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NATIONAL FISH HABITAT CONSERVATION ACT

JUNE 5, 2014.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany S. 2080]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred the bill (S. 2080) to conserve fish and aquatic communities in the United States through partnerships that foster fish habitat conservation, improve the quality of life for the people of the United States, enhance fish and wildlife-dependent recreation, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

GENERAL STATEMENT AND BACKGROUND

S. 2080 seeks to improve fish habitat across the nation and would codify the National Fish Habitat Action Plan (Action Plan). The Action Plan focuses financial and technical resources on the root causes of fish habitat declines. The Action Plan focuses on the protection and conservation of intact and healthy fish habitats to prevent their future decline and disruption.

Since 1900, 123 freshwater species have become extinct in North America. Hundreds of other fish, mollusks, crayfish and amphibians are imperiled. A 2008 study by USGS scientists concluded that nearly 40 percent of the nation's fish populations are in decline. The loss and degradation of aquatic habitat are considered one of the primary reasons for the vulnerable condition of aquatic species.

S. 2080 would foster better science, communication, and partnerships to unite diverse stakeholders and focus voluntary action on conserving priority habitats and encourage private-public partnerships that are consistent with the goals and mission of the National Fish Habitat Action Plan, which was released in 2006.

The goals of the plan are:

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

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

(3) to reverse declines in the quality and quantity of aquatic habitats to improve the overall health of fish species;

(4) to increase the quality and quantity of fish habitats that support a broad natural diversity of fish species.

The legislation would codify the National Fish Habitat Board, composed of members from federal, state, and tribal agencies, and non-governmental organizations, which approves Fish Habitat Partnerships (FHP) and makes recommendations to the Secretary of the Interior regarding the funding of conservation projects. The bill also ensures coordination of ongoing Federal efforts to support the NFHAP by directing the Director of the FWS to establish the National Fish Habitat Conservation Partnership Office within the FWS, the National Oceanic and Atmospheric Administration (NOAA), and the US Geological Survey (USGS) to provide technical and scientific assistance to the Partnerships, the project participants, and the Board. The bill authorizes appropriations for each of fiscal years 2014 through 2018.

OBJECTIVES OF THE LEGISLATION

The National Fish Habitat Conservation Act (S. 2080) seeks to conserve fish habitats in the United States through partnerships that foster fish habitat conservation and to improve the quality of life for the people of the United States.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents

Section 1 provides that this Act may be cited as the "National Fish Habitat Conservation Act" and includes the table of contents of the Act.

Section 2. Findings; Purpose

Section 2 includes several findings that highlight the economic, social, and environmental importance of fish habitats; acknowledge the harmful impacts to the national economy, environment, and wildlife that result from the destruction or alteration of aquatic habitats; and, recognize the need to protect, conserve, and restore the quality of aquatic habitats.

Section 2 states that the purpose of the Act is to encourage partnerships among public agencies and other interested parties consistent with the mission and goals of the National Fish Habitat Action Plan.

Section 3. Definitions

Section 3 provides definitions of several terms used in the Act.

Section 4. National Fish Habitat Board

Section 4 establishes the National Fish Habitat Board to oversee and promote the implementation of the Act, to establish national goals and priorities, to designate partnerships, and to review and

recommend aquatic habitat projects. This section describes the composition of the board and the procedures for appointing and replacing members.

Section 5. Fish Habitat Partnerships

Section 5 establishes procedures for designating Fish Habitat Partnerships (Partnerships) and outlines criteria for approval of partnerships. Criteria included are that the partnership: (1) includes a diverse group of public and private partners; (2) is organized to promote the health of important aquatic habitats and distinct geographical areas, keystone fish species, or system types; (3) identifies strategic fish habitat priorities for the Partnership area; (4) is able to address issues on a nationally-significant scale; (5) includes governances structures that reflects the range of all partners and promotes joint strategic planning; (6) demonstrates completion of progress toward development of a strategic plan to address causes of fish decline; (7) ensures collaboration in implementing a scientifically-sound and achievable implementation program.

Section 6. Fish habitat conservation projects

Section 6 establishes procedures for consideration of fish habitat projects by the Board and criteria for the board to use in evaluating and recommending projects for funding to the Secretaries of Interior and Commerce, which the Secretaries must approve, reject, or reorder within 180 days. All fish habitat projects will be submitted to the Board by the Partnerships and must include an evaluation plan designed to—appropriately assess the biological, ecological, or other results of the project and reflect appropriate changes to the fish habitat conservation project if the assessment finds that the project objectives are not being met. This section establishes cost-sharing requirements and includes requirements related to the acquisition of real property through a fish habitat project. The section also ensures that no fish habitat conservation project may result in the acquisition of real property by a State, local government, or other non-Federal entity, or provided financial assistance under this Act unless the owner of the real property authorizes the State, local government, or other non-Federal entity to acquire the real property.

Section 7. National Fish Habitat Conservation Partnership Program

Section 7 establishes the National Fish Habitat Conservation Partnership Program and describes its functions, which include: providing funding for Partnership projects and the detail of State and tribal fish and wildlife staff; facilitating development and approval of Partnerships and communication and operations of the Partnerships and the Board; coordinating scientific reporting on projects; and providing support to the Board for national communication and outreach efforts that promote public awareness of fish habitat conservation.

This section also requires the Director of the FWS, in cooperation with the Assistant Administrator for Fisheries of NOAA and heads of other appropriate Federal agencies, to establish an interagency operational plan to guide the efforts of the Partnership Program

and ensure inter-agency coordination. This section directs the Director of the FWS and Assistant Administrator for Fisheries of NOAA to provide staff to support the work of the Partnership Program and authorizes the Partnership Program to accept staff or support through interagency details or contractors.

At least once per year, the Director of the FWS must provide to the Board a report describing the activities of the National Fish Habitat Conservation Partnership Program.

Section 8. Technical and scientific assistance

Section 8 directs the Director of the FWS, Assistant Administrator for Fisheries of NOAA, and Director of the United States Geological Survey (USGS), in coordination with other appropriate federal agencies, to provide technical and scientific assistance to develop and implement Partnerships; assess habitat, conduct strategic planning, and prioritize efforts; assess projects, support the development and implementation of fish habitat conservation projects, and provide recommendations for a national fish habitat assessment; support science-based monitoring and assessment; and ensure the availability of experts to conduct scientifically-based evaluation and reporting of fish habitat conservation projects.

Section 9. Conservation of fish habitat on Federal land

Section 9 provides that the head of each Federal department and agency responsible for acquiring, managing, or disposing of Federal land or water must cooperate with the FWS and NOAA to conserve the aquatic habitats and organisms within the land and water of the department or agency.

Section 10. Coordination with States and Indian tribes

Section 10 provides that the Secretary of the Interior shall provide a notice to the appropriate State or tribal agency within which an activity is planned to be carried out pursuant with this Act no later than 30 days before the planned activity is implemented.

Section 11. Accountability and reporting

Section 11 requires the Board to submit reports to appropriate congressional committees on the implementation of this Act and the National Fish Habitat Action Plan, which shall include an estimate of the amounts of aquatic habitats protected or restored under the National Fish Habitat Action Plan; a description of public access to aquatic habitats protected, restored or established; a description of the opportunities for public fishing; and an assessment of the status of the fish habitat conservation projects funded under this Act.

Section 11 requires the Board to submit to the appropriate congressional committees a report describing the status of aquatic habitats in the United States by December 31, 2015 and each five years thereafter.

Section 12. Regulations

Section 12 provides that the Secretary of the Interior may promulgate such regulations as the Secretary determines necessary to carry out this Act.

Section 13. Effect of Act

Section 13 states that nothing in this Act establishes a water right in the United States, affects any water right in existence, or affects state water law. This section further clarifies that nothing in the Act affects state rights to manage wildlife and fish, affects tribal rights, affects existing federal authorities for land or water acquisition, or enables the use of funds provided by the Act to acquire real property without the consent of the property owner. This section also states that nothing in this Act allows the use of funds for fish and wildlife mitigation under existing Federal laws and court settlements.

Section 14. Nonapplicability of Federal Advisory Committee Act

Section 14 provides that the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the National Fish Habitat Board or any Partnership.

Section 15. Funding

Section 15 authorizes $7,200,000 for the Secretary of the Interior 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. This section authorizes five percent of the funds appropriated for fish habitat conservation projects for the National Fish Habitat Conservation Program and requires the Secretary to annually transfer appropriate amounts to other federal agencies pursuant to the interagency operation plan under section 7(c). FWS, NOAA, and USGS are authorized to receive $500,000 each to provide technical and scientific assistance. This section authorizes three percent of the funds appropriated for fish habitat conservation projects for administrative expenses. All authorizations are for fiscal years 2014 through 2018.

LEGISLATIVE HISTORY

S. 2080 was introduced by Senators Cardin and Crapo on March 5, 2014. The bill was received, read twice, and referred to the Committee on Environment and Public Works. On April 4, 2014, the full Committee on Environment and Public Works met to consider the bill. The bill was ordered reported favorably without amendment by voice vote. Previous versions of this bill were reported favorably by voice vote from the Environment and Public Works Committee.

HEARINGS

In the 111th Congress, on December 3, 2009, the Water and Wildlife Subcommittee of the Senate Environment and Public Works Committee held a legislative hearing on multiple wildlife and invasive species bills, including the National Fish Habitat Conservation Act.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 2080 on April 4, 2014. The bill was ordered reported favor-

ably by voice vote with Senators Barrasso and Fischer recorded as "no".

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 2080 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee noted that the Congressional Budget Office has found, S. 2080 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 14, 2014.

Hon. BARBARA BOXER,
Chairman, Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2080, the National Fish Habitat Conservation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 2080—National Fish Habitat Conservation Act

Summary: S. 2080 would authorize the appropriation of $29 million over the 2015–2018 period for the Department of the Interior (DOI) to fund projects to conserve fish habitats. The legislation also would establish a National Fish Habitat Board and authorize the appropriation of $6 million over the same period to establish a National Fish Habitat Partnership Program, cover certain planning and administrative expenses, and provide technical and scientific assistance to the board, Fish Habitat Partnerships (FHPs), and conservation project participants.

CBO estimates that implementing S. 2080 would cost $32 million over the 2015–2019 period and $5 million after 2019, assuming appropriation of the specified amounts. Because the legislation would authorize DOI to accept and use gifts and donations, enacting the bill could affect offsetting receipts and associated direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that the net effect on direct spending would be negligible in each year. Enacting the bill would not affect revenues.

S. 2080 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary effect of S. 2080 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2015	2016	2017	2018	2019	2015–2019
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Fish Habitat Conservation Projects: [a]						
Authorization Level	7	7	7	7	0	29
Estimated Outlays	3	5	6	7	4	24
Other Costs:						
Authorization Level	2	2	2	2	0	8
Estimated Outlays	2	2	2	2	*	8
Total Changes:						
Authorization Level	9	9	9	9	0	37
Estimated Outlays	4	6	8	9	4	32

Note: Components may not sum to totals because of rounding; * = less than $500,000.
[a] The United States Fish and Wildlife Service received appropriations of $7 million in 2014 for fish habitat conservation projects.

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted near the end of 2014 and that amounts specified in the bill will be appropriated for each year.

S. 2080 would establish a National Fish Habitat Board composed of 28 members from federal, state, and tribal agencies, and nongovernmental organizations. The board would approve FHPs formed around specific aquatic habitats and geographic areas and make recommendations to the Secretary of the Interior regarding the funding of conservation projects. Those recommendations would be primarily informed by the FHPs, which would conduct scientific assessments and identify strategic priorities on behalf of public and private partners.

Fish habitat conservation projects

S. 2080 would authorize the appropriation of $7.2 million in each of fiscal years 2015 through 2018 for DOI to provide funding for projects to conserve fish habitat, including the acquisition of property. Projects would increase fishing opportunities for the public; increase public access to land; protect threatened and endangered species, fish, and fish habitats; and promote resilience to environmental change. No project could derive more than 50 percent of its funding from the federal government unless the project was located on federal property. Based on the historical spending patterns for other conservation and land acquisition projects, we estimate that implementing this provision would cost $24 million over the 2015–2019 period.

Other costs

S. 2080 would authorize the appropriation of $1.5 million in each of fiscal years 2015 through 2018 for technical and scientific assistance to the board, the FHPs, and conservation project participants. The legislation would provide equal funding in each year to the Fish and Wildlife Service (FWS), the National Oceanic and Atmospheric Administration, and the United States Geological Survey for those purposes. The bill also would authorize the appropriation of 8 percent of the funds appropriated for fish habitat conservation projects. Assuming appropriation of the full amount authorized to

be appropriated for fish habitat, S. 2080 would authorize the appropriation of $0.6 million a year over the 2015–2018 period to establish a National Fish Habitat Conservation Partnership Program within FWS and for planning and administrative expenses. Based on the historical spending patterns for programs carried out by each of the affected agencies, CBO estimates that implementing those provisions would cost $8 million over the 2015–2019 period.

Intergovernmental and private-sector impact: S. 2080 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. State, local, and tribal governments would benefit from technical and financial assistance authorized in the bill. Any costs to those governments would be incurred voluntarily as a condition of receiving federal assistance.

Estimate prepared by: Federal Costs: Jeff LaFave; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate requires the committee to publish changes in existing law made by the bill as reported. Passage of this bill will make no changes to existing law.

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