

104TH CONGRESS
1ST SESSION

H. R. 1438

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.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 1995

Mrs. LOWEY (for herself, Ms. DELAURO, Mr. GEJDENSON, Mrs. KENNELLY, Mr. BONIOR, Mr. YATES, Mr. MILLER of California, Mr. FRANK of Massachusetts, Mr. ACKERMAN, Mr. ENGEL, Mr. MANTON, Mr. SERRANO, Ms. ESHOO, Mr. FILNER, Ms. PELOSI, Ms. WOOLSEY, Ms. FURSE, Mr. REED, Mr. TORRES, Ms. HARMAN, Ms. NORTON, Mr. PALLONE, Mr. McDERMOTT, Mr. TOWNS, Mr. WAXMAN, Ms. WATERS, Mr. DICKS, Mr. VENTO, Mr. WYNN, Mr. GONZALEZ, Ms. VELÁZQUEZ, Mr. JOHNSTON of Florida, Mr. MARTINEZ, Mr. MARKEY, Mr. BERMAN, Mr. HINCHEY, Mr. ROMERO-BARCELÓ, and Mr. FALEOMAVAEGA) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS AND PURPOSES.**

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

6 (1) The Nation’s estuaries are a vital natural
7 resource to which many regional economies are
8 closely tied.

9 (2) Many of the Nation’s estuaries are under a
10 severe threat from point source pollution and pol-
11 luted run-off (nonpoint source pollution) and from
12 habitat alteration and destruction.

13 (3) Only through expanded investments in
14 waste water treatment and other water and sediment
15 pollution control and prevention efforts can the envi-
16 ronmental and economic values of the Nation’s estu-
17 aries be restored and protected.

18 (4) The National Estuary Program created
19 under the Federal Water Pollution Control Act has
20 significantly advanced the Nation’s understanding of
21 the declining condition of the Nation’s estuaries.

22 (5) The National Estuary Program has also
23 provided precise information about the corrective
24 and preventative measures required to reverse the
25 degradation of water and sediment quality and to

1 halt the alteration and destruction of vital habitat in
2 the Nation's estuaries.

3 (6) The level of funding available to States, mu-
4 nicipalities, and the Environmental Protection Agen-
5 cy for implementation of approved conservation and
6 management plans is inadequate, and additional fi-
7 nancial resources must be provided.

8 (7) Funding for implementation of approved
9 conservation and management plans should be pro-
10 vided under the State revolving loan fund program
11 authorized by title VI of the Federal Water Pollu-
12 tion Control Act.

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

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

18 (1) to expand and strengthen efforts to combat
19 the serious and growing water and sediment quality
20 problems in estuaries of national significance identi-
21 fied under the Federal Water Pollution Control Act;

22 (2) to provide significant levels of Federal as-
23 sistance to States and municipalities seeking to im-
24 plement comprehensive conservation and manage-
25 ment plans for those estuaries;

1 (3) to reauthorize section 320 of the Federal
2 Water Pollution Control Act in order to improve the
3 development and implementation of comprehensive
4 conservation and management plans for those estu-
5 aries; and

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

10 **SEC. 3. EXTENSION OF WATER POLLUTION CONTROL RE-**
11 **VOLVING LOAN FUND PROGRAM.**

12 (a) ALLOTMENT FORMULA.—Section 604(a) of the
13 Federal Water Pollution Control Act (33 U.S.C. 1383(a))
14 is amended—

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

18 (2) by striking “and 1990” and inserting
19 “through 2002”.

20 (b) FUNDING.—Section 607 of such Act (33 U.S.C.
21 1387) is amended by striking “the following sums:” and
22 all that follows through the end of the section and insert-
23 ing the following: “\$4,000,000,000 for each of the fiscal
24 years 1996 and 1997, and \$5,000,000,000 for each of the
25 fiscal years 1998, 1999, 2000, 2001, and 2002.”.

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 1996;

21 “(ii) 5 percent for fiscal year 1997;

22 “(iii) 7.5 percent for fiscal year 1998;

23 “(iv) 10 percent for fiscal year 1999;

24 “(v) 12.5 percent for fiscal year 2000;

25 “(vi) 15 percent for fiscal year 2001;

26 and

1 “(vii) 15 percent for fiscal year 2002.

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 that is monitoring the implementa-
7 tion of an approved estuary plan under section
8 320 and of which the State is a member.

9 “(5) FAILURE TO SUBMIT ESTIMATE.—A quali-
10 fied State which does not submit an estimate for a
11 fiscal year in accordance with paragraph (4) shall
12 not be eligible for any allocation under paragraph
13 (2) for that fiscal year.

14 “(b) SEPARATE ACCOUNT.—

15 “(1) ESTABLISHMENT OF ACCOUNT.—A quali-
16 fied State shall establish a separate account in its
17 water pollution control revolving fund established
18 under this title, which shall be known as an ‘Estuary
19 Account’. Amounts of grants to a qualified State
20 under subsection (a) shall be deposited into the
21 Estuary Account established by the State.

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

1 “(c) TYPES OF ASSISTANCE.—

2 “(1) IN GENERAL.—Except as otherwise pro-
3 vided by State law and subject to paragraph (2),
4 amounts in the Estuary Account of a qualified State
5 may be used only for providing the types of assist-
6 ance described in section 603(d).

7 “(2) SPECIAL RULES.—

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

17 “(B) PRINCIPAL SUBSIDIES.—In addition
18 to the types of assistance authorized by section
19 603(d), a qualified State may use amounts of
20 interest earned on amounts in its Estuary Ac-
21 count to subsidize up to 90 percent of the prin-
22 cipal portion of the amount of debt service of
23 an entity referred to in section 603(c)(1) that,
24 notwithstanding the availability of interest free
25 loans under section 603(d)(1)(A) and extended

1 amortization under subparagraph (A), the State
2 determines is financially unable to carry out a
3 project that is necessary for the implementation
4 of an approved estuary plan.

5 “(d) STATE MATCHING.—Notwithstanding section
6 602(b)(2), a qualified State shall deposit into its Estuary
7 Account an amount from State funds equal to at least 15
8 percent of amounts deposited into the account in the form
9 of capitalization grants to the State under this section.

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

12 “(1) APPROVED ESTUARY PLAN.—The term
13 ‘approved estuary plan’ means a comprehensive con-
14 servation and management plan approved by the
15 Administrator under section 320(h).

16 “(2) ESTUARY ACCOUNT.—The term ‘Estuary
17 Account’ means a separate account established by a
18 qualified State under subsection (b) in its water pol-
19 lution control revolving fund.

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

22 “(A) is subject to an approved estuary
23 plan;

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

1 “(C) has fulfilled its responsibilities under
2 section 320 with respect to each management
3 conference under that section of which it is a
4 member.”.

5 **SEC. 5. DISCRETIONARY GRANTS FOR IMPLEMENTATION**
6 **OF ESTUARY CONSERVATION AND MANAGE-**
7 **MENT PLANS.**

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

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

14 “(1) IN GENERAL.—The Administrator shall
15 make grants to State, interstate, and regional water
16 pollution control agencies and entities, State coastal
17 zone management agencies, interstate agencies,
18 other public or nonprofit agencies, institutions, orga-
19 nizations, Indian tribes, and individuals for imple-
20 mentation of conservation and management plans
21 approved under this section.

22 “(2) PURPOSES.—Grants under this subsection,
23 shall be made to assist in aspects of implementation
24 of such plans which involve innovative technology,
25 research and development, education, pollution pre-

1 vention, comprehensive land use planning, and other
2 activities not generally funded by the State under
3 this title.

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

9 “(4) AUTHORIZATION OF APPROPRIATIONS.—
10 There is authorized to be appropriated to the Ad-
11 ministrator to carry out this subsection not to ex-
12 ceed \$50,000,000 per fiscal year for each of fiscal
13 years 1996 through 2002.”.

14 (b) FUNDING FOR INTERIM ACTIONS.—Section
15 320(g)(2) of such Act (33 U.S.C. 1330(g)(2)) is amended
16 by inserting before the period the following: “, and for ap-
17 propriate interim actions that are adopted by the manage-
18 ment conference and approved in accordance with sub-
19 section (h) to protect the water and sediment quality of
20 the estuary that is the subject of such a plan”.

21 (c) GRANT REPORTING.—Section 320(h) of such Act
22 (33 U.S.C. 1330(h)) is amended by striking “subsection
23 (g)” and inserting “subsection (i) and that receives a
24 grant under subsection (m)”.

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

4 **SEC. 6. EXTENSION OF CONSERVATION AND MANAGEMENT**
5 **PLAN DEVELOPMENT GRANT PROGRAM.**

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

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

11 (2) by inserting “for fiscal years 1987 through
12 1991, and \$8,000,000 per fiscal year of the sums
13 authorized to be appropriated under this subsection
14 for fiscal years 1992 through 2002,” before “to the
15 Administrator of the National”.

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

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

20 (1) by striking the matter preceding paragraph
21 (1) and inserting the following:

22 “(b) PURPOSES OF CONFERENCE.—The purpose of
23 any management conference convened with respect to an
24 estuary under this section shall be to ensure, through a
25 comprehensive planning process, full implementation of

1 the requirements of sections 303, 304(l), 305(b), 319,
2 402, and 404 of this Act, and to identify, plan, and ensure
3 implementation of additional measures necessary to
4 achieve compliance with water quality standards and to
5 protect existing and designated uses of coastal waters and
6 the integrity of aquatic habitat. To achieve these purposes
7 a management conference shall—”;

8 (2) by redesignating paragraphs (1), (2), (3),
9 (4), (5), (6), and (7) as paragraphs (2), (3), (4),
10 (6), (8), (10), and (11), respectively;

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

13 “(1) conduct within 1 year after the convening
14 of the conference a literature survey to identify ex-
15 isting information on the environmental health of
16 the estuary;”;

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

19 “(5) identify within 3 years after the convening
20 of the conference the major environmental problems
21 and priorities that the comprehensive conservation
22 and management plan will address;”;

23 (5) in paragraph (6), as so redesignated, by in-
24 serting “, within 5 years after the date on which the
25 management conference is convened and in accord-

1 ance with the applicable guidance document pub-
2 lished under subsection (e),” after “plan”;

3 (6) in paragraph (6), as so redesignated, by in-
4 serting “(including policies enforceable under State
5 law)” after “actions”;

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

8 “(7) submit to the Administrator in the first
9 year following the convening of the conference, an
10 initial 5-year budget for the development of the con-
11 servation and management plan, and revise such
12 budget on an annual basis;”;

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

15 “(9) conduct an analysis, within 3 years after
16 the convening of the conference, of any changes to
17 State statutory authority that will be required to im-
18 plement the conservation and management plan and,
19 provided such changes are more protective of aquatic
20 resources than the previous law, publish the full text
21 of such statutory authority and proposed changes
22 and a plain language description of them in the con-
23 servation and management plan proposed for ap-
24 proval under subsection (b)(3), and update such

1 analysis and publication on an annual basis there-
2 after;”;

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

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

7 (11) by inserting after paragraph (11), as so
8 redesignated, the following:

9 “(12) identify all Federal activities (including
10 development projects, financial assistance programs,
11 and licensing and permitting activities) that may af-
12 fect the requirements and objectives of the conserva-
13 tion and management plan developed under this sec-
14 tion, and ensure that such plan is at a minimum
15 consistent with all Federal licensing and permitting
16 requirements of this Act and other Federal laws or
17 provides for greater protection of the integrity of
18 natural aquatic habitat or water or sediment quality;

19 “(13) identify all pollutants and water bodies
20 for which development of maximum daily loads are
21 necessary pursuant to section 303, and establish a
22 schedule whereby all such total maximum daily loads
23 and wasteload and load allocations shall be com-
24 pleted within 5 years of approval of a conservation
25 and management plan pursuant to this section;

1 “(14) ensure that all permits issued under sec-
2 tion 402 are current for significant dischargers with-
3 in an estuary that is subject to a conservation and
4 management plan, and ensure that, if multiple dis-
5 chargers affect a single segment of such estuary, the
6 dischargers are placed on simultaneous permit issu-
7 ance schedules to allow for efficient wasteload alloca-
8 tion;

9 “(15) ensure that if an estuary subject to a
10 conservation and management plan is affected by
11 combined sewer overflows, development and imple-
12 mentation of a combined sewer overflow abatement
13 plan is included in the conservation and manage-
14 ment plan; and

15 “(16) identify portions of the conservation and
16 management plan developed under this section which
17 should be included in a State coastal zone manage-
18 ment program approved under section 306(c) of the
19 Coastal Zone Management Act of 1972 and make
20 appropriate recommendations to the Governor and
21 the Under Secretary for that inclusion.”; and

22 (12) in the matter following paragraph (16) (as
23 such paragraph is added by this subsection) by
24 striking “paragraph (7)” and inserting “paragraph
25 (11)”.

1 (b) FISHERIES AND WILDLIFE.—

2 (1) MEMBERS OF CONFERENCE.—Section
3 320(c) of the Federal Water Pollution Control Act
4 (33 U.S.C. 1330(c)) is amended—

5 (A) in paragraph (3) by inserting “includ-
6 ing those Federal agencies with responsibility
7 for conserving and protecting living resources
8 including fish, shellfish, and wildlife,” after
9 “Federal agency,”; and

10 (B) in paragraph (5) by inserting “includ-
11 ing the agricultural industry,” after “indus-
12 tries,”.

13 (2) RESEARCH.—Section 320(j)(2) of the Fed-
14 eral Water Pollution Control Act (33 U.S.C.
15 1330(j)(2)) is amended by inserting “and the Direc-
16 tor of the United States Fish and Wildlife Service”
17 after “Administration”.

18 (c) PARTICIPATION OF MUNICIPALITIES.—Section
19 320(c)(4) of the Federal Water Pollution Control Act (33
20 U.S.C. 1330(c)(4)) is amended by striking “local govern-
21 ments” and inserting “municipalities”.

22 (d) PARTICIPATION OF ENVIRONMENTAL ORGANIZA-
23 TIONS.—Section 320(c)(5) of the Federal Water Pollution
24 Control Act (33 U.S.C. 1330(c)(5)) is amended by insert-

1 ing “, including environmental organizations” after “the
2 general public”.

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

6 (1) by redesignating subsections (d), (e), (f),
7 (g), (h), (i), (j), (k), and (l) as subsections (f), (g),
8 (h), (i), (j), (k), (l), (m), and (n), respectively; and

9 (2) by inserting after subsection (c) the follow-
10 ing:

11 “(d) DUTIES OF MEMBERS.—

12 “(1) ADMINISTRATOR.—

13 “(A) IN GENERAL.—The Administrator
14 shall provide necessary levels of funding and
15 staff resources to carry out the functions of the
16 Administrator related to the development, ap-
17 proval, implementation, and monitoring of a
18 conservation and management plan under this
19 section and of approved interim measures.

20 “(B) ANALYSIS OF FEDERAL NEEDS.—Not
21 later than 120 days after the date of the enact-
22 ment of this subparagraph, the Comptroller
23 General of the United States shall submit to
24 the Congress and to the Administrator an anal-
25 ysis of the needs of the Environmental Protec-

1 tion Agency for additional personnel and ad-
2 ministrative resources necessary to fully carry
3 out its duties under this section. Such analysis
4 shall include recommendations regarding nec-
5 essary additional authorizations and appropria-
6 tions.

7 “(C) POLICY AND TECHNICAL LIAISON.—
8 The Administrator or his or her designee shall,
9 among other functions performed with respect
10 to management conferences, serve as policy and
11 technical liaison for all participants in manage-
12 ment conferences.

13 “(2) UNDER SECRETARY.—The Under Sec-
14 retary of Commerce for Oceans and Atmosphere
15 shall provide the necessary levels of funding and
16 staff resources to carry out the functions of the
17 Under Secretary under this section, and shall coordi-
18 nate the activities of the Under Secretary with each
19 management conference convened under this section.

20 “(e) GUIDANCE DOCUMENT.—

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

1 “(A) management conferences to follow in
2 developing and monitoring conservation and
3 management plans, including requirements to
4 ensure that—

5 “(i) the plan addresses each existing
6 or foreseeable material impairment of the
7 chemical, physical, and biological integrity
8 of the estuary’s waters;

9 “(ii) the plan authorizes the Adminis-
10 trator to delete proposed actions from the
11 plan;

12 “(iii) the plan ranks each proposed
13 action included in the plan for funding
14 purposes in order of priority and author-
15 izes the Administrator to modify such
16 ranking; and

17 “(iv) no person engaged in business
18 for profit or State or local agency or au-
19 thority whose responsibilities include the
20 promotion of economic development shall
21 have the power, singly or in combination,
22 to prevent the inclusion of any proposed
23 action in the plan;

24 “(B) approving the implementation of in-
25 terim actions to protect the water quality of the

1 estuary for which a conservation and manage-
2 ment plan is developed; and

3 “(C) the Administrator to follow in approv-
4 ing or disapproving each strategy included in
5 such conservation and management plans, in-
6 cluding requirements to ensure that effective
7 measures to reduce the most serious problems
8 in the estuary receive priority for funding and
9 requirements to prevent funding for projects
10 which cause or encourage the unnecessary de-
11 struction or alteration of aquatic habitat.

12 “(2) PUBLICATION OF PROPOSED DOCU-
13 MENT.—The Administrator shall publish a proposed
14 guidance document under this subsection by not
15 later than 6 months after the date of the enactment
16 of this paragraph. Notwithstanding section
17 553(a)(2) of title 5, United States Code, the Admin-
18 istrator shall provide at least 30 days advance notice
19 of the proposed adoption of a guidance document
20 under this subsection and comply in all other re-
21 spects with section 553(b), (c), and (e) of such title
22 with respect to the guidance document. The guid-
23 ance document shall be deemed to be a substantive
24 rule of general applicability for purposes of section
25 552(a)(1)(D) of such title.”.

1 (f) MANAGEMENT CONFERENCES.—Section 320(g)
2 of the Federal Water Pollution Control Act, as redesignated by subsection (c)(1), is amended—

4 (1) by striking “A management” and inserting
5 “(1) IN GENERAL.—”;

6 (2) by indenting paragraph (1), as so designated, and moving the text 2 ems to the right; and

8 (3) by adding at the end the following:

9 “(2) TERMINATION OF CONFERENCES.—Upon
10 the application of any resident of a State located in
11 whole or in part in the estuarine zone of the estuary
12 for which the conference was convened, or any affected person, or on the Administrator’s own initiative, the Administrator shall terminate a management conference whenever—

16 “(A) the management conference has failed
17 to perform any of the duties prescribed in subsection (b);

19 “(B) the management conference is unlikely to achieve the purposes specified in subsection (b);

22 “(C) the management conference has delayed or interfered with the enforcement or implementation of any provision of this Act; or

1 “(D) termination of the management con-
2 ference would promote the restoration and
3 maintenance of the chemical, physical, and bio-
4 logical integrity of the estuary, including the
5 factors specified in subsection (b)(6).”.

6 (g) APPROVAL AND IMPLEMENTATION OF CONSERVA-
7 TION AND MANAGEMENT PLANS; PUBLIC REVIEW AND
8 COMMENT.—Section 320(h) of the Federal Water Pollu-
9 tion Control Act, as redesignated by subsection (c)(1), is
10 amended to read as follows:

11 “(h) APPROVAL AND IMPLEMENTATION OF PLANS
12 AND INTERIM ACTIONS.—

13 “(1) APPROVAL OF PLANS.—Not later than 120
14 days after the date of the completion of a conserva-
15 tion and management plan and after providing for
16 public review and comment, the Administrator shall
17 approve such plan if—

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

20 “(B) it meets the requirements of this sec-
21 tion;

22 “(C) it specifies the implementation re-
23 sponsibilities, including funding responsibilities
24 and implementation schedules, of the Federal
25 Government and of State and local governments

1 that participated in the development of the
2 plan, ensures that the lowest cost and least en-
3 vironmentally damaging alternatives for achiev-
4 ing specified goals have been selected, and sets
5 priorities for funding to ensure that measures
6 to address the most serious pollution problems
7 will be funded first;

8 “(D) the affected Governor or Governors
9 concur;

10 “(E) the affected Governor or Governors
11 certify that they have the authority to under-
12 take the actions called for in the plan;

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

19 “(G) the Director of the United States
20 Fish and Wildlife Service and Assistant Admin-
21 istrator of the National Marine Fisheries Serv-
22 ice concur in the Administrator’s initial deter-
23 mination under subparagraph (F) and in the
24 Administrator’s final approval of the plan under
25 this section.

1 “(2) APPROVAL OF INTERIM ACTIONS.—The
2 Administrator shall approve an interim action to
3 protect the water quality of an estuary for which a
4 conservation and management plan is being devel-
5 oped if the action meets the requirements set forth
6 in paragraph (1) (A) through (D).

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

14 “(4) IMPLEMENTATION.—Upon approval of a
15 conservation and management plan or interim ac-
16 tions under this section, the Administrator, as a
17 nondiscretionary duty, shall ensure that the Federal
18 responsibilities and commitments under the plan or
19 interim action are complied with and implemented in
20 accordance with the guidance document. The Admin-
21 istrator shall—

22 “(A) provide assistance to the management
23 conference, including administrative and tech-
24 nical assistance, for monitoring implementation
25 of the plan or interim action;

1 “(B) coordinate Federal programs nec-
2 essary for implementing the plan or interim
3 action;

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

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

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

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

1 “(6) CONSISTENCY.—Upon approval of a con-
2 servation and management plan or interim action
3 under this section, no Federal financial assistance,
4 project, or activity may be provided or approved that
5 is inconsistent with such plan unless the Adminis-
6 trator, the Assistant Director of the United States
7 Fish and Wildlife Service, and the Assistant Admin-
8 istrator of the National Marine Fisheries Service
9 each determines that such assistance, project, or ac-
10 tivity will provide greater protection to the integrity
11 of natural aquatic habitat or water or sediment qual-
12 ity in the estuary than such plan or interim action
13 would otherwise provide, and will not alter or de-
14 stroy aquatic habitat. Nothing in this section, any
15 conservation or management plan, or any interim ac-
16 tion shall supersede any requirement of this Act or
17 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.”.

○

HR 1438 IH—2

HR 1438 IH—3