

## ESTUARY HABITAT RESTORATION PARTNERSHIP ACT OF 1997

● Mr. CHAFEE. Mr. President, yesterday I introduced S. 1222. I ask that the text of the bill be printed in the RECORD.

The text of the bill follows:

S. 1222

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Estuary Habitat Restoration Partnership Act of 1997".

**SEC. 2. FINDINGS.**

Congress finds that—

(1) the estuaries and coastal regions of the United States are home to half the population of the United States;

(2) the traditions, economy, and quality of life of many communities depend on the natural abundance and health of the estuaries;

(3) approximately 75 percent of the commercial fish and shellfish of the United States depend on estuaries at some stage in their life cycle;

(4) the varied habitats of estuaries and other coastal waters provide jobs to 28,000,000 United States citizens in commercial and sport fishing, tourism, recreation, and other industries, with fishing alone contributing \$111,000,000,000 to the United States economy each year;

(5) despite the many values of estuaries, estuaries are gravely threatened by estuary habitat alteration and loss;

(6) the accumulated loss of estuary habitat, reaching over 90 percent in some estuaries, threatens the ecological and economic bounty of regions experiencing the loss, and can be reversed only by action to restore lost and degraded estuary habitat;

(7) the demands on Federal, State, and local funding for estuary habitat restoration activities exceed available resources and prompt serious concerns about the ability of the United States to restore estuary habitat vital to efforts to restore, preserve, and protect the health of estuaries;

(8) successful restoration of estuaries demands the full coordination of Federal and State estuary habitat restoration programs;

(9) to succeed in restoring estuaries, it is important to link estuary habitat restoration projects to broader ecosystem planning in order to establish restoration programs that are effective in the long term;

(10) efficient leveraging of scarce public resources and new and innovative market-based funding for estuary habitat restoration activities would generate real returns on investments for communities through improvement of the vibrancy and health of estuaries;

(11) the Federal, State, and private cooperation in estuary habitat restoration activities in existence on the date of enactment of this Act should be strengthened and new public and public-private estuary habitat restoration partnerships established; and

(12) such new partnerships would help ensure the ecological and economic vibrancy of estuaries for the benefit of future generations.

**SEC. 3. PURPOSES.**

The purposes of this Act are—

(1) to establish a voluntary, community-driven, incentive-based program that will catalyze the restoration of 1,000,000 acres of estuary habitat by 2010;

(2) to encourage enhanced coordination and leveraging of Federal, State, and community estuary habitat restoration programs, plans, and studies;

(3) to establish effective estuary habitat restoration partnerships among public agencies at all levels of government and between the public and private sectors;

(4) to promote efficient financing of estuary habitat restoration activities to help better leverage limited Federal funding; and

(5) to develop and enhance monitoring and maintenance capabilities designed to ensure that restoration efforts build on the successes of past and current efforts and scientific understanding.

**SEC. 4. DEFINITIONS.**

In this Act:

(1) **COLLABORATIVE COUNCIL.**—The term "Collaborative Council" means the interagency council established by section 5.

(2) **DEGRADED ESTUARY HABITAT.**—The term "degraded estuary habitat" means estuary habitat where natural ecological functions have been impaired and normal beneficial uses have been reduced.

(3) **ESTUARY.**—The term "estuary" means—

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

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

(4) **ESTUARY HABITAT.**—

(A) **IN GENERAL.**—The term "estuary habitat" means the complex of physical and hydrologic features and living organisms within estuaries and associated ecosystems.

(B) **INCLUSIONS.**—The term "estuary habitat" includes salt and fresh water coastal marshes, coastal forested wetlands and other coastal wetlands, tidal flats, natural shoreline areas, shellfish beds, sea grass meadows, kelp beds, river deltas, and river and stream banks under tidal influence.

(5) **ESTUARY HABITAT RESTORATION ACTIVITY.**—

(A) **IN GENERAL.**—The term "estuary habitat restoration activity" means an activity that results in improving degraded estuary habitat (including both physical and functional restoration), with the goal of attaining a self-sustaining, ecologically based system integrated into the surrounding landscape.

(B) **INCLUDED ACTIVITIES.**—The term "estuary habitat restoration activity" includes—

(i) the reestablishment of physical features and biological and hydrologic functions;

(ii) except as provided in subparagraph (C)(ii), the cleanup of contamination;

(iii) the control of nonnative and invasive species;

(iv) the reintroduction of native or ecologically beneficial species through planting or natural succession; and

(v) other activities that improve estuary habitat.

(C) **EXCLUDED ACTIVITIES.**—The term "estuary habitat restoration activity" does not include—

(i) an act that constitutes mitigation for the adverse effects of an activity regulated or otherwise governed by Federal or State law; or

(ii) an act that constitutes satisfaction of liability for natural resource damages under any Federal or State law.

(6) **ESTUARY HABITAT RESTORATION PROJECT.**—The term "estuary habitat restoration project" means an estuary habitat restoration activity under consideration or selected by the Collaborative Council, in accordance with this Act, to receive financial, technical, or another form of assistance.

(7) **ESTUARY HABITAT RESTORATION STRATEGY.**—The term "estuary habitat restoration strategy" means the estuary habitat restoration strategy developed under section 6(a).

(8) **FEDERAL ESTUARY MANAGEMENT OR HABITAT RESTORATION PLAN.**—The term "Federal

estuary management or habitat restoration plan" means any Federal plan for restoration of degraded estuary habitat that—

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

(B) reflects a community-based planning process.

(9) **PERSON.**—The term "person" includes an entity of a Federal, State, or local government, an Indian tribe, an entity organized or existing under the law of a State, and a nongovernmental organization.

(10) **SECRETARY.**—The term "Secretary" means the Secretary of the Army, or a designee.

(11) **UNDER SECRETARY.**—The term "Under Secretary" means the Under Secretary for Oceans and Atmosphere of the Department of Commerce, or a designee.

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

(a) **COLLABORATIVE COUNCIL.**—There is established an interagency council to be known as the "Estuary Habitat Restoration Collaborative Council".

(b) **MEMBERSHIP.**—The Collaborative Council shall be composed of the Secretary, the Under Secretary, the Administrator of the Environmental Protection Agency, the Secretary of the Interior (acting through the Director of the United States Fish and Wildlife Service), the Secretary of Agriculture, and the Secretary of Transportation, or their designees.

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

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

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

(d) **COLLABORATIVE COUNCIL PROCEDURES.**—

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

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

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

(a) **ESTUARY HABITAT RESTORATION STRATEGY.**—

(1) **IN GENERAL.**—

(A) **DEVELOPMENT.**—Not later than 1 year after the date of enactment of this Act, the Collaborative Council, in consultation with representatives from coastal States and non-profit organizations with expertise in estuary habitat restoration, shall develop an estuary habitat restoration strategy designed to ensure a comprehensive approach to the selection and prioritization of estuary habitat restoration projects and the full coordination of Federal and non-Federal activities related to restoration of estuary habitat.

(B) **PROVISION OF NATIONAL FRAMEWORK.**—The estuary habitat restoration strategy shall provide a national framework for estuary habitat restoration activities by—

(i) identifying existing estuary habitat restoration plans;

(ii) integrating overlapping estuary habitat restoration plans; and

(iii) identifying appropriate processes for the development of estuary habitat restoration plans where needed.

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

(A) conduct a review of—

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

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

(B) develop, based on best management practices, a framework for fully coordinating and streamlining the activities of the Federal plans and programs referred to in subparagraph (A);

(C) develop a set of proposals for—

(i) using programs established under this or any other Act to maximize the incentives for the creation of new public-private partnerships to carry out estuary habitat restoration projects; and

(ii) leveraging Federal resources to encourage increased private sector involvement in estuary habitat restoration activities; and

(D) ensure that the estuary habitat restoration strategy is developed and will be implemented in a manner that is consistent with the findings and requirements of Federal estuary management or habitat restoration plans.

(3) ELEMENTS TO BE CONSIDERED.—Consistent with the requirements of this section, the Collaborative Council, in the development of the estuary habitat restoration strategy, shall consider—

(A) the contributions of estuary habitat to—

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

(ii) fish and shellfish, including commercial and sport fisheries;

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

(iv) outdoor recreation; and

(v) other areas of concern that the Collaborative Council determines to be appropriate for consideration;

(B) the estimated historic losses, estimated current rate of loss, and extent of the threat of future loss or degradation of each type of estuary habitat;

(C) the most appropriate method for selecting estuary habitat restoration projects essential to—

(i) the proper protection and preservation of an estuary ecosystem;

(ii) the implementation of a Federal estuary management or habitat restoration plan; or

(iii) the selection by the Collaborative Council of an appropriate balance of smaller and larger estuary habitat restoration projects; and

(D) procedures to minimize duplicative and conflicting application requirements for public and private landowners seeking assistance for estuary habitat restoration activities.

(4) COMMUNITY ADVICE.—The Collaborative Council shall seek the advice of experts in restoration of estuary habitat from the private, including nonprofit, sectors to assist in the development of an estuary habitat restoration strategy.

(5) PUBLIC REVIEW AND COMMENT.—Before adopting a final estuary habitat restoration strategy, the Collaborative Council shall publish in the Federal Register a draft of the estuary habitat restoration strategy and provide an opportunity for public review and comment.

(b) ESTABLISHMENT OF PROJECT APPLICATION AND SELECTION CRITERIA.—

(1) IN GENERAL.—Consistent with the other provisions of this section, the Collaborative Council shall establish—

(A) application procedures to be followed by States and other non-Federal persons to nominate estuary habitat restoration activities for consideration by the Collaborative Council for assistance under this Act;

(B) criteria for determining eligibility for financial assistance under this Act for an estuary habitat restoration project;

(C) application procedures and criteria for granting a reduction in the minimum non-Federal share requirement, in accordance with section 7(d)(2); and

(D) such other criteria as the Collaborative Council determines to be reasonable and necessary in carrying out this Act.

(2) PROPOSALS.—A proposal for an estuary habitat restoration project shall originate from a non-Federal person and shall require, when appropriate, the approval of State or local agencies.

(3) FACTORS TO BE TAKEN INTO ACCOUNT.—The criteria established under paragraph (1) shall provide for the consideration of the following factors in determining the eligibility of an estuary habitat restoration project for financial assistance under this Act and in prioritizing the selection of estuary habitat restoration projects by the Collaborative Council:

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

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

(C) Whether the non-Federal persons proposing the estuary habitat restoration project can provide satisfactory assurances that they will have adequate personnel, funding, and authority to carry out and properly maintain the estuary habitat restoration project.

(D) Whether, in the State in which a proposed estuary habitat restoration project is to be carried out, there is a State dedicated source of funding for programs to acquire or restore estuary habitat, natural areas, and open spaces.

(E) Whether the proposed estuary habitat restoration project will encourage the increased coordination and cooperation of Federal, State, and local Government agencies.

(F) The level of private matching fund or in-kind contributions to the estuary habitat restoration project.

(G) Whether the proposed habitat restoration project includes a monitoring plan to ensure that short-term and long-term restoration goals are achieved.

(H) Other factors that the Collaborative Council determines to be reasonable and necessary for consideration.

(4) PRIORITY ESTUARY HABITAT RESTORATION PROJECTS.—

(A) DESIGNATION.—The Collaborative Council may designate an estuary habitat restoration project as a priority estuary habitat restoration project if, in addition to meeting the selection criteria specified in this section—

(i) the estuary habitat restoration project addresses a restoration goal identified in the estuary habitat restoration strategy;

(ii) the estuary habitat restoration project is part of an approved Federal estuary management or habitat restoration plan;

(iii) the non-Federal share with respect to the estuary habitat restoration project exceeds 50 percent; or

(iv) there is a nonpoint source program upstream of the estuary habitat restoration project that addresses upstream sources that would otherwise re-impair the restored habitat.

(B) EFFECT OF DESIGNATION.—A priority estuary habitat restoration project shall be given a higher priority in receipt of funding under this Act.

(c) INTERIM ACTIONS.—

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

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

(d) COOPERATION OF NON-FEDERAL PARTNERS.—

(1) IN GENERAL.—The Collaborative Council shall not select an estuary habitat restoration project until each non-Federal interest has entered into a written cooperation agreement in accordance with section 221(a) of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b(a)).

(2) MAINTENANCE AND MONITORING.—A cooperation agreement entered into under paragraph (1) shall provide for maintenance and monitoring of the estuary habitat restoration project to the extent determined necessary by the Collaborative Council.

(e) LEAD COLLABORATIVE COUNCIL MEMBER.—The Collaborative Council shall designate a lead Collaborative Council member for each proposed estuary habitat restoration project. The lead Collaborative Council member shall have primary responsibility for overseeing and assisting others in implementing the proposed project.

(f) AGENCY CONSULTATION AND COORDINATION.—

(1) IN GENERAL.—In carrying out this section, the Collaborative Council shall consult with, cooperate with, and coordinate its activities with the activities of other appropriate Federal agencies, as determined by the Collaborative Council.

(2) USE OF COORDINATING MECHANISMS.—The Collaborative Council shall work to ensure that Federal agency coordinating and streamlining mechanisms established under other law are fully used in cases in which the Collaborative Council determines the use of the mechanisms to be appropriate.

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

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Department of the Army for the administration and operation of the Collaborative Council \$4,000,000 for each fiscal year.

#### SEC. 7. COST SHARING OF ESTUARY HABITAT RESTORATION PROJECTS.

(a) IN GENERAL.—No financial assistance in carrying out an estuary habitat restoration project shall be available under this Act from any Federal agency unless the non-Federal applicant for assistance demonstrates to the satisfaction of the Collaborative Council that the estuary habitat restoration project meets—

(1) the requirements of this Act; and

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

(b) FEDERAL SHARE.—

(1) IN GENERAL.—Except as provided in paragraph (2), for each fiscal year, the Federal share of the cost of an estuary habitat restoration project assisted under this Act shall be not less than 25 percent and not more than 65 percent.

(2) INCREASED FEDERAL SHARE.—In the case of an estuary habitat restoration project with respect to which the applicant demonstrates need under subsection (d)(2), the Federal share of the cost of the project shall not exceed 75 percent.

(c) PAYMENT OF FEDERAL SHARE UNDER OTHER LAW.—The Collaborative Council may use funds made available under this Act to pay all or part of the Federal share of the cost of an estuary habitat restoration activity eligible for funding under a program established under another provision of law, if the activity would also be eligible for funding under this Act as an estuary habitat restoration project.

(d) NON-FEDERAL SHARE.—

(1) IN-KIND CONTRIBUTIONS.—The non-Federal share of the cost of an estuary habitat restoration project may be provided in the form of land, easements, rights-of-way, services, or any other form of in-kind contribution determined by the Collaborative Council to be an appropriate contribution equivalent to the monetary amount required for the non-Federal share of the estuary habitat restoration project.

(2) REDUCED NON-FEDERAL SHARE.—An applicant for assistance in carrying out an estuary habitat restoration project may submit an application for a reduction in the requirement of the payment of a non-Federal share of at least 35 percent, if the applicant submits a statement of need and demonstrates a need for a reduced non-Federal share in accordance with section 103(m) of the Water Resources Development Act of 1986 (33 U.S.C. 2213(m)).

(e) ALLOCATION OF FUNDS BY STATES TO POLITICAL SUBDIVISIONS.—With the approval of the Secretary, a State may allocate to any local government, area wide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334), regional agency, or interstate agency, a portion of any funds disbursed by the Collaborative Council to the State for the purpose of carrying out an estuary habitat restoration project.

#### SEC. 8. MONITORING AND MAINTENANCE OF ESTUARY HABITAT RESTORATION PROJECTS.

(a) DATABASE OF RESTORATION PROJECT INFORMATION.—The Under Secretary shall maintain an appropriate database of information concerning estuary habitat restoration projects funded by the Collaborative Council, including information on project techniques, project completion, monitoring data, and other relevant information.

(b) REPORT.—

(1) IN GENERAL.—The Collaborative Council shall biennially submit a report to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives on the results of activities carried out under this Act.

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

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

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

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

(D) a review of how the Collaborative Council has incorporated the information described in subparagraphs (A) through (C) in the selection and implementation of estuary habitat restoration projects;

(E) a review of efforts made by the Collaborative Council to maintain an appropriate database of restoration projects funded under this Act; and

(F) a review of the measures that the Collaborative Council has taken to provide the information described in subparagraphs (A) through (C) to persons with responsibility for assisting in the restoration of estuary habitat.

#### SEC. 9. MEMORANDA OF UNDERSTANDING.

In carrying out this Act, the Collaborative Council may—

(1) enter into cooperative agreements with persons; and

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

#### SEC. 10. DISTRIBUTION OF APPROPRIATIONS FOR ESTUARY HABITAT RESTORATION ACTIVITIES.

The Secretary shall allocate funds made available to carry out this Act based on the need for the funds and such other factors as the Collaborative Council determines to be appropriate to carry out this Act.

#### SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

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

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this Act—

(1) \$40,000,000 for fiscal year 1999;

(2) \$50,000,000 for fiscal year 2000; and

(3) \$75,000,000 for each of fiscal years 2001 through 2003.

#### SEC. 12. GENERAL PROVISIONS.

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

(1) may carry out estuary habitat restoration projects as determined by the Collaborative Council; and

(2) shall give estuary habitat restoration projects the same consideration (as determined by the Collaborative Council) as projects relating to irrigation, navigation, or flood control.

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

(c) ESTUARY HABITAT RESTORATION MISSION.—The Secretary shall establish restoration of estuary habitat as a primary mission of the Army Corps of Engineers.

(d) FEDERAL AGENCY FACILITIES AND PERSONNEL.—

(1) IN GENERAL.—Federal agencies may cooperate in carrying out scientific and other programs necessary to carry out this Act, and may provide facilities and personnel, for the purpose of assisting the Collaborative Council in carrying out its duties under this Act.

(2) REIMBURSEMENT FROM COLLABORATIVE COUNCIL.—Federal agencies may accept reimbursement from the Collaborative Council for providing services, facilities, and personnel under paragraph (1).

(e) COLLABORATIVE COUNCIL ADMINISTRATIVE EXPENSES AND STAFFING.—Not later than 180 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress and the Secretary an analysis of the extent to which the Collaborative Council needs additional personnel and administrative resources to fully carry out its duties under this Act. The analysis shall include recommendations regarding necessary additional funding.

(f) APPLICATION OF AND CONSISTENCY WITH OTHER LAWS.—Except as specifically provided in this Act—

(1) nothing in this Act supersedes or modifies any Federal law in existence on the date of enactment of this Act; and

(2) each action by a Federal agency under this Act shall be carried out in a manner that is consistent with such law.●

ORDERS FOR MONDAY,  
SEPTEMBER 29, 1997

Mr. McCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 12 noon on Monday, September 29. I further ask that on Monday, immediately following the prayer, the routine requests through the morning hour be granted and the Senate immediately resume S. 25, the campaign finance reform bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### PROGRAM

Mr. McCONNELL. Mr. President, on Monday, the Senate will resume the pending campaign finance reform bill. As a reminder to all Senators, no votes will occur during Monday's session of the Senate. The next vote will be at 11 a.m. on Tuesday, September 30, on the motion to invoke cloture on the Coats amendment concerning scholarships to the District of Columbia appropriations bill. Also during Tuesday's session of the Senate, the Senate will consider the continuing resolution. Therefore, votes will occur throughout the day on Tuesday.

#### ORDER FOR ADJOURNMENT

Mr. McCONNELL. If there is no further business to come before the Senate, I now ask the Senate stand in adjournment under the previous order, following the remarks of Senator DORGAN.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

#### BIPARTISAN CAMPAIGN REFORM ACT OF 1997

The Senate continued with the consideration of the bill.

Mr. DORGAN. Mr. President, this is truly what is called getting the last word, as I understand the unanimous consent agreement is for the adjourning of the Senate following my presentation.

I regret I was delayed. I wanted to be here to be involved in the back-and-forth discussion on campaign finance reform. Nonetheless, I am able to offer a few comments about some of the discussion we have had in the last few hours on this important issue.

It is important for everybody to understand that we are talking now about campaign finance reform, and we ought not take a victory lap by virtue of the fact that it is on the floor of the Senate. We are at the starting line, not the finish line. The starting line was to scratch and fight and prod to try to get campaign finance reform to the floor because a whole lot of people didn't want us to talk about it or to consider it.