum extent practicable, cooperate and coordinate activities related to the implementation of a comprehensive conservation and management plan approved by the Administrator. The Environmental Protection Agency shall serve as the lead coordinating agency under this paragraph.

(3) CONSIDERATION OF PLANS IN AGENCY BUDGET REQUESTS.—In making an annual budget request for a Federal agency referred to in paragraph (2), the head of such agency shall consider the responsibilities of the agency under this section, including under comprehensive conservation and management plans approved by the Administrator.

(4) MONITORING.—The heads of the Federal agencies referred to in paragraph (2) shall collaborate on the development of tools and methodologies for monitoring the ecological health and water quality conditions of estuaries covered by a management conference convened under this section.

[(g)] (h) GRANTS.—

(1) * * *

* * * * *

(4) EFFECTS OF PROBATIONARY STATUS.—

(A) REDUCTIONS IN GRANT AMOUNTS.—The Administrator shall reduce, by an amount to be determined by the Administrator, grants for the implementation of a comprehensive

conservation and management plan developed by a management conference convened under this section if the Administrator determines that the management conference is in probationary status under subsection (f)(5).

(B) TERMINATION OF MANAGEMENT CONFERENCES.—The Administrator shall terminate a management conference convened under this section, and cease funding for the implementation of the comprehensive conservation and management plan developed by the management conference, if the Administrator determines that the management conference has been in probationary status for 2 consecutive years.

[(h)] *(i) GRANT REPORTING.—Any person (including a State, interstate, or regional agency or entity) that receives a grant under [subsection (g)] subsection (h) shall report to the Administrator not later than 18 months after receipt of such grants and biennially thereafter on the progress being made under this section.*

[(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator not to exceed \$35,000,000 for each of fiscal years 2001 through 2010 for—

[(1) expenses related to the administration of management conferences under this section, not to exceed 10 percent of the amount appropriated under this subsection;

[(2) making grants under subsection (g); and

[(3) monitoring the implementation of a conservation and management plan by the management conference or by the Administrator, in any case in which the conference has been terminated.

The Administrator shall provide up to \$5,000,000 per fiscal year of the sums authorized to be appropriated under this subsection to the Administrator of the National Oceanic and Atmospheric Administration to carry out subsection (j).**]**

(j) AUTHORIZATION OF APPROPRIATIONS.—

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

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

(B) making grants under subsection (h); and

(C) monitoring the implementation of a conservation and management plan by the management conference, or by the Administrator in any case in which the conference has been terminated.

(2) ALLOCATIONS.—Of the sums authorized to be appropriated under this subsection, the Administrator shall provide—

(A) at least \$1,250,000 per fiscal year, subject to the availability of appropriations, for the development, implementation, and monitoring of each conservation and management plan eligible for grant assistance under subsection (h); and

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

[(j)] (k) RESEARCH.—

(1) PROGRAMS.—In order to determine the need to convene a management conference under this section or at the request of such a management conference, the Administrator shall coordinate and implement, through the National Marine Pollution Program Office and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, as appropriate, for one or more estuarine zones—

(A) a long-term program of trend assessment monitoring measuring variations in pollutant concentrations, marine ecology, and other physical or biological environmental **[paramenters]** *parameters* which may affect estuarine zones, to provide the Administrator the capacity to determine the potential and actual effects of alternative management strategies and measures;

* * * * *

(l) NATIONAL ESTUARY PROGRAM EVALUATION.—

(1) IN GENERAL.—Not later than 4 years after the date of enactment of this paragraph, and every 4 years thereafter, the Administrator shall complete an evaluation of the national estuary program established under this section.

(2) SPECIFIC ASSESSMENTS.—In conducting an evaluation under this subsection, the Administrator shall assess the effectiveness of the national estuary program in improving water quality, natural resources, and sustainable uses of the estuaries covered by management conferences convened under this section.

(3) REPORT.—In completing an evaluation under this subsection, the Administrator shall issue a report on the results of the evaluation, including the findings and recommendations of the Administrator.

(4) AVAILABILITY TO PUBLIC.—The Administrator shall make a report issued under this subsection available to the public, including through publication in the Federal Register and on the Internet.

[(k)] (m) DEFINITIONS.—For purposes of this section, the terms “estuary” and “estuarine zone” have the meanings such terms have in section 104(n)(4) of this Act, except that the term “estuarine zone” shall also include associated aquatic ecosystems and those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.

* * * * *