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104TH CONGRESS
1ST SESSION

H. R. 1917

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

JUNE 22, 1995

Mrs. LOWEY (for herself, Ms. DELAURO, Mr. GEJDENSON, Mrs. KENNELLY, Mr. BONIOR, Mr. SMITH of New Jersey, Mr. STUDDS, 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, Ms. LOFGREN, 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. CONYERS, Mr. ROMERO-BARCELÓ, and Mr. FALEOMAVAEAGA) 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.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''DeLauro-Lowey Water Pollution Control and Estuary Restoration Act''.

SEC. 2. FINDINGS AND PURPOSES.

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

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

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

(3) Only through expanded investments in waste water treatment and other water and sediment pollution control and prevention efforts can the environmental and economic values of the Nation's estuaries be restored and protected.

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

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

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

(6) The level of funding available to States, municipalities, and the Environmental Protection Agency for implementation of approved conservation and management plans is inadequate, and additional financial resources must be provided.

(7) Funding for implementation of approved conservation and management plans should be provided under the State revolving loan fund program authorized by title VI of the Federal Water Pollution Control Act.

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

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

(1) to expand and strengthen efforts to combat the serious and growing water and sediment quality problems in estuaries of national significance identified under the Federal Water Pollution Control Act;

(2) to provide significant levels of Federal assistance to States and municipalities seeking to implement comprehensive conservation and management plans for those estuaries;

(3) to reauthorize section 320 of the Federal Water Pollution Control Act in order to improve the development and implementation of comprehensive conservation and management plans for those estuaries; and

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

SEC. 3. EXTENSION OF WATER POLLUTION CONTROL REVOLVING LOAN FUND PROGRAM.

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

(1) by striking ''Sums authorized'' and inserting ''Except as provided in section 608, sums authorized''; and

(2) by striking ''and 1990'' and inserting ''through 2002''.

(b) FUNDING.—Section 607 of such Act (33 U.S.C. 1387) is amended by striking ''the following sums:'' and all that follows through the end of the section and inserting the following: ''$4,000,000,000 for each of the fiscal years 1996 and 1997, and $5,000,000,000 for each of the fiscal years 1998, 1999, 2000, 2001, and 2002.''.

SEC. 4. FUNDING FOR IMPLEMENTATION OF ESTUARY CONSERVATION AND MANAGEMENT PLANS.

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

"SEC. 608. CAPITALIZATION GRANTS TO STATES FOR IMPLEMENTING ESTUARY CONSERVATION AND MANAGEMENT PLANS.

''(a) SET-ASIDE FOR IMPLEMENTING APPROVED PLANS.—

''(1) SET-ASIDE.—

''(A) IN GENERAL.—Of amounts appropriated under the authority of section 607 for each fiscal year, the applicable percentage under subparagraph (B) shall be used by the Administrator to make capitalization grants under this title to qualified States.

''(B) PERCENTAGE.—For purposes of subsection (A), the applicable percentage is—

''(i) 2.5 percent for fiscal year 1996;

''(ii) 5 percent for fiscal year 1997;

''(iii) 7.5 percent for fiscal year 1998;

''(iv) 10 percent for fiscal year 1999;

''(v) 12.5 percent for fiscal year 2000;

''(vi) 15 percent for fiscal year 2001; and

''(vii) 15 percent for fiscal year 2002.

''(2) ALLOCATION.—Of amounts required under paragraph (1) to be used for grants to qualified States for a fiscal year, the Administrator shall allocate to each qualified State an amount equal to—

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

''(B) the percentage specified by the Administrator for the fiscal year for that State under paragraph (3)(B).

''(3) DETERMINATION OF STATE NEEDS.—Not later than 120 days after the date on which all qualified States have submitted under paragraph (4)(A) estimates of the needs of the States for financial assistance for a fiscal year, the Administrator shall—

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

''(i) the Administrator's ranking of each project or activity included in all the needs estimates submitted, according to the severity of the pollution problem each project or activity will address; and

''(ii) the Administrator's determination of which projects or activities should be included in the approved estimate of needs for each qualifying State; and

''(B) submit to the Congress a report describing the cost of each project or activity included in each approved estimate of needs for each State, the total for all qualified States, and a percentage for purposes of paragraph (2)(B) representing such approved needs of the qualified State relative to such approved needs of all qualified States.

''(4) STATE ESTIMATE OF NEEDS.—

''(A) SUBMISSION.—Not later than July 1 of each year, each qualified State shall submit to the Administrator an estimate of the needs of the State for financial assistance for implementing, monitoring, and enforcing approved estuary plans in the next fiscal year. Such estimates shall include a description of each project and activity for which funding is being sought, the entity which would receive the funding, the need for the project or activity, and its cost. Such estimates may be included in a qualified State's intended use plan under section 606(c),

and shall maximize economical planning, design, and construction.

''(B) CONSULTATION.—In preparing an estimate of needs under this paragraph, a qualified State shall consult with each management conference under section 320 that is implementing an approved estuary plan and of which the State is a member.

''(C) APPROVAL REQUIRED.—A qualified State may not submit an estimate of needs under this paragraph unless the estimate is approved by each management conference under section 320 that is implementing an approved estuary plan and of which the State is a member.

''(5) FAILURE TO SUBMIT ESTIMATE.—A qualified State which does not submit an estimate for a fiscal year in accordance with paragraph (4) shall not be eligible for any allocation under paragraph (2) for that fiscal year.

''(b) SEPARATE ACCOUNT.—

''(1) ESTABLISHMENT OF ACCOUNT.—A qualified State shall establish a separate account in its water pollution control revolving fund established 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

603(d), a qualified State may use amounts of interest earned on amounts in its Estuary Account to subsidize up to 90 percent of the principal portion of the amount of debt service of an entity referred to in section 603(c)(1) that, notwithstanding the availability of interest free loans under section 603(d)(1)(A) and extended amortization under subparagraph (A), the State determines is financially unable to carry out a project that is necessary for the implementation of an approved estuary plan.

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

''(e) DEFINITIONS.—In this section, the following definitions apply:

''(1) APPROVED ESTUARY PLAN.—The term 'approved estuary plan' means a comprehensive conservation and management plan approved by the Administrator under section 320(h).

''(2) ESTUARY ACCOUNT.—The term 'Estuary Account' means a separate account established by a

qualified State under subsection (b) in its water pollution control revolving fund.

''(3) QUALIFIED STATE.—The term 'qualified State' means a State that—

''(A) is subject to an approved estuary plan;

''(B) has established an estuary account in accordance with subsection (b); and

''(C) has fulfilled its responsibilities under section 320 with respect to each management conference under that section of which it is a member.''.

SEC. 5. DISCRETIONARY GRANTS FOR IMPLEMENTATION OF ESTUARY CONSERVATION AND MANAGEMENT PLANS.

(a) IN GENERAL.—Section 320 of the Federal Water Pollution Control Act (33 U.S.C. 1330) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

''(k) GRANTS FOR IMPLEMENTATION OF CONSERVATION AND MANAGEMENT PLANS.—

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

other public or nonprofit agencies, institutions, organizations, Indian tribes, and individuals for implementation of conservation and management plans approved under this section.

''(2) PURPOSES.—Grants under this subsection, shall be made to assist in aspects of implementation of such plans which involve innovative technology, research and development, education, pollution prevention, comprehensive land use planning, and other activities not generally funded by the State under this title.

''(3) FEDERAL SHARE.—The amount of grants to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year shall not exceed 75 percent of the cost of implementation of such plans.

''(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator to carry out this subsection not to exceed $50,000,000 per fiscal year for each of fiscal years 1996 through 2002.''.

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

ment conference and approved in accordance with subsection (h) to protect the water and sediment quality of the estuary that is the subject of such a plan''.

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

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

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

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

(1) by inserting ''and $28,000,000 per fiscal year for each of fiscal years 1992 through 2002'' after ''and 1991''; and

(2) by inserting ''for fiscal years 1987 through 1991, and $8,000,000 per fiscal year of the sums authorized to be appropriated under this subsection for fiscal years 1992 through 2002,'' before ''to the Administrator of the National''.

SEC. 7. NATIONAL ESTUARY PROGRAM IMPROVEMENT.

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

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

''(b) PURPOSES OF CONFERENCE.—The purpose of any management conference convened with respect to an estuary under this section shall be to ensure, through a comprehensive planning process, full coordination and full implementation of the requirements of sections 303, 304(l), 305(b), 319, 402, and 404 of this Act and the Coastal Zone Management Act of 1972, and to identify, plan, and ensure implementation of additional measures necessary to achieve compliance with water quality standards and to protect existing and designated uses of coastal waters and the integrity of aquatic habitat. To achieve these purposes a management conference shall—'';

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

(3) by inserting before paragraph (2), as so redesignated, the following new paragraph:

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

isting information on the environmental health of the estuary;'';

(4) by inserting after paragraph (4), as so redesignated, the following:

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

(5) in paragraph (6), as so redesignated, by inserting '', within 5 years after the date on which the management conference is convened and in accordance with the applicable guidance document published under subsection (e),'' after ''plan'';

(6) in paragraph (6), as so redesignated, by inserting ''(including policies enforceable under State law)'' after ''actions'';

(7) by inserting after paragraph (6), as so redesignated, the following:

''(7) submit to the Administrator in the first year following the convening of the conference, an initial 5-year budget for the development of the conservation and management plan, and revise such budget on an annual basis;'';

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

''(9) conduct an analysis, within 3 years after the convening of the conference, of any changes to State statutory authority that will be required to implement the conservation and management plan and, provided such changes are more protective of aquatic resources than the previous law, publish a citation to such statutory authority and the proposed changes (and a plain language description and summary) in the conservation and management plan proposed for approval under subsection (h), and update such analysis and publication on an annual basis thereafter;'';

(9) in paragraph (10), as so redesignated, by striking ''and'' after the semicolon;

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

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

''(12) identify all Federal activities (including development projects, financial assistance programs, and licensing and permitting activities) that may affect the requirements and objectives of the conservation and management plan developed under this section, ensure the coordinated implementation of the plan with respect to those activities, and ensure that

the plan is at a minimum consistent with all Federal licensing and permitting requirements of this Act and other Federal laws or provides for greater protection of the integrity of natural aquatic habitat or water or sediment quality;

''(13) identify all pollutants and water bodies for which development of maximum daily loads are necessary pursuant to section 303, and establish a schedule whereby all such total maximum daily loads and wasteload and load allocations shall be completed within 5 years of approval of a conservation and management plan pursuant to this section;

''(14) ensure that all permits issued under section 402 are current for significant dischargers within an estuary that is subject to a conservation and management plan, and ensure that, if multiple dischargers affect a single segment of such estuary, the dischargers are placed on simultaneous permit issuance schedules to allow for efficient wasteload allocation;

''(15) ensure that if an estuary subject to a conservation and management plan is affected by combined sewer overflows, development and implementation of a combined sewer overflow abatement

plan is included in the conservation and management plan; and

''(16) identify portions of the conservation and management plan developed under this section which should be included in a State coastal zone management program approved under section 306(c) of the Coastal Zone Management Act of 1972 and make appropriate recommendations to the Governor and the Under Secretary for that inclusion.''; and

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

(b) FISHERIES AND WILDLIFE.—

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

(A) in paragraph (3) by inserting ''including those Federal agencies with responsibility for conserving and protecting living resources including fish, shellfish, and wildlife,'' after ''Federal agency,''; and

(B) in paragraph (5) by inserting ''including the agricultural industry,'' after ''industries,''.

(2) RESEARCH.—Section 320(j)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1330(j)(2)) is amended by inserting ''and the Director of the United States Fish and Wildlife Service'' after ''Administration''.

(c) PARTICIPATION OF MUNICIPALITIES.—Section 320(c)(4) of the Federal Water Pollution Control Act (33 U.S.C. 1330(c)(4)) is amended by striking ''local governments'' and inserting ''municipalities''.

(d) PARTICIPATION OF ENVIRONMENTAL ORGANIZATIONS.—Section 320(c)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1330(c)(5)) is amended by inserting '', including environmental organizations'' after ''the general public''.

(e) DUTIES OF MEMBERS OF CONFERENCE.—Section 320 of the Federal Water Pollution Control Act (33 U.S.C. 1330) is amended—

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

(2) by inserting after subsection (c) the following:

''(d) DUTIES OF MEMBERS.—

''(1) ADMINISTRATOR.—

"(A) IN GENERAL.—The Administrator shall provide necessary levels of funding and staff resources to carry out the functions of the Administrator related to the development, approval, implementation, and monitoring of a conservation and management plan under this section and of approved interim measures.

"(B) ANALYSIS OF FEDERAL NEEDS.—Not later than 120 days after the date of the enactment of this subparagraph, the Comptroller General of the United States shall submit to the Congress and to the Administrator an analysis of the needs of the Environmental Protection Agency for additional personnel and administrative resources necessary to fully carry out its duties under this section. Such analysis shall include recommendations regarding necessary additional authorizations and appropriations.

"(C) POLICY AND TECHNICAL LIAISON.—The Administrator or his or her designee shall, among other functions performed with respect to management conferences, serve as policy and technical liaison for all participants in management conferences.

"(2) UNDER SECRETARY.—The Under Secretary of Commerce for Oceans and Atmosphere shall provide the necessary levels of funding and staff resources to carry out the functions of the Under Secretary under this section, and shall coordinate the activities of the Under Secretary with each management conference convened under this section.

"(e) GUIDANCE DOCUMENT.—

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

"(A) management conferences to follow in developing, implementing, and monitoring conservation and management plans, including requirements to ensure that—

"(i) the plan addresses each existing or foreseeable material impairment of the chemical, physical, and biological integrity of the estuary's waters;

"(ii) the plan authorizes the Administrator to delete proposed actions from the plan;

''(iii) the plan ranks each proposed action included in the plan for funding purposes in order of priority; and

''(iv) no person with a conflict of interest in relation to the intent of this section shall have the power, singly or in combination, to prevent the inclusion of any proposed action in the plan; and

''(B) the Administrator to follow in approving implementation strategies within the conservation and management plan and in approving interim actions to protect the water quality of the estuary for which a conservation and management plan is developed.

''(2) PUBLICATION OF PROPOSED DOCUMENT.—The Administrator shall publish a proposed guidance document under this subsection by not later than 6 months after the date of the enactment of this paragraph. Notwithstanding section 553(a)(2) of title 5, United States Code, the Administrator shall provide at least 30 days advance notice of the proposed adoption of a guidance document under this subsection and comply in all other respects with section 553(b), (c), and (e) of such title with respect to the guidance document. The guid-

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

(f) MANAGEMENT CONFERENCES.—Section 320(g) of the Federal Water Pollution Control Act, as redesignated by subsection (c)(1) of this section, is amended to read as follows:

''(g) PERIOD OF CONFERENCES.—

''(1) IN GENERAL.—A management conference convened under this section shall be convened for a period of at least 5 years. Upon approval of a plan under subsection (h), the Administrator may, for purposes of monitoring or implementing the plan, extend a conference for an additional 5 years if the affected Governor or Governors concur in the extension and the extension is necessary to meet the requirements of this section and section 608.

''(2) TERMINATION OF CONFERENCES.—Upon the application of any resident of a State located in whole or in part in the estuarine zone of the estuary 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—

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

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

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

''(D) termination of the management conference would promote the restoration and maintenance of the chemical, physical, and biological integrity of the estuary, including the factors specified in subsection (b)(6).''.

(g) APPROVAL AND IMPLEMENTATION OF CONSERVATION AND MANAGEMENT PLANS; PUBLIC REVIEW AND COMMENT.—Section 320(h) of the Federal Water Pollution Control Act, as redesignated by subsection (c)(1) of this section, is amended to read as follows:

''(h) APPROVAL AND IMPLEMENTATION OF PLANS AND INTERIM ACTIONS.—

''(1) APPROVAL OF PLANS.—Not later than 120 days after the date of the completion of a conservation and management plan and after providing for

public review and comment, the Administrator shall approve such plan if—

''(A) it complies with the applicable guidance document published under subsection (c);

''(B) it meets the requirements of this section;

''(C) it specifies the implementation responsibilities, including funding responsibilities and implementation schedules, of the Federal Government and of State and local governments that participated in the development of the plan;

''(D) the affected Governor or Governors concur;

''(E) the affected Governor or Governors certify that they have the authority to undertake the actions called for in the plan; and

''(F) the Administrator determines that each action called for in the plan is necessary to protect, restore, and maintain the chemical, physical, and biological integrity of the Nation's waters, is cost-effective, and will not alter or destroy aquatic habitat.

''(2) APPROVAL OF INTERIM ACTIONS.—The Administrator shall approve an interim action to

protect the water quality of an estuary for which a conservation and management plan is being developed if the action meets the requirements set forth in paragraph (1) (A) through (D).

''(3) PUBLIC REVIEW AND COMMENT.—The Administrator shall, before approving a conservation and management plan, publish in the Federal Register a draft of the plan and provide an opportunity for public review and comment on the plan pursuant to section 553 (b) through (e) of title 5, United States Code.

''(4) IMPLEMENTATION.—Upon approval of a conservation and management plan or an interim action under this section, such plan or action shall be implemented. The Administrator, as a nondiscretionary duty, shall ensure that the Federal responsibilities and commitments under the plan or action are complied with and implemented in accordance with the guidance document. The Administrator shall—

''(A) provide assistance to the management conference, including administrative and technical assistance, for monitoring implementation of the plan or interim action;

''(B) coordinate Federal programs necessary for implementing the plan or interim action;

''(C) make recommendations to the management conference on enforcement and technical assistance activities necessary to ensure compliance with and implementation of the plan or interim action;

''(D) collect and make available to the public, publications and other forms of information relating to implementation of the plan or interim action; and

''(E) make grants under the authority provided by this title.

''(5) FUNDING.—Funds authorized to be appropriated under titles II and VI, section 319, and this section may be used in accordance with the applicable requirements of this Act to assist States with the implementation of such conservation and management plans. Funds authorized to be appropriated under section 319 and this section may also be used in accordance with the applicable requirements of this Act to assist States with the implementation of such interim actions.

"(6) CONSISTENCY.—Upon approval of a conservation and management plan or interim action under this section, each Federal agency activity identified pursuant to subsection (b)(10) with respect to such plan or interim action shall be conducted in a manner which is consistent with the enforceable requirement of the plan or interim action. No Federal financial assistance, project, or activity may be provided or approved that is inconsistent with such plan unless the Administrator, the Assistant Director of the United States Fish and Wildlife Service, and the Assistant Administrator of the National Marine Fisheries Service each determines that such assistance, project, or activity will provide greater protection to the integrity of natural aquatic habitat or water or sediment quality in the estuary than such plan or interim action would otherwise provide, and will not alter or destroy aquatic habitat. Nothing in this section, any conservation or management plan, or any interim action shall supersede any requirement of this Act or any other Federal law.".

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

''(o) HABITAT PROTECTION.—No project or activity that is located in whole or in part in waters of the United States or which in whole or in part serves new development located in such waters shall be included in a conservation and management plan or a State estimate of needs under this section unless the Administrator, the Director of the United States Fish and Wildlife Service, and the Assistant Administrator of the National Marine Fisheries Service each determines that—

''(1) the project or activity is essential to reduce the discharge of pollutants into the navigable waters; and

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

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