

ESTUARY RESTORATION ACT OF 2000

JUNE 9, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 1775]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1775) to catalyze restoration of estuary habitat through more efficient financing of projects and enhanced coordination of Federal and non-Federal restoration programs, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Estuary Restoration Act of 2000”.

SEC. 2. PURPOSES.

The purposes of this Act are—

- (1) to establish an Estuary Restoration Council to coordinate existing Federal estuary restoration programs and to select estuary restoration projects for Federal assistance;
- (2) to develop a national estuary restoration strategy for creating and maintaining effective estuary restoration partnerships among public agencies at all levels of government and to establish new partnerships between the public and private sectors, including agricultural interests and estuary users;
- (3) to provide Federal assistance for estuary restoration projects and to promote efficient financing of such projects; and
- (4) to develop and enhance monitoring and research capabilities for estuary restoration projects to ensure that such projects are based on sound science and to create a national database of estuary restoration information.

SEC. 3. DEFINITIONS.

For the purposes of this Act, the following definitions apply:

- (1) COUNCIL.—The term “Council” means the Estuary Restoration Council established by section 4.

(2) ESTUARY.—

(A) IN GENERAL.—The term “estuary” has the meaning given the terms “estuarine zones” and “estuary” in section 104(n)(4) of the Federal Water Pollution Control Act (33 U.S.C. 1254(n)(4)).

(B) NEAR COASTAL WATERS AND WETLANDS OF THE GREAT LAKES.—In addition to areas covered under subparagraph (A), near coastal waters and wetlands of the Great Lakes that are similar in form and function to estuaries shall be eligible for assistance under this Act.

(3) ESTUARY RESTORATION.—

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

(B) INCLUDED ACTIVITIES.—The term “estuary restoration” includes—

- (i) the reestablishment of the physical features, hydrology, chemistry, and biological components associated with an estuary;
- (ii) except as provided in subparagraph (C), the cleanup of contamination related to the restoration an estuary;
- (iii) the control of non-native and invasive species in the estuary;
- (iv) the reintroduction of species native to the estuary, including through such means as planting or promoting natural succession;
- (v) the construction of reefs to promote fish and shellfish production and to provide habitat for living resources; and
- (vi) other activities that improve the quality of an estuary for human users, fish, wildlife, and other living resources.

(C) EXCLUDED ACTIVITIES.—The term “estuary restoration” does not include—

- (i) an act that constitutes mitigation for the adverse effects of an activity regulated or otherwise required by Federal or State law; or
- (ii) an act that constitutes restitution for natural resource damages required under any Federal or State law.

(4) PROJECT.—The term “project” means an estuary restoration project under consideration or selected by the Council under section 5 to receive financial, technical, or another form of assistance.

(5) FEDERAL ESTUARY MANAGEMENT OR HABITAT RESTORATION PLAN.—

(A) IN GENERAL.—The term “Federal estuary management or habitat restoration plan” means any Federal plan for the restoration of an estuary or degraded estuary habitat that was developed with the substantial participation of appropriate public and private stakeholders.

(B) INCLUDED PLANS AND PROGRAMS.—The term “Federal estuary management or habitat restoration plan” includes—

- (i) a comprehensive conservation and management plan approved under section 320 of the Federal Water Pollution Control Act (33 U.S.C. 1330);
- (ii) a plan submitted under section 118 of the Federal Water Pollution Control Act (33 U.S.C. 1268);
- (iii) a management program containing estuary restoration components approved under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); and
- (iv) the interstate management plan developed pursuant to the Chesapeake Bay Program under section 117 of the Federal Water Pollution Control Act (33 U.S.C. 1267).

(6) INDIAN TRIBE.—The term “Indian tribe” has the meaning given such term by section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(7) NON-FEDERAL INTEREST.—The term “non-Federal interest” means a State, a political subdivision of a State, an Indian tribe, or a regional or interstate agency.

(8) SECRETARY.—The term “Secretary” means the Secretary of the Army.

(9) STATE.—The term “State” has the meaning given the term “coastal State” under section 304(4) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(4)), except that for the purposes of this Act, such term shall include the District of Columbia.

(10) UNDER SECRETARY.—The term “Under Secretary” means the Under Secretary for Oceans and Atmosphere of the Department of Commerce.

SEC. 4. ESTABLISHMENT OF ESTUARY RESTORATION COUNCIL.

(a) IN GENERAL.—There is established an interagency council to be known as the Estuary Restoration Council.

- (b) DUTIES.—The Council shall—
- (1) develop and transmit to the Committee on Resources and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a national strategy for estuary restoration pursuant to section 5 and periodically review and update the strategy;
 - (2) determine the eligibility and priority of project applications submitted under section 6;
 - (3) provide advice in the development of the database and monitoring standards under section 7; and
 - (4) prepare and submit the report required under section 8.
- (c) MEMBERSHIP.—
- (1) IN GENERAL.—The Council shall be composed of the following members:
 - (A) The Secretary.
 - (B) The Under Secretary.
 - (C) The Administrator of the Environmental Protection Agency.
 - (D) The Secretary of the Interior (acting through the Director of the United States Fish and Wildlife Service).
 - (E) The Secretary of Agriculture.
 - (2) EX OFFICIO MEMBERS.—The President may designate the head of any other Federal agency to serve as an ex officio member of the Council.
 - (3) CHAIRPERSON AND VICE-CHAIRPERSON.—The Secretary shall serve as the chairperson of the Council. The Under Secretary shall serve as the vice-chairperson of the Council.
- (d) MEETINGS.—The chair or vice-chair shall—
- (1) convene the first meeting of the Council not later than 90 days after the date of enactment of this Act; and
 - (2) convene additional meetings, as often as appropriate (but not less often than annually), to select projects, and develop a priority order of such projects, for funding under section 6 .
- (e) PROCEDURES.—
- (1) QUORUM.—Three members of the Council shall constitute a quorum.
 - (2) VOTING AND MEETING PROCEDURES.—The Council shall establish procedures for voting and the conduct of meetings.
- (f) ADVISORY BOARD.—
- (1) IN GENERAL.—The Council may establish an advisory board (in this subsection referred to as the “board”) to provide advice and recommendations to the Council on the strategy developed pursuant to section 5 and on the selection and prioritization of projects submitted under section 6.
 - (2) MEMBERS.—The Council shall appoint members of the board representing diverse public and private interests. Members of the board shall be selected such that the board consists of—
 - (A) 2 members representing State agencies with expertise in aquatic habitat restoration;
 - (B) 2 members representing local or regional government agencies with expertise in aquatic habitat restoration;
 - (C) 2 members with recognized academic scientific expertise in aquatic habitat restoration;
 - (D) 2 members representing nongovernmental organizations with expertise in aquatic habitat restoration;
 - (E) 2 members representing estuary users;
 - (F) 1 member representing agricultural interests;
 - (G) 1 member representing Indian tribes; and
 - (H) 1 at-large member.
 - (3) TERMS.—
 - (A) IN GENERAL.—Except as provided by subparagraph (B), members of the board shall be appointed for a term of 3 years.
 - (B) INITIAL MEMBERS.—As designated by the chairperson of the Council at the time of appointment, of the members first appointed—
 - (i) 4 shall be appointed for a term of 1 year; and
 - (ii) 4 shall be appointed for a term of 2 years.
 - (4) VACANCIES.—Whenever a vacancy occurs among members of the board, the Council shall appoint an appropriate individual to fill that vacancy for the remainder of the applicable term.
 - (5) BOARD LEADERSHIP.—The board shall elect among its members a chairperson of the board and a vice-chairperson of the board to represent the board in matters related to its duties under this Act.
 - (6) COMPENSATION.—Members of the board shall not be construed to be employees of the United States, and may not receive compensation for their service

as members of the board, except that while engaged in the performance of their duties away from their homes or regular place of business, members of the board may be allowed necessary travel expenses as authorized by section 5703 of title 5, United States Code.

SEC. 5. ESTUARY RESTORATION STRATEGY.

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Council shall develop and transmit to the Committee on Resources and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate an estuary restoration strategy designed to promote estuary restoration nationwide and improve coordination among existing Federal estuary restoration activities and between Federal and non-Federal estuary restoration activities. Such strategy shall include proposals for—

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

(2) using Federal resources to encourage increased private sector involvement in estuary restoration activities;

(3) ensuring that the strategy will be implemented in a manner that is consistent with the requirements of Federal estuary management or habitat restoration plans;

(4) ensuring the long term conservation of lands and waters restored, enhanced, or otherwise managed under this Act; and

(5) ensuring an equitable geographic distribution of projects funded under this Act.

(b) **CONSIDERATION OF EXISTING FEDERAL PLANS, PROGRAMS, AND PARTNERSHIPS.**—In developing the estuary restoration strategy, the Council shall conduct a review of—

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

(2) Federal programs established under other laws that provide funding for estuary or coastal wetland restoration activities.

(c) **PUBLIC PARTICIPATION.**—The Council shall publish in the Federal Register a draft of the estuary restoration strategy and provide an opportunity for public review and comment. In developing the estuary restoration strategy, the Council shall seek advice from the advisory board established under section 4(f).

(d) **PERIODIC REVISION.**—Using data and information developed through project monitoring and management, and other relevant information, the Council may, as necessary, seek advice from the advisory board to periodically review and update the estuary restoration strategy. The Council shall transmit any updates of the estuary restoration strategy to Congress, after providing for appropriate public review and comment.

SEC. 6. ESTUARY RESTORATION PROJECTS.

(a) **IN GENERAL.**—The Council may provide assistance to non-Federal interests for carrying out estuary restoration projects that are consistent with this Act. In carrying out this section, the Council shall develop guidelines for reviewing and prioritizing estuary restoration projects. Such guidelines shall ensure a comprehensive approach to the selection and prioritization of estuary restoration projects.

(b) **APPLICATIONS FOR ASSISTANCE.**—A non-Federal interest may submit to the Council for consideration under subsection (c) an application for assistance in carrying out an estuary restoration project.

(c) **SELECTION OF PROJECTS.**—

(1) **IN GENERAL.**—The Council shall review applications for estuary restoration projects submitted under subsection (b). Based on the criteria specified in paragraphs (2) and (3), the Council shall determine the eligibility of each project and establish a priority order for carrying out such projects.

(2) **SELECTION CRITERIA.**—The Council may not select a project for funding under this section unless—

(A) the project addresses restoration needs identified in an approved Federal estuary management or habitat restoration plan;

(B) the project promotes—

(i) the restoration of habitat for fish and wildlife, including shellfish, endangered and threatened species, migratory and resident birds, and commercial and sport fish species;

(ii) the improvement of surface and ground water quality and quantity; or

(iii) the restoration of physical features and hydrologic functions, including flood control;

(C) after the Council publishes the estuary restoration strategy under section 5, the project is consistent with the strategy;

(D) the project is cost effective, based on sound science, and technically feasible;

(E) the non-Federal interest proposing the project demonstrates that adequate personnel, funding, and authority exists to carry out and properly maintain the project;

(F) the State in which the non-Federal interest is proposing the project has a dedicated source of funding to acquire or restore habitat, natural areas, and open spaces;

(G) the project will encourage the increased coordination and cooperation of Federal, State, and local government agencies;

(H) the project includes a monitoring plan to ensure that short-term and long-term restoration goals are achieved; and

(I) there is an effective program or plan within the watershed of the project to ensure the long-term conservation of lands and waters restored, enhanced, or otherwise managed by the project.

(3) PRIORITY ESTUARY RESTORATION PROJECTS.—An estuary restoration project shall be given a higher priority in receipt of funding under this section if, in addition to meeting the selection criteria specified in paragraph (2)—

(A) the non-Federal share of the total costs of the project exceeds 50 percent; or

(B) the project includes pilot testing or a demonstration of an innovative technology having the potential for improved cost-effectiveness in estuary restoration.

(d) NON-FEDERAL INTEREST.—The Council may, upon recommendation of the Governor of the State and in consultation with responsible officials from local political jurisdictions in which a project would occur, allow a nongovernmental organization to serve as the non-Federal interest.

(e) LEAD FEDERAL AGENCY.—The Council shall designate a lead Council member for each estuary restoration project funded under this section. The lead Council member shall have primary responsibility for overseeing and assisting in project implementation.

(f) COST SHARING OF ESTUARY HABITAT RESTORATION PROJECTS.—

(1) WRITTEN AGREEMENT.—

(A) CONSTRUCTION COSTS.—The Council shall not provide any assistance for an estuary restoration project until all appropriate non-Federal interests have entered into a written agreement with the lead Federal agency designated under subsection (e) in which the non-Federal interests agree to provide the required non-Federal share of the cost of the project.

(B) OPERATION, MAINTENANCE, REPLACEMENT, AND REHABILITATION COSTS.—An agreement entered into under this paragraph shall require that the non-Federal interest pay 100 percent of any operation, maintenance, replacement, and rehabilitation costs of the estuary restoration project to the extent prescribed by the Council.

(2) FEDERAL SHARE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Federal share of the cost of an estuary restoration project under this section shall not exceed 50 percent of the total cost of the project.

(B) INTERIM ACTIONS.—Pending completion of the estuary restoration strategy under section 5, the Federal share of the cost of an interim action to carry out an estuary restoration project shall not exceed 25 percent of the cost of the interim action.

(3) NON-FEDERAL SHARE.—A non-Federal interest shall provide at least 50 percent of the cost of any project carried out under this section including provision of all lands, easements, rights-of-way, services, and relocations.

SEC. 7. MONITORING, RESEARCH, AND PEER REVIEW OF ESTUARY RESTORATION PROJECTS.

(a) NATIONAL CLEARINGHOUSE OF ESTUARY RESTORATION PROJECT INFORMATION.—

(1) IN GENERAL.—The Under Secretary shall maintain a database of information related to estuary restoration projects, including projects funded under section 6. Such database shall include information on project goals and accomplishments, techniques used to restore habitat, costs of project completion, monitoring data, and other information that the Council determines to be relevant.

(2) MONITORING DATA STANDARDS.—The Under Secretary, in consultation with the Council, shall develop quality control requirements and standard data formats for estuary restoration monitoring data, along with requirements for types of data collected and frequency of monitoring.

(3) **COORDINATION OF DATA.**—The Under Secretary shall compile information pertaining to estuary restoration projects from other Federal, State, and local sources provided that the information meets the quality control requirements and data standards established under this subsection.

(4) **USE OF EXISTING PROGRAMS.**—The Under Secretary shall use existing programs within the National Oceanic and Atmospheric Administration to create and maintain the database required under this subsection.

(5) **PUBLIC AVAILABILITY.**—The Under Secretary shall make the information collected and maintained under this subsection available to the public.

(b) **ESTUARY RESTORATION RESEARCH AND INNOVATION.**—The Under Secretary shall develop and enhance monitoring and research capabilities, through use of existing programs, including the environmental technology innovation program associated with the National Estuarine Research Reserve System established by section 315 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461), to ensure that restoration efforts are based on sound science and innovative technologies.

(c) **PEER REVIEW.**—The Council shall establish a procedure for providing scientific peer review, coordinated through the National Estuary Research Reserve System established by section 315 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461), of estuary restoration projects submitted under section 6.

SEC. 8. REPORT.

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

(b) **CONTENTS OF REPORT.**—A report transmitted under subsection (a) shall include—

(1) the number of acres of estuary habitat restored under this Act and the status of other acres in need of restoration;

(2) descriptions of, and partners involved with, projects selected, in progress, and completed under this Act;

(3) information related to ongoing monitoring of projects to ensure that short-term and long-term restoration goals are achieved;

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

(5) a review of how the information described in paragraphs (1) through (4) has been incorporated in the selection and implementation of estuary habitat restoration projects;

(6) a review of efforts made to maintain a database of restoration projects; and

(7) a review of the measures taken to provide the information described in subparagraphs (1) through (4) to persons with responsibility for restoring estuaries;

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

(a) **AUTHORIZATION FOR RESTORATION PROJECTS.**—

(1) **IN GENERAL.**—There is authorized to be appropriated to the Secretary to carry out estuary restoration projects under this Act \$50,000,000 for each of fiscal years 2002, 2003, and 2004. Such amounts shall remain available until expended.

(2) **SET-ASIDE FOR ADMINISTRATIVE EXPENSES OF THE COUNCIL.**—Of the amounts appropriated for a fiscal year under this subsection, not more than \$1,000,000 may be used by the Secretary for administration and operation of the Council and advisory board.

(3) **DISTRIBUTION OF APPROPRIATIONS FOR ESTUARY RESTORATION ACTIVITIES.**—The Secretary shall allocate funds made available to carry out this Act to the members of the Council, based on the need for the funds and such other factors as the Council determines to be appropriate to carry out this Act.

(b) **AUTHORIZATION FOR MONITORING DATABASE.**—There is authorized to be appropriated to the Under Secretary for the acquisition, maintenance, and management of monitoring data on restoration projects carried out under this Act \$1,000,000 for each of fiscal years 2002, 2003, and 2004. Such amounts shall remain available until expended.

SEC. 10. AGENCY CONSULTATION AND COORDINATION.

(a) **IN GENERAL.**—In carrying out this Act, the Council shall, as necessary, consult with, cooperate with, and coordinate its activities with the activities of other appropriate Federal agencies.

(b) COOPERATIVE AGREEMENTS; MEMORANDA OF UNDERSTANDING.—In carrying out this Act, the Council may enter into cooperative agreements and memoranda of understanding with Federal agencies and non-Federal interests.

(c) FEDERAL AGENCY FACILITIES AND PERSONNEL.—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 Council in carrying out its duties under this Act.

(d) REIMBURSEMENT.—Federal agencies may accept reimbursement from the Council for providing services, facilities, and personnel under subsection (c).

PURPOSE OF THE BILL

The purposes of H.R. 1775 are to catalyze restoration of estuary habitat through more efficient financing of projects and enhanced coordination of federal and non-Federal restoration programs, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

Estuaries are coastal waterbodies that occur where freshwater from rivers and streams mixes with saltwater from the ocean. These transition zones between inland and marine environments are strongly influenced by land use activities in their surrounding watersheds. Coastal waters and wetlands along the Great Lakes have similar characteristics and provide many of the same natural functions as estuaries. Estuaries provide some of the most biologically and economically productive habitat in the country, and are important for migratory birds, commercially valuable fish species, shellfish, and other wildlife. According to the National Oceanic and Atmospheric Administration, more than 75 percent of the commercially important fish and shellfish and 80 percent of recreational fish species depend on estuaries during some point in their life cycles. In 1998, U.S. commercial fishermen alone landed about 9.2 billion pounds of fish and shellfish at U.S. ports, which was valued at approximately \$3.1 billion. The thousands of firms located throughout the United States which produce, process and distribute this fish and shellfish combined contribute more than \$25 billion to the U.S. Gross National Product, a significant contribution to the national economy.

Years of intensive use have degraded many of these sensitive areas. Estuaries in the United States suffer from a host of environmental problems including poor water quality, sediment contamination, habitat loss, harmful algal blooms, and altered freshwater flows. Out of the 30,000 square miles of estuaries in the United States, the Environmental Protection Agency has reported to Congress in the latest National Water Quality Inventory that nearly 40 percent are impaired. From pre-industrial times to the present, it is estimated that over 55 million acres of coastal wetlands in the continental United States have been degraded or destroyed. In the Chesapeake Bay, habitat degradation and disease have resulted in a declining oyster harvest from approximately 133 million pounds in 1880 to 2.86 million pounds in 1998. Narragansett Bay in Rhode Island suffers from hypoxia during the summer and has lost as much as 70 percent of its eel grass beds, a significant reduction in habitat for juvenile fish. The Louisiana Department of Natural Resources estimates that the State is losing annually 25 to 30 square miles of coastal wetlands and estuary habitat along the Mississippi River delta on the Gulf of Mexico due to subsidence, shoreline ero-

sion, freshwater and sediment deprivation, saltwater intrusion, channelization and invasive species. Similar problems have been cited for Long Island Sound, Tampa Bay, Galveston Bay, San Francisco Bay, and many other coastal areas.

Due to the importance of estuaries to fish, wildlife, human recreation, commercial activities, and the national economy, the Committee feels that there is a need for additional funding to carry out estuary restoration nationwide. However, the Committee believes that this funding should be coordinated with and be consistent with existing estuary and wetland restoration programs. As reported by the Resources Committee, H.R. 1775 will supplement existing estuary programs, streamline the project selection and funding process, and provide equal opportunity for all of the federal agencies with expertise and responsibility for managing estuaries to develop the priority project list for funding. Over the last thirty years, Congress has appropriated hundreds of millions of dollars to develop federal estuary management and habitat restoration plans through programs developed pursuant to the Coastal Zone Management Act, the Coastal Wetlands Planning, Protection, and Restoration Act, and the Clean Water Act. Clean Water Act programs, including the National Estuary Program, the Chesapeake Bay Program, and the Great Lakes Program, have been successful at developing locally-led management plans, but funds appropriated for these programs have been insufficient to fully implement the restoration components identified in the plans. H.R. 1775 provides a unified approach to address the aquatic habitat restoration needs identified by these plans and fills a critical role for funding large-scale, complicated estuary restoration projects that could not otherwise be undertaken given the limited funding for these programs.

The Estuary Restoration Council established by H.R. 1775 will coordinate the estuary restoration activities of several federal agencies. H.R. 1775 builds upon existing Army Corps of Engineers authority and expertise for water resources development and construction, including aquatic ecosystem restoration (section 206 of the Water Resources Development Act of 1996), fish and wildlife mitigation (section 906 of the Water Resources Development Act of 1986), and the environmental protection mitigation fund (section 908 of the Water Resources Development Act of 1986). The National Oceanic and Atmospheric Administration (NOAA) maintains a system of 25 National Estuarine Reserves, which are federal-State partnerships established under the 1972 Coastal Zone Management Act to study estuarine processes and ecosystems. NOAA also maintains an Office of Response and Restoration to address degraded marine habitat and is responsible for protecting important spawning and rearing habitat of many marine species through the National Marine Fisheries Service. The Fish and Wildlife Service (FWS) is charged with protecting coastal habitat for migratory waterfowl, shorebirds and other wildlife that use estuaries at different times during the year. FWS also assists with measures to control invasive species that impact estuaries and Great Lakes habitat. The Environmental Protection Agency is responsible for managing and protecting the quality of the nation's waters. The Department of Agriculture provides assistance for such things as small watershed improvements, agricultural best management practices, invasive species control, conservation and wetland re-

serve programs, and other activities. These agencies also participate on the Administration's "Coastal America" partnership, which was created to unify federal coastal policy. The Committee believes that the Council should rely on the existing infrastructure created through Coastal America to implement the provisions of H.R. 1775 as appropriate.

H.R. 1775 directs the Council to establish an advisory board to assist with the development of a national estuary restoration strategy and the selection of estuary restoration projects. The Committee believes that local, State, and non-governmental input is important for carrying out successful habitat restoration projects. In 1987, Congress created the National Estuary Program (NEP) to promote comprehensive planning for the long term protection of 28 nationally significant estuaries through collaborative, voluntary partnerships between federal, State and local governments, private, and non-profit interests. The management conferences for these estuaries have developed management and restoration plans with significant public input. Sufficient local and State input for estuary restoration projects can be derived from the use of a well-balanced advisory board with expertise in aquatic ecosystem restoration, instead of regional estuary restoration councils. Members of the board should have knowledge of fresh or salt water aquatic habitat restoration, and the Committee encourages the Council to select members for the advisory board who represent a diverse range of views and geographic areas, including those who utilize estuarine areas.

Projects selected for funding will be developed with a substantial amount of public review and input. H.R. 1775 requires that projects be selected from among those restoration needs identified under federal estuary management or habitat restoration plans, such as State coastal zone management plans or the comprehensive conservation and management plans for estuaries in the NEP. Non-Federal interests (States, local governments, Indian tribes, and nongovernmental organizations) may submit applications (either singly or jointly) for assistance in carrying out an estuary restoration project to the Council. The Council may allow a non-governmental organization with estuary restoration experience to serve as the non-Federal interest with the concurrence of the Governor of the State and the support of the appropriate locally-elected officials. This ensures that only those projects with substantial support will be funded, and that an elected government official will ultimately be responsible for the implementation of the project.

The Council, with input from the non-federal advisory board, will review, select, and prioritize eligible projects for funding. The Council should develop guidelines for determining whether a project is cost-effective that are consistent with the procedures used by the Army Corps of Engineers for other water resources development and aquatic restoration projects. The Council should also develop procedures for providing peer review of estuary restoration projects through the National Estuarine Research Reserve System. The Committee intends that the Council rely on restoration experts who receive funding through the National Estuarine Research Reserve System or who perform research at System sites (not the Reserve managers) to carry out the necessary peer review. These sci-

entists participate in research projects at the Reserve System, and represent a broad range of academic disciplines and institutions.

The Committee recognizes that many estuary restoration projects will be expensive. The Council has the discretion to determine the appropriate mechanisms for selecting a balance of small and large restoration projects, as well ensuring equitable geographic distribution of projects. Large restoration projects may require multi-year funding agreements and several construction seasons. The Committee envisions that projects that do not receive funding in a given fiscal year may remain eligible for funding in subsequent years, provided the non-Federal interest, State and local governments continue to support the project.

H.R. 1775 directs the Under Secretary for Oceans and Atmosphere of the Department of Commerce to establish monitoring criteria, data standards and develop a national clearinghouse of estuary restoration information. The Under Secretary should make the information available to the public on the Internet in a format that is useful for academic research and other estuary restoration programs. The Committee strongly encourages the Under Secretary to use existing programs, such as the National Ocean Service's Office of Response and Restoration, the National Marine Fisheries Service's Restoration Center, and the National Estuarine Research Reserve System to carry out the monitoring and database directives of H.R. 1775.

This legislation provides a balanced approach to selecting and prioritizing estuary restoration projects. It addresses the need for increased funding for estuary restoration, and relies upon the strengths of existing federal laws and programs to implement a coordinated, cost-effective program for restoring estuaries.

COMMITTEE ACTION

H.R. 1775 was introduced on May 12, 1999, by Representative Wayne Gilchrest (R-MD). The bill was primarily referred to the Committee on Transportation and Infrastructure and additionally to the Committee on Resources. Within the Resources Committee, the bill was referred to the Subcommittee on Fisheries Conservation, Wildlife and Oceans. On September 23, 1999, the Subcommittee held a hearing on the bill. On October 28, 1999, the Subcommittee met to mark up the bill. The bill was ordered favorably reported to the Full Committee by voice vote without amendment. On May 24, 1999, the Full Resources Committee met to consider the bill. Chairman Don Young (R-AK) offered an amendment in the nature of substitute to simplify the project selection process and enhance the role of NOAA in selecting and carrying out estuary restoration projects. Congressman George Miller (D-CA) offered an amendment to the amendment to clarify that Indian tribes and Alaska natives were eligible non-Federal interests and to add a seat on the advisory board for Indian tribes. The amendment was adopted by voice vote. The amendment in the nature of a substitute, as amended, was then adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS OF BILL AS ORDERED REPORTED

Section 1. Short title

The short title of this Act is the “Estuary Restoration Act of 2000”.

Section 2. Purposes

The purposes of H.R. 1775 are to establish an Estuary Restoration Council to coordinate federal estuary restoration activities; to develop a national estuary restoration strategy; to provide federal assistance to implement voluntary estuary restoration projects; and to develop and enhance monitoring and research capabilities for estuary restoration projects.

Section 3. Definitions

Section 3 defines the terms used in the Act. The term “estuary” is defined to be consistent with the combined definition of the terms “estuary” and “estuarine zone” as they are used in the Clean Water Act (33 U.S.C. 1254(n)(4)). Estuaries are transitional zones between fresh and salt water. Projects funded under this Act will be carried out in estuaries and associated habitat which includes, but is not limited to, salt marshes, coastal forested wetlands, coastal and intertidal areas, bays, harbors, lagoons, inshore waters, and channels. Although they are not considered to be estuaries, coastal waters and wetlands on the Great Lakes provide similar habitat, hydrologic, and water quality functions. These areas are eligible for projects under this Act. Near-coastal waters and wetlands on the Great Lakes may include coastal wetlands, marshes, swamps, embayments, harbors, drowned river mouths and other geographical features that provide estuary-like habitat and have a direct hydrological connection with the Lakes.

The term “estuary restoration” defines the types of projects that can be undertaken with assistance under this Act. Estuary restoration includes the control of non-native and invasive species, and reestablishing native estuarine species, including plants such as sea grass or spartina in cases where reestablishing native vegetation is important for the long-term protection of shorelines from erosion and for providing habitat to benefit fish and wildlife.

The term “non-Federal interest” is defined to be consistent with existing uses of the term in other Army Corps of Engineers programs, except that for the purposes of H.R. 1775, the term includes Indian tribes and native Alaskans as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

Section 4. Establishment of Estuary Restoration Council

Section 4 establishes a federal Estuary Restoration Council tasked with developing and implementing a national strategy for estuary restoration, selecting and prioritizing estuary restoration projects for funding, developing monitoring standards for restoration projects and incorporating monitoring information into a database, and reporting on the progress of the national estuary restoration strategy to Congress. The Council consists of the Secretary of the Army, the Under Secretary for Oceans and Atmosphere of the Department of Commerce, the Administrator of the Environmental

Protection Agency, the Secretary of the Interior (acting through the Director of the U.S. Fish and Wildlife Service), and the Secretary of Agriculture. The President may designate the head of any other federal agency as a non-voting, ex-officio member. The Secretary of the Army is designated as the Council chair, and the Under Secretary is designated as the vice-chair. The Council is directed to establish procedures for meetings, voting, and other administrative functions of the Council.

H.R. 1775 allows the Council to establish an advisory board to provide recommendations to the Council on implementing the Act and selecting projects. The board will help to create partnerships between all levels of government and between the public and private sectors. The board consists of 13 members, representing geographically diverse state, local and regional governments, Indian tribes, non-profit organizations, well-known scientists with expertise in aquatic restoration, estuary user groups, agricultural interests, and an at-large member.

Section 5. Estuary restoration strategy

Section 5 directs the Estuary Restoration Council to develop a national estuary restoration strategy based on a review of current federal estuary management or habitat restoration plans, existing estuary and coastal wetland restoration programs, and the advice and recommendations of the advisory board. The strategy shall include proposals for establishing new public-private partnerships, using the projects authorized under this Act to increase private involvement in estuary restoration, and ensuring that the strategy will be implemented consistent with existing federal estuary management programs. The Council shall provide appropriate opportunity for public notice and comment, and submit the completed strategy to the Committees on Transportation and Infrastructure and Resources of the House and the Committee on Environment and Public Works of the Senate. The Council may periodically review, update, and submit to the Committees changes to the estuary restoration strategy.

Section 6. Estuary restoration projects

Section 6 authorizes the Council to provide assistance to non-Federal interests, including State, local and regional governments, to carry out estuary restoration projects. Eligible non-Federal interests are defined to be consistent with existing Army Corps of Engineers construction authorities. Non-Federal interests submit project proposals and applications for assistance to the Council for consideration. The assistance will be provided for specific estuary restoration projects through contracts and memoranda of agreement. A non-governmental organization may serve as the non-Federal interest with the consent of the Governor of the State in which a project will be carried out. The Council is required to consult with the appropriate locally-elected officials prior to allowing a non-governmental organization to serve as the non-Federal interest. The Council selects appropriate projects that meet the criteria for funding and prioritizes the list of projects. To be eligible to receive funding, the non-Federal interest must demonstrate the following:

- The project addresses restoration needs identified in an approved federal estuary management or habitat restoration plan;

- The project will promote the restoration of habitat for fish and wildlife, improve surface and ground water quality or quantity, or restore physical and hydrologic features;
- The project is consistent with the national estuary restoration strategy;
- The project is based on sound science and is technically feasible, including being cost-effective;
- The non-Federal interest has adequate personnel, funding, and authority to carry out and maintain the project;
- The State in which the project will be carried out has a dedicated source of funding to acquire or restore habitat, natural areas, and open spaces;
- The project will encourage increased coordination and cooperation between all levels of government;
- The project includes a monitoring plan to ensure that short and long-term goals are achieved; and
- There is an effective program or plan in the project's watershed which will ensure the long-term success of the project and prevent re-impairment of the habitat restored by the project.

In addition to the selection criteria listed above, the Council shall give priority consideration to projects where the non-federal share will exceed 50 percent of the total cost of the project and to projects that include pilot testing or demonstration of innovative restoration technology.

After a project has been selected for funding, the Council shall choose a lead federal agency from the members of the Council to oversee the implementation of the project. H.R. 1775 directs the Secretary to redistribute funding through the lead agency, as appropriate, to carry out estuary restoration projects. The lead agency shall enter into written agreements with any appropriate non-Federal interest involved with project implementation under which the non-Federal interests agree to provide at least 50 percent of the total cost of the project, including the provision of all lands, easements, rights-of-way, services, and relocation. For example, the non-Federal interest would be expected to provide the lands necessary for disposal of dredged materials for an estuary project. The non-Federal interest shall also agree to pay 100 percent of the costs of operation and maintenance of the project, and in the event of failure, replacement or rehabilitation of the restored estuary. This requirement is similar to existing Army Corps of Engineers authorities for water resources projects. Pending the completion of the national estuary restoration strategy, the federal share of a project is limited to 25 percent of the total cost of the project.

Section 7. Monitoring, research, and peer review of estuary restoration projects

Section 7 directs the Under Secretary to establish and maintain a database of estuary restoration projects and monitoring data that are deemed appropriate by the Council. The database shall be made available to the public. The Under Secretary shall establish data quality standards, monitoring criteria, and standardized formats for reporting estuary monitoring information. To the extent practicable, the Under Secretary shall include information from other sources pertaining to estuary restoration. The Under Sec-

retary is directed to utilize existing programs within NOAA to carry out and implement this section.

The Under Secretary shall also utilize the monitoring and research capabilities of the National Estuarine Research Reserve System to ensure that restoration efforts are based on sound science. Section 7 requires the Council to establish procedures for providing scientific peer review coordinated through the National Estuarine Research Reserve System to determine whether a project meets the selection criteria of being technically feasible and based on sound science (including cost-effectiveness).

Section 8. Report

The Council shall transmit a biennial report to the States, the Committee on Resources and the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Environment and Public Works of the Senate, on the activities carried out under this Act, including:

- The number of estuary habitat acres restored and the status of other acres in need of restoration;
- Descriptions of projects and partners receiving assistance under the Act;
 - Information related to ongoing monitoring to measure progress towards achieving short and long-term goals;
 - Estimates of the success of different restoration strategies; and
 - A review of the implementation of an estuary restoration monitoring database.

The report should include detailed descriptions of projects funded under this Act. These descriptions should include information about any land acquired with funds under this Act, the use of non-federal lands to implement the project, the long-term monitoring and maintenance requirements of each project, and any other information that the Council deems necessary.

Section 9. Authorization of appropriations

Section 8 authorizes \$50 million per year for each of fiscal years 2002 through 2004 to be appropriated to the Secretary to carry out estuary restoration projects. Not more than \$1 million may be used for the administrative expenses of the Council and advisory board. The Secretary is directed to allocate funds made available to carry out this Act to members of the Council as necessary and appropriate to carry out estuary restoration projects. Additionally, section 9 authorizes \$1 million for each of fiscal years 2002 through 2004 to be appropriated to the Under Secretary to develop and maintain an estuary restoration and monitoring database.

Section 10. Agency consultation and coordination

Section 10 directs the Council to consult, coordinate, and cooperate with other federal agencies to carry out this Act. The Council is authorized to enter into cooperative agreements and memoranda of understanding with federal and non-Federal interests to implement the Act. Federal agencies may accept reimbursement from the Council for providing services, facilities, and personnel to implement estuary restoration projects.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

FEDERAL ADVISORY COMMITTEE STATEMENT

The functions of the proposed advisory committee authorized in the bill are not currently being nor could they be performed by one or more agencies, an advisory committee already in existence or by enlarging the mandate of an existing advisory committee.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. Government Reform Oversight Findings. Under clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on this bill.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 2, 2000.

Hon. DON YOUNG,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1775, the Estuary Restoration Act of 2000.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 1775—Estuary Restoration Act of 2000

Summary: H.R. 1775 would establish the Estuary Restoration Council, consisting of representatives of multiple federal agencies, to develop a strategy for restoring estuary habitats and provide financial assistance to nonfederal entities for restoration projects. The bill would authorize the appropriation of \$150 million over the 2002–2004 period to the Corps of Engineers for that purpose. In addition, the bill would authorize the appropriation of \$3 million over the same period to the National Oceanic and Atmospheric Administration to collect information to monitor the effectiveness of estuary restoration projects. Assuming appropriation of the specified amounts, CBO estimates that implementing the bill would cost \$117 million over the 2001–2005 period, and \$36 million after 2005.

H.R. 1775 contains no private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). Any expenditures made by state and local governments to satisfy the matching requirements of grants authorized by this bill would be voluntary. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1775 is shown in the following table. The costs of this legislation would fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—				
	2001	2002	2003	2004	2005
SPENDING SUBJECT TO APPROPRIATION					
Authorization Level	0	51	51	51	0
Estimated Outlays	0	8	31	46	32

Basis of estimate: CBO estimates that implementing the bill would result in additional outlays of \$117 million over the 2001–2005 period, assuming appropriation of the amounts authorized for each year. Estimated outlays are based on historical spending patterns for similar activities.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: H.R. 1775 contains no private-sector or intergovernmental mandates as defined in UMRA. Any expenditures made by state and local governments to satisfy the matching requirements of grants authorized by this bill would be voluntary.

Previous CBO estimate: On March 27, 2000, CBO transmitted a cost estimate for H.R. 1775, as ordered reported by the House Committee on Transportation and Infrastructure on March 16, 2000. The two versions of H.R. 1775 are similar; however, the version approved by the Transportation and Infrastructure Committee would

authorize the appropriation of \$172 million more than the version approved by the Resources Committee.

Estimate prepared by: Federal Costs: Rachel Applebaum; Impact on State, Local, and Tribal Governments: Marjorie Miller; and Impact on the Private Sector: Natalie Tawil.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

