

105TH CONGRESS  
1ST SESSION

# H. R. 2374

To amend the Federal Water Pollution Control Act to provide special funding to States for implementation of national estuary conservation and management plans, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 1, 1997

Mrs. LOWEY (for herself, Ms. DELAURO, and Mr. SHAYS) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

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## A BILL

To amend the Federal Water Pollution Control Act to provide special funding to States for implementation of national estuary conservation and management plans, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “DeLauro-Lowey Water  
5       Pollution Control and Estuary Restoration Act”.

6       **SEC. 2. FINDINGS AND PURPOSES.**

7       (a) FINDINGS.—The Congress finds the following:

1           (1) The Nation's estuaries are a vital natural  
2       resource to which many regional economies are  
3       closely tied.

4           (2) Many of the Nation's estuaries are under a  
5       severe threat from point source pollution and pol-  
6       luted run-off (nonpoint source pollution) and from  
7       habitat alteration and destruction.

8           (3) Only through expanded investments in  
9       waste water treatment and other water and sediment  
10      pollution control and prevention efforts can the envi-  
11      ronmental and economic values of the Nation's estu-  
12      aries be restored and protected.

13          (4) The National Estuary Program created  
14      under the Federal Water Pollution Control Act has  
15      significantly advanced the Nation's understanding of  
16      the declining condition of the Nation's estuaries.

17          (5) The National Estuary Program has also  
18      provided precise information about the corrective  
19      and preventative measures required to reverse the  
20      degradation of water and sediment quality and to  
21      halt the alteration and destruction of vital habitat in  
22      the Nation's estuaries.

23          (6) The level of funding available to States, mu-  
24      nicipalities, and the Environmental Protection Agen-  
25      cy for implementation of approved conservation and

1 management plans is inadequate, and additional fi-  
2 nancial resources must be provided.

3 (7) Funding for implementation of approved  
4 conservation and management plans should be pro-  
5 vided under the State revolving loan fund program  
6 authorized by title VI of the Federal Water Pollu-  
7 tion Control Act.

8 (8) Authorization levels for State revolving loan  
9 fund capitalization grants should be increased by an  
10 amount necessary to ensure the achievement of the  
11 goals of the Federal Water Pollution Control Act.

12 (b) PURPOSES.—The purposes of this Act are—

13 (1) to expand and strengthen efforts to combat  
14 the serious and growing water and sediment quality  
15 problems in estuaries of national significance identi-  
16 fied under the Federal Water Pollution Control Act;

17 (2) to provide significant levels of Federal as-  
18 sistance to States and municipalities seeking to im-  
19 plement comprehensive conservation and manage-  
20 ment plans for those estuaries;

21 (3) to reauthorize section 320 of the Federal  
22 Water Pollution Control Act in order to improve the  
23 development and implementation of comprehensive  
24 conservation and management plans for those estu-  
25 aries; and

1           (4) to extend and increase Federal support for  
 2           the State water pollution control revolving fund pro-  
 3           gram in order to address various water and sediment  
 4           quality problems in the waters of the United States.

5   **SEC. 3. EXTENSION OF WATER POLLUTION CONTROL RE-**  
 6                           **VOLVING LOAN FUND PROGRAM.**

7           (a) ALLOTMENT FORMULA.—Section 604(a) of the  
 8   Federal Water Pollution Control Act (33 U.S.C. 1383(a))  
 9   is amended—

10           (1) by striking “Sums authorized” and insert-  
 11           ing “Except as provided in section 608, sums au-  
 12           thorized”; and

13           (2) by striking “and 1990” and inserting  
 14           “through 2004”.

15           (b) FUNDING.—Section 607 of such Act (33 U.S.C.  
 16   1387) is amended by striking paragraph (1) and all that  
 17   follows through the period at the end and inserting the  
 18   following:

19           “(1) \$2,500,000,000 for fiscal year 1998.

20           “(2) \$2,750,000,000 for fiscal year 1999.

21           “(3) \$3,000,000,000 for fiscal year 2000.

22           “(4) \$3,500,000,000 for fiscal year 2001.

23           “(5) \$3,750,000,000 for fiscal year 2002.

24           “(6) \$4,000,000,000 for each of fiscal years  
 25           2003 and 2004.”.

1 **SEC. 4. FUNDING FOR IMPLEMENTATION OF ESTUARY CON-**  
 2 **SERVATION AND MANAGEMENT PLANS.**

3 Title VI of the Federal Water Pollution Control Act  
 4 (33 U.S.C. 1381 et seq.) is amended by adding at the end  
 5 the following:

6 **“SEC. 608. CAPITALIZATION GRANTS TO STATES FOR IM-**  
 7 **PLEMENTING ESTUARY CONSERVATION AND**  
 8 **MANAGEMENT PLANS.**

9 “(a) SET-ASIDE FOR IMPLEMENTING APPROVED  
 10 PLANS.—

11 “(1) SET-ASIDE.—

12 “(A) IN GENERAL.—Of amounts appro-  
 13 priated under the authority of section 607 for  
 14 each fiscal year, the applicable percentage  
 15 under subparagraph (B) shall be used by the  
 16 Administrator to make capitalization grants  
 17 under this title to qualified States.

18 “(B) PERCENTAGE.—For purposes of sub-  
 19 section (A), the applicable percentage is—

20 “(i) 2.5 percent for fiscal year 1998;

21 “(ii) 5 percent for fiscal year 1999;

22 “(iii) 7.5 percent for fiscal year 2000;

23 “(iv) 10 percent for fiscal year 2001;

24 “(v) 12.5 percent for fiscal year 2002;

25 “(vi) 15 percent for fiscal year 2003;

26 and

1 “(vii) 15 percent for fiscal year 2004.

2 “(2) ALLOCATION.—Of amounts required under  
3 paragraph (1) to be used for grants to qualified  
4 States for a fiscal year, the Administrator shall allo-  
5 cate to each qualified State an amount equal to—

6 “(A) the total amounts required under  
7 paragraph (1) to be used for such grants for  
8 that fiscal year, multiplied by

9 “(B) the percentage specified by the Ad-  
10 ministrator for the fiscal year for that State  
11 under paragraph (3)(B).

12 “(3) DETERMINATION OF STATE NEEDS.—Not  
13 later than 120 days after the date on which all  
14 qualified States have submitted under paragraph  
15 (4)(A) estimates of the needs of the States for finan-  
16 cial assistance for a fiscal year, the Administrator  
17 shall—

18 “(A) determine the needs of each qualified  
19 State for financing implementation of approved  
20 estuary plans in the fiscal year, based on—

21 “(i) the Administrator’s ranking of  
22 each project or activity included in all the  
23 needs estimates submitted, according to  
24 the severity of the pollution problem each  
25 project or activity will address; and

1           “(ii) the Administrator’s determina-  
2           tion of which projects or activities should  
3           be included in the approved estimate of  
4           needs for each qualifying State; and

5           “(B) submit to the Congress a report de-  
6           scribing the cost of each project or activity in-  
7           cluded in each approved estimate of needs for  
8           each State, the total for all qualified States,  
9           and a percentage for purposes of paragraph  
10          (2)(B) representing such approved needs of the  
11          qualified State relative to such approved needs  
12          of all qualified States.

13          “(4) STATE ESTIMATE OF NEEDS.—

14               “(A) SUBMISSION.—Not later than July 1  
15               of each year, each qualified State shall submit  
16               to the Administrator an estimate of the needs  
17               of the State for financial assistance for imple-  
18               menting, monitoring, and enforcing approved  
19               estuary plans in the next fiscal year. Such esti-  
20               mates shall include a description of each project  
21               and activity for which funding is being sought,  
22               the entity which would receive the funding, the  
23               need for the project or activity, and its cost.  
24               Such estimates may be included in a qualified  
25               State’s intended use plan under section 606(c),

1           and shall maximize economical planning, de-  
2           sign, and construction.

3           “(B) CONSULTATION.—In preparing an es-  
4           timate of needs under this paragraph, a quali-  
5           fied State shall consult with each management  
6           conference under section 320 that is implement-  
7           ing an approved estuary plan and of which the  
8           State is a member.

9           “(C) APPROVAL REQUIRED.—A qualified  
10          State may not submit an estimate of needs  
11          under this paragraph unless the estimate is ap-  
12          proved by each management conference under  
13          section 320 that is implementing an approved  
14          estuary plan and of which the State is a mem-  
15          ber.

16          “(5) FAILURE TO SUBMIT ESTIMATE.—A quali-  
17          fied State which does not submit an estimate for a  
18          fiscal year in accordance with paragraph (4) shall  
19          not be eligible for any allocation under paragraph  
20          (2) for that fiscal year.

21          “(b) SEPARATE ACCOUNT.—

22          “(1) ESTABLISHMENT OF ACCOUNT.—A quali-  
23          fied State shall establish a separate account in its  
24          water pollution control revolving fund established  
25          under this title, which shall be known as an ‘Estuary



Account'. Amounts of grants to a qualified State under subsection (a) shall be deposited into the Estuary Account established by the State.

“(2) USE.—A qualified State may use amounts in its Estuary Account only for providing assistance for the purpose of implementing approved estuary plans that apply to the State.

“(c) TYPES OF ASSISTANCE.—

“(1) IN GENERAL.—Except as otherwise provided by State law and subject to paragraph (2), amounts in the Estuary Account of a qualified State may be used only for providing the types of assistance described in section 603(d).

“(2) SPECIAL RULES.—

“(A) EXTENDED AMORTIZATION PERIOD.—Notwithstanding section 603(d)(1)(A), a loan made by a qualified State with amounts in the Estuary Account of the State may be for a term of not to exceed 40 years or the useful life of any facility constructed with the loan, whichever is less, if the borrower demonstrates to the State that the borrower is experiencing financial hardship.

“(B) PRINCIPAL SUBSIDIES.—In addition to the types of assistance authorized by section

1           603(d), a qualified State may use amounts of  
2           interest earned on amounts in its Estuary Ac-  
3           count to subsidize up to 90 percent of the prin-  
4           cipal portion of the amount of debt service of  
5           an entity referred to in section 603(c)(1) that,  
6           notwithstanding the availability of interest free  
7           loans under section 603(d)(1)(A) and extended  
8           amortization under subparagraph (A), the State  
9           determines is financially unable to carry out a  
10          project that is necessary for the implementation  
11          of an approved estuary plan.

12          “(d) STATE MATCHING.—Notwithstanding section  
13          602(b)(2), a qualified State shall deposit into its Estuary  
14          Account an amount from State funds equal to at least 15  
15          percent of amounts deposited into the account in the form  
16          of capitalization grants to the State under this section.

17          “(e) DEFINITIONS.—In this section, the following  
18          definitions apply:

19                  “(1) APPROVED ESTUARY PLAN.—The term  
20                  ‘approved estuary plan’ means a comprehensive con-  
21                  servation and management plan approved by the  
22                  Administrator under section 320(h).

23                  “(2) ESTUARY ACCOUNT.—The term ‘Estuary  
24                  Account’ means a separate account established by a

1 qualified State under subsection (b) in its water pol-  
2 lution control revolving fund.

3 “(3) QUALIFIED STATE.—The term ‘qualified  
4 State’ means a State that—

5 “(A) is subject to an approved estuary  
6 plan;

7 “(B) has established an estuary account in  
8 accordance with subsection (b); and

9 “(C) has fulfilled its responsibilities under  
10 section 320 with respect to each management  
11 conference under that section of which it is a  
12 member.”.

13 **SEC. 5. DISCRETIONARY GRANTS FOR IMPLEMENTATION**  
14 **OF ESTUARY CONSERVATION AND MANAGE-**  
15 **MENT PLANS.**

16 (a) IN GENERAL.—Section 320 of the Federal Water  
17 Pollution Control Act (33 U.S.C. 1330) is amended by re-  
18 designating subsection (k) as subsection (l) and by insert-  
19 ing after subsection (j) the following new subsection:

20 “(k) GRANTS FOR IMPLEMENTATION OF CONSERVA-  
21 TION AND MANAGEMENT PLANS.—

22 “(1) IN GENERAL.—The Administrator shall  
23 make grants to State, interstate, and regional water  
24 pollution control agencies and entities, State coastal  
25 zone management agencies, interstate agencies,

1 other public or nonprofit agencies, institutions, orga-  
2 nizations, Indian tribes, and individuals for imple-  
3 mentation of conservation and management plans  
4 approved under this section.

5 “(2) PURPOSES.—Grants under this subsection,  
6 shall be made to assist in aspects of implementation  
7 of such plans which involve innovative technology,  
8 research and development, education, pollution pre-  
9 vention, comprehensive land use planning, and other  
10 activities not generally funded by the State under  
11 this title.

12 “(3) FEDERAL SHARE.—The amount of grants  
13 to any person (including a State, interstate, or re-  
14 gional agency or entity) under this subsection for a  
15 fiscal year shall not exceed 75 percent of the cost of  
16 implementation of such plans.

17 “(4) AUTHORIZATION OF APPROPRIATIONS.—  
18 There is authorized to be appropriated to the Ad-  
19 ministrator to carry out this subsection not to ex-  
20 ceed \$50,000,000 per fiscal year for each of fiscal  
21 years 1998 through 2004.”.

22 (b) FUNDING FOR INTERIM ACTIONS.—Section  
23 320(g)(2) of such Act (33 U.S.C. 1330(g)(2)) is amended  
24 by inserting before the period the following: “, and for ap-  
25 propriate interim actions that are adopted by the manage-

1 ment conference and approved in accordance with sub-  
 2 section (h) to protect the water and sediment quality of  
 3 the estuary that is the subject of such a plan”.

4 (c) GRANT REPORTING.—Section 320(h) of such Act  
 5 (33 U.S.C. 1330(h)) is amended by striking “subsection  
 6 (g)” and inserting “subsection (i) and that receives a  
 7 grant under subsection (m)”.

8 (d) CONFORMING AMENDMENT.—Section 320(g) of  
 9 such Act (33 U.S.C. 1330(g)) is amended by inserting  
 10 “DEVELOPMENT” before “GRANTS.—”.

# 11 **SEC. 6. EXTENSION OF CONSERVATION AND MANAGEMENT**

## 12 **PLAN DEVELOPMENT GRANT PROGRAM.**

13 Section 320(i) of the Federal Water Pollution Control  
 14 Act (33 U.S.C. 1330(i)) is amended—

15 (1) by inserting “and \$28,000,000 per fiscal  
 16 year for each of fiscal years 1992 through 2002”  
 17 after “and 1991”; and

18 (2) by inserting “for fiscal years 1987 through  
 19 1991, and \$8,000,000 per fiscal year of the sums  
 20 authorized to be appropriated under this subsection  
 21 for fiscal years 1992 through 2002,” before “to the  
 22 Administrator of the National”.

1 **SEC. 7. NATIONAL ESTUARY PROGRAM IMPROVEMENT.**

2 (a) MANAGEMENT PLANS.—Section 320(b) of the  
3 Federal Water Pollution Control Act (33 U.S.C. 1330(b))  
4 is amended—

5 (1) by striking the matter preceding paragraph  
6 (1) and inserting the following:

7 “(b) PURPOSES OF CONFERENCE.—The purpose of  
8 any management conference convened with respect to an  
9 estuary under this section shall be to ensure, through a  
10 comprehensive planning process, full coordination and full  
11 implementation of the requirements of sections 303,  
12 304(l), 305(b), 319, 402, and 404 of this Act and the  
13 Coastal Zone Management Act of 1972, and to identify,  
14 plan, and ensure implementation of additional measures  
15 necessary to achieve compliance with water quality stand-  
16 ards and to protect existing and designated uses of coastal  
17 waters and the integrity of aquatic habitat. To achieve  
18 these purposes a management conference shall—”;

19 (2) by redesignating paragraphs (1), (2), (3),  
20 (4), (5), (6), and (7) as paragraphs (2), (3), (4),  
21 (6), (8), (10), and (11), respectively;

22 (3) by inserting before paragraph (2), as so re-  
23 designated, the following new paragraph:

24 “(1) conduct within 1 year after the convening  
25 of the conference a literature survey to identify ex-

1       isting information on the environmental health of  
2       the estuary;”;

3               (4) by inserting after paragraph (4), as so re-  
4       designated, the following:

5               “(5) identify within 3 years after the convening  
6       of the conference the major environmental problems  
7       and priorities that the comprehensive conservation  
8       and management plan will address;”;

9               (5) in paragraph (6), as so redesignated, by in-  
10      serting “, within 5 years after the date on which the  
11      management conference is convened and in accord-  
12      ance with the applicable guidance document pub-  
13      lished under subsection (e),” after “plan”;

14              (6) in paragraph (6), as so redesignated, by in-  
15      serting “(including policies enforceable under State  
16      law)” after “actions”;

17              (7) by inserting after paragraph (6), as so re-  
18      designated, the following:

19              “(7) submit to the Administrator in the first  
20      year following the convening of the conference, an  
21      initial 5-year budget for the development of the con-  
22      servation and management plan, and revise such  
23      budget on an annual basis;”;

24              (8) by inserting after paragraph (8), as so re-  
25      designated, the following:

1           “(9) conduct an analysis, within 3 years after  
2           the convening of the conference, of any changes to  
3           State statutory authority that will be required to im-  
4           plement the conservation and management plan and,  
5           provided such changes are more protective of aquatic  
6           resources than the previous law, publish a citation to  
7           such statutory authority and the proposed changes  
8           (and a plain language description and summary) in  
9           the conservation and management plan proposed for  
10          approval under subsection (h), and update such  
11          analysis and publication on an annual basis there-  
12          after;”;

13           (9) in paragraph (10), as so redesignated, by  
14          striking “and” after the semicolon;

15           (10) in paragraph (11), as so redesignated, by  
16          striking the period and inserting a semicolon;

17           (11) by inserting after paragraph (11), as so  
18          redesignated, the following:

19           “(12) identify all Federal activities (including  
20          development projects, financial assistance programs,  
21          and licensing and permitting activities) that may af-  
22          fect the requirements and objectives of the conserva-  
23          tion and management plan developed under this sec-  
24          tion, ensure the coordinated implementation of the  
25          plan with respect to those activities, and ensure that



1 the plan is at a minimum consistent with all Federal  
2 licensing and permitting requirements of this Act  
3 and other Federal laws or provides for greater pro-  
4 tection of the integrity of natural aquatic habitat or  
5 water or sediment quality;

6 “(13) identify all pollutants and water bodies  
7 for which development of maximum daily loads are  
8 necessary pursuant to section 303, and establish a  
9 schedule whereby all such total maximum daily loads  
10 and wasteload and load allocations shall be com-  
11 pleted within 5 years of approval of a conservation  
12 and management plan pursuant to this section;

13 “(14) ensure that all permits issued under sec-  
14 tion 402 are current for significant dischargers with-  
15 in an estuary that is subject to a conservation and  
16 management plan, and ensure that, if multiple dis-  
17 chargers affect a single segment of such estuary, the  
18 dischargers are placed on simultaneous permit issu-  
19 ance schedules to allow for efficient wasteload alloca-  
20 tion;

21 “(15) ensure that if an estuary subject to a  
22 conservation and management plan is affected by  
23 combined sewer overflows, development and imple-  
24 mentation of a combined sewer overflow abatement

1 plan is included in the conservation and manage-  
 2 ment plan; and

3 “(16) identify portions of the conservation and  
 4 management plan developed under this section which  
 5 should be included in a State coastal zone manage-  
 6 ment program approved under section 306(c) of the  
 7 Coastal Zone Management Act of 1972 and make  
 8 appropriate recommendations to the Governor and  
 9 the Under Secretary for that inclusion.”; and

10 (12) in the matter following paragraph (16) (as  
 11 such paragraph is added by this subsection) by  
 12 striking “paragraph (7)” and inserting “paragraph  
 13 (11)”.

14 (b) FISHERIES AND WILDLIFE.—

15 (1) MEMBERS OF CONFERENCE.—Section  
 16 320(c) of the Federal Water Pollution Control Act  
 17 (33 U.S.C. 1330(c)) is amended—

18 (A) in paragraph (3) by inserting “includ-  
 19 ing those Federal agencies with responsibility  
 20 for conserving and protecting living resources  
 21 including fish, shellfish, and wildlife,” after  
 22 “Federal agency,”; and

23 (B) in paragraph (5) by inserting “includ-  
 24 ing the agricultural industry,” after “indus-  
 25 tries,”.

1           (2) RESEARCH.—Section 320(j)(2) of the Fed-  
 2       eral Water Pollution Control Act (33 U.S.C.  
 3       1330(j)(2)) is amended by inserting “and the Direc-  
 4       tor of the United States Fish and Wildlife Service”  
 5       after “Administration”.

6       (c) PARTICIPATION OF MUNICIPALITIES.—Section  
 7       320(c)(4) of the Federal Water Pollution Control Act (33  
 8       U.S.C. 1330(c)(4)) is amended by striking “local govern-  
 9       ments” and inserting “municipalities”.

10       (d) PARTICIPATION OF ENVIRONMENTAL ORGANIZA-  
 11       TIONS.—Section 320(c)(5) of the Federal Water Pollution  
 12       Control Act (33 U.S.C. 1330(c)(5)) is amended by insert-  
 13       ing “, including environmental organizations” after “the  
 14       general public”.

15       (e) DUTIES OF MEMBERS OF CONFERENCE.—Sec-  
 16       tion 320 of the Federal Water Pollution Control Act (33  
 17       U.S.C. 1330) is amended—

18           (1) by redesignating subsections (d), (e), (f),  
 19           (g), (h), (i), (j), (k), and (l) as subsections (f), (g),  
 20           (h), (i), (j), (k), (l), (m), and (n), respectively; and

21           (2) by inserting after subsection (c) the follow-  
 22       ing:

23       “(d) DUTIES OF MEMBERS.—

24       “(1) ADMINISTRATOR.—

1           “(A) IN GENERAL.—The Administrator  
2           shall provide necessary levels of funding and  
3           staff resources to carry out the functions of the  
4           Administrator related to the development, ap-  
5           proval, implementation, and monitoring of a  
6           conservation and management plan under this  
7           section and of approved interim measures.

8           “(B) ANALYSIS OF FEDERAL NEEDS.—Not  
9           later than 120 days after the date of the enact-  
10          ment of this subparagraph, the Comptroller  
11          General of the United States shall submit to  
12          the Congress and to the Administrator an anal-  
13          ysis of the needs of the Environmental Protec-  
14          tion Agency for additional personnel and ad-  
15          ministrative resources necessary to fully carry  
16          out its duties under this section. Such analysis  
17          shall include recommendations regarding nec-  
18          essary additional authorizations and appropria-  
19          tions.

20          “(C) POLICY AND TECHNICAL LIAISON.—  
21          The Administrator or his or her designee shall,  
22          among other functions performed with respect  
23          to management conferences, serve as policy and  
24          technical liaison for all participants in manage-  
25          ment conferences.

1           “(2) UNDER SECRETARY.—The Under Sec-  
2       retary of Commerce for Oceans and Atmosphere  
3       shall provide the necessary levels of funding and  
4       staff resources to carry out the functions of the  
5       Under Secretary under this section, and shall coordi-  
6       nate the activities of the Under Secretary with each  
7       management conference convened under this section.

8       “(e) GUIDANCE DOCUMENT.—

9           “(1) IN GENERAL.—Not later than 9 months  
10      after the date of the enactment of this paragraph,  
11      the Administrator shall issue a guidance document  
12      which establishes requirements for—

13           “(A) management conferences to follow in  
14      developing, implementing, and monitoring con-  
15      servation and management plans, including re-  
16      quirements to ensure that—

17           “(i) the plan addresses each existing  
18      or foreseeable material impairment of the  
19      chemical, physical, and biological integrity  
20      of the estuary’s waters;

21           “(ii) the plan authorizes the Adminis-  
22      trator to delete proposed actions from the  
23      plan;

1 “(iii) the plan ranks each proposed  
2 action included in the plan for funding  
3 purposes in order of priority; and

4 “(iv) no person with a conflict of in-  
5 terest in relation to the intent of this sec-  
6 tion shall have the power, singly or in com-  
7 bination, to prevent the inclusion of any  
8 proposed action in the plan; and

9 “(B) the Administrator to follow in ap-  
10 proving implementation strategies within the  
11 conservation and management plan and in ap-  
12 proving interim actions to protect the water  
13 quality of the estuary for which a conservation  
14 and management plan is developed.

15 “(2) PUBLICATION OF PROPOSED DOCU-  
16 MENT.—The Administrator shall publish a proposed  
17 guidance document under this subsection by not  
18 later than 6 months after the date of the enactment  
19 of this paragraph. Notwithstanding section  
20 553(a)(2) of title 5, United States Code, the Admin-  
21 istrator shall provide at least 30 days advance notice  
22 of the proposed adoption of a guidance document  
23 under this subsection and comply in all other re-  
24 spects with section 553(b), (c), and (e) of such title  
25 with respect to the guidance document. The guid-

1       ance document shall be deemed to be a substantive  
2       rule of general applicability for purposes of section  
3       552(a)(1)(D) of such title.”.

4       (f) MANAGEMENT CONFERENCES.—Section 320(g)  
5       of the Federal Water Pollution Control Act, as redesign-  
6       nated by subsection (e)(1) of this section, is amended to  
7       read as follows:

8       “(g) PERIOD OF CONFERENCES.—

9               “(1) IN GENERAL.—A management conference  
10       convened under this section shall be convened for a  
11       period of at least 5 years. Upon approval of a plan  
12       under subsection (h), the Administrator may, for  
13       purposes of monitoring or implementing the plan,  
14       extend a conference for an additional 5 years if the  
15       affected Governor or Governors concur in the exten-  
16       sion and the extension is necessary to meet the re-  
17       quirements of this section and section 608.

18              “(2) TERMINATION OF CONFERENCES.—Upon  
19       the application of any resident of a State located in  
20       whole or in part in the estuarine zone of the estuary  
21       for which the conference was convened, or any af-  
22       fected person, or on the Administrator’s own initia-  
23       tive, the Administrator shall terminate a manage-  
24       ment conference whenever—

1           “(A) the management conference has failed  
2           to perform any of the duties prescribed in sub-  
3           section (b);

4           “(B) the management conference is un-  
5           likely to achieve the purposes specified in sub-  
6           section (b);

7           “(C) the management conference has de-  
8           layed or interfered with the enforcement or im-  
9           plementation of any provision of this Act; or

10          “(D) termination of the management con-  
11          ference would promote the restoration and  
12          maintenance of the chemical, physical, and bio-  
13          logical integrity of the estuary, including the  
14          factors specified in subsection (b)(6).

15          “(3) RECONVENING OF CONFERENCES.—

16          “(A) IN GENERAL.—Before the deadline  
17          specified in subparagraph (B), a management  
18          conference convened with respect to an estuary  
19          under this section shall initiate activities to—

20                 “(i) review the water quality and nat-  
21                 ural resources data of the estuary;

22                 “(ii) organize a public assembly to  
23                 gather comments about the effectiveness of  
24                 the implementation of the approved estu-  
25                 ary plan;



1                   “(iii) assess how successfully each of  
2                   the priority corrective actions included in  
3                   the approved estuary plan is being imple-  
4                   mented; and

5                   “(iv) identify impediments to the cor-  
6                   rective actions that are not being imple-  
7                   mented in the approved estuary plan and  
8                   develop strategies to remove the impedi-  
9                   ments.

10                  “(B) DEADLINE.—With respect to an estu-  
11                  ary for which a management conference has  
12                  been convened under this section, the deadline  
13                  specified in this subparagraph is as follows:

14                       “(i) If the Administrator has ap-  
15                       proved a management plan for the estuary  
16                       on or before the date of the enactment of  
17                       this paragraph, the expiration of the 3-  
18                       year period beginning on such date of en-  
19                       actment.

20                       “(ii) If the Administrator has not ap-  
21                       proved a management plan for the estuary  
22                       on or before the date of the enactment of  
23                       this paragraph, the expiration of the 4-  
24                       year period beginning on the date of ap-

1                   proval by the Administrator of a manage-  
2                   ment plan for the estuary.

3                   “(C) REQUIREMENT FOR RECONVENING.—

4                   A management conference convened under this  
5                   section (other than a management conference  
6                   terminated pursuant to paragraph (2)) shall be  
7                   reconvened, if necessary, to carry out the re-  
8                   quirements of this paragraph.

9                   “(D) REPORT.—Upon completion of its ac-  
10                  tivities under subparagraph (A), a management  
11                  conference shall submit to the Administrator a  
12                  report on the results of such activities.”.

13               (g) APPROVAL AND IMPLEMENTATION OF CONSERVA-  
14               TION AND MANAGEMENT PLANS; PUBLIC REVIEW AND  
15               COMMENT.—Section 320(h) of the Federal Water Pollu-  
16               tion Control Act, as redesignated by subsection (e)(1) of  
17               this section, is amended to read as follows:

18               “(h) APPROVAL AND IMPLEMENTATION OF PLANS  
19               AND INTERIM ACTIONS.—

20               “(1) APPROVAL OF PLANS.—Not later than 120  
21               days after the date of the completion of a conserva-  
22               tion and management plan and after providing for  
23               public review and comment, the Administrator shall  
24               approve such plan if—

1           “(A) it complies with the applicable guid-  
2           ance document published under subsection (c);

3           “(B) it meets the requirements of this sec-  
4           tion;

5           “(C) it specifies the implementation re-  
6           sponsibilities, including funding responsibilities  
7           and implementation schedules, of the Federal  
8           Government and of State and local governments  
9           that participated in the development of the  
10          plan;

11          “(D) the affected Governor or Governors  
12          concur;

13          “(E) the affected Governor or Governors  
14          certify that they have the authority to under-  
15          take the actions called for in the plan; and

16          “(F) the Administrator determines that  
17          each action called for in the plan is necessary  
18          to protect, restore, and maintain the chemical,  
19          physical, and biological integrity of the Nation’s  
20          waters, is cost-effective, and will not alter or de-  
21          stroy aquatic habitat.

22          “(2) APPROVAL OF INTERIM ACTIONS.—The  
23          Administrator shall approve an interim action to  
24          protect the water quality of an estuary for which a  
25          conservation and management plan is being devel-

1       oped if the action meets the requirements set forth  
2       in subparagraphs (A) through (D) of paragraph (1).

3               “(3) PUBLIC REVIEW AND COMMENT.—The Ad-  
4       ministrator shall, before approving a conservation  
5       and management plan, publish in the Federal Reg-  
6       ister a draft of the plan and provide an opportunity  
7       for public review and comment on the plan pursuant  
8       to subsections (b) through (e) of section 553 of title  
9       5, United States Code.

10              “(4) IMPLEMENTATION.—Upon approval of a  
11       conservation and management plan or an interim ac-  
12       tion under this section, such plan or action shall be  
13       implemented. The Administrator, as a nondiscretion-  
14       ary duty, shall ensure that the Federal responsibil-  
15       ities and commitments under the plan or action are  
16       complied with and implemented in accordance with  
17       the guidance document. The Administrator shall—

18                   “(A) provide assistance to the management  
19       conference, including administrative and tech-  
20       nical assistance, for monitoring implementation  
21       of the plan or interim action;

22                   “(B) coordinate Federal programs nec-  
23       essary for implementing the plan or interim  
24       action;

1           “(C) make recommendations to the man-  
2           agement conference on enforcement and tech-  
3           nical assistance activities necessary to ensure  
4           compliance with and implementation of the plan  
5           or interim action;

6           “(D) collect and make available to the pub-  
7           lic, publications and other forms of information  
8           relating to implementation of the plan or in-  
9           terim action; and

10          “(E) make grants under the authority pro-  
11          vided by this title.

12          “(5) FUNDING.—Funds authorized to be appro-  
13          priated under titles II and VI, section 319, and this  
14          section may be used in accordance with the applica-  
15          ble requirements of this Act to assist States with the  
16          implementation of such conservation and manage-  
17          ment plans. Funds authorized to be appropriated  
18          under section 319 and this section may also be used  
19          in accordance with the applicable requirements of  
20          this Act to assist States with the implementation of  
21          such interim actions.

22          “(6) CONSISTENCY.—Upon approval of a con-  
23          servation and management plan or interim action  
24          under this section, each Federal agency activity  
25          identified pursuant to subsection (b)(10) with re-

1       spect to such plan or interim action shall be con-  
2       ducted in a manner which is consistent with the en-  
3       forceable requirement of the plan or interim action.  
4       No Federal financial assistance, project, or activity  
5       may be provided or approved that is inconsistent  
6       with such plan unless the Administrator, the Assist-  
7       ant Director of the United States Fish and Wildlife  
8       Service, and the Assistant Administrator of the Na-  
9       tional Marine Fisheries Service each determines that  
10      such assistance, project, or activity will provide  
11      greater protection to the integrity of natural aquatic  
12      habitat or water or sediment quality in the estuary  
13      than such plan or interim action would otherwise  
14      provide, and will not alter or destroy aquatic habitat.  
15      Nothing in this section, any conservation or manage-  
16      ment plan, or any interim action shall supersede any  
17      requirement of this Act or any other Federal law.”.

18      (h) HABITAT PROTECTION.—Section 320 of the Fed-  
19      eral Water Pollution Control Act (33 U.S.C. 1330) is  
20      amended by adding at the end the following:

21      “(o) HABITAT PROTECTION.—No project or activity  
22      that is located in whole or in part in waters of the United  
23      States or which in whole or in part serves new develop-  
24      ment located in such waters shall be included in a con-  
25      servation and management plan or a State estimate of

1 needs under this section unless the Administrator, the Di-  
2 rector of the United States Fish and Wildlife Service, and  
3 the Assistant Administrator of the National Marine Fish-  
4 eries Service each determines that—

5           “(1) the project or activity is essential to reduce  
6       the discharge of pollutants into the navigable waters;  
7       and

8           “(2) there is no practicable alternative to the  
9       proposed project or activity that would have a less  
10      adverse impact on existing natural aquatic habitat.”.

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