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COMMUNITY-BASED WATERSHED MANAGEMENT

**Lessons from the
National Estuary
Program**

FEBRUARY, 2005

Appendix A: Clean Water Act, Section 320, as Amended

NATIONAL ESTUARY PROGRAM

a. MANAGEMENT CONFERENCE.

1. **NOMINATION OF ESTUARIES.** The Governor of any State may nominate to the Administrator an estuary lying in whole or in part within the State as an estuary of national significance and request a management conference to develop a comprehensive management plan for the estuary. The nomination shall document the need for the conference, the likelihood of success, and information relating to the factors in paragraph (2).
2. **CONVENING OF CONFERENCE.**
 - A. **IN GENERAL.** In any case where the Administrator determines, on his own initiative or upon nomination of a State under paragraph (1), that the attainment or maintenance of that water quality in an estuary which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on water, requires that control of point and nonpoint sources of pollution to supplement existing controls of pollution in more than one State, the Administrator shall select such estuary and convene a management conference.
 - B. **PRIORITY CONSIDERATION.** The Administrator shall give priority consideration under this section to Long Island Sound, New York and Connecticut; Narragansett Bay, Rhode Island; Buzzards Bay, Massachusetts; Massachusetts Bay, Massachusetts (including Cape Cod Bay and Boston Harbor); Puget Sound, Washington; New York New Jersey Harbor, New York and New Jersey; Delaware Bay, Delaware and New Jersey; Delaware Inland Bays, Delaware; Albemarle Sound, North Carolina; Sarasota Bay, Florida; San Francisco Bay, California; Santa Monica Bay, California; Galveston Bay, Texas; Barataria Terrebonne Bay estuary complex, Louisiana; Indian River Lagoon, Florida; Lake Pontchartrain Basin, Louisiana and Mississippi; and Peconic Bay, New York.
3. **BOUNDARY DISPUTE EXCEPTION.** In any case in which a boundary between two States passes through an estuary and such boundary is disputed and is the subject of an action in any court, the Administrator shall not convene a management conference with respect to such estuary before a final adjudication has been made of such dispute.

- b. PURPOSES OF CONFERENCE. The purposes of any management conference convened with respect to an estuary under this subsection shall be to –
1. assess trends in water quality, natural resources, and uses of the estuary;
 2. collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;
 3. develop the relationship between the in-place loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;
 4. develop a comprehensive conservation and management plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish, and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;
 5. develop plans for the coordinated implementation of the plan by the States as well as federal and local agencies participating in the conference;
 6. monitor the effectiveness of actions taken pursuant to the plan; and
 7. review all Federal financial assistance programs and Federal development projects in accordance with the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of the plan prepared under this section.

For purposes of paragraph (7), such programs and projects shall not be limited to the assistance programs and development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the plan developed under this section.

- c. MEMBERS OF CONFERENCE. The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of –
1. each State and foreign nation located in whole or in part in the estuarine zone of the estuary for which the conference is convened;
 2. international, interstate, or regional agencies or entities having jurisdiction over all or a significant part of the estuary;
 3. each interested Federal agency, as determined appropriate by the Administrator;
 4. local governments having jurisdiction over any land or water within the estuarine zone, as determined appropriate by the Administrator; and
 5. affected industries, public and private educational institutions, and the general public, as determined appropriate by the Administrator.

- d. UTILIZATION OF EXISTING DATA. In developing a conservation and management plan under this section, the management conference shall survey and utilize existing reports, data, and studies relating to the estuary that have been developed by or made available to Federal, interstate, State, and local agencies.
- e. PERIOD OF CONFERENCE. A management conference convened under this section shall be convened for a period not to exceed 5 years. Such conference may be extended by the Administrator, and if terminated after the initial period, may be reconvened by the Administrator at any time thereafter, as may be necessary to meet the requirements of this section.
- f. APPROVAL AND IMPLEMENTATION PLANS.
1. APPROVAL. Not later than 120 days after the completion of a conservation and management plan and after providing for public review and comment, the Administrator shall approve such plan if the plan meets the requirements of this section and the affected Governor or Governors concur.
 2. IMPLEMENTATION. Upon approval of a conservation and management plan under this section, such plan shall be implemented. Funds authorized to be appropriated under titles II and VI of this chapter and CWA § 319 of this title may be used in accordance with the applicable requirements of this chapter to assist States with the implementation of such plan.
- g. GRANTS.
1. RECIPIENTS. The Administrator is authorized to make grants to State, interstate, and regional water pollution control agencies and entities, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals.
 2. PURPOSES. Grants under this subsection shall be made to pay for activities necessary for the development and implementation of a comprehensive conservation and management plan under this section.
 3. FEDERAL SHARE. The Federal share of a grant to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year –
 - A. shall not exceed –
 - (i) 75 percent of the annual aggregate costs of the development of a comprehensive conservation and management plan; and
 - (ii) 50 percent of the annual aggregate costs of the implementation of the plan; and
 - B. shall be made on condition that the non-Federal share of the costs are provided from non-Federal sources.
- h. GRANT REPORTING. Any person (including a State, interstate, or regional agency or entity) that receives a grant under subsection (g) of this section shall report to the Administrator not later than 18 months after receipt of such grant and biennially thereafter on the progress being made under this section.

i. AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated to the Administrator not to exceed \$35,000,000 for each of fiscal years 2001 through 2005 for –

1. expenses related to the administration of management conferences under this section, not to exceed 10 percent of the amount appropriated under this subsection;
2. making grants under subsection (g) of this section; and
3. monitoring the implementation of a conservation and management plan by the management conference or by the Administrator, in any case in which the conference has been terminated.

The Administrator shall provide up to \$5,000,000 per fiscal year of the sums authorized to be appropriated under this subsection to the Administrator or the National Oceanic and Atmospheric Administration to carry out subsection (j) of this section.

j. RESEARCH.

1. PROGRAMS. In order to determine the need to convene a management conference under this section or at the request of such a management conference, the Administrator shall coordinate and implement, through the National Marine Pollution Program Office and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, as appropriate, for one or more estuarine zones-
 - A. a long-term program of trend assessment monitoring measuring variations in pollutant concentrations, marine ecology, and other physical or biological environmental parameters which may affect estuarine zones, to provide the Administrator the capacity to determine the potential and actual effects of alternative management strategies and measures;
 - B. a program of ecosystem assessment assisting in the development of (i) baseline studies which determine the state of estuarine zones and the effects of natural and anthropogenic changes, and (ii) predictive models capable of translating information on specific discharges or general pollutant loadings within estuarine zones into a set of probable effects on such zones into a set of probable effects on such zones;
 - C. a comprehensive water quality sampling program for the continuous monitoring of nutrients, chlorine, acid precipitation dissolved oxygen, and potentially toxic pollutants (including organic chemicals and metals) in estuarine zones, after consultation with interested State, local, interstate, or international agencies and review and analysis of all environmental sampling data presently collected from estuarine zones; and
 - D. a program of research to identify the movements of nutrients, sediments and pollutants through estuarine zones and the impact of nutrients, sediments, and pollutants on water quality, the ecosystem, and designated or potential uses of the estuarine zones.

2. REPORTS. The Administrator, in cooperation with the Administrator of the National Oceanic and Atmospheric Administration, shall submit to the Congress no less often than biennially a comprehensive report on the activities authorized under this subsection including—
 - A. a listing of priority monitoring and research needs;
 - B. an assessment of the state and health of the Nation's estuarine zones, to the extent evaluated under this subsection;
 - C. a discussion of pollution problems and trends in pollutant concentrations with a direct or indirect effect on water quality, the ecosystem, and designated or potential uses of each estuarine zone, to the extent evaluated under this subsection; and
 - D. an evaluation of pollution abatement activities and management measures so far implemented to determine the degree of improvement toward the objectives expressed in subsection (b)(4) of this section.

- k. DEFINITIONS. For purposes of this section, the terms "estuary" and "estuarine zone" have the meanings such terms have in CWA § 104 (n)(3) of this title, except that the term "estuarine zone" shall also include associated aquatic ecosystems and those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.

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