(1) a comprehensive conservation and management plan approved under section 1330 of this title;
(2) a lake management plan or remedial action plan developed under section 1268 of this title;
(3) a management plan approved under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); and
(4) the interstate management plan developed pursuant to the Chesapeake Bay program under section 1267 of this title.

(7) Indian tribe
The term "Indian tribe" has the meaning given such term by section 450b of title 25.

(8) Non-Federal interest
The term "non-Federal interest" means a State, a political subdivision of a State, an Indian tribe, a regional or interstate agency, or, as provided in section 2903(f)(2) of this title, a nongovernmental organization.

(9) Secretary
The term "Secretary" means the Secretary of the Army.

(10) State
The term "State" means the States of Alabama, Alaska, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia, Washington, and Wisconsin, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, American Samoa, and Guam.

(11) Federal interest
The term "Federal interest" means the Federal Government or any agency or instrumentality of the Federal Government.

(c) Selection of projects
(1) In general
The Secretary shall select estuary habitat restoration projects from a list of project proposals submitted by the Estuary Habitat Restoration Council under section 2904(b) of this title.

(2) Required elements
Each estuary habitat restoration project selected by the Secretary must—
(A) address restoration needs identified in an estuary habitat restoration plan;
(B) be consistent with the estuary habitat restoration strategy developed under section 2905 of this title;
(C) include a monitoring plan that is consistent with standards for monitoring developed under section 2906 of this title to ensure that short-term and long-term restoration goals are achieved; and
(D) include satisfactory assurance from the non-Federal interests proposing the project that the non-Federal interests will have adequate personnel, funding, and authority to carry out items of local cooperation and properly maintain the project.

(3) Factors for selection of projects
In selecting an estuary habitat restoration project, the Secretary shall consider the following factors:
(A) Whether the project is part of an approved Federal or State estuary management or habitat restoration plan.
(B) The technical feasibility of the project.
(C) The scientific merit of the project.
(D) Whether the project will encourage increased coordination and cooperation among Federal, State, and local government agencies.
(E) Whether the project fosters public-private partnerships and uses Federal resources to encourage increased private sector involvement, including consideration of the amount of private funds or in-kind contributions for an estuary habitat restoration activity.
(F) Whether the project is cost-effective.
(G) Whether the State in which the non-Federal interest is proposing the project has a dedicated source of funding to acquire or restore estuary habitat, natural areas, and open spaces for the benefit of estuary habitat restoration or protection.
(H) Other factors that the Secretary determines to be reasonable and necessary for consideration.

(4) Priority
In selecting estuary habitat restoration projects to be carried out under this chapter, the Secretary shall give priority consideration to a project if, in addition to merit selection based on the factors under paragraph (3)—
(A) the project occurs within a watershed in which there is a program being carried out that addresses sources of pollution and other activities that otherwise would re-impair the restored habitat; or
(B) the project includes pilot testing of or a demonstration of an innovative technology
or approach having the potential for improved cost-effectiveness in estuary habitat restoration.

(d) Cost sharing
   (1) Federal share
      (A) In general
      Except as provided in paragraph (2) and subsection (e)(2) of this section, the Federal share of the cost of an estuary habitat restoration project (other than the cost of operation and maintenance of the project) carried out under this chapter shall not exceed 65 percent of such cost.
      (B) Monitoring
         (i) Costs
            The costs of monitoring an estuary habitat restoration project funded under this chapter may be included in the total cost of the estuary habitat restoration project.
         (ii) Goals
            The goals of the monitoring shall be—
            (I) to measure the effectiveness of the restoration project; and
            (II) to allow adaptive management to ensure project success.
   (2) Innovative technology costs
      The Federal share of the incremental additional cost of including in a project pilot testing of or a demonstration of an innovative technology or approach described in subsection (c)(4)(B) of this section shall be 85 percent.
   (3) Non-Federal share
      The non-Federal share of the cost of an estuary habitat restoration project carried out under this chapter shall include lands, easements, rights-of-way, and relocations and any other elements the Secretary determines appropriate under subsection (d)(3) of this section; and
      (A) provide all lands, easements, rights-of-way, and relocations and any other elements the Secretary determines appropriate under subsection (d)(3) of this section; and
      (B) provide for long-term maintenance and monitoring of the project.
   (2) Nongovernmental organizations
      Notwithstanding section 1962d–5b(b) of title 42, for any project to be undertaken under this chapter, the Secretary, in consultation and coordination with appropriate State and local governmental agencies and Indian tribes, may allow a nongovernmental organization to serve as the non-Federal interest for the project.
   (g) Delegation of project implementation
      (1) In general
         In carrying out this chapter, the Secretary may delegate project implementation to another Federal department or agency on a reimbursable basis if the Secretary, upon the recommendation of the Council, determines such delegation is appropriate.
      (2) Small projects
         (A) Small project defined
            In this paragraph, the term "small project" means a project carried out under this chapter with an estimated Federal cost of less than $1,000,000.
         (B) Delegation of project implementation
            In carrying out this section, the Secretary, on recommendation of the Council, may delegate implementation of a small project to—
            (i) the Secretary of the Interior (acting through the Director of the United States Fish and Wildlife Service);
            (ii) the Under Secretary for Oceans and Atmosphere of the Department of Commerce;
            (iii) the Administrator of the Environmental Protection Agency; or
            (iv) the Secretary of Agriculture.
         (C) Funding
            A small project delegated to the head of a Federal department or agency under this paragraph may be carried out using funds appropriated to the department or agency under section 2908(a)(1) of this title or other funds available to the department or agency.
      (D) Agreements
         The head of a Federal department or agency to which a small project is delegated under this paragraph shall enter into an agreement with the non-Federal interest for the project generally in conformance with the criteria in subsections (d) and (e). Cooperative agreements may be used for any delegated project to allow the non-Federal interest to carry out the project on behalf of the Federal agency.

§ 2904. Establishment of Estuary Habitat Restoration Council

(a) Council

There is established a council to be known as the “Estuary Habitat Restoration Council”.

(b) Duties

The Council shall be responsible for—

(1) soliciting, reviewing, and evaluating project proposals and developing recommendations concerning such proposals based on the factors specified in section 2903(c)(3) of this title;

(2) submitting to the Secretary a list of recommended projects, including a recommended order priority and any recommendation as to whether a project should be carried out by the Secretary or by another Federal department or agency under section 2903(g) of this title;

(3) developing and transmitting to Congress a national strategy for restoration of estuary habitat;

(4) periodically reviewing the effectiveness of the national strategy in meeting the purposes of this chapter and, as necessary, updating the national strategy;

(5) providing advice on the development of the database, monitoring standards, and report required under sections 2906 and 2907 of this title;

(6) cooperating in the implementation of the strategy developed under section 2906 of this title;

(7) recommending standards for monitoring for restoration projects and contribution of project information to the database developed under section 2906 of this title; and

(8) otherwise using the respective authorities of the Council members to carry out this chapter.

c) Membership

The Council shall be composed of the following members:

(1) The Secretary (or the Secretary’s designee).

(2) The Under Secretary for Oceans and Atmosphere of the Department of Commerce (or the Under Secretary’s designee).

(3) The Administrator of the Environmental Protection Agency (or the Administrator’s designee).

(4) The Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service (or such Secretary’s designee).

(5) The Secretary of Agriculture (or such Secretary’s designee).

(6) The head of any other Federal agency designated by the President to serve as an ex officio member of the Council.

(d) Prohibition of compensation

Members of the Council may not receive compensation for their service as members of the Council.

e) Chairperson

The chairperson shall be elected by the Council from among its members for a 3-year term, except that the first elected chairperson may serve a term of fewer than 3 years.

(f) Convening of Council

(1) First meeting

The Secretary shall convene the first meeting of the Council not later than 60 days after November 7, 2000, for the purpose of electing a chairperson.

(2) Additional meetings

The chairperson shall convene additional meetings of the Council as often as appropriate to ensure that this chapter is fully carried out, but not less often than annually.

(g) Council procedures

The Council shall establish procedures for voting, the conduct of meetings, and other matters, as necessary.

(h) Public participation

Meetings of the Council shall be open to the public. The Council shall provide notice to the public of such meetings.

(i) Advice

The Council shall consult with persons with recognized scientific expertise in estuary or estuary habitat restoration, representatives of State agencies, local or regional government agencies, and nongovernmental organizations with expertise in estuary or estuary habitat restoration, and representatives of Indian tribes, agricultural interests, fishing interests, and other estuary users—

(1) to assist the Council in the development of the estuary habitat restoration strategy to be developed under section 2906 of this title; and

(2) to provide advice and recommendations to the Council on proposed estuary habitat restoration projects, including advice on the scientific merit, technical merit, and feasibility of a project.

AMENDMENTS