



**FY 2025 – FY 2028 CLEAN WATER ACT SECTION 320**

**NATIONAL ESTUARY PROGRAM GUIDANCE**

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# FY 2025 - FY 2028 Clean Water Act Section 320

## National Estuary Program Guidance

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## Introduction

Authorized in 1987, [Section 320 of the Clean Water Act](#) authorizes and establishes the requirements of the National Estuary Program. Since it was established, the NEP has successfully adapted to new opportunities, challenges and expectations. The inherent flexibility of the NEP has enabled it to evolve from a targeted research program to a national model for effective, community-based resource management.

To enable a continued responsiveness to changing conditions, this document contains Environmental Protection Agency guidance for the 28 designated estuaries of national significance or individual NEPs about comprehensive conservation management plans, annual workplans, reporting requirements, and major assistance agreement policies funded by the EPA through CWA Section 320 grants and cooperative agreements.<sup>1</sup> It reflects the shared need for a high level of coordination and timely communication among the EPA headquarters, the EPA regions and individual NEPs.

This guidance is intended to promote those efforts by consolidating the major applicable requirements and policies into one document for the EPA regions to use in their oversight of the NEPs and be used as a reference for the NEPs in the course of their work. Note that in May 2016, the NEP was reauthorized by Congress to add a competitive grant program under Section 320(g)(4). However, this is not addressed by this program guidance.

### Program Guidance Updates

Key updates from the Fiscal Year 2021 –2024 Clean Water Act Section 320 National Estuary Program Guidance include:

### Protect and Restore America’s Estuaries Act

Individual NEPs have been considering the effects of recurring extreme weather events in their planning efforts as well as meaningfully engaging with all the communities in their study area. Pursuant to the requirements of the Protect and Restore America’s Estuaries Act that amended CWA Section 320, this guidance builds on those efforts and encourages NEPs to continue to develop resilient management plans to address impacts from recurring extreme weather events, including flooding that may be related to sea level rise, while also increasing engagement and benefits to all communities.

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<sup>1</sup> In administering the National Estuary Program, regions will also need to abide by other applicable laws, regulations and policies, including, but not limited to, the [Uniform Grants Guidance](#), the [Endangered Species Act](#), Coastal Zone Management Act, and the National Historic Preservation Act. Regions work with their General Counsel to identify other requirements that may apply.



## Approval of Changes to the Comprehensive Conservation and Management Plan

As of April 2024, approval of changes to previously approved CCMPs is delegated to the EPA regions. The regions consult with the EPA headquarters on the changes prior to approval. In addition, the EPA headquarters has provided further details regarding the required contents of CCMPs. More information on each major change can be found below.

### The EPA Priorities

As of the effective date of this guidance, the EPA's Office of Wetlands, Oceans and Watersheds has several priority areas of interest for the NEP, including: 1) reduction in nutrient pollution; 2) adapting to recurring extreme weather events and increasing resilience; 3) increasing benefits from projects to all communities; and 4) marine litter reduction. The EPA encourages the individual NEPs to consider how best to address these priorities in their study areas. Additionally, the NEPs support the EPA's ["Powering the Great American Comeback" Initiative](#) by supporting Pillar 1: Clean Air, Land, and Water for Every American, and Pillar 3: Permitting Reform, Cooperative Federalism, and Cross-Agency Partnerships. Because priorities can change over time, the EPA also encourages the individual NEPs to review EPA priorities annually during the work planning process and consult with the EPA to incorporate new areas of special interest in future workplans consistent with their goals. Where a project aligns with a priority area, that should be indicated in the individual NEP's workplans. The following is a description of current areas of special interest:

#### 1. Reduce Nutrient Pollution to Protect Water Quality and Public Health

Nutrient pollution remains one of America's most widespread and costly environmental and public health challenges. The EPA invests in many of its regulatory CWA programs to achieve nutrient pollution control and has found additional benefits in nutrient reduction actions under voluntary programs working with the U.S. Department of Agriculture, Tribes, states and other interested parties.

To support clean water for every American, the EPA encourages individual NEPs to continue their collaborative work with partners to assess current and developing nutrient issues and address nutrient management in their watershed. For example, NEPs can coordinate with their State Nonpoint Source Program on their ongoing watershed protection efforts. Individual NEPs facing nutrient pollution challenges are urged to consider a comprehensive suite of nutrient management activities.

Visit the [EPA's Ongoing Efforts to Reduce Nutrient Pollution](#) for more details on the EPA's collaborative approach to reducing excess nutrients in watersheds.

#### 2. Make Investments to Address Recurring Extreme Weather Events and Increase Resilience

Given their coastal locations and the environmental goals the program pursues, the NEPs were among the first programs to recognize and address the vulnerability of their study areas to natural disasters and the impacts from recurring extreme weather events by incorporating response actions in their CCMPs. Sea level rise, hurricanes and floods, s can damage key ecological systems, reduce the water quality and affect coastal communities.

The EPA has a responsibility to ensure that awarded funds will achieve the desired environmental results by appropriate consideration and management of risks. Per [33 U.S.C. 1330\(g\)\(2\)](#) grant awards are “to pay for activities necessary for the development and implementation of a comprehensive conservation and management plan” and necessarily entails a responsibility to manage foreseeable risks to achieving environmental results and the CCMP goals.

The [Protect and Restore America’s Estuaries Act](#), an amendment to CWA Section 320 signed into law in January 2021, requires all the individual NEPs to have a management plan that “addresses the effects of recurring extreme weather events on the estuary, including the identification and assessment of vulnerabilities in the estuary and the development and implementation of adaptation strategies.” For further information please see Appendix 8.

The EPA expects the individual NEPs to continue to integrate long-term adaptation and resiliency into their CCMPs to address effects from recurring extreme weather events and inform water quality and habitat restoration goals, including supporting infrastructure, protection, restoration and public outreach projects consistent with statutory requirements.

### 3. Engage All Communities

It is important to incorporate many voices in the NEP decision-making process and to better represent stakeholders from all communities in the Management Conference. Meaningful participation empowers such community members to more fully protect and restore key habitats, improve water quality and help increase resilience to the effects of changing environmental conditions and recurring extreme weather events in their study area environment.

The [Protect and Restore America’s Estuaries Act](#) amendments to Section 320 of the CWA reinforce the ongoing communication, engagement, public education and awareness that has been a key element of success for the individual NEPs by requiring the CCMPs to “increase public education and awareness of the ecological health and water quality conditions of the estuary.”

In support of clean water for every American and cooperative federalism, the EPA encourages the individual NEPs to engage with a broad spectrum of communities by

listening, collaborating, sharing tools and information, or providing technical assistance that contributes to meeting the goals of the CCMP. In turn, these efforts help such community partners establish and sustain their own local capacity to deal with the stressors they are facing such as sea level rise, storm surge, extreme heat, wildfire and coastal flooding.

#### 4. Reduce Trash

Preventing trash loadings — especially plastic waste — into inland and coastal waterways is an EPA priority as it supports clean water and land for every American. The Trash Free Waters program is working to address the problem in the U.S. through a range of approaches that can be utilized within the individual NEP study areas. Examples of trash mitigation projects include, but are not limited to, source reduction, trash capture, monitoring and assessment, stakeholder engagement and outreach/education.

Some of the individual NEPs already have CCMP trash reduction or trash abatement goals and are implementing trash-related projects as part of their CWA Section 320 grants. For those that do not have such goals or activities in their CCMPs, the EPA strongly encourages the individual NEPs that have trash and plastic waste challenges to consider doing so as part of their next round of CCMP updates or revisions. The EPA plans to track the number of CCMPs that include trash goals and may be able to provide technical or financial assistance for select individual NEP trash mitigation projects.

# I. Management Conference-Approved Workplan Content

## A. Workplan Process and Deadlines

Workplan contents must be tied to the CCMP for the study area. CCMP actions are implemented through the workplan projects. The individual NEPs should work closely with their EPA regional coordinators to develop draft workplans for review and approval by the Management Conference prior to their grant package final submittal. The EPA headquarters expects that the EPA regional coordinators will have seen and commented on draft workplans prior to the individual NEPs' submittal of their grant applications. This process will facilitate a quicker review and approval of the submission by the EPA. Regional offices can choose to negotiate with their individual NEPs for dates based on their region's deadlines for submission of the workplan and completed SF 424. The expectation is to obligate annual funding by the end of the fiscal year.

**Table 1: Plan Coordination**

<b>Deliverable</b>	<b>Recipients</b>	<b>Follow-up Action</b>
Draft NEP Workplan	EPA Regional Coordinators	Regional coordinator shares draft workplan with headquarters coordinator for courtesy review and comment (date varies by receipt of draft).
Final Management Committee approved NEP Workplan (with SF 424 application) entered into grants.gov	EPA Regional Coordinators	Regional coordinator sends final workplan to headquarters coordinator and posts on NEP SharePoint site after award (date varies by region).

## B. Required Elements of a Workplan

- 1. Comprehensive Conservation and Management Plan Goals:** Provide a statement indicating which of the CCMP goals the individual NEP will focus on in the coming year.
- 2. Budget and Staff Elements**
  - Provide a budget breakdown of proposed workplan expenditures, including nonfederal match. See [Appendix 2](#) for additional information about the 50% match requirement.

- Provide a list of the individual NEP staff and their official responsibilities.
- Provide a description of cost-share. Cost-share can be in the form of cash or in-kind contributions or services. See [Appendix 2](#) for additional information and caveats about cost-share.
- To the maximum extent practical, the workplan must specify target dates and milestones for timely project completion.
- NEP workplans must implement the CCMP and meet the intent of the latest EPA Strategic Plan (currently Goal 5, Objective 2).

3. **New and Ongoing Project Information:** Provide the following information for each proposed new and ongoing project. The workplan may provide the required information in the format that complements the program evaluation, or in the individual NEP's own preferred format. Information about proposed new projects should be easily distinguishable from information reported about ongoing projects.

For each new or ongoing project, provide information on the following:

- **Project or Activity Name:** indicate whether it is a “new” or “ongoing” project relative to the award.
- **Objective(s):** describe in one or more sentences; for example, “The objectives are to restore twenty acres of coastal wetland habitat and to reduce nonpoint source runoff.”
- **Description:** describe the project briefly in one or more sentences; for example, “This project will engage multiple partners in the restoration of wetlands that formerly served as habitat for several endangered bird species and helped filter storm water runoff from a nearby road.”
- **Leads, Partners and Their Role(s)** (if available): for example, “The State Department of Natural Resources – technical review of monitoring results.”
- **Anticipated Output(s) or Deliverable(s):** for example, “Ten workshops for the public to provide information on the values of restored local habitat.”
- **Estimated Milestones**, where appropriate: for example, “Within three months of project start date, all partners will have been identified.”
- **Anticipated Long-term Outcome(s):** for example, “An increase in the number of high-value habitat acres is expected to result in a 50% increase in native X and Y populations in the sub-watershed. The increase will also restore water quality in local stream to 1980 conditions and help reduce the impacts of recurring extreme weather events.”
- **How the Project Supports the CWA:** for example, “Restoring impaired waters.”

- **Estimated Budget including Non-Federal Match:** for example, “Total budget for this item is estimated at \$20,000, with \$10,000 from EPA grant and \$10,000 from match.”
- **Link to CCMP (this includes any separate monitoring, habitat, communication, and finance plans or strategies):** reference tasks or activities as actions; for example, WQ-1.

#### 4. Accomplishments

- This Section should include significant outputs and outcomes, examples of transferable activities and tools, and whether the CCMP objectives towards long-term goals were achieved. The workplan should include important environmental and programmatic accomplishments, completed workplan activities, and highlight noteworthy lessons learned. The individual NEPs should highlight success stories from the year, including, but not limited to, quantifiable outcomes related to the priority areas of special interest (see below). This information is needed to illustrate each of the individual NEP’s CCMP implementation progress and should be presented in enough detail to fully describe what was accomplished, along with whatever substantiating data are available. The information also serves as the basis for the annual report.

Workplan accomplishments are used by the EPA to respond to various information requests. The EPA also utilizes them to update the NEP website (e.g., success stories for [How the NEPs Address Environmental Issues](#)) for technical transfer purposes. The individual NEPs can use these same workplan accomplishments for future program evaluation submissions and other upcoming reporting purposes for the EPA, share them internally within their management conference structure, or repurpose them to communicate with local stakeholders and potential funders through a variety of means (e.g., websites, social media and outreach materials). Therefore, it is important that the write-up be understandable to these multiple audiences.

#### 5. Recurring Extreme Weather Event Risk(s) Considered:

- Consistent with section 320(b)(4)(B) of the Clean Water Act, where applicable, workplans must explain how building resilience to effects of recurring extreme weather events was considered in planning the workplan consistent with the CCMP. This should be a simple check to ensure that the findings from the vulnerability assessment and resulting adaptation plan are integrated into the workplan.

## II. Expedited Obligation and Expenditure of CWA Section 320 Grant Funds

### A. Expediting the Obligation of Grant Funds

The EPA promotes the expedited obligation of federally appropriated funds. In light of this policy, the EPA recommends that the individual NEPs begin workplan development prior to enacted final annual appropriations. Given the history of delayed appropriations, the individual NEPs should use the previous year's funding as the funding basis with the expectation that some elements may need revising once the EPA determines the final allocation. In the interim, the individual NEP Directors should work closely with their regional coordinators to develop the workplan for review and approval by the Management Committee. This enables regional coordinators to flag any concerns before action is taken by the Committee. Note that workplans should consider work that could be completed in two years (i.e., pursuant to the goal of expediting obligations and expenditures; see [Section II.B - Expediting the Expenditure of Grant Funds](#)).

Regional coordinators should share the workplan with the headquarters coordinator to ensure the EPA headquarters is kept abreast of their NEP locations' activities. The regional coordinators should post the final workplan on the EPA NEP SharePoint site and notify the EPA headquarters coordinator of its availability (see [Table 1](#)). Regional coordinators should also provide their headquarters coordinator with the NEP's Annual Report. (see [Section V.A. - Annual Reporting](#)).

If, prior to or during regional review of the individual NEP's grant application, the region proposes significant revisions to the workplan, the individual NEP's management Committee should be made aware of those proposed revisions in a timely manner.

### B. Expediting the Expenditure of Grant Funds

It is a federal government priority to ensure timely funds expenditure. The EPA strongly urges its assistance agreement recipients to spend down funds expeditiously, preferably within two years of the assistance award date. The following steps can help to ensure timely funds expenditure:

- Break up long-term projects into phases with shorter project periods.
- If an individual NEP anticipates difficulties in completing projects within planned project periods, the NEP should immediately discuss with the EPA regional coordinator what steps it plans to take to expedite the expenditure of its unspent project funds. Work-cost extensions; these require approvals based on written justification and are discouraged but may be allowed with approval from an Authorized EPA Official, or AEO on the recommendations of a project officer and grants management specialist. For the purposes of this guidance, the term "Authorized EPA Official" refers to EPA officials who

have delegated authority to make decisions under 2 C.F.R. part 200, 2 C.F.R. part 1500, and 40 C.F.R. part 35, subpart P relating to the allowability of costs under the CWA Section 320 grants and cooperative agreements. AEOs include regional award officials and grants management officers.<sup>1</sup>

- Project officers should ensure that the National Term and Condition in Next Generation Grants System or NGGS (reproduced below) requiring the EPA approval for no-cost extensions is included in the Funding Recommendation for the grant/cooperative agreement.

If a project is completed at a cost that is less than the budgeted amount, the individual NEP should notify the EPA regional coordinator and project officer how remaining project funds have been, or will be, re-allocated so that all available funds will be drawn down during the project period.

### ***Extension of Project/Budget Period Expiration Date***

The EPA has not exercised the waiver option to allow automatic one-time extensions for non-research grants under 2 C.F.R. 200.308(e). Therefore, if a no-cost time extension is necessary to extend the period of availability of funds, the recipient must submit a written request to the EPA prior to the budget/project period expiration dates and comply with the deadlines in the Terms and Conditions. The written request must include: a justification describing the need for additional time, an estimated date of completion, and a revised schedule for project completion including updated milestone target dates for the approved workplan activities. In addition, if there are overdue reports required by the general, administrative, and/or programmatic terms and conditions of this assistance agreement, the recipient must ensure that they are submitted along with or prior to submitting the no-cost time extension request (National and Regional Term and Condition Extension of Project/Budget Period Expiration Date).

The EPA encourages the individual NEP to spend down CWA Section 320 funds consistent with anticipated expenses. However, if the planned expenditure rate for those costs is slower than originally planned due to unanticipated circumstances (e.g., a staff position becomes vacant and remains unfilled for a period of time), the individual NEP should advise the EPA project officer that funds will not be completely spent down within the expected timeframe and provide the reason and a plan for expenditure in subsequent years. For information about unliquidated obligations, please refer to Unliquidated Policies GPI 11-01 and [GPI 12-06](#).

### III. Habitat and Leveraging Reporting Requirements

Federal programs are required to annually report on their progress toward meeting established program goals, if any, as well as Strategic Plan performance measures and internal agency targets. [Table 2](#) provides the deadlines for the individual NEPs to report habitat and leveraging data. The National Estuary Program Online Reporting Tool, or NEPORT, will be open year-round to allow early reporting if the regions wish to request it from their individual NEPs. Approved users can enter data into NEPORT at <https://www.neport.epa.gov>. The forthcoming NEP IJA Reporting Guide will provide directions on how to appropriately report IJA funded actions in NEPORT.

EPA headquarters and EPA regional coordinators will conduct a quality assurance review and give final approval of the annual NEP data submitted in NEPORT. To ensure projects meet the guidance and reporting criteria, regional coordinators should refer to the FAQ document found via the link located in NEPORT. For NEPs that will undergo a Program Evaluation review, the regional coordinators should provide the NEPORT data identified in the Program Evaluation Guidance to the NEP for the submission package (see the most current Program Evaluation Guidance for further details).

The final regionally approved NEPORT data will be compiled annually by headquarters into a national total summary. In addition, EPA headquarters will also conduct a high level random general spot check, focusing on anomalies. EPA headquarters will continue to provide technical support and assistance with the NEPORT application and announce the annual reporting and approval deadline dates.

**Table 2: NEPORT Reporting Deadlines**

<b>Deliverable</b>	<b>Due Date</b>
Individual NEPs provide Habitat and Leveraged Data	End of 2 <sup>nd</sup> week in September each year
The EPA regional coordinators review and give final approval of the NEP Data submitted in NEPORT	End of 2 <sup>nd</sup> week in October each year
The EPA headquarters will compile a national totals summary and provide technical support regarding the application.	Three weeks after all regional data is final, or by second week in December

## A. Habitat Reporting

The EPA asks the individual NEPs to report on the habitat protected and restored by the individual NEPs and their partners during the fiscal year of October 1 through September 30. By the end of the last week in June, the EPA headquarters will provide specific NEPORT data entry deadline dates to the individual NEPs and regions. Data become final after regional coordinators officially approve habitat and leveraging data.

The EPA posts the national habitat annual totals and a subset of the reported habitat data in NEPORT (e.g., project description, lead implementer, photos, and acres) on the EPA's interactive [NEPmap](#) website for public viewing. NEPmap shows geo-located NEP habitat projects within each study area, along with many other national data layers related to water quality, land use and land cover. Since this project information is posted verbatim, data must be accurate and project descriptions must be clear and understandable to the public.

## B. Leveraged Resources<sup>2</sup>

As part of the CCMP implementation, each individual NEP works to ensure its long-term financial sustainability by pursuing leveraging opportunities — i.e., financial or in-kind resources provided above and beyond the federal funding provided under the CWA Section 320 grant. Leveraged resources include both resources that are administered by the individual NEP and those that are not. As in previous years, the EPA headquarters requests each individual NEP to report annually on those resources. Leveraging report entries need only include information for projects with primary or significant participation by the individual NEP. See [Appendix 4](#).

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<sup>2</sup> Leveraged resources are those financial or in-kind resources above and beyond CWA Section 320 assistance agreement funds and earmarks or line items that an individual NEP Director and staff had a role in directing toward the CCMP implementation. Leveraged resources include resources administered by the individual NEP or its partners. Examples include CWA Section 320 match, grants obtained by an individual NEP, and bonds that an individual NEP played a role in directing toward the CCMP implementation (source: Frequently Asked NEPORT Questions document in NEPORT).

## IV. Additional National Estuary Program Policies

### A. Annual/End of Year Reporting

The individual NEPs are required to provide annual/end of year reports to the EPA regions as part of their assistance agreements. The purpose of these reports is to provide a clear record of how funds were spent during the reporting period and therefore serves a different and distinct purpose from the accomplishments report that is required for annual workplans as described in [Section II](#). The terms and conditions for annual/end of year reporting requirements may vary across the EPA regions depending on each individual NEP's fiscal year grant cycle and the timing of these reports may be negotiated with the regional coordinator and shared with the headquarters coordinator.

In general, annual/end of year reports (or second semiannual report if a final report is not submitted) should include the following elements for all major projects that were completed during the previous work year:

- Project/activity name;
- Brief project description;
- Lead implementer, partners and their roles;
- Deliverables and completed activities;
- Amount of CWA Section 320 grant/cooperative agreement funds spent on project implementation per award;
- How a project fits within the CCMP structure; and  
if applicable, a discussion of how any project constraints were addressed.

Regional coordinators are asked to share the final annual/end of year report for each individual NEP with their respective headquarters coordinator by December 30 if possible. Dates may vary by region.

**Table 3: Annual/End of Year Reporting**

Deliverable	Recipients	Action
Annual/End of Year Report	EPA regional coordinators	The individual NEPs provide annual/end of year reports to the regional coordinators
Final Annual Report	EPA headquarters coordinators	Regional coordinator saves final annual report on the NEP National Teams Site available to regional coordinators (Documents/General/End of Year Progress Report); the last semi-annual report can serve as the final report if it includes the requested final report contents specified in the grant’s programmatic terms and conditions and the project officer and recipient agree

**B. Required Documentation of CWA Section 320 Grant Funds Used for Travel**

The EPA recognizes the value of technology transfer and information sharing between coastal communities to promote coastal watershed protection, including sharing best accomplished during in-person meetings. Estimates of annual travel costs should be included in the final annual workplans. CWA Section 320 funds may be used to fund travel for the purpose of information sharing and technology transfer among stakeholders, partners, and other individual NEPs.

The individual NEPs must document travel taken during the previous federal fiscal year funded with CWA Section 320 funds and/or matching funds in their annual/end of year report. Provide the following information for each trip taken and funded by the grant:

- Trip purpose;
- Destination;
- Number of staff members who traveled; and  
Final trip cost.

Eligible travel costs using CWA Section 320 funds and matching funds may include:

- Travel by staff and/or stakeholders from other individual NEPs or watershed organizations who collaborate with the individual NEP on issues of common interest. Stakeholders may include members of the public and of environmental and public interest organizations, business or industry representatives, academicians, scientists and technical experts; and Cost associated with attending conferences, meetings, workshops or events that advance the CCMP implementation.

Note that when using CWA Section 320 grant funds for travel, the individual NEPs should use the least expensive means of travel, whenever possible. CWA Section 320 grant funds and nonfederal matching funds may not be used to cover the travel costs of federal employees.

### **C. Role of the Host Entity**

The purpose of this section is to clarify the roles and responsibilities of the individual NEP host entity (i.e., the grant recipient and employer of the director and staff) in relation to the individual NEP's Management Conference.

The Management Conference is the entire shared NEP governance structure made up of diverse stakeholders for open discussion, cooperation, consensus building and collaborative decision-making. The Management Conference serves as the neutral forum to develop, update, and implement an individual NEP's CCMP, including identifying key issues for the program, connecting and prioritizing work for the annual workplan, and approving the budget and program direction, and is composed of the individual NEP program office/staff and various stakeholder committees that collectively direct, approve, implement, and provide technical and citizen input. The individual NEP director and program staff coordinate these committees to facilitate implementation of the CCMP and are accountable to the Management Conference.

Unless the individual NEP is an independent non-profit organization, the individual NEP typically includes their host entity as a management conference member. In addition to serving as an equal member of the Management Conference, the host is also expected to provide administrative and other kinds of support related to the individual NEP's decision-making process — e.g., providing a physical home for the program and a neutral platform for program decision-making, sharing technical and stakeholder information, and managing funding processes for purposes and activities developed and approved by the Management Conference. This requirement is derived from the NEP financial assistance regulation at 40 C.F.R. 35.9065(a):

The Regional Administrator will not award funds pursuant to CWA Section 320(g) to any applicant unless and until the scope of work and overall budget have been approved by the management conference of the estuary for which the work is proposed.

The host entity is responsible for: (1) complying with terms and conditions of the assistance agreement made with the EPA; (2) maintaining financial records; (3) submitting progress reports and other required paperwork; (4) employing the individual NEP director and staff; and (5) tracking and adhering to eligible cost requirements which include a non-federal 50% match.

Funding awarded to the host entity is intended to be used for those purposes and activities approved by the Management Conference, consistent with the CCMP and CWA Section 320.

An individual NEP is unique both in the highly collaborative approach it requires among members of the Management Conference and in the authority, it confers on the Management Conference to choose the direction of its program. The Management Conference approves the annual workplan and any changes to the CCMP, thus providing a safeguard against individual interests steering the individual NEP's direction alone. To this end, many of the individual NEPs have developed and adopted operating procedures, agreements, or by-laws which outline roles and responsibilities.

The individual NEP director oversees the program's spending and work efforts, including authorizing payments for grants, contracts, reimbursements, and typical administrative expenditures for the individual NEP as well as staffing selections and duty assignments. Decisions to make significant changes—e.g., elimination of roles/responsibilities of key staff positions or directing staff focused projects/activities that do not align with or do not support the CCMP implementation—to the individual NEP key personnel (e.g., the director) or their duties must be approved by the Management Conference.

For this approach to succeed, the individual NEP's Director and staff should be perceived to be autonomous and independent of detailed direction from particular interest groups or agencies, with the individual NEP's Director and staff not directed by their host entity, but by their Management Conference. The individual NEPs belong to all the Management Conference participants, not just the hosts.

There may be situations where the goals of the Management Conference and the host entity are no longer compatible, or the Management Conference determines that the host entity no longer can meet the needs of the program. In such cases, the Management Conference may decide to explore a new host entity. The process for selecting a new host entity should be guided by the Management Conference to ensure that the individual NEP retains its independence while fulfilling its duties. Examples include issuing public calls (Statement of Interest) for interested parties, or expressions of interest from members of the NEP Management Conference to take on the host role.

#### **D. Required National Meeting Attendance**

Every individual NEP director is required to attend official meetings between the EPA and the individual NEP unless extenuating circumstances arise, and an alternative approach is approved by the EPA project officer. Officially scheduled meetings between the EPA and the individual NEP include:

- a. the scheduled annual NEP national meeting usually held in the Washington, D.C. area; or
- b. any scheduled EPA Region/NEP meeting convened by a Regional Administrator or their designee.

Each annual assistance agreement must include a programmatic term and condition requiring the individual NEP Director to attend all national or regional meetings called on behalf of the

program. The programmatic term and condition should also indicate that attendance may be delegated to another staffer under extenuating circumstances (e.g., a family emergency, or a conflict in meeting dates caused by a previously scheduled event).

## **E. Use of CWA Section 320 Funds for Land Purchase**

Purchase or acquisition of land, including appraisals and land operation and maintenance, is an allowable use of CWA Section 320 funds if purchase/acquisition is identified as an action or activity in an approved CCMP. Also, real property (land) may be used as match if the land was not purchased or acquired using CWA Section 320 or other federal funds and its use is described in an approved CCMP. The individual NEPs should consult with their regional coordinators and regional grants project officials for information about the appropriate documentation required for real estate transactions and for use as match. In addition, NEPs are encouraged to collaborate with the State/Territory Nonpoint Source Program to see if a land purchase aligns with on-going watershed protection efforts and to facilitate local coordination of projects.

## **F. Proposal/Grant Writing Preparation Costs**

See [Appendix 6](#) for scenario examples. The following Section applies to both grants and cooperative agreements.

As provided at [2 C.F.R. 200.460](#), proposal costs include “. . . the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including the development of data necessary to support the non-Federal entity’s bids or proposals.” The term may include costs of proposals for funding from other Federal agencies, state or individual governments, and private foundations. Under 2 C.F.R. 200.460, proposal costs for both successful and unsuccessful proposals incurred during the current accounting period are “normally” treated as indirect costs. However, the EPA has determined that directly charging proposal preparation costs is also allowable under the NEP provided all of the following conditions are met:

1. The recipient (i.e., the individual NEP) must be seeking funding from other EPA programs, other federal agencies, state or local governments, or private foundations. If the proposal is successful, the funds will be used to carry out an activity described in the recipient’s CCMP.
2. The proposal preparation costs must not be included in the “base” for calculating the recipient’s indirect cost rate. Recipients must classify proposal preparation costs under CWA Section 320 grants consistently as direct or indirect as required by [2 C.F.R. 200.412](#). For example, if the salary of the analyst who develops the narrative for the proposal is not included in the indirect cost base, then the personnel compensation costs (salary and fringe) for the time the analyst spends preparing the proposal, may be charged directly to the CWA Section 320 grant. The cost for the time an accountant

spends developing a proposal can be charged either to the indirect cost base, or to direct costs, but not both.

The proposal preparation costs must bear a reasonable relationship to the total budget. Recipients of the CWA Section 320 grants may only use up to 2% of the total budget (EPA funds plus required cost share) or \$5,000 annually, whichever is greater, for direct costs for preparing proposals for awards under EPA grant competitions. Allowable direct proposal preparation costs for CWA Section 320 grants may not include costs for procuring contractors/consultants to prepare the proposals for the EPA competitions. These restrictions only apply to competitions for direct EPA funding and not for competitions undertaken by other federal agencies or non-profits. For example, the restrictions on direct proposal preparation costs apply when the CWA Section 320 grant recipients compete for the EPA Wetland Program Development Grants and Environmental Education grants. The restrictions do not apply when the CWA Section 320 grant recipients compete for subawards offered by recipients of the EPA passthrough funding, such as Tribal or state CWA Section 319 grant recipients or the CWA Section 320 NEP Watersheds Grant.

3. The Office of Grants and Debarment's Grants Competition Advocate determined, based on the restrictions described above, that the guidance materially complies with Section 4 of the EPA Order 5700.5A1, Policy for Competition of Assistance Agreements, which " . . . requires that the competitive process be fair and impartial . . . and that no applicant receive an unfair competitive advantage." Among the factors the Grants Competition Advocate considered in approving the coverage in the guidance on proposal preparation costs was that such costs were historically allowable without restriction for CWA Section 320 grants since at least FY2012. As noted in Section 6 a. of the Guidance on Selected Items of Cost, of the Guidance on Selected Items of Cost, the Office of Management and Budget's Uniform Grant Guidance (2 C.F.R. part 200) identifies the direct charges of proposal preparation costs.
4. Proposal preparation costs for competitions from other federal agencies or non-profits may not exceed 5% of the total budget (which includes both the EPA's share and any cost share/match by the recipient) for the CWA Section 320 grant for the proposal preparation costs as provided in Section 6 c.(1)(c) of the [EPA's Guidance on Selected Items of Cost for Recipients](#). Note that the EPA expects the costs to develop a proposal will be much less. The NEPs must consult with their regional coordinators to confirm the "reasonable relationship" to the budget.
5. As required by [2 C.F.R. 200.460](#), recipients must ensure "[N]o proposal costs of past accounting periods will be allocable to the current period."
6. Any proposal preparation costs incurred before award of the NEP assistance agreement that will be charged for the proposal preparation costs must comply with the requirements for pre-award costs at [2 C.F.R. 200.458](#) in order to qualify for direct

charging. If the proposal preparation costs are incurred before award, the budget and project period for the agreement must include the period of time that the recipient incurred the proposal preparation costs. As provided at [2 C.F.R. 1500.8](#), recipients must obtain prior AEO approval before charging proposal preparation costs that were incurred more than 90 days prior to award. Pre-award costs are only an issue for the initial award of a grant in its first year, and not in subsequent years of amendments for that grant. As with all pre-award costs, the recipient incurs proposal preparation costs at its own risk.

7. Recipients must provide the EPA with assurances that regulatory and policy requirements are met with the application for the award which includes direct charges for proposal preparation costs with the understanding that the recipient will inform the EPA if circumstances change. No further assurances are necessary throughout the term of the agreement. An example of an acceptable assurance statement is as follows:

The budget for (Name of Recipient) application for the EPA funding includes direct costs for preparing its proposal for this award or proposals for funding from other sources. The amount of funds that may be used for proposal development may not exceed 2% when applying for direct EPA funding of the total budget (both Federal and non-Federal shares). If the proposal is successful, the funds must be used to carry out an activity described in the recipient's CCMP. (Name of Recipient) may not include the same proposal preparation costs in its indirect cost "pool" or similar term used in its indirect cost rate agreement.

Additionally, no direct costs for preparing proposals from past accounting periods may be allocated to the current accounting period as required by [2](#)

[C.F.R. 200.460](#). The CWA Section 320 grant recipients who obtained reimbursement for proposal preparation costs as a direct cost prior to the effective date of this guidance must provide the EPA's regional grant management officer with the same assurance for the costs to be allowable. For the purposes of retroactive approval, the past accounting period means the previous grant to be charged. If the CWA Section 320 grant recipient cannot make those assurances, then the recipient must adjust its charges to the grant to offset the direct charges for proposal preparation costs with the other eligible and allowable costs.

Note that the EPA has determined that funds a recipient obtains from successful proposals are not program income for the purposes of [2 C.F.R. 200.307](#) and [2 C.F.R. 1500.7\(b\)](#) even if the recipient charges the costs for preparing the proposal directly to the CWA Section 320 grant. Successful proposals in almost all cases lead to an agreement with the grantor that contains specific conditions for the use of funds. Under these circumstances, the EPA does not consider the funds that recipients obtain

through proposal preparation activities charged as direct costs to the CWA Section 320 grant to be program income since the grantor's conditions may be different than those contained in the CWA Section 320 grant/assistance agreement.

If a recipient or subrecipient does not have an indirect cost rate, then all grants management costs that are "allocable" to a specific CWA Section 320 grant or subaward may be charged directly. Recipients and subrecipients with indirect rates must ensure that they charge the grants management costs consistently as direct or indirect.

## **G. Fundraising Costs (see [Appendix 6](#) for scenario examples)**

The following section applies to both grants and cooperative agreements. As 2 C.F.R. 200.442(a) indicates, fundraising consists of organized activities such as "financial campaigns, endowment drives, solicitation of gifts and bequests" designed to "raise capital or obtain contributions." These costs are generally unallowable. However, in limited circumstances when the funds raised further the statutory purposes of the individual NEP found under CWA Section 320(b), fundraising costs may be allowable as a direct cost if an AEO provides prior written approval. This approval requires a determination that the funds raised will be used to carry out an activity described in the CCMP. These determinations may be made at the time of award if the recipient justifies charging the CWA Section 320 grant or cooperative agreement for fundraising costs in its budget narrative or post-award in response to a request by a recipient. The justification should include:

- Specific action in the CCMP that the funds will be used to carry out;
- The method(s) the recipient will use to raise the funds; and
- Controls in place to assure that the funds are only used for authorized purposes, including the 5% of total budget cost limitation on allowable fundraising cost.

The EPA has determined that the amount of the total budget (CWA Section 320 funds and cost share/match) that can be used for fundraising is 5%. The individual NEPs need to consult with their regional coordinator regarding these costs. Fundraising costs differ from proposal preparation costs based on how the recipient may use the money. Funds raised through solicitations of gifts or bequests are not conditioned on the recipient carrying out a specific project as would be the case with a financial assistance agreement from a governmental entity or foundation. The grant recipient has the discretion to use the program funds under the same conditions as the CWA Section 320 grant to implement the CCMP. Since the grant recipient used the CWA Section 320 grant funds to solicit the gift or bequest, the funds raised were directly generated by the EPA supported activity as provided in the definition of program income at [2 C.F.R. 200.1](#).

The EPA's Guidance on Selected Items of Cost for Recipients provides that funds raised with costs charged to the EPA grants will be treated as program income under either the "addition"

or “cost share” method. By regulation, program income used under these methods must be used for the same purposes and under the same conditions as the CWA Section 320 grant. [2 C.F.R. 1500.7\(b\)](#); [2 C.F.R. 200.307\(e\)\(2\)](#) and (3); [2 C.F.R. 200.306\(b\)](#). In other words, any program income obtained by the individual NEP may be added to the amount of the EPA funding or used as cost share, but under either method the program income must be used to fulfill the terms and conditions to implement the CCMP.

Regional AEOs may authorize recipients to use program income as cost share/match or a combination of cost share and addition thru the terms and conditions of the agreement. Two options of the necessary term and condition are as follows:

The budget for (Name of Recipient) application for the EPA funding includes direct costs for fundraising as that term is defined by [2 C.F.R. 200.442\(a\)](#). Direct costs for fundraising may not exceed 5% of the total budget (both federal and non- federal shares) without express approval from the EPA’s regional award official or grants management officer. All proceeds from fundraising supported by the EPA or the recipients cost share/match are to be accounted for as program income, and

(Option 1 “as provided by 2C.F.R. 200.307(b)(2) added to the amount of the cooperative agreement and used for the purposes and under the conditions of the cooperative agreement to carry out an authorized activity described in the recipient’s CCMP.”), or

(Option 2 “used for cost share/match as provided in 2 C.F.R. 200.307(b)(3) to carry out an authorized activity in the recipient’s CCMP.”)

(Name of Recipient) must not include the same fundraising costs in its indirect cost “pool” or similar term used in its indirect cost rate agreement. Additionally, (Name of Recipient) may not use the EPA funds or resources counted towards cost share/match to support any fundraising event that involves entertainment including evening receptions, dinners, or similar events where alcohol is served or otherwise available even if the EPA funds or resources counted towards cost share are not used to purchase alcohol.

Note: While governmental entities rarely make gifts or bequests, it may be more difficult to determine whether funds sought from private foundations fall under the fundraising or proposal preparation cost categories. The EPA will typically base the determination on which category the activity falls under based on how the grant recipient accounts for the funds for financial statement purposes. Funds that are classified as “unrestricted assets” would be characteristic of resources obtained through fundraising, while “restricted assets” would be characteristic of grants obtained through a proposal.

## H. Prohibition on Use of CWA Section 320 Funds by the Association of National Estuary Programs or ANEP

ANEP membership dues and lobbying activities must be paid for by non-federal sources and cannot be used as match for funds received from the EPA under CWA Section 320 authority. It is important to clearly demonstrate that ANEP: (1) is independent of the EPA; (2) does not receive federal funds allocated by the EPA; and (3) is viewed as independent by its members and the public.

The individual NEPs are not prohibited from obtaining *services* from ANEP. The individual NEPs may use CWA Section 320 funds to pay ANEP to obtain non-lobbying “services” from the organization through subawards, provided that a waiver memo (see June 9, 2021 example in Appendix 6) was obtained to do so and the funds go exclusively for non-lobbying services such as cross-program communication, issue analysis and discussion, joint project development, meeting planning and other logistical services, etc.<sup>3</sup>

The CWA Section 320 grant recipients may use micro-purchase procedures ([2 C.F.R. 200.320\(a\)\(1\)](#)) to acquire the services from ANEP without competition provided the cost for the services charged to their EPA assistance agreement or counted towards cost share (if the CWA Section 320 grant recipient uses non-federal funds to pay for these services) is \$10,000 or less. The costs would be categorized as contractual for budget purposes. The individual NEP could reasonably determine that the use of micro-purchase procedures to contract with ANEP is more efficient than a subaward which involves extensive transaction costs under [2 C.F.R. 200.332](#). The [Subaward Policy](#) (Appendix A) does not preclude recipients from using micro purchase procedures to acquire ancillary services from nonprofit organizations. As with all transactions with service vendors, the individual NEPs must voluntarily choose to order the services from ANEP; there is no requirement by the EPA for the individual NEPs to contract with ANEP.

The CWA Section 320 grant recipients that choose to acquire non-lobbying services from ANEP may do so provided:

- The work is proposed and budgeted for by the individual NEP in its annual workplan, which requires approval by the individual NEP’s management conference and submission to the EPA;
- The cost for the services is less than \$10,000;
- ANEP provides invoices describing the services they will perform that meet the documentation requirements of [2 C.F.R. 200.318\(i\)](#);

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<sup>3</sup> As a general example, if an individual NEP needed web hosting (or other non-lobbying services) from ANEP, it could not simply contract with ANEP to provide those services without following the procurement standards in [2 C.F.R. part 200](#).

- The invoice accurately describes the services and deliverables that the NEP will receive from ANEP;
- The services ANEP will provide are consistent with the description of examples of allowable activities which may include cross program communication tools or analyses that may be useful for all NEPs; and
- The recipient determines that the price for the services is reasonable.

In a situation in which a CWA Section 320 grant recipient chooses to order non-lobbying services from ANEP the costs would be allowable provided the services are consistent with the [Guidance on Selected Items of Cost for Recipients](#); [Best Practice Guide for Procuring Services, Supplies and Equipment Under EPA Assistance Agreements](#), along with the examples of allowable activities described in the Guidance. Note also that, as provided at [2 C.F.R. 200.315](#) and the “Copyrighted Materials and Data” [General Term and Condition](#) for the EPA assistance agreements, the EPA has the right to reproduce and distribute documents ANEP produces under the EPA funded micro-purchases to other individual NEPs.

If the local NEP recipients need to transfer funds from another cost category into contractual to pay for the services, the [“Transfer of Funds” General Term and Condition](#) only requires prior approval from the EPA’s grants management officer (via a formal amendment of the budget) if cumulative amount of all transfers exceeds 10% of the total budget.

For further information please refer to the Memo found in Appendix 3.

## **I. The NEP Program Evaluation**

The EPA analyzes and reports on the results of all 28 program evaluations conducted over the previous 5-year review period. After each cycle, a findings report will be produced using the results to highlight common strengths, areas for improvement and recommendations and distributed accordingly. The current [Program Evaluation Guidance](#) reflects changes in evaluation timing, new areas of assessment and reporting requirements. The current program evaluation cycle will proceed through 2025, with 2026 serving as a reflection year on lessons learned from all four year-cycles and updates to the program evaluation guidance, if necessary.

## V. Approval Process for Changes to Previously Approved CCMPs

The CCMP is a living document, and the EPA expects that individual NEPs periodically review and assess their CCMP to determine if changes are needed. A CCMP may contain the monitoring, habitat, funding, and communication strategy (including public education and awareness) and adaptation strategy as chapters within the document, or an individual NEP may choose to pull them out and create separate documents. Each separate document should contain the information necessary to serve as a standalone document. The term CCMP refers to the whole management plan including all those components/plans. Every five years the individual NEP should examine the CCMP and determine what changes, if any, are necessary to keep the document relevant.

No later than every 10 years the CCMP should be modified to reflect the results of a 5-year assessment conducted to examine the relevance of the document and determine what changes may be needed (e.g., new actions, modified monitoring methods, altered finance approach, new key species or habitat addressed, updated information to inform the adaptation goals and actions, or a new education, awareness or communication technique). If it is determined that significant changes are necessary, the CCMP should be modified prior to that 10-year time period.

The EPA expects that changes to the CCMPs will be informed by a vulnerability assessment and State of the Bay (SOB) or State of the Estuary (SOE) reports and be consistent with the content checklist of the individual NEP CCMP Guidelines (see [Appendix 5](#)). The EPA expects that the SOB or SOE communicates status and trends to the public and is produced every three – five years. To ensure the seamless integration among key individual NEP products, the EPA expects that the program evaluations will examine and consider the need, if any, for changes to the CCMP.

Regional coordinators must work with their individual NEPs in the technical development and review of the draft CCMPs (and where applicable their associated documents). Regions and the individual NEPs should keep headquarters apprised of progress in modifying these documents. If the CCMP revisions change the scope or objective of the EPA funded project under [2 C.F.R. 200.308\(f\)\(1\)](#), prior EPA project officer approval is required.

**Any** changes made to any of the 28 existing CCMPs, including the finance strategy, monitoring plan, communication strategy, and habitat plans must be approved by the EPA region as provided in [Delegation 2-117](#). (See [Appendix 10](#)) Per the delegation authority, the approvals may be redelegated to the regional division director\*. The regions lead the EPA review and approval process for proposed changes to the previously approved CCMP. Any new CCMPs submitted in future years by new designated individual NEPs must still be approved by the EPA Administrator per CWA Section 320.

Each region may develop and utilize their own approval process but must consult with EPA headquarters before final regional approval is determined and conveyed to the individual NEP.

The regional coordinator will provide email notification to the headquarters coordinator with a copy to the HQ headquarters' Chief of the Partnership Programs Branch when the CCMP is ready for approval review.

Consultation should involve a collaborative regional and headquarters review and discussion of the draft final CCMP and associated documents. The regional coordinator should raise any significant concerns with the documents or highlight innovative actions or other content that should be shared with other individual NEPs. The headquarters coordinator will focus their consultation attention on identifying issues that pertain to potential non-approval such as missing items from the CCMP checklist, conflicts with the National Estuary Program Guidance, and inappropriate use of CWA Section 320 funds and relaying those to the region via email.

The headquarters coordinators will honor the CCMP review schedule set by the individual NEP. The regional coordinators will share documents to allow headquarters adequate time for review (e.g., minimum two weeks). The regional coordinator will share their comments along with those from the headquarters coordinator with the individual NEP Director. The individual NEP Director will address the comments/make edits to the CCMP or associated document or explain why the edit is not possible. If there is a disagreement regarding whether the EPA headquarters staff comments have been addressed, the EPA headquarters branch chief and regional manager will discuss it and come to a resolution. The headquarters coordinators will honor the CCMP review schedule set by the individual NEP. The regional coordinators will share documents to allow headquarters adequate time for review (e.g., minimum two weeks).

Once any needed final changes are made to the CCMP, the headquarters branch chief will email the region to confirm there are no outstanding issues and that consultation is complete. The region will then send an official communication to the NEP that the CCMP is approved (e.g., via an approval letter) and all Section 320 and NEP Program Guidance requirements were met. The EPA headquarters branch chief must be copied on the email that provides the individual NEP with approval of the CCMP. The regional coordinator will provide the final approved CCMP or associated document to the headquarters coordinator for their files and posting on the [EPA NEP website](#).

- \* Regional coordinators will work with the individual NEP Director and staff to follow the CCMP Checklist so that the set of content requirements are reflected in the final CCMP and associated documents. The regional coordinator must ensure that the documents reflect and address: 1) the National Estuary Program Guidance elements; 2) the CCMP Checklist components; and 3) the EPA comments, unless the individual NEP provides a clear and sufficient justification for not incorporating a specific comment. Once the regional and headquarters coordinators are in agreement that the CCMP meets the approval criteria, the regional manager will send an email to

the EPA headquarters branch chief (copying regional staff and the headquarters coordinator) requesting confirmation that headquarters consultation is complete. The EPA headquarters branch chief responds via email with confirmation—confirming internally with the headquarters coordinator that there are no outstanding issues.

Consultation in summary:

- The regional coordinator is the lead on CCMP approval and notifies the headquarters coordinator when the plan is ready for approval/consultation with a copy to the regional and headquarters managers.
- The headquarters coordinator will review the CCMP and consult with the region to provide any critical comments or raise any significant concerns or non-approvable issues. The regional coordinator will share those along with any regional comments with the NEP Director.
- The NEP makes any necessary changes to the CCMP in response to EPA comments raised during consultation unless there is a clear and sufficient rationale for not incorporating it into the document.
- If there is a disagreement between the region and headquarters staff as to whether comments have been adequately addressed and the CCMP is ready for approval, the EPA headquarters branch chief and regional manager will discuss it and come to a resolution.
- The regional manager sends an email to the headquarters branch chief requesting confirmation that headquarters consultation is complete.
- The headquarters branch chief emails the region to confirm there are no outstanding issues, and that consultation is complete.
- The region sends an approval letter to the NEP with a copy to the headquarters branch chief and coordinator stating that all the requirements were met and approval of the document has been given.
- The regional coordinator provides the headquarters coordinator with the final CCMP.

## I. Protect and Restore America's Estuary Act amendments to the CWA Section 320 and Requirement for CCMPs

In 2021, the *Protect and Restore America's Estuaries Act* was signed into law, amending CWA Section 320(b)(4)(B) and (C) (See [Appendix 8](#)). This amendment includes, but is not limited to, requiring individual NEPs to “develop a comprehensive conservation and management plan that—

(B) addresses the effects of recurring extreme weather events on the estuary, including the identification and assessment of vulnerabilities in the estuary and the development and implementation of adaptation strategies; and

(C) increases public education and awareness of the ecological health and water quality conditions of the estuary;”

The requirements established by the *Protect and Restore America's Estuaries Act* reinforce what individual NEPs have been incorporating as a matter of practice for years related to addressing recurring extreme weather events, changing environmental conditions and public education and awareness.

To ensure consistency with CWA Section 320 amendments and incorporation of up-to-date available science, at each 5-year interval, the individual NEPs will either: 1) confirm that no changes are needed to the vulnerability assessment or 2) make the necessary revisions to the vulnerability assessment. This can be done concurrently with the similar assessment of the CCMP. If it is determined that the vulnerability assessment needs to be updated, the individual NEP should examine what changes may be required to the CCMP goals, and adaptation actions as a result.

### A. Identification and Assessment of Vulnerabilities in Estuaries

It is widely acknowledged that (1) warmer summers; (2) warmer winters; (3) warmer waters; (4) increasing drought; (5) increasing storminess; (6) sea level rise; and (7) ocean acidification will pose risks to the water quality and habitat goals that are set by individual NEPs. To “address the effects of recurring extreme weather events including identification and assessment of vulnerabilities,” the CCMPs will be informed by a risk-based vulnerability assessment and will contain adaptation strategies that are appropriate for the assessed risks. All risks, low, medium or high risks should be evaluated and prioritized, where possible/appropriate, to address those risks.

Each of the major goals in the CCMP are to be assessed for risks due to the seven stressors identified above or any other important local stressors, where applicable. Risks to achieving each goal will be identified and assessed for likelihood and consequence. Once the vulnerability assessment process to understand the vulnerabilities is complete, the NEP may need to modify or adjust the CCMP goals. The individual NEPs should be building from the work of the previous vulnerability assessments. The individual NEPs should review those assessments and confirm if the assessment remains valid or if any revisions are needed based on new information or new goals. This analysis and results will be reported in the individual NEP's CCMP in each respective goal Section or in a separate correlated document that is incorporated by reference.<sup>4</sup>

If the vulnerability assessment shows that risks are likely to occur and would have consequences that impede reaching a goal (what typically may be called 'high' or 'red' risks), then adaptation may be necessary, which may include:

- Modifying the CCMP goals that are still ambitious, yet attainable given projected environmental impacts.
- Undertaking actions that mitigate the risks to the CCMP goals.
- Removing the CCMP goals that are no longer attainable.

Pursuing goals that have long-term high risks, yet less risk in the near-term, can still be reasonable undertakings. High risks are not expected to accompany actions that entail low investments where the consequence of not being successful is not significant. If a project delivers its intended benefits, then it is not unsuccessful. If a project goes forward and cannot deliver its intended benefits because foreseeable risks prevent that, then it is most likely unsuccessful. Document due diligence and explain why this goal is so important that the investment is justified given the opportunity costs, even if the benefits lifespan is anticipated to be limited.

## **B. Adaptation Strategy**

An adaptation strategy explains the CCMP actions to be implemented to address vulnerabilities in the estuary. It is the sum of information about and reasoning for the individual NEP's adaptation actions. An adaptation action is a response to change. It can be an observed change or an anticipated change. [Appendix 7](#) provides definitions and examples of how a CCMP can serve as an adaptation plan and examples of how a CCMP action can be an

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<sup>4</sup> A process for conducting vulnerability assessments, assessing risks and developing adaptation plans is described in the [Being Prepared for Climate Change Workbook](#). Additional examples and guidance are provided in [Appendix 7](#).

adaptation action. If an action is not intended to address or mitigate risks to any of the CCMP goals, then adaptation strategies as described in CWA Section 320(b)(4)(B) are not required.

If integrating the adaptation strategy into the CCMP, then CCMP actions intended to reduce the risk of the effects of recurring extreme weather events and other environmental changes to CCMP goals should:

- Include a symbol or label (e.g., color coding, asterisk, etc.) to signal it is an action in the adaptation strategy;
- Identify which environmental/recurring extreme weather event stressors is being addressed based on the Vulnerability Assessment;
- Indicate what vulnerability risk(s) the action addresses in the vulnerability assessment; and
- Identify, where applicable, how the action will adapt to or reduce the risk of environmental impacts/recurring extreme weather events.

## Appendix 1: SF 424 Application Submission

The individual NEPs or their fiscal sponsors should provide a complete SF 424 application, including a Management Conference-approved workplan, to Grants.gov each year. Register with Grants.gov

In order to submit an application using [Grants.gov](https://www.grants.gov), an organization must be registered. Please allow four weeks to complete registration. Also, please have a Unique Entity Identifier that is provided by the System for Award Management at [SAM.gov](https://www.sam.gov) registration before registering with [Grants.gov](https://www.grants.gov). The Data Universal Numbering System or DUNS Number was replaced by this new, non-proprietary identifier called the UEI. To find or request an UEI, please visit [SAM.gov](https://www.sam.gov). You can find out more information about registering at [Applicant Registration](#).

### A. Access and Download Grant Application Package and follow these steps:

Go to [How to Apply for Grants](#) at Grants.gov.

1. Type “EPA-CEP-01” in the “Funding Opportunity Number” field and click “Download Package”.
2. Download the package associated with CFDA 66.456.A.

The screenshot shows a web form with three input fields and a button. The first field is labeled 'CFDA Number:' with a placeholder '(##.###)'. The second field is labeled 'Funding Opportunity Number:' and contains the text 'EPA-CEP-01', with a note '(Can contain only letters, numbers and dashes)'. The third field is labeled 'Funding Opportunity Competition ID:' with a note '(Can contain only letters, numbers and dashes)'. Below the fields is a button labeled 'Download Package'.

3. Complete the Grant Application Package. Attach the forms and information that the CWA Section 320 grants require. Contact the EPA project officer and/or grants management specialist if you have questions about which forms and materials you must submit.
4. Submit your application.
5. Confirm with the EPA project officer that EPA has received your application package.

If for ANY reason you cannot submit your application by the deadline specified, contact the EPA project officer immediately.

### B. Applicant Grants.gov Support

Visit the Grants.gov [Applicant Resource](#) page for FAQs, User Guides, Checklists, Training and Technical Support. Call or email the [Grants.gov](https://www.grants.gov) Contact Center with any technical questions or issues. 1-800- 518-4726 or [support@grants.gov](mailto:support@grants.gov).

## Appendix 2: Explanation of Match Requirement and of Cost-Share

### Match Requirement

CWA Section 320 requires a one-for-one grant funding match, split between federal and nonfederal funds, for each annual assistance agreement awarded under CWA Section 320, unless awarded under CWA Section 320(g)(4). Non-federal match must comply with [2 C.F.R. 200.306](#). See information on non-federal match, below.

The CWA Section 320 assistance agreement recipient is responsible for ensuring that this match requirement is met. If a recipient's structure includes multiple organizations which each receive a portion of the annual CWA Section 320 allocation, the combined match provided by those organizations must meet the CWA Section 320 50% match requirement. Recipients of CWA Section 320 assistance agreement funds are required to show how they will match those funds over the project period (i.e., the match must be verifiable and well documented and identified in the assistance agreement approved budget). At the end of a project period, the total aggregate match provided by the CWA Section 320 grant recipient must equal the total amount of CWA Section 320 funds received during that period. The EPA does not require CWA Section 320 grant recipients to meet cost-share on a rolling basis throughout the project period although recipients may choose to do so.

### Non-Federal Match

Non-federal match (sometimes called cost-share) can be in the form of cash or in-kind contributions or services with the following caveats:

Other federal agency or other funds from the EPA may not be used as match for funds provided under CWA Section 320 unless a federal statute (e.g., HUD's Community Development Block Grant authority) allows federal funds to be used as match.

Project partner or other government agency staff serving in a professional capacity on the individual NEP committees can be counted as match as long as they are not paid by the individual NEP or counted as match for another federally assisted program.

In-kind contributions can be resources like staff time, space and equipment (e.g., office or lab space, photocopiers), or other services provided by partners in support of the Management Conference activity such as the CCMP implementation and revising a CCMP.

Volunteer services may be used as in-kind match if they are integral to and a necessary part of a project. Those services must be provided by a volunteer who:

- has the requisite skill;
- has received relevant, project-specific training by the individual NEP; or

- is professionally qualified to carry out a specific task (e.g., a carpenter who volunteers to construct a wooden boardwalk).

Services provided by volunteers who do not have project-specific skills and training, or who lack professional qualifications to carry out specific tasks, **may not be considered** as in-kind match. Services from volunteers must be valued based on the activity performed rather than the amount the volunteer gets paid for unrelated work.

A national "[value of volunteer labor](#)" database which provides rates for each state that the individual NEPs may wish to refer.

It is important to develop and maintain a recordkeeping system or management process that depicts how both professional staff time and volunteer time is allocated to each individual activity and project the individual NEP conducts. The system should depict the dollar value of services provided by both professional and volunteer staff for each workplan activity on which they work.

## Appendix 3: Important Assistance Agreement Orders and Policies; Other Policy Updates

### Orders and Policies Issued

Detailed information about and copies of the policies are available at the listed websites, and EPA project officers and grants specialists are available to provide additional clarification and guidance on the policies. However, only AEOs may provide approvals.

1. [Grants Policy Issuance \(GPI\) 16-01](#): The EPA Subaward Policy for the EPA Assistance Agreement Recipients

**Purpose:** This policy establishes the requirements and procedures for grants management offices and program offices in making determinations regarding subrecipient eligibility, overseeing pass-through entity monitoring and management of subawards, and authorizing fixed amount subawards under 2 C.F.R. 200.330, 200.331, and 200.332.

2. [Grants Policy Issuance \(GPI\) 15-02](#): The EPA's Final Financial Assistance Conflict of Interest Policy

**Purpose:** As required by 2 C.F.R. 200.112, the EPA has established the following final policy governing disclosure of actual and potential conflicts of interest by applicants for, and recipients of, federal financial assistance awards from the EPA. This policy applies to all individuals and non-Federal entities requesting and receiving the EPA financial assistance in the form of new initial awards or incremental/supplemental funding on or after October 1, 2015, and is intended to prevent personal and organizational conflict of interests in the award and administration of EPA financial assistance.

3. [Grants Policy Issuance 12-06](#): Timely Obligation, Award and Expenditure of the EPA Grant Funds

**Purpose:** The purpose of this policy is to further the EPA's mission of protecting human health and the environment by ensuring the timely obligation, award and expenditure of the EPA grant funds. The goal for all the EPA assistance agreement programs is to expeditiously obligate grant funds appropriated by Congress in the first year of availability.

The EPA has eliminated the requirement for recipients to submit a signed Affirmation of Award for new awards or amendments. The Notice of Award Section of the agreement will include the language in Attachment D allowing recipients to demonstrate their commitment to carry out an award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a

notice of disagreement with the award terms and conditions within 21 days after the EPA award mailing date.

4. [Grants Policy Issuance 11-01](#) — Managing Unliquidated Obligations and Ensuring Progress under the EPA Assistance Agreements.

**Purpose:** To ensure that recipients of assistance agreement funds like the individual NEPs spend those funds and make progress implementing their workplans in a timely manner.

- Several of the EPA resource management offices are increasing their scrutiny of the pace of assistance agreement expenditures. The EPA’s Office of Grants and Debarment has developed this new policy to promote more rapid expenditure of assistance agreement funds and to reduce unliquidated obligation balances. It requires that every assistance agreement include the following standard national Term and Condition language:

“The EPA may terminate the assistance agreement for failure to make sufficient progress so as to reasonably ensure completion of the project within the project period, including any extensions. The EPA will measure sufficient progress by examining the performance required under the work plan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or the availability of funds necessary to complete the project.”

### **Federal Funding Accountability and Transparency Act Reporting Requirements for Sub-award and Executive Compensation**

**Purpose:** To describe federal reporting requirements for the EPA assistance agreement recipients.

Public Law 109-282, the Federal Funding Accountability and Transparency Act of 2006 as amended, requires disclosure of all entities and organizations receiving federal funds through a single publicly accessible website, [USASpending.gov](http://USASpending.gov).

USASpending.gov includes information on each federal financial assistance award and contract over \$25,000, including such information as:

1. The name of the entity receiving the award;
2. The amount of the award;
3. Information on the award including transaction type, funding agency, etc.;
4. The location of the entity receiving the award;
5. A unique identifier of the entity receiving the award; and

## 6. Names and compensation of highly compensated officers (as applicable).

Grant and cooperative agreement recipients are responsible for reporting on executive compensation, when applicable, and subrecipient awards over \$25,000. Executive compensation and subrecipient reporting requirements generally apply to new discretionary and mandatory funding from the EPA, equal to or exceeding \$25,000, awarded on or after October 1, 2010.

A prime recipient is required to report subawards where the obligations are equal to or greater than \$25,000 in federal funds. If a subaward is initially funded at less than \$25,000, the prime recipient does not have to report the subaward to the [Federal Funding Accountability and Transparency Act Subaward Reporting System, or FSRS](#). However, if the prime recipient subsequently provides additional funding to increase the subaward amount to \$25,000 or more, the subaward must be reported in the FSRS.

Subaward reporting is specific to each assistance agreement. For example, if a prime recipient makes a subaward to an organization under one grant for \$20,000 and another subaward for less than \$15,000 to the same organization for different work under a different grant, the prime recipient would not have to report either subaward to the FSRS, even though the cumulative value of the two subawards exceeds \$25,000.

Prime recipients should not subdivide subawards equal to or greater than \$25,000 into smaller subawards to circumvent the FSRS reporting requirements. All recipients are required to maintain an active SAM registration and UEI number for the place of performance (see [SAM.gov](#)).

The OMB guidance regarding the Federal Funding Accountability and Transparency Act related requirements is available at 2 C.F.R. part 170 and further details regarding these requirements are outlined below. The FSRS also has a very extensive list of frequently asked questions that provide guidance to many different recipient situations.

### C. Guidance on Selected Items of Costs

Please refer to the EPA's [Guidance on Selected Items of Cost for Recipients](#), [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#), and [Indirect Cost Guidance](#) for information on topics that impact the allowability of costs under the NEP assistance agreements. Highlighted below are matters of particular importance for the CWA Section 320 grant recipients.

#### 1. Meals and Light Refreshments

**Purpose:** To describe allowable costs for light refreshments and meals at meetings, conferences, training workshops, and during outreach events like those sponsored by the individual NEPs.

- Unless otherwise prohibited by the terms of the agreement, costs for Light Refreshments and Meals at meetings, conferences, training workshops, and outreach activities and events are allowable under the 2 C.F.R. 200.432 if reasonable and necessary for performance of an activity described in the scope of work of an assistance agreement. Project officers make initial determinations regarding allowability of costs for meals and light refreshments on a case-by-case basis. AEOs make the final decision on cost allowability. Determinations regarding the reasonableness and necessity of costs for light refreshments and meals will be made on a case-by-case basis. Guidelines for cost determinations are as follows:
- **Eligibility Determination:** To be eligible for funding under assistance agreements, the light refreshment and meal costs must not be prohibited by statute, regulation, appropriation, or program guidance. This includes program guidance contained in an assistance agreement solicitation or the terms of the assistance agreement.
- **Purpose Determination:** To be eligible for funding under assistance agreements, the purpose of the event must be to: (1) disseminate environmental information; (2) offer environmental or public health education; (3) discuss environmental science, policy, or programs; (4) conduct outreach to the public on environmental concerns or issues; (5) obtain community involvement in an activity described by the EPA- approved scope of work; or (6) be otherwise necessary for the recipient to carry out the EPA-approved scope of work. To obtain a purpose determination, the event must meet at least one condition above.
- **Time Determination:** The length or timing of the event must be such that light refreshments or meals are necessary for the effective and efficient achievement of its purpose.
- **Reasonableness Determination:** The costs for light refreshments and meals must be identified in the budget narrative in order to determine the reasonableness for costs on a per event basis. Recipients must demonstrate that the costs for light refreshments and meals are reasonable given such factors as the purpose of the event and costs for similar publicly funded business events at the facility. If recipients cannot establish that the costs for meals and light refreshment represent prudent expenditures of public funds, the costs are unallowable.
- **Unallowable Light Refreshment and Meal Costs:**  
Costs for light refreshments and meals for recipient staff meetings and similar day-to-day activities are not allowable under the EPA assistance agreements. The EPA policy prohibits the use of the EPA funds for meals and light refreshments at receptions, banquets, and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by the EPA. An example of an activity where the EPA funds may be used for meals or light refreshment is an evening working meeting in which small groups discuss technical subjects on the basis of a structured agenda or there are presentations being conducted by experts.

The EPA funding for meals, light refreshments, and space rental may not be used for any portion of any conference event including receptions, banquets and working meetings where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if the EPA funds are not used to purchase the alcohol.

Under 2 C.F.R. 200.423 costs of alcoholic beverages are unallowable.

**Note:** U.S. General Services Administration regulations define “light refreshments” for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins ([41 C.F.R. 301-74.7](#)).

## 2. Advertising and Public Relations Costs

**Purpose:** To describe allowable costs for promotional items and for public relations.

- CWA Section 320 funds may be used to purchase promotional items and to fund public relations expenses that are included in the EPA-approved scope of work or detailed budget for the individual NEP. Note that it is costs for promotional items and other advertising and public relations costs that are “specifically required” to perform work under the grant that are allowable. For example, CWA Section 320 funds can be used to purchase promotional items for a conference or to communicate an environmental message if those activities were included in an EPA approved scope of work.
- If a grantee indicates in the scope of work or detailed budget that it will purchase promotional items (e.g., for a conference in order to convey an environmental message) or incur other advertising and public relations costs, and the EPA approves the scope of work/budget, the costs are allowable if otherwise reasonable (e.g., the per unit price for the items are not excessive). Detailed information regarding (1) allowable advertising and public relations costs; (2) unallowable advertising and public relations costs; and (3) requirements in determining whether costs are allowable under more than one Federal award is provided in the 2 C.F.R. 200.405 and 2 C.F.R. 200.421.
- Please know that there is additional guidance on Advertising and Public Relations Costs in the Selected Items of Cost for Recipients Guidance referenced above.

## 3. Entertainment Costs

**Purpose:** To describe allowable costs for entertainment, amusement, diversion and social activities.

As provided at 2 C.F.R. 200.438, entertainment includes amusement, diversion, and social activities. The regulation provides that entertainment costs are unallowable “except where specific costs that might otherwise be considered entertainment have a

programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the Federal awarding agency.” The Uniform Grant Guidance’s allowability of entertainment costs in certain circumstances is a change in Federal financial assistance policy.

- (a) The EPA considers costs for evening receptions and banquets as entertainment. The EPA policy precludes AEOs from approving costs for meals, light refreshments, and space rental for any portion of these events where alcohol is served, purchased, or otherwise available as part of the event, even if EPA funds are not used to purchase the alcohol and the recipient identifies a programmatic purpose for the event.
- (b) AEOs may approve reasonable entertainment costs for activities necessary to carry out environmental education programs and outreach projects that have clearly defined programmatic purposes. Examples of allowable entertainment costs include films, videos and other forms of audio-visual communication that promote environmental protection. Costs for artistic performances may be allowable in limited circumstances such as a traditional tribal ceremony highlighting environmental stewardship to open or close a conference or a puppet show with environmental education content for children.

#### 4. Travel Costs

Purpose: To describe allowable costs for travel that is integral to the purposes or activities of the CWA Section 320 grant. Please note that travel costs are addressed in the EPA Project Officer/Grant Specialist Cost Review Guidance ([https://intranet.epa.gov/ogd/policy/epa\\_internal\\_interim\\_general\\_cost\\_review\\_guidance\\_for\\_epa\\_grants\\_specialists\\_and\\_project\\_officers.pdf](https://intranet.epa.gov/ogd/policy/epa_internal_interim_general_cost_review_guidance_for_epa_grants_specialists_and_project_officers.pdf)).

- The expenses for transportation, lodging, subsistence, and related items incurred by employees and program participants who are in travel status on official business related to activities by the recipient are allowable. Such costs may be charged according to the organization’s written policy on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the recipient’s non-federally-sponsored activities.
- In the absence of a written organization policy regarding travel costs acceptable to the EPA or the organization’s cognizant audit agency, the rates and amounts established under regulations issued to implement subchapter I of Chapter 57, Title 5, United States Code (“Travel and Subsistence Expenses Mileage Allowances”) by the Administrator of General Services, or by the President (or his or her designee) shall apply to travel under federal awards. However, recipients may not use the EPA funds to pay the travel costs of federal employees.

## 5. Program Participant Support Costs

Travel allowances and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects are allowable with the prior approval of the AEO. An award with a work plan and budget containing or describing participant support costs demonstrates the EPA's approval. However, in the absence of specific statutory authority, federal employees may not be program participants under the EPA financial assistance awards. Please refer to the [EPA Guidance on Participant Support Costs](#) for additional information on the allowability of subsidies to encourage businesses and homeowners to participate in environmental stewardship programs as a form of participant support costs.

### D. Highlights of Major Assistance Agreement Policies and Orders Applicable to NEPs

1. [EPA Order No. 5700.7A1](#) "Environmental Results Under the EPA Assistance Agreements" establishes policy for addressing environmental results under the EPA assistance agreements.

Section 12 of the Environmental Results Order and ICR is as follows:

#### **COMPLIANCE WITH THE FEDERAL GRANT AND COOPERATIVE AGREEMENT ACT AND THE PAPERWORK REDUCTION ACT**

- (a) Nothing in this Order authorizes the EPA to treat assistance agreements like contracts. Under the Federal Grant and Cooperative Agreement Act, and associated EPA Order 5700.1 (Policy for Distinguishing Between Assistance and Acquisition) the principal purpose of any proposed EPA assistance agreement must be, unless otherwise provided by statute, to support a recipient in carrying out a public purpose authorized by the EPA's statutory authorities, as opposed to providing goods or services for the direct benefit or use of the EPA or the Federal Government.
- (b) When implementing this Order, the EPA officials must comply with the applicable provisions of the [Paperwork Reduction Act](#). This Act applies not just to surveys but other information collections including recordkeeping and reporting requirements.

Note the following clarifications about information collection and renewal of existing information collections and the Environmental Results Order.

Description of an "Information Collection Request": An ICR is a set of documents that must be submitted by a Federal agency to the Office of Management and Budget for approval before that agency can legally collect information from the public. Without approval, enforcement of the collection may be at risk. A completed ICR provides an overview of the collection effort, including what information will be collected, why the information is needed, what members of the public would need to respond to the information collection request, and what is the

estimated burden the request would place on the public. Questions regarding ICRs may be sent to Teddy Bruce at the EPA headquarters (Bruce.Teddy@epa.gov).

Collection activities of a National Estuary Program are covered by the EPA's NEP ICR (OMB Control No. 2040-0138) provided such collections are necessary to complete to its annual workplan, Program Evaluation, or *Government Performance and Results Act* reporting. For any collection activity that is beyond the requirements of the annual workplan, program evaluation or *Government Performance and Results Act* reporting, or is conducted under the circumstances described below, the EPA project officer, i.e., the regional coordinator, must prepare and submit an ICR describing the collection to the OMB for review and approval.

The EPA handles obtaining the ICR because the agency is the sponsor of the collection under the Paperwork Reduction Act. Since it typically takes six to nine months to develop and obtain OMB approval for an ICR, the individual NEPs should plan ahead and start the process early in order to allow sufficient time before the proposed activity is scheduled to begin. Additional information about the information collection provision appears at the [EPA's Information Collection Request \(ICR\) Center](#).

For the individual NEPs that receive **cooperative agreement** assistance funding under CWA Section 320:

- If the recipient's scope of work includes a survey or the collection of identical information from ten or more non-Federal respondents within a 12-month period, **and** cooperative agreement funding will be used, then **the EPA project officer, i.e., the regional coordinator, must prepare and submit an ICR describing the survey** to the OMB for review and approval.<sup>5</sup> This applies when the EPA has not requested and/or helped design or administer the survey.
- If the recipient **does not charge** to its agreement the cost of designing and administering the survey, **and** the EPA has not requested and/or helped design the survey, then **an ICR is not required**. Cooperative agreement funds **may** be used for analysis of the survey data and publication of the results.

For the individual NEPs that receive **grant** funding under CWA Section 320:

- If the recipient's scope of work includes the survey/collection of identical information from ten or more persons **and** the EPA has requested or wants to influence, design, or develop survey activities, **the EPA project officer must prepare and submit an ICR** describing the survey to OMB for review and approval.

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<sup>5</sup> Under the Paperwork Reduction Act, federal agencies obtain approval from OMB to collect information from the public. To comply with this requirement, federal agencies must submit information collection requests explaining what information will be collected, why the information is needed, which members of the public would be asked to respond to the information request, and what estimated burden the request would place on the public.

If the EPA has **not** directed a CWA Section 320 grant recipient to conduct the survey or directed the survey design or implementation, OMB approval is not required.

2. [EPA Order No. 5700.5A1](#) — “Competition in Assistance Agreements” was changed on February 6, 2014. Under the terms of this Order, CWA Section 320 grants provided to the individual NEPs under the regulations at 40 C.F.R. 35.9000 are exempt from competition (consistent with the understanding reached at an August 9, 2007, meeting between the Office of Water and the Office of Grants and Debarment). However, in determining the distribution of the EPA funds, the Management Conference for each individual NEP may consider whether it would be feasible and practical to have EPA conduct a competition for certain projects. In considering the suitability of competition, the Management Conference may consider such factors as the nature of the project, whether competition could foster innovation, and cost effectiveness.

Note that pursuant to the May 2016 NEP reauthorization, the EPA must compete the NEP’s CWA Section 320(g)(4) grants. If EPA competes a portion of a NEP’s CWA Section 320(g)(2) funds, the EPA must compete the funds in compliance with the Competition Policy.

3. [EPA Order 5700.8](#) — The EPA Policy on Assessing Capabilities of Non-Profit Applicants for Managing Assistance Award requires that staff from non-profits whose application has been approved for funding by a region complete mandatory on-line training has been waived nationally. Although training is no longer mandatory, the EPA encourages all the CWA Section 320 grant recipients to take advantage of the EPA Grants Management Training for Applicants and Recipients.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

June 9, 2021



OFFICE OF WATER

**MEMORANDUM**

**SUBJECT:** Clarification of 2020-2024 Clean Water Act § 320 NEP Funding Guidance Re: ANEP Services

**FROM:** Robert S. Benson, Acting Chief, Partnership Programs Branch

**TO:** Regional NEP Contacts

ROBERT BENSON BENSON Digitally signed by ROBERT  
Date: 2021.06.09 11:12:28 -04'00'

The most recent 2020-2024 National Estuary Program (NEP) Funding Guidance (Guidance) allows NEPs to obtain non-lobbying services from the Association of National Estuary Programs (ANEP). This memorandum, which may be provided to NEP recipients, provides further clarification of the coverage in the Guidance on obtaining services from ANEP.

**Excerpt from FY 2020-2024 Funding Guidance:**

**I. Prohibition on Use of CWA §320 Funds by the Association of National Estuary Programs (ANEP)**

As stated in previous Funding Guidance documents, ANEP membership dues and lobbying activities must be paid for by non-federal sources and cannot be used as match for funds received from EPA under CWA §320 authority. It is important to clearly demonstrate that ANEP: (1) is independent of the EPA, (2) does not receive federal funds allocated by EPA, and (3) is viewed as independent by its members and the public.

NEPs are no longer prohibited from obtaining services from ANEP. NEPs may use §320 funds to pay ANEP to obtain non-lobbying “services” from the organization through subawards, provided that a waiver was obtained to do so, and the funds go exclusively for non-lobbying services such as cross-program communication, issue analysis and discussion, joint project development, meeting planning and other logistical services, etc.

As NEPs and Regions begin to explore the use of this new provision, some questions have been raised, which this memo attempts to clarify.

Notwithstanding the reference to subawards in the Guidance, NEPs may use micro-purchase procedures ([2 CFR 200.320\(a\)\(1\)](#)) to acquire the services from ANEP without competition provided the cost for the services charged to their EPA assistance agreement or counted towards cost share (if the CWA Section 320 grant recipient uses non-federal funds to pay for these services) is \$10,000 or less. The costs would be categorized as contractual for budget purposes. As with all transactions with service vendors, NEPs must voluntarily choose to order the services from ANEP; there is no EPA requirement for NEPs to contract with ANEP.

The CWA Section 320 grant recipients that choose to acquire non-lobbying services from ANEP may do so provided:

- The work is proposed and budgeted for by the NEP in its annual workplan, which requires approval by the NEP's management conference and submission to EPA;
- ANEP provides invoices describing the services they will perform that meet the documentation requirements of;
- The invoice accurately describes the services and deliverables that the NEP will receive from ANEP;
- The services ANEP will provide are consistent with the description of examples of allowable activities which may include cross program communication tools or analyses that may be useful for all NEPs; and the recipient determines that the price for the services is reasonable.

In a situation in which a CWA Section 320 grant recipient chooses to order non-lobbying services from ANEP the costs would be allowable provided the services are consistent with the [Guidance on Selected Items of Cost for Recipients; Best Practice Guide for Procuring Services, Supplies and Equipment Under EPA Assistance Agreements](#), along with the examples of allowable activities described in the Guidance. Note also that, as provided at [2 CFR 200.315](#) and the "Copyrighted Materials and Data" [General Term and Condition](#) for EPA assistance agreements, EPA has the right to reproduce and distribute documents ANEP produces under EPA funded micro-purchases to other NEPs.

If NEP recipients need to transfer funds from another cost category into contractual to pay for the services, the ["Transfer of Funds" General Term and Condition](#) only requires prior approval from EPA's Grants Management Officer (via a formal amendment of the budget) if cumulative amount of all transfers exceeds 10% of the total budget.

## **2. How does a NEP obtain the waiver referenced in the Guidance?**

This memorandum serves as the waiver referenced in the Guidance.

## Appendix 4: Reporting Using the National Estuary Program Online Reporting Tool (NEPORT)

### HABITAT

Habitat data entries must meet the following requirements to ensure accuracy and transparency. Since project information is found in NEPmap (e.g., project description), it is also important that the information be clear and understandable to the public.

- On-the-ground habitat protection and restoration project descriptions **must only address work completed** during the relevant federal fiscal year. **Note:** the habitat work reported in NEPORT **must be tied** to an action in an individual NEP's CCMP. In cases where the habitat work is done by a sub-recipient or contractor, the individual NEP should report only the acreage protected and restored **after the habitat-related work has been completed**, not when the sub-grant or contract is awarded.
- **Entries must be complete**, i.e., data must be entered in each required field for every project.
- **Data for each project must be aligned** across all relevant fields, e.g., data entered in the *Project Description* field should be consistent with data entered into the *Restoration Technique and Habitat* fields.
- **Entries must reflect data for the entire federal fiscal year.** The individual NEP submissions are due in early September but must include habitat data for the entire reporting period, i.e., for the period October 1 through September 30 of each year. The individual NEPs that need to estimate the number of acres to be protected and restored between the submission due dates shown in [Table 2](#) and the end of each reporting period must include that estimate in the data totals entered in NEPORT.

**The individual NEPs must comply with submission deadlines.** Each individual NEP must enter all data by the deadlines identified in September. Unless there is a documented malfunction of the NEPORT system that prevents data entry as described in this document, **the data not entered by the dates shown in [Table 2](#) will be excluded from the final habitat acreage tally.**

### LEVERAGING

Report leveraged resources information using NEPORT. The individual NEP and its partners may have to calculate a total for the reporting year by estimating the amount of leveraged resources between October 1 and September 30 for a given fiscal year. The regional coordinators will conduct a preliminary review and approve data prior to the EPA headquarters approving the data. Unless there is a documented malfunction of the NEPORT system which prevents entry of data during the entry period, the EPA requires each individual NEP to enter its completed leveraged resources reports into NEPORT by the end of the second week in September.

**The NEP Leveraging Role Definitions and Examples:** The individual NEP directors and staff should use the following leveraging role definitions and examples to help them when entering the NEP leveraging data into NEPORT. Please clearly explain the role the individual NEP played in obtaining the leveraged resources in NEPORT.

**Primary role definition:** the NEP director, staff, and/or committees played the central role in obtaining leveraged resources that helped implement the CCMP.

For example, the NEP director, staff, and/or committees:

- wrote a grant proposal that helped fund the implementation of a CCMP action;
- convened a workgroup that created a stormwater utility that raised funds for CCMP implementation;
- organized meetings with State, local government, and/or the public on the importance of habitat restoration that led to the funding of habitat restoration actions in the CCMP;
- partnered with stakeholders so that non-NEP resources (e.g., supplemental environmental project funds) were directed to the CCMP activities;
- solicited and received funds and in-kind support for NEP operations (e.g., office space); or
- received the CCMP project funds from partners based on NEP's demonstrated ability to execute work.

**Significant role definition:** the individual NEP director, staff, and/or committees actively participated in, but did not lead, the effort to obtain additional resources for the CCMP implementation.

For example, the individual NEP director, staff, and/or committees:

- wrote parts of a grant proposal that was funded to help implement the CCMP;
- provided matching funds that partners needed to obtain grants to help implement the CCMP;
- established a local land trust that raised money for the CCMP implementation;
- actively participated in a stormwater utility workgroup that raised funds for the CCMP implementation;
- developed lists of lands for acquisition to help implement the CCMP and funders used these lists to make acquisition decisions; or
- developed a list of priority projects that others use to secure grants that helped implement the CCMP.

**Support role definition:** the individual NEP director, staff, and/or committees played a minor role in channeling resources toward the CCMP implementation. For example, the NEP director, staff, and/or committees:

- wrote a letter of support for a partner grant application that helped fund the CCMP action(s);
- included habitat acquisition as a CCMP action, but other entities raised funds and identified lands for acquisition;
- included invasive species as a CCMP action, but other entities conducted activities that resulted in eradicating invasive species in the watershed; or
- included adaptation to recurring extreme weather events as a CCMP action, but other entities conducted activities that helped implement this action.

The regional coordinators have responsibility for conducting quality reviews needed to ensure the accuracy of reported leveraging data. The regional coordinators should make every effort to ensure that the data are accurate and be comfortable with an individual NEP's explanation of the role it played in obtaining leveraged resources. This role information should be clearly explained by the individual NEP in NEPORT.

*For guidance on reporting requirements for projects funded by the Infrastructure Investment and Jobs Act, please refer to the forthcoming NEP IJA Reporting Guide.*

## Appendix 5: Existing Comprehensive Conservation and Management Plan Guidelines

### Background

This guidance broadly communicates expectations for the CCMPs. The requirements discussed below address subsequent versions of the original CCMP that was approved by the EPA Administrator under CWA Section 320. The CCMP Content Checklist below is designed to guide the individual NEPs through the CCMP approval process for both new CCMPs and updates to previously approved CCMPs, beginning with general definitions and principles. New designated individual NEPs and their initial CCMPs must also follow the previous guidance (please see [National Estuary Program Guidance, Comprehensive Conservation and Management Plans: Content and Approval Requirements \(October 1992\)](#) for additional requirements).

**Scope of the CCMPs** – All the CCMP action plans must be consistent with CWA Section 320 and this guidance. The CCMP actions encompass environmental goals, metrics, and milestones that the NEP strives to achieve over time as implemented through annual workplans. Action plans must identify the needed resources and sources of resources expected to be secured. It is especially important to distinguish between actions funded under CWA Section 320 and those to be implemented with other sources. To see further information about CCMP development and NEP key management principles, please see the [Community-Based Watershed Management Handbook](#).

### Approval Checklist for CCMPs - Essential Components

The EPA is not prescribing any particular format for the CCMPs as long as the CCMP meets the Content Checklist. The checklist is a means to ensure CCMP meets common national criteria. The CCMPs must contain the contents of this checklist in order for it to be approved by the region when any changes to the document occur.

When revising or updating a previously approved CCMP, the CCMP needs to:

1. \_\_\_\_ Be clear, understandable, and plainly link to CWA Section 320 (See CWA Section 320(b)(4) **Purpose of Conference**).
2. \_\_\_\_ Identify the changes from the previously approved CCMP so that reviewers and the public can easily determine what has changed and why. These changes can include program priorities and goals, action plans, any new information that suggests more promising approaches or currently unaddressed issues, etc. The discussion of changes may be contained in the Introduction or an Appendix that might include a comparative table of original and revised actions.

3. \_\_\_\_ Describe how the individual NEP has contributed to or supported activities that helped develop new information, if applicable, when highlighting major changes due to new information. Major changes could be informed by the latest Status and Trends or State of the Bay (SOB)/State of the Estuary (SOE) reports, Indicator reports, recurring extreme weather event modeling projections, and data or vulnerability assessments, and associated monitoring programs where adequate monitoring data are available. The EPA expects that the SOB or SOE is produced at least every three – five years.
4. \_\_\_\_ Describe the individual NEP’s Management Conference and membership with any proposed changes and explain how the structure will support the individual NEP’s ability to oversee and promote the CCMP implementation. This would include a discussion about the individual NEP’s approach to achieving financial sustainability and for involving the public and stakeholders in its programs.
5. \_\_\_\_ Include a map of the study area. NEP study area boundary changes should be described in the document along with the reasons for the change. Any individual NEP study area boundary changes should be based on sound science with the support and approval of the individual NEP’s Management Conference in a transparent and open process.
6. \_\_\_\_ Describe the priority problems and identify the likely causes/sources. Discuss the environmental stressors (e.g., nutrients, recurring extreme weather events) and their impacts. This information can be placed in the introduction, a chapter, or associated with an action plan.
7. \_\_\_\_ Describe the Goals and Measurable Objectives (numeric where possible) to address the priority problems. Goals focus on desired end products or results for the estuary. All program goals should be environmentally meaningful and resonate with the public. Objectives are specific and more clearly defined aimed at achieving the broader, long-term goals. Objectives must be measurable and achievable through the implementation of specific action plans. Include sufficient information to track objectives and targets.
8. \_\_\_\_ Include a description of the CCMP actions. For each of the CCMP actions, identify the key activities expected to be implemented to address the priority problem. It would be helpful to include a table comparing the old completed or deemed obsolete actions, and new, revised, or on-going actions in the CCMP. This could appear upfront in the document, or within each chapter. A crosswalk from previous action to current action and a description of change should be included as a chart in the document.

CCMP Actions need to:

- describe the priority problem and where the action will take place or location it will affect;
- identify what will be done, the key activities to address the problem and reduce impacts, including affected habitat types, or resource(s) if

appropriate; some activities may take place system-wide or involve policy changes rather than on-the-ground projects;

- identify proposed action plan responsibilities, including likely lead parties, along with any implementing partners;
- include a timeframe and key milestones for completion (or indicate ongoing);
- estimate the range of potential costs of the overall action and identify the possible sources of funding;
- include targets and performance measures (quantitative measures and intended environmental results wherever possible);
- those CCMP Actions eligible for CWA Section 320 funding (and as stated in an EPA Assistance Agreement) will be spelled out and included in the NEP workplan submitted to EPA. CCMP Actions not funded by CWA Section 320 should be clearly identified along with the other potential funding source; and
- identify if the action is an adaptation strategy per the *Protect and Restore America's Estuaries Act* amendments to Section 320 of the CWA (See [Appendix 7](#) for examples).

9. \_\_\_\_ Include a Monitoring Plan to track and detect changes and/or improvements within the study area (so change in environmental indicators can be detected over time), and effectiveness of the CCMP Actions. This can be described in a separate document, or chapter in the CCMP. The Monitoring Plan should identify:
- (a) objectives;
  - (b) data the individual NEP and partners are collecting for which parameters/indicators;
  - (c) the party/parties responsible for collecting and providing the data;
  - (d) frequency of collecting and reporting the monitoring data;
  - (e) how the data are shared, reported, and used;
  - (f) data gaps;
  - (g) amount of additional funding needed for monitoring activities and filling data gaps;
  - (h) sources of funding; and
  - (i) timeframe. This Section should explain how monitoring has/will change as a result of new/modified actions and priorities, and any new environmental indicators.
- Monitoring should be tied to the SOB or SOE Report produced every three to five years and has similar components.

Note: A Quality Management Plan or Quality Assurance Project Plan can supplement the Monitoring Plan but does not in and of itself meet this requirement.

10. \_\_\_\_ Include a Finance strategy that will establish long-term financial sustainability to implement the CCMP through diverse resources and partners. The strategy can be a separate document or chapter in the CCMP. The strategy should discuss:
- (a) priorities for funding;
  - (b) current funding and other support such as staff assignments, or in-kind partnering;
  - (c) short- and long-term resource needs;
  - (d) proposed actions or strategies to maintain or garner new resources for CCMP implementation and their timeframe;
  - (e) sources of funding; and
  - (f) strategy implementors.
11. \_\_\_\_ Include a Habitat Protection/Restoration strategy. The strategy should clearly tie back to habitat or ecosystem issues addressed in the CCMP, including those habitats and species prioritized for protection and or restoration efforts. Strategies can be addressed in a separate document or a chapter in the CCMP and should discuss:
- (a) relevant habitat types and key species in the study area; goals and measurable objectives to address them;
  - (b) recurring extreme weather events and other stressors and impacts on the study area;
  - (c) identify key activities to implement the action, including affected habitat types, or resources;
  - (d) identify lead implementors and partners;
  - (e) include the proposed action plan timeframe, and where appropriate, key milestones for completion;
  - (f) estimate the range of potential costs of the overall action and identify the possible sources of funding;
  - (g) include protection and restoration targets and performance measures (quantitative measures and intended environmental results wherever possible). The strategy can make it easier for NEPs to plan and report on their habitat protection results; and
  - (h) any considerations for how changes in federal, state or local regulatory authorities may affect protection and restoration priorities.
12. \_\_\_\_ Include a Communication/Outreach strategy to: 1) increase public education and awareness of the ecological health and water quality conditions of the estuary, and 2) ensure community involvement and ownership in CCMP implementation. This can be represented as a stand-alone document, chapter or a series of actions in the CCMP that includes:
- (a) guiding principles, or goals and objectives;
  - (b) a target audience(s);
  - (c) a narrative description of activities, including any tool used such as branding and messaging, behavior change campaigns or social media;

- (d) implementers for those activities;
- (e) any key deliverables; and
- (f) a budget, funding source and timeframe for implementing the activities.

13. \_\_\_ Include a Vulnerability Assessment which can be referenced in the CCMP if a standalone separate document or integrated into the description of each CCMP goal. The CCMP must indicate if the vulnerability assessment is still current and therefore the adaptation actions contained in the CCMP continues to be relevant, or a new or revised vulnerability assessment for recurring extreme weather events and other stressors required by CWA Section 320(b)(4)(B) was produced which informs the goals, and as a result actions contained in the CCMP.

**Public Review:** Stakeholder involvement could simply involve an internal Management Conference member discussion if modifications made to the CCMP are minimal. **When the extent of changes is significant, a broad 60-day public review process that extends beyond the Management Conference members is needed.** Responses to comments should be summarized and be made publicly available.

**CCMP Component Documents.** CCMP-component documents can be stand-alone reports or a chapter in the CCMP. NEPs should examine the CCMP-component documents (monitoring plan, finance strategy, habitat strategy, and communication and outreach strategy) and determine in what ways they may need to be revised as a result of the CCMP modification. If new important information has come to light or actions have been significantly revised, it may be necessary to modify the entire CCMP-component document or CCMP chapter.

The CCMPs are living documents and as such should be re-examined and revised on a regular basis. The EPA recognizes that the CCMPs are also critical components of the NEP model of adaptive management as it facilitates a continual process of integrating new data and results. The EPA expects that the revised CCMPs will discuss the relevance and applicability of the: 1) monitoring; 2) habitat; 3) finance; 4) recurring extreme storm event vulnerability assessment; 5) adaptation strategy, and 6) communications and outreach component strategies, including any needed substantive changes.

If separate documents, the 1) monitoring; 2) habitat; 3) finance; and 5) communications and outreach component strategies must contain actions with the same information as a-f above and completed within 3 years of the CCMP approval. Each separate document must contain the information necessary if it will serve as a standalone document.

## **Appendix 6: Examples of Scenarios Relating to Directly Charging CWA Section 320 Grants for Proposal Preparation Costs and Fundraising Costs**

**Example 1.** Recipient requests the EPA approval to directly charge costs for developing a proposal for a HUD grant to develop affordable housing. The project will take place in a low-income community in the area covered by the CCMP for the estuary. Will the EPA approve the request?

No. While an initiative to develop affordable housing may benefit the community, that activity would not carry out an activity eligible for funding under CWA Section 320 because it is outside of the scope of the CCMP. The purpose of the CCMPs, as provided at CWA Section 320(b)(4), is to recommend:

“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.”

Funding under CWA Section 320(g) is available only to develop and implement the CCMPs. Therefore, direct costs for preparing a proposal for a project to develop affordable housing would not meet the “necessary, reasonable and allocable” requirements for allowability in 2 C.F.R. 200.403 and Item 1 of [Section IV.F: Proposal/Grant Writing Preparation Costs](#).

**Example 2.** A CWA Section 320 grant applicant’s proposed workplan indicates that it intends to use up to 3% of the amount of the grant for direct costs associated with preparing proposals for federal and state research grants to study the impact of nonpoint pollution on shellfish population in the estuary. The CCMP for the estuary includes studies of this type. The primary costs associated with preparing the proposals are attributable to the time a scientist spends developing the proposals and the time an accountant spends providing financial information for the proposals.

**The salary for the accountant is included in the “overhead base” for the recipient’s 18% indirect cost rate but the scientist’s salary is not. Are the costs for compensating the scientist and accountant for their work on the proposals allowable as direct charges for proposal preparation?**

The compensation for the scientist’s time is allowable as a direct cost, but the compensation for the accountant’s time may not be charged directly to the grant. This is because under 2 C.F.R. 200.403(b) “[A] cost may not be assigned to a federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.” The accountant’s salary is a component of the overhead costs used to calculate the 18% indirect cost rate which the applicant will add to the charges to the grant to the extent authorized by its negotiated indirect cost rate agreement. Allowing the applicant

to charge the compensation for the accountant's time directly as well would be "double dipping."

Note also that the applicant's proposal to use up to 3% of the amount of the CWA Section 320 grant (which includes both the federal and non-federal share) for direct costs of proposal preparation is consistent with [Section IV.F. Proposal/Grant Writing Preparation Costs](#) which places a 5% cap on the amount of grant funds that may be expended for proposal preparation.

**Example 3. Recipient requests prior EPA approval to use the CWA Section 320 grant funding for direct costs of a fundraising campaign to purchase a conservation easement to prevent development in a sensitive area in the estuary that is to be protected under the CCMP. The fundraising campaign will involve postal and e-mailing requests for donations to residents and businesses in the area as well as outreach to local community organizations. Costs associated with the campaign include compensation for time a development specialist and outreach coordinator spend on the effort. Neither employee's salary is included in the "overhead base" for the recipient's 22% indirect cost rate.**

**Are the costs for the time the development specialist and outreach coordinator spend on the fundraising campaign allowable as direct costs under the recipient's CWA Section 320 grant?**

Yes. As [2 C.F.R. 200.442\(a\)](#) indicates, fundraising consists of organized activities such as "financial campaigns, endowment drives, solicitation of gifts and bequests" designed to "raise capital or obtain contributions". Although these costs are generally unallowable, the regulation also provides that "[F]und raising costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency." In this case, the funds raised will be used to carry out an activity described in the recipient's CCMP so the requirement of meeting the objectives of the NEP program are met under Item 1 of [Section IV.F. Proposal/Grant Writing Preparation Costs](#).

**Can the project officer send the recipient an email approving the fundraising costs?**

No. Prior approvals for matters covered by the grant regulations must be provided by the EPA's award official or grants management officer as provided in [Delegation 1-14-A](#). The project officer should work with the grant specialist for the CWA Section 320 grant to arrange for an AEO to provide the prior written approval.

**Does the assistance agreement have to be amended to authorize the fundraising costs?**

It depends on whether the recipient's budget includes estimated amounts for program income. An AEO may approve requests to use the EPA grant funds for fundraising through an informal modification such as an email unless a budget amendment is necessary. The EPA's [guidance](#) on the allowability of fundraising costs states:

Funds a recipient raises with costs borne by an EPA financial assistance agreement are considered program income under 2 C.F.R. 200.80 and 200.307. As provided at 2 C.F.R. 1500.7(b), program income must be added to direct the EPA funding and used under the purposes and conditions of the award unless the terms of the assistance agreement provide for a different disposition (i.e., to meet a cost share requirement) of program income.

The projected value of program income that will be generated and used during the grant period will be shown on line 7 of the [SF-424A](#) budget form under either the “addition” or “cost share” method for using program income. (Additional guidance on program income and other budget related matters is available in the EPA’s [Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance](#)). If the recipient’s budget includes estimated amounts for program income, then there is no need for an amended budget for the CWA Section 320 grant. It is a different case if the recipient’s budget does not include program income; a formal budget amendment would be necessary.

**The recipient’s fundraising plan includes a silent auction and gala that includes a cash bar. Can the recipient charge the cost for renting the facility for this event to its CWA Section 320 grant as a direct charge or as an authorized use of program income?**

No. The EPA would not grant prior approval for charging the cost of renting the facility for such an entertainment-oriented event to the CWA Section 320 grant or for the recipient to use program income for that purpose. The EPA’s [guidance](#) on Selected Items of Cost on the allowability of entertainment costs provides:

The EPA considers costs for evening receptions and banquets as entertainment. The EPA policy precludes [AEOs] from approving costs for meals, light refreshments, and space rental for any portion of these events where alcohol is served, purchased, or otherwise available as part of the event, even if the EPA funds are not used to purchase the alcohol and the recipient identifies a programmatic purpose for the event.

**The recipient is holding an all-day community workshop to discuss environmental challenges and solutions for the estuary as described in the CCMP. There will be a speaker at the lunch who is an expert on water quality. In order to raise funds for a project that is included in the CCMP, the recipient intends to charge a fee for attending the lunch and solicit corporate sponsorships. No alcohol will be served at the event. The fees and sponsorships will generate funds in excess of the cost for the lunch. May the recipient charge the cost for lunch (space rental, food, service) and soliciting corporate contributions to the CWA Section 320 grant as fundraising costs?**

Yes. As provided in the EPA’s Selected Items of Cost, the EPA funds may be used for costs for events to disseminate environmental information relating to the scope of work for the EPA grant. Soliciting corporate contributions for the event would be an allowable fundraising cost

with prior approval from the EPA. The fees and contributions would be treated as program income.

**Example 4.** A CWA Section 320 grant recipient plans to construct a berm to mitigate nonpoint source pollution flowing into the estuary. The CCMP for the estuary includes constructing berms to protect water quality. There is a state grant program that provides 70% of the cost of construction projects for mitigating nonpoint source pollution. One requirement of the state program is that grant recipients give preference to construction contractors with corporate offices in the state when soliciting bids. The EPA approved budget and workplan for the CWA Section 320 grant authorizes the recipient to use up to 5% of the budget for proposal preparation costs for activities that further the objectives of the CCMP. The CWA Section 320 grant recipient does not include the salary of its grant managers or technical staff in the indirect cost pool for its 23% indirect cost rate. Consequently, the grant recipient may charge the CWA Section 320 grant for the direct costs for the time the grant manager and technical staff spend preparing the proposal to the state for the berm construction grant.

If the proposal submitted to the state is successful, the funds the CWA Section 320 grant recipient receives would not be program income. This is because the funds would be a restricted asset subject to the requirements of the state grant program rather than for use under the conditions of the EPA assistance agreement. The CWA Section 320 grant recipient intends to use the EPA funding to meet the 30% cost share for the state grant. Federal rules on cost share preclude using funds from one federal grant for cost share on another federal grant without authorization in a federal statute but the regulation (2 C.F.R. 200.306) does not address state cost share. The recipient could use the EPA funds to hire architectural and engineering firms for the construction project as a selection criterion provided “application [of the criteria] leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.” 2 C.F.R. 200.319(b).

**Example 5.** The CWA Section 320 grant recipient in Example 4 also intends to apply to private foundations for funding to install an innovative erosion control system to enhance the effectiveness of the berm. This activity will also further the objectives of the CCMP. If the proposal is successful, the recipient’s accounting system must classify the funds as a restricted asset available only for erosion control project. Should the time the recipient’s grant managers and technical staff spend developing the proposal to the private foundation be classified as proposal preparation costs subject to the 5% cap in the budget or fundraising costs?

The EPA would consider the costs to be for proposal preparation. The distinction between proposal preparation costs and fundraising costs when a grant recipient applies for private funding is somewhat more complicated than when the recipient is seeking public funds. In this case, however, because the recipient may only use the private foundation funding for the erosion control project the situation is sufficiently similar to other types of grant proposals for

the EPA to classify the costs as proposal preparation. Consequently, the private funding the CWA Section 320 grant recipient receives from the private foundation would not be accounted for as program income.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

June 9, 2021

OFFICE OF WATER

**MEMORANDUM**

**SUBJECT:** Clarification of 2020-2024 Clean Water Act § 320 NEP Funding Guidance Re: ANEP Services

**FROM:** Robert S. Benson, Acting Chief, Partnership Programs Branch

**TO:** Regional NEP Contacts

Digitally signed by ROBERT

ROBERT BENSON BENSON

Date: 2021.06.09 11:12:28 -04'00'

The most recent 2020-2024 National Estuary Program (NEP) Funding Guidance (Guidance) allows NEPs to obtain non-lobbying services from the Association of National Estuary Programs (ANEP). This memorandum, which may be provided to NEP recipients, provides further clarification of the coverage in the Guidance on obtaining services from ANEP.

**Excerpt from FY 2020-2024 Funding Guidance:**

**I. Prohibition on Use of CWA §320 Funds by the Association of National Estuary Programs (ANEP)**

As stated in previous Funding Guidance documents, ANEP membership dues and lobbying activities must be paid for by non-federal sources and cannot be used as match for funds received from EPA under CWA §320 authority. It is important to clearly demonstrate that ANEP: (1) is independent of the EPA, (2) does not receive federal funds allocated by EPA, and (3) is viewed as independent by its members and the public.

NEPs are no longer prohibited from obtaining services from ANEP. NEPs may use §320 funds to pay ANEP to obtain non-lobbying “services” from the organization through subawards, provided that a waiver was obtained to do so, and the funds go exclusively for non-lobbying services such as cross-program communication, issue analysis and discussion, joint project development, meeting planning and other logistical services, etc.

As NEPs and Regions begin to explore the use of this new provision, some questions have been raised, which this memo attempts to clarify.

Notwithstanding the reference to subawards in the Guidance, NEPs may use micro-purchase procedures ([2 CFR 200.320\(a\)\(1\)](#)) to acquire the services from ANEP without competition provided the cost for the services charged to their EPA assistance agreement or counted towards cost share (if the CWA Section 320 grant recipient uses non-federal funds to pay for these services) is \$10,000 or less. The costs would be categorized as contractual for budget purposes. As with all transactions with service vendors, NEPs must voluntarily choose to order the services from ANEP; there is no EPA requirement for NEPs to contract with ANEP.

The CWA Section 320 grant recipients that choose to acquire non-lobbying services from ANEP may do so provided:

- The work is proposed and budgeted for by the NEP in its annual workplan, which requires approval by the NEP's management conference and submission to the EPA;
- ANEP provides invoices describing the services they will perform that meet the documentation requirements of;
- The invoice accurately describes the services and deliverables that the NEP will receive from ANEP;
- The services ANEP will provide are consistent with the description of examples of allowable activities which may include cross program communication tools or analyses that may be useful for all NEPs; and the recipient determines that the price for the services is reasonable.

In a situation in which a CWA Section 320 grant recipient chooses to order non-lobbying services from ANEP the costs would be allowable provided the services are consistent with the [Guidance on Selected Items of Cost for Recipients](#); [Best Practice Guide for Procuring Services, Supplies and Equipment Under EPA Assistance Agreements](#), along with the examples of allowable activities described in the Guidance. Note also that, as provided at [2 C.F.R. 200.315](#) and the "Copyrighted Materials and Data" [General Term and Condition](#) for EPA assistance agreements, EPA has the right to reproduce and distribute documents ANEP produces under EPA funded micro-purchases to other NEPs.

If NEP recipients need to transfer funds from another cost category into contractual to pay for the services, the ["Transfer of Funds" General Term and Condition](#) only requires prior approval from EPA's Grants Management Officer (via a formal amendment of the budget) if cumulative amount of all transfers exceeds 10% of the total budget.

## **2. How does a NEP obtain the waiver referenced in the Guidance?**

This memorandum serves as the waiver referenced in the Guidance.

## **Appendix 7: Examples and Guidelines for Meeting Requirements in Protect and Restore America’s Estuaries Act Amendments to CWA Section 320**

The [Protect and Restore America’s Estuaries Act of 2021](#) amended CWA Section 320 to require the individual NEPs to have a “management plan that [...] addresses the effects of recurring extreme weather events on the estuary, including the identification and assessment of vulnerabilities in the estuary and the development and implementation of adaptation strategies.” In summary, the Act requires an assessment of vulnerabilities to recurring extreme weather events and other stressors with a corresponding adaptation strategy to be included in the individual NEP CCMPs. This appendix clarifies the vulnerability assessment requirements and provides examples for implementing adaptation strategy requirements.

### **I. Does my individual NEP need a new Vulnerability Assessment?**

CWA Section 320(b)(4)(B) requires “future comprehensive conservation and management plans to address the effects of recurring extreme weather events on the estuary. It also requires future plans to identify and assess vulnerabilities specific to the estuary and develop and implement corresponding adaptation strategies.” This applies to when a CCMP is modified. The individual NEPs should be building from the work of the previous vulnerability assessments to include an up-to-date vulnerability assessment. The individual NEPs should review those assessments and determine if any updates are needed based on new information or new goals. Confirming or updating the vulnerability assessment ensures the individual NEP is benefiting from the current state of the science when revising their CCMP (e.g., if an individual NEP is updating a CCMP to cover the next 10 years and uses a 10-year-old vulnerability assessment, plans implemented in the later years of the updated CCMP may be relying on a vulnerability assessment as old as 20 years).

Vulnerability assessments need new content when one or more of the following conditions occur:

- Newer understanding of changing environmental conditions and recurring extreme weather events suggests different risks or implies different risk analysis results; or
- Newer CCMP goals were adopted or proposed and have not yet been assessed.

If goals remain unchanged in the revised CCMP to the previous version and the risk analysis is still sound, an individual NEP should include a statement or other language in the modified CCMP stating that the 20XX vulnerability assessment was reviewed along with an explanation for why it is still current.

### What should be in a vulnerability assessment?

As discussed in [Section V](#), the individual NEPs can write a new, separate vulnerability assessment, reference their existing vulnerability assessment in the CCMP, or they can integrate the vulnerability analysis into their description of each CCMP goal.<sup>6</sup> If integrating the vulnerability assessment, then for each CCMP goal provide the following information:

- Identification of which stressors affect the CCMP goal.
- Assessment of what the risks are to the CCMP goals.
- Analysis of the likelihood (high/medium/low) and consequence (high/medium/low) of each risk to achieving the CCMP goal.

If the vulnerability assessment shows that risks are likely to occur and would have consequences that impede reaching a goal (what is typically referred to as ‘high’ or ‘red’ risks), then adaptation is necessary, which may include:

- Modifying the CCMP goals to ones that are still ambitious, yet attainable given projected impacts from increased extreme weather events and changing environmental conditions;
- Undertaking actions that mitigate the risks to CCMP goals; or
- Removing the CCMP goals that are no longer attainable.

## **II. What is an Adaptation Strategy?**

An adaptation strategy explains the individual NEP CCMP actions to be implemented to address vulnerabilities in the estuary. It is the sum of information about and reasoning for the individual NEP’s selected adaptation actions that are contained in the CCMP.

Consistent with CWA Section 320(b)(4)(b), each individual NEP will develop and implement adaptation strategies in the CCMP to address vulnerabilities and stressors identified in their vulnerability assessments. The recommended approach for the individual NEPs to develop their adaptation strategies is to integrate it into the CCMP by indicating which CCMP actions/activities are adaptation actions (for example, by marking them with a label, symbol, or color coding or by putting them in a clearly marked list, table, Section or chapter). This set of indicated actions along with explanatory language (e.g., vulnerability stressors and risks, and how the action will adapt to or reduce impacts from stressors from recurring extreme weather events and changing environmental conditions) constitutes the adaptation strategy.

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<sup>6</sup> A process for conducting vulnerability assessments, assessing risks and developing adaptation plans is described in the [Being Prepared for Climate Change Workbook](#).

### *What is an adaptation action?*

An adaptation action is a response to an observed or anticipated change. Adaptation actions are steps taken to implement the adaptation strategy within the CCMP. Adaptation actions are clearly driven by a recurring extreme weather event or other environmental stressor.

#### If a CCMP action...

- That is conceptualized and intended to manage one or more recurring extreme weather event stressors (e.g., warmer summers, warmer winters, warmer water temperature, increasing storminess, increasing drought and/or sea level rise); or has an altered design, approach, or outcome specifically because one or more stressors were considered then it is an adaptation action.

#### What does a CCMP adaptation action include?

It is helpful to tie the adaptation action to the associated stressor and which vulnerability risk it is addressing. Useful techniques depicted in the examples below include:

- Placing a symbol or label (color coding, asterisk, etc.) next to the action to signal it as an element in the adaptation strategy.
- Identifying what stressor is being addressed based on the individual NEP vulnerability assessment (e.g., warmer summers, warmer winters, warmer water temperature, increasing storminess, increasing drought and/or sea level rise).
- Referencing what vulnerability risk(s) the action addresses in the vulnerability assessment; and
- Identifying, where applicable, how the action will adapt to or reduce impacts from stressors from recurring extreme weather events or other environmental stressors.

Actions that do not directly address impacts from recurring extreme weather events or have speculative connections should not be identified as adaptation actions. The EPA recognizes that the work the individual NEPs conduct benefit their study areas and are often related to adapting to and reducing impacts from environmental changes and extreme weather events. However, not all CCMP actions are considered adaptation actions. An adaptation action is an action with the primary purpose of responding to risks identified from a recurring extreme weather event stressor or changing environmental condition. The objective is to lower the risks that extreme weather events pose to achieving the CCMP goals or protecting the individual NEP's and the EPA's investments — and to act accordingly and track those results.

After identifying major categories of CCMP adaptation actions, cross check with the vulnerability assessment and verify that all goals which were assessed as having high risks are associated with one or more adaptation actions that are expected to lower those risks.

### III. Adaptation Action Examples

The following examples were fashioned from goals and actions in various individual NEP CCMPs. The stressor, risks and summary content were manufactured to demonstrate the requirements.

#### **Example 1**

**Goal:**

System resiliency and function are maintained by protecting, restoring and enhancing habitats.

**Action:**

HW-5: Use remote sensing, mapping tools, modeling and field verification to determine sites that are likely to be impacted by sea level rise, and which sites are ideal for habitat migration.

**Stressors:**

Sea level rise

**Risks addressed:**

Number 32. Accelerated sea level rise will drown existing salt marshes resulting in a loss of wetlands acres.

Number 44. Sea level rise will drown existing salt marshes resulting in loss of habitat for threatened and endangered species.

**Summary of adaptation relevance:**

Identifying and verifying salt marsh sites that are threatened by sea level rise allows restoration efforts to be targeted where they will be most efficient. Opportunities will be identified for protecting open space near tidal shorelines that can be the location of future salt marsh habitat when sea level is higher.

#### **Example 2**

**Goal:**

Contaminant and nutrient loads from land-based sources in the watershed are reduced.

**Action:**

WW-12: Improve efficiency and resiliency of existing/new waste treatment systems including septic, WWTF, and stormwater infrastructure to accommodate sea level rise.

**Stressors:**

Increasing storminess, Sea level rise

**Risks addressed:**

A7. Sea level rise leads to a higher groundwater table that leads to increased failure of septic systems which leads to pollution of the estuary.

A8. Increasing frequency of extreme rainfall events leads to increased failure of septic systems which leads to pollution of the estuary.

**Summary of adaptation relevance:**

Promoting and subsidizing alternatives to on-site septic systems will allow for effective sewage treatment and will avoid the septic system failures and water pollution problems that are being seen due to higher groundwater tables in waterfront neighborhoods.

**Example 3****Goal:**

Coordinated Land and Water Use Management

**Action:**

CM 1-2b: Increase the beneficial use of sediment to enhance shorelines and tidal wetlands.

**Stressors:**

Sea level rise, Increasing storminess.

**Risks addressed:**

4-5 Increasing rates of sea level rise are drowning tidal wetlands leading to habitat loss (Goal 2. Restore and Protect Habitat)

5-2 Increasing number of damaging storms and sea level rise are eroding and inundating recreational beaches around the bay (Goal 4. Safe Recreation Opportunities)

**Summary of adaptation relevance:**

Some tidal wetlands are drowning under increased rates of sea-level rise and need sediment to maintain a certain elevation. Beneficial use involves relocating clean sediment from where it is not wanted, like channels frequented by boats, and moves it to places where it could be helpful, like drowning wetlands and eroding beaches.

**Example 4****Goal:**

Coordinated Land and Water Use Management

**Action:**

HB 5-4: Increase acreage of Bay bottom approved for shellfish harvest when microbial water quality, potential pollution, and conflicts with other natural resources allow.

**Stressors:**

Warmer water temperature

**Risks addressed:**

22. Higher concentrations of bacteria might occur with warming water, further limiting the shellfish harvesting areas.

**Summary of adaptation relevance:**

As water temperatures warm this can lead to higher concentrations of bacteria that threaten the ability to safely harvest shellfish in approved zones. Increasing the acreage of bay bottom that is suitable and approved for shellfish harvesting is a hedge against bacteria problems at vulnerable sites.

## Appendix 8: [33 U.S. Code Section 1330 - National estuary program](#) (Including Protect and Restore America's Estuaries Act amendments)

### (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 the water, requires the 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; Peconic Bay, New York; Casco Bay, Maine; Tampa Bay, Florida; Coastal Bend, Texas; San Juan Bay, Puerto Rico; Tillamook Bay, Oregon; Piscataqua Region, New Hampshire; Barnegat Bay, New Jersey; Maryland Coastal Bays, Maryland; Charlotte Harbor, Florida; Mobile Bay, Alabama; Morro Bay, California; and Lower Columbia River, Oregon and Washington.

#### (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—
  - (A) 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;
  - (B) addresses the effects of recurring extreme weather events on the estuary, including the identification and assessment of vulnerabilities in the estuary and the development and implementation of adaptation strategies; and
  - (C) increases public education and awareness of the ecological health and water quality conditions of the estuary;
- (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, nonprofit [organizations](#), 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 OF 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 subchapters II and VI of this chapter and [section 1329 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% of the annual aggregate costs of the development of a comprehensive conservation and management plan; and

**(ii)** 50% 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.

**(4) COMPETITIVE AWARDS**

**(A) In general**

Using the amounts made available under subsection (i)(2)(B), the Administrator shall make competitive awards under this paragraph.

**(B) Application for awards**

The Administrator shall solicit applications for awards under this paragraph from [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.

**(C) Selection of recipients**

In selecting award recipients under this paragraph, the Administrator shall select recipients that are best able to address urgent, emerging, and challenging issues that threaten the ecological and economic well-being of the estuaries selected by the Administrator under subsection (a)(2), or that relate to the coastal resiliency of such estuaries. Such issues shall include—

**(i)** extensive seagrass habitat losses resulting in significant impacts on fisheries and water quality;

**(ii)** recurring harmful algae blooms;

**(iii)** unusual marine mammal mortalities;

**(iv)** invasive exotic species that may threaten wastewater systems and cause other damage;

- (v) jellyfish proliferation limiting community access to water during peak tourism seasons;
- (vi) stormwater runoff;
- (vii) accelerated land loss;
- (viii) flooding that may be related to sea level rise, extreme weather, or wetland degradation or loss; and
- (ix) low dissolved oxygen conditions in estuarine waters and related nutrient management.

**(h) GRANT REPORTING**

Any [person](#) (including a [state](#), interstate, or regional agency or entity) that receives a grant under subsection (g) 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**

**(1) IN GENERAL**

There is authorized to be appropriated to the Administrator \$26,500,000 for each of fiscal years 2017 through 2021, and \$50,000,000 for each of fiscal years 2022 through 2026, for—

**(A)** expenses relating to the administration of grants or awards by the Administrator under this section, including the award and oversight of grants and awards, except that such expenses may not exceed 5% of the amount appropriated under this subsection for a fiscal year; and **(B)** making grants and awards under subsection (g).

**(2) ALLOCATIONS**

**(A) Conservation and management plans**

Not less than 80% of the amount made available under this subsection for a fiscal year shall be used by the Administrator to provide grant assistance for the development, implementation, and monitoring of each of the conservation and management plans eligible for grant assistance under subsection (g)(2).

**(B) Competitive awards**

Not less than 15% of the amount made available under this subsection for a fiscal year shall be used by the Administrator for making competitive awards described in subsection (g)(4).

**(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;
- (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 [section 1254\(n\)\(4\) 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.

## Appendix 9: Build America, Buy America (BABA) Act Summary - National Estuary Program

### Determine if BABA is Implicated

**What is an infrastructure project?** BABA applies specifically to infrastructure projects. In determining whether BABA is implicated, please use the definition of infrastructure project provided in 2 C.F.R. 184.3.

- 1) 2 C.F.R. 184.3: Infrastructure project is defined as any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. See also paragraphs [\(c\)](#) and [\(d\) of section 184.4](#).
- 2) The [small project general applicability waiver](#) applies to small projects where assistance agreements or subawards under assistance agreements are less than \$250,000<sup>7</sup>[\[1\]](#).
- 3) The EPA defines “project” as, “any activity related to the construction, alteration, maintenance, or repair of infrastructure in the U.S.” If the EPA funding for an assistance agreement or subaward for an infrastructure project is above \$250,000, it is not eligible for the small project waiver.

**Typical activities within a project.** The next step is to consider the types of the materials used, and the public use of where the activities are occurring (private or public land). Recipients are encouraged to coordinate with the EPA as questions arise for specific projects.

- 1) Materials
  - Whether the products covered under 2 C.F.R. 184.3 are incorporated into the project site. temporary items used and removed during construction, and other materials or equipment that may be removed from the site are not covered under BABA (e.g., temporary scaffolding).
  - If BABA applies, the [De Minimis waiver](#) is an important implementation tool. The *De Minimis* waiver allows the use of products of non-domestic or unknown origin up to 5% of the total project cost (construction/alteration).
- 2) Public use
  - Project activities solely for the purchase, construction, maintenance, or improvement of a private property solely for non-public use may not implicate BABA. For example, installing fencing to restrict private livestock from access on private land (see [question 8.3<sup>8</sup> of the Office of Water Implementation Procedures](#)). Public access or public use may implicate BABA. Projects that

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<sup>7</sup> The \$250,000 threshold applies to the EPA portion of project funding.

<sup>8</sup> Supplemental Questions and Answers for Build America, Buy America Act Implementation Procedures for Office of Water Federal Financial Assistance Programs memo.

include activities in populated areas may implicate BABA if they are implemented outside privately owned land. In municipal-owned lands, if practices use iron or steel products, manufactured products, or construction materials as defined in [2 C.F.R. 184.3](#) (e.g., precast concrete structures, plastic or PVC piping and materials), BABA may be implicated.

### Recordkeeping

If BABA applies: The assistance recipient is responsible for assuring projects meet BABA requirements in compliance with the terms and conditions of the grant. Often, a first step for recipients is bidding a contract that clearly identifies the domestic preference requirements. If BABA is implicated for a project, the contract and compliance documents (principally developed by a contractor) should be retained by the recipient for the appropriate record retention period for the grant (minimum of 3 years from the date of submission of the final Federal Financial Report, consistent with 2 C.F.R. 200.334, unless other requirements exceed this timeframe).

- The *De Minimis* waiver allows the use of products of non-domestic or unknown origin up to 5% of the total project cost. Recordkeeping for *De Minimis* is simple, as many recipients keep a simple tabular list of items and their costs to track the *De Minimis* waiver use.

If BABA does not apply or is waived at the project level: The recipient should ensure that the following information is noted in the project file:

- The total cost of the award or subaward to ensure BABA compliance under the Small Projects Waiver,
- Evaluation of the materials used to implement the practices funded with the award or assistance agreement,
- Whether the project is implemented on private property and not for public use.

**Terms and Conditions:** EPA should confirm that the BABA-specific term and condition is included in each grant for projects covered by BABA. If you are uncertain, confirm with grant/program specialists.

### References:

OMB Guidance: [M-24-02](#) and [2 C.F.R. 184](#)

EPA Websites: [epa.gov/baba](http://epa.gov/baba)

Email Inboxes: [BABA-OW@epa.gov](mailto:BABA-OW@epa.gov) (hyphen!)

Made in America Office: [MBX.OMB.MadeInAmerica@omb.eop.gov](mailto:MBX.OMB.MadeInAmerica@omb.eop.gov)

## Appendix 10: CCMP Delegation

### NEP Delegation

[ Delegation: 2-117 [OHR Intranet - Administrative Policy - Delegations Manual - Chapter 1 \(epa.gov\)](#), TN 739: [OHR Intranet - Administrative Policy - Transmittal Notices for Delegations of Authority \(epa.gov\)](#)]

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**THE ADMINISTRATOR**

WASHINGTON, D.C. 20460

April 29, 2024

### MEMORANDUM

**SUBJECT:** Approval of Delegation of Authority 2-117, Approval of Any Changes to Previously Approved Comprehensive Conservation and Management Plans under Section 320 of the Clean Water Act

**FROM:**

Michael S. Regan

**TO:**

Bruno Pigott, Acting Assistant Administrator for Water  
Regional Administrators

#### **2-117. Approval of Any Changes to Previously Approved Comprehensive Conservation and Management Plans under Section 320 of the Clean Water Act (1200 TN 739)**

I hereby delegate the authority as follows.

- 1. AUTHORITY.** To approve any changes to a Comprehensive Conservation and Management Plan pursuant to Section 320 of the Clean Water Act.

2. **TO WHOM DELEGATED.** Regional administrators.
  
3. **LIMITATIONS.** This delegation is limited to any changes to a Comprehensive Conservation and Management Plans and its associated components previously approved by the Administrator. As part of the approval process, the region must consult with agency headquarters per the National Estuary Program Funding Guidance prior to approving the CCMP changes.
  
4. **REDELEGATION AUTHORITY.** This authority may be redelegated to the level of regional water division director or equivalent and no further. An official who redelegates an authority retains the right to exercise or withdraw the authority. Redelegated authority may be exercised by any official in the chain of command, including deputies, to the official to whom it has been specifically redelegated.
  
5. **ADDITIONAL REFERENCES.**
  - a. 33 U.S.C. Section 1330(f)(1)
  - b. National Estuary Program policies and guidance
  
6. **RATIFICATION.** To the extent authority previously exercised consistent with this memorandum may require ratification, it is hereby approved and ratified.

## Appendix 11: National Environmental Policy Act

The National Environmental Policy Act does not apply to grants and projects funded under Clean Water Act Section 319 (33 U.S.C. 1329), nonpoint source management programs or CWA Section 320 (33 U.S.C. 1330) National Estuary Program. Specifically, CWA 511(c)(1) (33 U.S.C. § 1371) exempts the application of NEPA for the EPA actions except for “the provision of Federal financial assistance for the purposes of assisting the construction of publicly owned treatment works as authorized by Section 1281 [CWA 201] of this Title and the issuance of a permit under Section 1342 of this title. . . .” Although both the CWA Section 319 and CWA Section 320 grant programs may occasionally fund implementation projects that fall under the definition of “treatment works” in CWA 212(2)(A) (33 U.S.C. 1292), the funding is not authorized under CWA 201. Therefore, the NEPA exemption in CWA 511(c)(1) applies.

**Exemption from NEPA does not exempt programs from compliance with other applicable federal laws including, but not limited to, the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544), the Magnuson-Stevens Fisheries Conservation and Management Act (16 U.S.C 1891 et seq.) or the National Historic Preservation Act (16 U.S.C. 470).**