To conserve fish and aquatic communities in the United States through partnerships that foster fish habitat conservation, to improve the quality of life for the people of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2011

Mr. LIEBERMAN (for himself, Mr. CRAPO, Mr. TESTER, Mr. BINGAMAN, Ms. MURKOWSKI, Mr. WHITEHOUSE, Mr. BEGICH, Mr. CARDIN, and Mr. UDALL of Colorado) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To conserve fish and aquatic communities in the United States through partnerships that foster fish habitat conservation, to improve the quality of life for the people of the United States, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “National Fish Habitat Conservation Act”.

(b) Table of Contents.—The table of contents of this Act is as follows:

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SEC. 2. FINDINGS; PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) healthy populations of fish and other aquatic organisms depend on the conservation, protection, restoration, and enhancement of aquatic habitats in the United States;

(2) aquatic habitats (including wetlands, streams, rivers, lakes, estuaries, coastal and marine ecosystems, and associated riparian upland habitats that buffer those areas from external factors) perform numerous valuable environmental functions that sustain environmental, social, and cultural values, including recycling nutrients, purifying water, attenuating floods, augmenting and maintaining stream flows, recharging ground water, acting as primary producers in the food chain, and providing essential and significant habitat for plants, fish, wildlife, and other dependent species;
(3) the extensive and diverse aquatic habitat resources of the United States are of enormous significance to the economy of the United States, providing—

(A) recreation for 44,000,000 anglers;

(B) more than 1,000,000 jobs and approximately $125,000,000,000 in economic impact each year relating to recreational fishing; and

(C) approximately 500,000 jobs and an additional $35,000,000,000 in economic impact each year relating to commercial fishing;

(4) at least 40 percent of all threatened species and endangered species in the United States are directly dependent on aquatic habitats;

(5) certain fish species are considered to be ecological indicators of aquatic habitat quality, such that the presence of those species in an aquatic ecosystem reflects high-quality habitat for other fish;

(6) loss and degradation of aquatic habitat, riparian habitat, water quality, and water volume caused by activities such as alteration of watercourses, stream blockages, water withdrawals and diversions, erosion, pollution, sedimentation, and destruction or modification of wetlands have—
(A) caused significant declines in fish populations throughout the United States, especially declines in native fish populations; and

(B) resulted in economic losses to the United States;

(7)(A) providing for the conservation and sustainability of fish and other aquatic organisms has not been fully realized, despite federally funded fish and wildlife restoration programs and other activities intended to conserve aquatic resources; and

(B) that conservation and sustainability may be significantly advanced through a renewed commitment and sustained, cooperative efforts that are complementary to existing fish and wildlife restoration programs and clean water programs;

(8) the National Fish Habitat Action Plan provides a framework for maintaining and restoring aquatic habitats to ensure perpetuation of populations of fish and other aquatic organisms;

(9) the United States can achieve significant progress toward providing aquatic habitats for the conservation and restoration of fish and other aquatic organisms through a voluntary, nonregulatory incentive program that is based on technical and fi-
financial assistance provided by the Federal Government;

(10) the creation of partnerships between local citizens, Indian tribes, Alaska Native organizations, corporations, nongovernmental organizations, and Federal, State, and tribal agencies is critical to the success of activities to restore aquatic habitats and ecosystems;

(11) the Federal Government has numerous regulatory and land and water management agencies that are critical to the implementation of the National Fish Habitat Action Plan, including—

(A) the United States Fish and Wildlife Service;

(B) the Bureau of Land Management;

(C) the National Park Service;

(D) the Bureau of Reclamation;

(E) the Bureau of Indian Affairs;

(F) the National Marine Fisheries Service;

(G) the Forest Service;

(H) the Natural Resources Conservation Service; and

(I) the Environmental Protection Agency;

(12) the United States Fish and Wildlife Service, the Forest Service, the Bureau of Land Manage-
ment, and the National Marine Fisheries Service each play a vital role in—

(A) the protection, restoration, and enhancement of the fish communities and aquatic habitats in the United States; and

(B) the development, operation, and long-term success of fish habitat partnerships and project implementation;

(13) the United States Geological Survey, the United States Fish and Wildlife Service, and the National Marine Fisheries Service each play a vital role in scientific evaluation, data collection, and mapping for fishery resources in the United States;

(14) the State and territorial fish and wildlife agencies play a vital role in—

(A) the protection, restoration, and enhancement of the fish communities and aquatic habitats in the respective States and territories; and

(B) the development, operation, and long-term success of fish habitat partnerships and project implementation; and

(15) many of the programs for conservation on private farmland, ranchland, and forestland that are carried out by the Secretary of Agriculture, includ-
ing the Natural Resources Conservation Service and
the State and Private Forestry programs of the For-
est Service, are able to significantly contribute to the
implementation of the National Fish Habitat Action
Plan through the engagement of private landowners.

(b) PURPOSE.—The purpose of this Act is to encour-
age partnerships among public agencies and other inter-
ested parties consistent with the mission and goals of the
National Fish Habitat Action Plan—

(1) to protect and maintain intact and healthy
aquatic habitats;

(2) to prevent further degradation of aquatic
habitats that have been adversely affected;

(3) to reverse declines in the quality and quan-
tity of aquatic habitats to improve the overall health
of fish and other aquatic organisms;

(4) to increase the quality and quantity of
aquatic habitats that support a broad natural diver-
sity of fish and other aquatic species;

(5) to improve fisheries habitat in a manner
that leads to improvement of the annual economic
output from recreational, subsistence, and commer-
cial fishing;
(6) to ensure coordination and facilitation of activities carried out by Federal departments and agencies under the leadership of—

(A) the Director of the United States Fish and Wildlife Service;

(B) the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration; and

(C) the Director of the United States Geological Survey; and

(7) to achieve other purposes in accordance with the mission and goals of the National Fish Habitat Action Plan.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Commerce, Science, and Transportation and the Committee on Environment and Public Works of the Senate; and

(B) the Committee on Natural Resources of the House of Representatives.

(2) AQUATIC HABITAT.—
(A) IN GENERAL.—The term “aquatic habitat” means any area on which an aquatic organism depends, directly or indirectly, to carry out the life processes of the organism, including an area used by the organism for spawning, incubation, nursery, rearing, growth to maturity, food supply, or migration.

(B) INCLUSIONS.—The term “aquatic habitat” includes an area adjacent to an aquatic environment, if the adjacent area—

(i) contributes an element, such as the input of detrital material or the promotion of a planktonic or insect population providing food, that makes fish life possible;

(ii) protects the quality and quantity of water sources;

(iii) provides public access for the use of fishery resources; or

(iv) serves as a buffer protecting the aquatic environment.

(3) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.
(4) BOARD.—The term “Board” means the National Fish Habitat Board established by section 4(a)(1).

(5) CONSERVATION; CONSERVE; MANAGE; MANAGEMENT.—The terms “conservation”, “conserve”, “manage”, and “management” mean to protect, sustain, and, where appropriate, restore and enhance, using methods and procedures associated with modern scientific resource programs (including protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking)—

(A) a healthy population of fish, wildlife, or plant life;

(B) a habitat required to sustain fish, wildlife, or plant life; or

(C) a habitat required to sustain fish, wildlife, or plant life productivity.

(6) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.

(7) FISH.—

(A) IN GENERAL.—The term “fish” means any freshwater, diadromous, estuarine, or marine finfish or shellfish.
(B) INCLUSIONS.—The term “fish” includes the egg, spawn, spat, larval, and other juvenile stages of an organism described in subparagraph (A).

(8) FISH HABITAT CONSERVATION PROJECT.—

(A) IN GENERAL.—The term “fish habitat conservation project” means a project that—

(i) is submitted to the Board by a Partnership and approved by the Secretary under section 6; and

(ii) provides for the conservation or management of an aquatic habitat.

(B) INCLUSIONS.—The term “fish habitat conservation project” includes—

(i) the provision of technical assistance to a State, Indian tribe, or local community by the National Fish Habitat Conservation Partnership Office or any other agency to facilitate the development of strategies and priorities for the conservation of aquatic habitats; or

(ii) the obtaining of a real property interest in land or water, including water rights, in accordance with terms and conditions that ensure that the real property
will be administered for the long-term con-
servation of—

(I) the land or water; and

(II) the fish dependent on the

land or water.

(9) **INDIAN TRIBE.**—The term “Indian tribe”
has the meaning given the term in section 4 of the
Indian Self-Determination and Education Assistance

(10) **NATIONAL FISH HABITAT ACTION PLAN.**—
The term “National Fish Habitat Action Plan”
means the National Fish Habitat Action Plan dated
April 24, 2006, and any subsequent revisions or
amendments to that plan.

(11) **PARTNERSHIP.**—The term “Partnership”
means an entity designated by the Board as a Fish
Habitat Conservation Partnership pursuant to sec-
tion 5(a).

(12) **REAL PROPERTY INTEREST.**—The term
“real property interest” means an ownership interest
in—

(A) land;

(B) water (including water rights); or

(C) a building or object that is perma-
nently affixed to land.
(13) Secretary.—The term “Secretary” means the Secretary of the Interior.

(14) State Agency.—The term “State agency” means—

(A) the fish and wildlife agency of a State;

(B) any department or division of a department or agency of a State that manages in the public trust the inland or marine fishery resources or the habitat for those fishery resources of the State pursuant to State law or the constitution of the State; or

(C) the fish and wildlife agency of the Commonwealth of Puerto Rico, Guam, the Virgin Islands, or any other territory or possession of the United States.

SEC. 4. NATIONAL FISH HABITAT BOARD.

(a) Establishment.—

(1) In general.—There is established a board, to be known as the “National Fish Habitat Board”—

(A) to promote, oversee, and coordinate the implementation of this Act and the National Fish Habitat Action Plan;

(B) to establish national goals and priorities for aquatic habitat conservation;
(C) to designate Partnerships; and

(D) to review and make recommendations regarding fish habitat conservation projects.

(2) MEMBERSHIP.—The Board shall be composed of 27 members, of whom—

(A) 1 shall be the Director;

(B) 1 shall be the Assistant Administrator;

(C) 1 shall be the Chief of the Natural Resources Conservation Service;

(D) 1 shall be the Chief of the Forest Service;

(E) 1 shall be the Assistant Administrator for Water of the Environmental Protection Agency;

(F) 1 shall be the President of the Association of Fish and Wildlife Agencies;

(G) 1 shall be the Secretary of the Board of Directors of the National Fish and Wildlife Foundation appointed pursuant to section 3(g)(2)(B) of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3702(g)(2)(B));

(H) 4 shall be representatives of State agencies, 1 of whom shall be nominated by a regional association of fish and wildlife agencies.
from each of the Northeast, Southeast, Midwest, and Western regions of the United States;

(I) 1 shall be a representative of the American Fisheries Society;

(J) 2 shall be representatives of Indian tribes, of whom—

(i) 1 shall represent Indian tribes from the State of Alaska; and

(ii) 1 shall represent Indian tribes from the other States;

(K) 1 shall be a representative of the Regional Fishery Management Councils established under section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852);

(L) 1 shall be a representative of the Marine Fisheries Commissions, which is composed of—

(i) the Atlantic States Marine Fisheries Commission;

(ii) the Gulf States Marine Fisheries Commission; and

(iii) the Pacific States Marine Fisheries Commission;
(M) 1 shall be a representative of the
Sportfishing and Boating Partnership Council;
and
(N) 10 shall be representatives selected
from each of the following groups:
   (i) The recreational sportfishing ind-
dustry.
   (ii) The commercial fishing industry.
   (iii) Marine recreational anglers.
   (iv) Freshwater recreational anglers.
   (v) Terrestrial resource conservation
organizations.
   (vi) Aquatic resource conservation or-
ganizations.
   (vii) The livestock and poultry produc-
tion industry.
   (viii) The land development industry.
   (ix) The row crop industry.
   (x) Natural resource commodity inter-
ests, such as petroleum or mineral extrac-
tion.

(3) COMPENSATION.—A member of the Board
shall serve without compensation.

(4) TRAVEL EXPENSES.—A member of the
Board shall be allowed travel expenses, including per
diem in lieu of subsistence, at rates authorized for
an employee of an agency under subchapter I of
chapter 57 of title 5, United States Code, while
away from the home or regular place of business of
the member in the performance of the duties of the
Board.

(b) APPOINTMENT AND TERMS.—

(1) IN GENERAL.—Except as otherwise pro-
vided in this subsection, a member of the Board de-
scribed in any of subparagraphs (H) through (N) of
subsection (a)(2) shall serve for a term of 3 years.

(2) INITIAL BOARD MEMBERSHIP.—

(A) IN GENERAL.—Not later than 180
days after the date of enactment of this Act,
the representatives of the board established by
the National Fish Habitat Action Plan shall ap-
point the initial members of the Board de-
scribed in subparagraphs (H) through (I) and
(K) through (N) of subsection (a)(2).

(B) TRIBAL REPRESENTATIVES.—Not
later than 180 days after the enactment of this
Act, the Secretary shall provide to the board es-
established by the National Fish Habitat Action
Plan a recommendation of not less than 4 tribal
representatives, from which that board shall ap-
point 2 representatives pursuant to subparagraph (J) of subsection (a)(2).

(3) **TRANSITIONAL TERMS.**—Of the members described in subsection (a)(2)(N) initially appointed to the Board—

(A) 4 shall be appointed for a term of 1 year;

(B) 4 shall be appointed for a term of 2 years; and

(C) 3 shall be appointed for a term of 3 years.

(4) **VACANCIES.**—

(A) **IN GENERAL.**—A vacancy of a member of the Board described in any of subparagraphs (H) through (I) or (K) through (N) of subsection (a)(2) shall be filled by an appointment made by the remaining members of the Board.

(B) **TRIBAL REPRESENTATIVES.**—Following a vacancy of a member of the Board described in subparagraph (J) of subsection (a)(2), the Secretary shall recommend to the Board not less than 4 tribal representatives, from which the remaining members of the Board shall appoint a representative to fill the vacancy.
(5) Continuation of service.—An individual whose term of service as a member of the Board expires may continue to serve on the Board until a successor is appointed.

(6) Removal.—If a member of the Board described in any of subparagraphs (H) through (N) of subsection (a)(2) misses 3 consecutive regularly scheduled Board meetings, the members of the Board may—

(A) vote to remove that member; and

(B) appoint another individual in accordance with paragraph (4).

(c) Chairperson.—

(1) In general.—The Board shall elect a member of the Board to serve as Chairperson of the Board.

(2) Term.—The Chairperson of the Board shall serve for a term of 3 years.

(d) Meetings.—

(1) In general.—The Board shall meet—

(A) at the call of the Chairperson; but

(B) not less frequently than twice each calendar year.

(2) Public access.—All meetings of the Board shall be open to the public.
(c) Procedures.—

(1) In general.—The Board shall establish procedures to carry out the business of the Board, including—

(A) a requirement that a quorum of the members of the Board be present to transact business;

(B) a requirement that no recommendations may be adopted by the Board, except by the vote of $\frac{2}{3}$ of all members present and voting;

(C) procedures for establishing national goals and priorities for aquatic habitat conservation for the purposes of this Act;

(D) procedures for designating Partnerships under section 5; and

(E) procedures for reviewing, evaluating, and making recommendations regarding fish habitat conservation projects.

(2) Quorum.—A majority of the members of the Board shall constitute a quorum.

SEC. 5. FISH HABITAT PARTNER SHIPS.

(a) Authority To Designate.—The Board may designate Fish Habitat Partnerships in accordance with this section.
(b) PURPOSES.—The purposes of a Partnership shall be—

(1) to coordinate the implementation of the National Fish Habitat Action Plan at a regional level;

(2) to identify strategic priorities for fish habitat conservation;

(3) to recommend to the Board fish habitat conservation projects that address a strategic priority of the Board; and

(4) to develop and carry out fish habitat conservation projects.

(c) APPLICATIONS.—An entity seeking to be designated as a Partnership shall submit to the Board an application at such time, in such manner, and containing such information as the Board may reasonably require.

(d) APPROVAL.—The Board may approve an application for a Partnership submitted under subsection (c) if the Board determines that the applicant—

(1) includes representatives of a diverse group of public and private partners, including Federal, State, or local governments, nonprofit entities, Indian tribes, and private individuals, that are focused on conservation of aquatic habitats to achieve results across jurisdictional boundaries on public and private land;
(2) is organized to promote the health of important aquatic habitats and distinct geographical areas, keystone fish species, or system types, including reservoirs, natural lakes, coastal and marine environments, and estuaries;

(3) identifies strategic fish and aquatic habitat priorities for the Partnership area in the form of geographical focus areas or key stressors or impairments to facilitate strategic planning and decision-making;

(4) is able to address issues and priorities on a nationally significant scale;

(5) includes a governance structure that—
   (A) reflects the range of all partners; and
   (B) promotes joint strategic planning and decisionmaking by the applicant;

(6) demonstrates completion of, or significant progress toward the development of, a strategic plan to address the causes of system decline in fish populations, rather than simply treating symptoms in accordance with the National Fish Habitat Action Plan; and

(7) ensures collaboration in developing a strategic vision and implementation program that is scientifically sound and achievable.
SEC. 6. FISH HABITAT CONSERVATION PROJECTS.

(a) Submission to Board.—Not later than March 31 of each calendar year, each Partnership shall submit to the Board a list of fish habitat conservation projects recommended by the Partnership for annual funding under this Act.

(b) Recommendations by Board.—Not later than July 1 of each calendar year, the Board shall submit to the Secretary a description, including estimated costs, of each fish habitat conservation project that the Board recommends that the Secretary approve and fund under this Act, in order of priority, for the following fiscal year.

(c) Considerations.—The Board shall select each fish habitat conservation project to be recommended to the Secretary under subsection (b)—

(1) based on a recommendation of the Partnership that is, or will be, participating actively in carrying out the fish habitat conservation project; and

(2) after taking into consideration—

(A) the extent to which the fish habitat conservation project fulfills a purpose of this Act or a goal of the National Fish Habitat Action Plan;

(B) the extent to which the fish habitat conservation project addresses the national priorities established by the Board;
(C) the availability of sufficient non-Federal funds to match Federal contributions for the fish habitat conservation project, as required by subsection (e);

(D) the extent to which the fish habitat conservation project—

(i) increases fishing opportunities for the public;

(ii) will be carried out through a cooperative agreement among Federal, State, and local governments, Indian tribes, and private entities;

(iii) increases public access to land or water;

(iv) advances the conservation of fish and wildlife species that are listed, or are candidates to be listed, as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(v) where appropriate, advances the conservation of fish and fish habitats under the Magnuson-Stevens Act (16 U.S.C. 1801 et seq.) and other relevant
Federal law and State wildlife action plans; and

(vi) promotes resilience such that desired biological communities are able to persist and adapt to environmental stressors such as climate change; and

(E) the substantiality of the character and design of the fish habitat conservation project.

(d) LIMITATIONS.—

(1) REQUIREMENTS FOR EVALUATION.—No fish habitat conservation project may be recommended by the Board under subsection (b) or provided financial assistance under this Act unless the fish habitat conservation project includes an evaluation plan designed—

(A) to appropriately assess the biological, ecological, or other results of the habitat protection, restoration, or enhancement activities carried out using the assistance;

(B) to reflect appropriate changes to the fish habitat conservation project if the assessment substantiates that the fish habitat conservation project objectives are not being met; and
(C) to require the submission to the Board of a report describing the findings of the assessment.

(2) Acquisition of real property interests.—

(A) In general.—No fish habitat conservation project that will result in the acquisition by the State, local government, or other non-Federal entity, in whole or in part, of any real property interest may be recommended by the Board under subsection (b) or provided financial assistance under this Act unless the project meets the requirements of subparagraph (B).

(B) Requirements.—

(i) In general.—A real property interest may not be acquired pursuant to a fish habitat conservation project by a State, public agency, or other non-Federal entity unless the State, agency, or other non-Federal entity is obligated to undertake the management of the property being acquired in accordance with the purposes of this Act.
(ii) ADDITIONAL CONDITIONS.—Any real property interest acquired by a State, local government, or other non-Federal entity pursuant to a fish habitat conservation project shall be subject to terms and conditions that ensure that the interest will be administered for the long-term conservation and management of the aquatic ecosystem and the fish and wildlife dependent on that ecosystem.

(e) NON-FEDERAL CONTRIBUTIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), no fish habitat conservation project may be recommended by the Board under subsection (b) or provided financial assistance under this Act unless at least 50 percent of the cost of the fish habitat conservation project will be funded with non-Federal funds.

(2) PROJECTS ON FEDERAL LAND OR WATER.—Notwithstanding paragraph (1), Federal funds may be used for payment of 100 percent of the costs of a fish habitat conservation project located on Federal land or water.
(3) **Non-Federal Share.**—The non-Federal share of the cost of a fish habitat conservation project—

(A) may not be derived from a Federal grant program; but

(B) may include in-kind contributions and cash.

(4) **Special Rule for Indian Tribes.**—Notwithstanding paragraph (1) or any other provision of law, any funds made available to an Indian tribe pursuant to this Act may be considered to be non-Federal funds for the purpose of paragraph (1).

(f) **Approval.**—

(1) **In General.**—Not later than 180 days after the date of receipt of the recommendations of the Board for fish habitat conservation projects under subsection (b), and based, to the maximum extent practicable, on the criteria described in subsection (c)—

(A) the Secretary shall approve, reject, or reorder the priority of any fish habitat conservation project recommended by the Board that is not within a marine or estuarine habitat; and
(B) the Secretary and the Secretary of Commerce shall jointly approve, reject, or reorder the priority of any fish habitat conservation project recommended by the Board that is within a marine or estuarine habitat.

(2) FUNDING.—If the Secretary, or the Secretary and the Secretary of Commerce jointly, approves a fish habitat conservation project under paragraph (1), the Secretary, or the Secretary and the Secretary of Commerce jointly, shall use amounts made available to carry out this Act to provide funds to carry out the fish habitat conservation project.

(3) NOTIFICATION.—If the Secretary, or the Secretary and the Secretary of Commerce jointly, rejects or reorders the priority of any fish habitat conservation project recommended by the Board under subsection (b), the Secretary, or the Secretary and the Secretary of Commerce jointly, shall provide to the Board and the appropriate Partnership a written statement of the reasons that the Secretary, or the Secretary and the Secretary of Commerce jointly, rejected or modified the priority of the fish habitat conservation project.
(4) LIMITATION.—If the Secretary, or the Secretary and the Secretary of Commerce jointly, has not approved, rejected, or reordered the priority of the recommendations of the Board for fish habitat conservation projects by the date that is 180 days after the date of receipt of the recommendations, the recommendations shall be considered to be approved.

SEC. 7. NATIONAL FISH HABITAT CONSERVATION PARTNERSHIP OFFICE.

(a) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this Act, the Director shall establish an office, to be known as the “National Fish Habitat Conservation Partnership Office”, within the United States Fish and Wildlife Service.

(b) FUNCTIONS.—The National Fish Habitat Conservation Partnership Office shall—

(1) provide funding for the operational needs of the Partnerships, including funding for activities such as planning, project development and implementation, coordination, monitoring, evaluation, communication, and outreach;

(2) provide funding to support the detail of State and tribal fish and wildlife staff to the Office;

(3) facilitate the cooperative development and approval of Partnerships;
(4) assist the Secretary and the Board in carrying out this Act;

(5) assist the Secretary in carrying out the requirements of sections 8 and 10;

(6) facilitate communication, cohesiveness, and efficient operations for the benefit of Partnerships and the Board;

(7) facilitate, with assistance from the Director, the Assistant Administrator, and the President of the Association of Fish and Wildlife Agencies, the consideration of fish habitat conservation projects by the Board;

(8) provide support to the Director regarding the development and implementation of the interagency operational plan under subsection (c);

(9) coordinate technical and scientific reporting as required by section 11;

(10) facilitate the efficient use of resources and activities of Federal departments and agencies to carry out this Act in an efficient manner; and

(11) provide support to the Board for national communication and outreach efforts that promote public awareness of fish habitat conservation.

(c) INTERAGENCY OPERATIONAL PLAN.—Not later than 1 year after the date of enactment of this Act, and
every 5 years thereafter, the Director, in cooperation with
the Assistant Administrator and the heads of other appro-
priate Federal departments and agencies, shall develop an
interagency operational plan for the National Fish Habi-
tat Conservation Partnership Office that describes—

(1) the functional, operational, technical, sci-
entific, and general staff, administrative, and mate-
rial needs of the Office; and

(2) any interagency agreements between or
among Federal departments and agencies to address
those needs.

(d) STAFF AND SUPPORT.—

(1) DEPARTMENTS OF INTERIOR AND COM-
merce.—The Director and the Assistant Adminis-
trator shall each provide appropriate staff to support
the National Fish Habitat Conservation Partnership
Office, subject to the availability of funds under sec-
tion 15.

(2) STATES AND INDIAN TRIBES.—Each State
and Indian tribe is encouraged to provide staff to
support the National Fish Habitat Conservation
Partnership Office.

(3) DETAILLEES AND CONTRACTORS.—The Na-
tional Fish Habitat Conservation Partnership Office
may accept staff or other administrative support from other entities—

(A) through interagency details; or

(B) as contractors.

(4) QUALIFICATIONS.—The staff of the National Fish Habitat Conservation Partnership Office shall include members with education and experience relating to the principles of fish, wildlife, and aquatic habitat conservation.

(5) WAIVER OF REQUIREMENT.—The Secretary may waive all or part of the non-Federal contribution requirement under section 6(e)(1) if the Secretary determines that—

(A) no reasonable means are available through which the affected applicant can meet the requirement; and

(B) the probable benefit of the relevant fish habitat conservation project outweighs the public interest in meeting the requirement.

(e) REPORTS.—Not less frequently than once each year, the Director shall provide to the Board a report describing the activities of the National Fish Habitat Conservation Partnership Office.
SEC. 8. TECHNICAL AND SCIENTIFIC ASSISTANCE.

(a) IN GENERAL.—The Director, the Assistant Administrator, and the Director of the United States Geological Survey, in coordination with the Forest Service and other appropriate Federal departments and agencies, shall provide scientific and technical assistance to the Partnerships, participants in fish habitat conservation projects, and the Board.

(b) INCLUSIONS.—Scientific and technical assistance provided pursuant to subsection (a) may include—

(1) providing technical and scientific assistance to States, Indian tribes, regions, local communities, and nongovernmental organizations in the development and implementation of Partnerships;

(2) providing technical and scientific assistance to Partnerships for habitat assessment, strategic planning, and prioritization;

(3) supporting the development and implementation of fish habitat conservation projects that are identified as high priorities by Partnerships and the Board;

(4) supporting and providing recommendations regarding the development of science-based monitoring and assessment approaches for implementation through Partnerships;
(5) supporting and providing recommendations for a national fish habitat assessment; and

(6) ensuring the availability of experts to conduct scientifically based evaluation and reporting of the results of fish habitat conservation projects.

SEC. 9. CONSERVATION OF AQUATIC HABITAT FOR FISH AND OTHER AQUATIC ORGANISMS ON FEDERAL LAND.

To the extent consistent with the mission and authority of the applicable department or agency, the head of each Federal department and agency responsible for acquiring, managing, or disposing of Federal land or water shall cooperate with the Assistant Administrator and the Director to conserve the aquatic habitats for fish and other aquatic organisms within the land and water of the department or agency.

SEC. 10. COORDINATION WITH STATES AND INDIAN TRIBES.

The Secretary shall provide a notice to, and coordinate with, the appropriate State agency or tribal agency, as applicable, of each State and Indian tribe within the boundaries of which an activity is planned to be carried out pursuant to this Act by not later than 30 days before the date on which the activity is implemented.

SEC. 11. ACCOUNTABILITY AND REPORTING.

(a) IMPLEMENTATION REPORTS.—
(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, and every 2 years thereafter, the Board shall submit to the appropriate congressional committees a report describing the implementation of—

(A) this Act; and

(B) the National Fish Habitat Action Plan.

(2) CONTENTS.—Each report submitted under paragraph (1) shall include—

(A) an estimate of the number of acres, stream miles, or acre-feet (or other suitable measure) of aquatic habitat that was protected, restored, or enhanced under the National Fish Habitat Action Plan by Federal, State, or local governments, Indian tribes, or other entities in the United States during the 2-year period ending on the date of submission of the report;

(B) a description of the public access to aquatic habitats protected, restored, or established under the National Fish Habitat Action Plan during that 2-year period;

(C) a description of the opportunities for public fishing established under the National
Fish Habitat Action Plan during that period; and

(D) an assessment of the status of fish habitat conservation projects carried out with funds provided under this Act during that period, disaggregated by year, including—

(i) a description of the fish habitat conservation projects recommended by the Board under section 6(b);

(ii) a description of each fish habitat conservation project approved by the Secretary under section 6(f), in order of priority for funding;

(iii) a justification for—

(I) the approval of each fish habitat conservation project; and

(II) the order of priority for funding of each fish habitat conservation project;

(iv) a justification for any rejection or reordering of the priority of each fish habitat conservation project recommended by the Board under section 6(b) that was based on a factor other than the criteria described in section 6(e); and
(v) an accounting of expenditures by Federal, State, or local governments, Indian tribes, or other entities to carry out fish habitat conservation projects.

(b) STATUS AND TRENDS REPORT.—Not later than December 31, 2012, and every 5 years thereafter, the Board shall submit to the appropriate congressional committees a report describing the status of aquatic habitats in the United States.

(c) REVISIONS.—Not later than December 31, 2013, and every 5 years thereafter, the Board shall revise the goals and other elements of the National Fish Habitat Action Plan, after consideration of each report required by subsection (b).

SEC. 12. REGULATIONS.

The Secretary may promulgate such regulations as the Secretary determines to be necessary to carry out this Act.

SEC. 13. EFFECT OF ACT.

(a) WATER RIGHTS.—Nothing in this Act—

(1) establishes any express or implied reserved water right in the United States for any purpose;

(2) affects any water right in existence on the date of enactment of this Act;
(3) preempts or affects any State water law or
interstate compact governing water; or

(4) affects any Federal or State law in existence on the date of enactment of the Act regarding
water quality or water quantity.

(b) STATE AUTHORITY.—Nothing in this Act—

(1) affects the authority, jurisdiction, or responsibility of a State to manage, control, or regulate
fish and wildlife under the laws and regulations of the State; or

(2) authorizes the Secretary to control or regulate within a State the fishing or hunting of fish and
wildlife.

(c) EFFECT ON INDIAN TRIBES.—Nothing in this Act abrogates, abridges, affects, modifies, supersedes, or
alters any right of an Indian tribe recognized by treaty or any other means, including—

(1) an agreement between the Indian tribe and the United States;

(2) Federal law (including regulations);

(3) an Executive order; or

(4) a judicial decree.

(d) ADJUDICATION OF WATER RIGHTS.—Nothing in this Act diminishes or affects the ability of the Secretary
to join an adjudication of rights to the use of water pursu-
ant to subsection (a), (b), or (c) of section 208 of the Department of Justice Appropriation Act, 1953 (43 U.S.C. 666).

(e) Effect on Other Authorities.—

(1) Acquisition of land and water.—Nothing in this Act alters or otherwise affects the authorities, responsibilities, obligations, or powers of the Secretary to acquire land, water, or an interest in land or water under any other provision of law.

(2) Private property protection.—Nothing in this Act permits the use of funds made available to carry out this Act to acquire real property or a real property interest without the written consent of each owner of the real property or real property interest.

(3) Mitigation.—Nothing in this Act permits the use of funds made available to carry out this Act for fish and wildlife mitigation purposes under—

(A) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(B) the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.);

(C) the Water Resources Development Act of 1986 (Public Law 99–662; 100 Stat. 4082); or
SEC. 14. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to—

(1) the Board; or

(2) any Partnership.

SEC. 15. FUNDING.

(a) Authorization of Appropriations.—

(1) Fish habitat conservation projects.—

There is authorized to be appropriated to the Secretary $7,200,000 for each of fiscal years 2012 through 2016 to provide funds for fish habitat conservation projects approved under section 6(f), of which 5 percent shall be made available for each fiscal year for projects carried out by Indian tribes.

(2) National fish habitat conservation partnership office.—

(A) In general.—There is authorized to be appropriated to the Secretary for each of fiscal years 2012 through 2016 for the National Fish Habitat Conservation Partnership Office, and to carry out section 11, an amount equal to 5 percent of the amount appropriated for the
applicable fiscal year pursuant to paragraph (1).

(B) REQUIRED TRANSFERS.—The Secretary shall annually transfer to other Federal departments and agencies such percentage of the amounts made available pursuant to sub-paragraph (A) as is required to support participation by those departments and agencies in the National Fish Habitat Conservation Partnership Office pursuant to the interagency operational plan under section 7(e).

(3) TECHNICAL AND SCIENTIFIC ASSISTANCE.—There are authorized to be appropriated for each of fiscal years 2012 through 2016 to carry out, and provide technical and scientific assistance under, section 8—

(A) $500,000 to the Secretary for use by the United States Fish and Wildlife Service;

(B) $500,000 to the Assistant Administrator for use by the National Oceanic and Atmospheric Administration; and

(C) $500,000 to the Secretary for use by the United States Geological Survey.

(4) PLANNING AND ADMINISTRATIVE EXPENSES.—There is authorized to be appropriated to
the Secretary for each of fiscal years 2012 through 2016 for use by the Board, the Director, and the Assistant Administrator for planning and administrative expenses an amount equal to 3 percent of the amount appropriated for the applicable fiscal year pursuant to paragraph (1).

(b) AGREEMENTS AND GRANTS.—The Secretary may—

(1) on the recommendation of the Board, and notwithstanding sections 6304 and 6305 of title 31, United States Code, and the Federal Financial Assistance Management Improvement Act of 1999 (31 U.S.C. 6101 note; Public Law 106–107), enter into a grant agreement, cooperative agreement, or contract with a Partnership or other entity for a fish habitat conservation project or restoration or enhancement project;

(2) apply for, accept, and use a grant from any individual or entity to carry out the purposes of this Act; and

(3) make funds available to any Federal department or agency for use by that department or agency to provide grants for any fish habitat protection project, restoration project, or enhancement project
that the Secretary determines to be consistent with this Act.

(c) DONATIONS.—

(1) IN GENERAL.—The Secretary may—

(A) enter into an agreement with any organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of that Code to solicit private donations to carry out the purposes of this Act; and

(B) accept donations of funds, property, and services to carry out the purposes of this Act.

(2) TREATMENT.—A donation accepted under this section—

(A) shall be considered to be a gift or bequest to, or otherwise for the use of, the United States; and

(B) may be—

(i) used directly by the Secretary; or

(ii) provided to another Federal department or agency through an inter-agency agreement.