

NATIONAL FISH HABITAT CONSERVATION THROUGH
PARTNERSHIPS ACT

NOVEMBER 26, 2019.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 1747]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1747) to encourage partnerships among public agencies and other interested persons to promote fish conservation, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Fish Habitat Conservation Through Partnerships Act”.

SEC. 2. PURPOSE.

The purpose of this Act is to encourage partnerships among public agencies and other interested persons to promote fish conservation—

(1) to achieve measurable habitat conservation results through strategic actions of Fish Habitat Partnerships that lead to better fish habitat conditions and increased fishing opportunities by—

(A) improving ecological conditions;

(B) restoring natural processes; or

(C) preventing the decline of intact and healthy systems;

(2) to establish a consensus set of national conservation strategies as a framework to guide future actions and investment by Fish Habitat Partnerships;

(3) to broaden the community of support for fish habitat conservation by—

(A) increasing fishing opportunities;

(B) fostering the participation of local communities, especially young people in local communities, in conservation activities; and

(C) raising public awareness of the role healthy fish habitat play in the quality of life and economic well-being of local communities;

(4) to fill gaps in the National Fish Habitat Assessment and the associated database of the National Fish Habitat Assessment—

- (A) to empower strategic conservation actions supported by broadly available scientific information; and
- (B) to integrate socioeconomic data in the analysis to improve the lives of humans in a manner consistent with fish habitat conservation goals; and
- (5) to communicate to the public and conservation partners—
 - (A) the conservation outcomes produced collectively by Fish Habitat Partnerships; and
 - (B) new opportunities and voluntary approaches for conserving fish habitat.

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) BOARD.—The term “Board” means the National Fish Habitat Board established by section 4.
- (3) DIRECTOR.—The term “Director” means the Director of the United States Fish and Wildlife Service.
- (4) EPA ASSISTANT ADMINISTRATOR.—The term “EPA Assistant Administrator” means the Assistant Administrator for Water of the Environmental Protection Agency.
- (5) INDIAN TRIBE.—The term “Indian Tribe” has the meaning given to the term “Indian tribe” in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).
- (6) NOAA ASSISTANT ADMINISTRATOR.—The term “NOAA Assistant Administrator” means the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration.
- (7) PARTNERSHIP.—The term “Partnership” means a self-governed entity designated by Congress as a Fish Habitat Partnership under subsection (d)(6) after a recommendation by the Board under section 5.
- (8) REAL PROPERTY INTEREST.—The term “real property interest” means an ownership interest in—
 - (A) land; or
 - (B) water (including water rights).
- (9) MARINE FISHERIES COMMISSIONS.—The term “Marine Fisheries Commissions” means—
 - (A) The Atlantic States Marine Fisheries Commission;
 - (B) the Gulf States Marine Fisheries Commission; and
 - (C) the Pacific States Marine Commission.
- (10) SECRETARY.—The term “Secretary” means the Secretary of the Interior.
- (11) STATE.—The term “State” means each of the several States, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, the United States Virgin Islands, and the District of Columbia.
- (12) STATE AGENCY.—The term “State agency” means—
 - (A) the fish and wildlife agency of a State; and
 - (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 of the State or sustains the habitat for those fishery resources pursuant to State law or the constitution of the State.

SEC. 4. NATIONAL FISH HABITAT BOARD.

(a) ESTABLISHMENT.—

- (1) FISH HABITAT BOARD.—There is established a board, to be known as the “National Fish Habitat Board”, whose duties are—
 - (A) to promote, oversee, and coordinate the implementation of this Act;
 - (B) to establish national goals and priorities for fish habitat conservation;
 - (C) to recommend to Congress entities for designation as Partnerships;
 and
 - (D) to review and make recommendations regarding fish habitat conservation projects.
- (2) MEMBERSHIP.—The Board shall be composed of 25 members, of whom—
 - (A) 1 shall be a representative of the Department of the Interior;
 - (B) 1 shall be a representative of the United States Geological Survey;
 - (C) 1 shall be a representative of the Department of Commerce;
 - (D) 1 shall be a representative of the Department of Agriculture;
 - (E) 1 shall be a representative of the Association of Fish and Wildlife Agencies;

(F) 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;

(G) 1 shall be a representative of either—

- (i) Indian Tribes in the State of Alaska; or
- (ii) Indian Tribes in States other than the State of Alaska;

(H) 1 shall be a representative of either—

- (i) the Regional Fishery Management Councils established under section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852); or
- (ii) a representative of the Marine Fisheries Commissions;

(I) 1 shall be a representative of the Sportfishing and Boating Partnership Council;

(J) 7 shall be representatives selected from at least one from each of the following:

- (i) the recreational sportfishing industry;
- (ii) the commercial fishing industry;
- (iii) marine recreational anglers;
- (iv) freshwater recreational anglers;
- (v) habitat conservation organizations; and
- (vi) science-based fishery organizations;

(K) 1 shall be a representative of a national private landowner organization;

(L) 1 shall be a representative of an agricultural production organization;

(M) 1 shall be a representative of local government interests involved in fish habitat restoration;

(N) 2 shall be representatives from different sectors of corporate industries, which may include—

- (i) natural resource commodity interests, such as petroleum or mineral extraction;
- (ii) natural resource user industries; and
- (iii) industries with an interest in fish and fish habitat conservation;

and

(O) 1 shall be a leadership private sector or landowner representative of an active partnership.

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

(4) TRAVEL EXPENSES.—A member of the Board may 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 provided in this section, a member of the Board described in any of subparagraphs (F) through (O) of subsection (a)(2) shall serve for a term of 3 years.

(2) INITIAL BOARD MEMBERSHIP.—

(A) IN GENERAL.—The initial Board shall consist of representatives as described in subparagraphs (A) through (F) of subsection (a)(2).

(B) REMAINING MEMBERS.—Not later than 60 days after the date of enactment of this Act, the representatives of the initial Board under subparagraph (A) shall appoint the remaining members of the Board described in subparagraphs (H) through (O) of subsection (a)(2).

(C) TRIBAL REPRESENTATIVES.—Not later than 60 days after the enactment of this Act, the Secretary shall provide to the Board a recommendation of not fewer than 3 Tribal representatives, from which the Board shall appoint 1 representative pursuant to subparagraph (G) of subsection (a)(2).

(3) STAGGERED TERMS.—Of the members described in subsection (a)(2)(J) initially appointed to the Board—

- (A) 2 shall be appointed for a term of 1 year;
- (B) 2 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 subparagraph (H), (I), (J), (K), (L), (M), (N), or (O) 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 (G) of subsection (a)(2), the Secretary

shall recommend to the Board a list of not fewer than 3 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 (O) of subparagraph (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 representative of the Association of Fish and Wildlife Agencies appointed under subsection (a)(2)(E) shall 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.

(e) 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;

(C) procedures for establishing national goals and priorities for fish 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 PARTNERSHIPS.

(a) AUTHORITY TO RECOMMEND.—The Board may recommend to Congress the designation of Fish Habitat Partnerships in accordance with this section.

(b) PURPOSES.—The purposes of a Partnership shall be—

(1) to work with other regional habitat conservation programs to promote cooperation and coordination to enhance fish populations and fish habitats;

(2) to engage local and regional communities to build support for fish habitat conservation;

(3) to involve diverse groups of public and private partners;

(4) to develop collaboratively a strategic vision and achievable implementation plan that is scientifically sound;

(5) to leverage funding from sources that support local and regional partnerships;

(6) to use adaptive management principles, including evaluation of project success and functionality;

(7) to develop appropriate local or regional habitat evaluation and assessment measures and criteria that are compatible with national habitat condition measures; and

(8) to implement local and regional priority projects that improve conditions for fish and fish habitat.

(c) CRITERIA FOR DESIGNATION.—An entity seeking to be designated by Congress as a Partnership shall—

(1) submit to the Board an application at such time, in such manner, and containing such information as the Board may reasonably require; and

(2) demonstrate to the Board that the entity has—

(A) a focus on promoting the health of important fish and fish habitats;

(B) an ability to coordinate the implementation of priority projects that support the goals and national priorities set by the Board that are within the Partnership boundary;

(C) a self-governance structure that supports the implementation of strategic priorities for fish habitat;

(D) the ability to develop local and regional relationships with a broad range of entities to further strategic priorities for fish and fish habitat;

(E) a strategic plan that details required investments for fish habitat conservation that addresses the strategic fish habitat priorities of the Partnership and supports and meets the strategic priorities of the Board;

(F) the ability to develop and implement fish habitat conservation projects that address strategic priorities of the Partnership and the Board; and

(G) the ability to develop fish habitat conservation priorities based on sound science and data, the ability to measure the effectiveness of fish habitat projects of the Partnership, and a clear plan as to how Partnership science and data components will be integrated with the overall Board science and data effort.

(d) REQUIREMENTS FOR RECOMMENDATION TO CONGRESS.—The Board may recommend to Congress for designation an application for a Partnership submitted under subsection (c) if the Board determines that the applicant—

(1) meets the criteria described in subsection (c)(2);

(2) identifies representatives to provide support and technical assistance to the Partnership from a diverse group of public and private partners, which may include State or local governments, nonprofit entities, Indian Tribes, and private individuals, that are focused on conservation of fish habitats to achieve results across jurisdictional boundaries on public and private land;

(3) is organized to promote the health of important fish species and important fish habitats, including reservoirs, natural lakes, coastal and marine environments, and estuaries;

(4) identifies strategic fish and fish 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;

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

(6) includes a governance structure that—

(A) reflects the range of all partners; and

(B) promotes joint strategic planning and decision making by the applicant;

(7) demonstrates completion of, or significant progress toward the development of, a strategic plan to address declines in fish populations, rather than simply treating symptoms, in accordance with the goals and national priorities established by the Board; and

(8) promotes collaboration in developing a strategic vision and implementation program that is scientifically sound and achievable.

(e) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than February 1 of the first fiscal year beginning after the date of enactment of this Act and each February 1 thereafter, the Board shall develop and submit to the appropriate congressional committees an annual report, to be entitled “Report to Congress on Future Fish Habitat Partnerships and Modifications”, that—

(A) identifies each entity that—

(i) meets the requirements described in subsection (d); and

(ii) the Board recommends to Congress for designation as a Partnership;

(B) describes any proposed modifications to a Partnership previously designated by Congress under subsection (f);

(C) with respect to each entity recommended for designation as a Partnership, describes, to the maximum extent practicable—

(i) the purpose of the recommended Partnership; and

(ii) how the recommended Partnership fulfills the requirements described in subsection (d).

(2) PUBLIC AVAILABILITY; NOTIFICATION.—The Board shall—

(A) make the report publicly available, including on the internet; and

(B) provide to the appropriate congressional committees and the State agency of any State included in a recommended Partnership area written notification of the public availability of the report.

(f) DESIGNATION OR MODIFICATION OF PARTNERSHIP.—Congress shall have the exclusive authority to designate or modify a Partnership.

(g) EXISTING PARTNERSHIPS.—

(1) DESIGNATION REVIEW.—Not later than 5 years after the date of enactment of this Act, any partnership receiving Federal funds as of the date of enactment of this Act shall be subject to a designation review by Congress in which Congress shall have the opportunity to designate the partnership under subsection (f).

(2) **INELIGIBILITY FOR FEDERAL FUNDS.**—A partnership referred to in paragraph (1) that Congress does not designate as described in that paragraph shall be ineligible to receive Federal funds under this Act.

SEC. 6. FISH HABITAT CONSERVATION PROJECTS.

(a) **SUBMISSION TO BOARD.**—Not later than March 31 of each year, each Partnership shall submit to the Board a list of priority 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 year, the Board shall submit to the Secretary a priority list of fish habitat conservation projects that includes a description, including estimated costs, of each project that the Board recommends that the Secretary approve and fund under this Act for the following fiscal year.

(c) **CRITERIA FOR PROJECT SELECTION.**—The Board shall select each fish habitat conservation project recommended to the Secretary under subsection (b) after taking into consideration, at a minimum, the following information:

(1) A recommendation of the Partnership that is, or will be, participating actively in implementing the fish habitat conservation project.

(2) The capabilities and experience of project proponents to implement successfully the proposed project.

(3) The extent to which the fish habitat conservation project—

(A) fulfills a local or regional priority that is directly linked to the strategic plan of the Partnership and is consistent with the purpose of this Act;

(B) addresses the national priorities established by the Board;

(C) is supported by the findings of the habitat assessment of the Partnership or the Board, and aligns or is compatible with other conservation plans;

(D) identifies appropriate monitoring and evaluation measures and criteria that are compatible with national measures;

(E) provides a well-defined budget linked to deliverables and outcomes;

(F) leverages other funds to implement the project;

(G) addresses the causes and processes behind the decline of fish or fish habitats; and

(H) includes an outreach or education component that includes the local or regional community.

(4) The availability of sufficient non-Federal funds to match Federal contributions for the fish habitat conservation project, as required by subsection (e).

(5) The extent to which the fish habitat conservation project—

(A) will increase fish populations in a manner that leads to recreational fishing opportunities for the public;

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

(C) increases public access to land or water for fish and wildlife-dependent recreational opportunities;

(D) advances the conservation of fish and wildlife species that have been identified by a State agency as species of greatest conservation need;

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

(F) promotes strong and healthy fish habitats so that desired biological communities are able to persist and adapt.

(6) 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 using applicable Board guidance—

(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;

(C) to identify improvements to existing fish populations, recreational fishing opportunities, and the overall economic benefits for the local community of the fish habitat conservation project; and

(D) to require the submission to the Board of a report describing the findings of the assessment.

(2) ACQUISITION AUTHORITIES.—

(A) IN GENERAL.—A State, local government, or other non-Federal entity is eligible to receive funds for the acquisition of real property from willing sellers under this Act if the acquisition ensures—

- (i) public access for fish and wildlife-dependent recreation; or
- (ii) a scientifically based, direct enhancement to the health of fish and fish populations, as determined by the Board.

(B) STATE AGENCY APPROVAL.—

(i) IN GENERAL.—All real property interest acquisition projects funded under this Act must be approved by the State agency in the State in which the project is occurring.

(ii) PROHIBITION.—The Board may not recommend, and the Secretary may not provide any funding for, any real property interest acquisition that has not been approved by the State agency.

(C) ASSESSMENT OF OTHER AUTHORITIES.—The Board may not recommend, and the Secretary may not provide any funding under this Act for, any real property interest acquisition unless the Partnership that recommended the project has conducted a project assessment, submitted with the funding request and approved by the Board, to demonstrate all other Federal, State, and local authorities for the acquisition of real property have been exhausted.

(D) RESTRICTIONS.—A real property interest may not be acquired pursuant to a fish habitat conservation project by a State, local government, or other non-Federal entity conducted with funds provided under this Act, unless—

- (i) the owner of the real property authorizes the State, local government, or other non-Federal entity to acquire the real property; and
- (ii) the Secretary and the Board determine that the State, local government, or other non-Federal entity would benefit from undertaking the management of the real property being acquired because that is in accordance with the goals of a Partnership.

(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) NON-FEDERAL SHARE.—Such non-Federal share of the cost of a fish habitat conservation project—

- (A) may not be derived from another Federal grant program; and
- (B) may include in-kind contributions and cash.

(3) 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 90 days after the date of receipt of the recommended priority list of fish habitat conservation projects under subsection (b), and subject to subsection (d) and based, to the maximum extent practicable, on the criteria described in subsection (c), the Secretary, after consulting with the Secretary of Commerce on marine or estuarine projects, shall approve or reject any fish habitat conservation project recommended by the Board.

(2) FUNDING.—If the Secretary approves a fish habitat conservation project under paragraph (1), the Secretary 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 rejects under paragraph (1) any fish habitat conservation project recommended by the Board, not later than 90 days after the date of receipt of the recommendation, the Secretary shall provide to the Board, the appropriate Partnership, and the appropriate congressional committees a written statement of the reasons that the Secretary rejected the fish habitat conservation project.

SEC. 7. TECHNICAL AND SCIENTIFIC ASSISTANCE.

(a) IN GENERAL.—The Director, the NOAA Assistant Administrator, the EPA Assistant Administrator, and the Director of the United States Geological Survey, in coordination with the Forest Service and other appropriate Federal departments

and agencies, may provide scientific and technical assistance to Partnerships, participants in fish habitat conservation projects, and the Board.

(b) **INCLUSIONS.**—Scientific and technical assistance provided under 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;

(6) ensuring the availability of experts to assist in conducting scientifically based evaluation and reporting of the results of fish habitat conservation projects; and

(7) providing resources to secure State agency scientific and technical assistance to support Partnerships, participants in fish habitat conservation projects, and the Board.

SEC. 8. COORDINATION WITH STATES AND INDIAN TRIBES.

The Secretary shall provide a notice to, and cooperate 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, including notification, by not later than 30 days before the date on which the activity is implemented.

SEC. 9. 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 NOAA Assistant Administrator, the EPA Assistant Administrator, the Director of the United States Geological Survey, and the heads of other appropriate Federal departments and agencies (including, at a minimum, those agencies represented on the Board) shall develop an interagency operational plan that describes—

(1) the functional, operational, technical, scientific, and general staff, administrative, and material needs for the implementation of this Act; and

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

SEC. 10. ACCOUNTABILITY AND REPORTING.

(a) **REPORTING.**—

(1) **IN GENERAL.**—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Board shall submit to the appropriate congressional committees a report describing the progress of this Act.

(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 measures of fish habitat, that was maintained or improved by Partnerships under this Act during the 5-year period ending on the date of submission of the report;

(B) a description of the public access to fish habitats established or improved under this Act during that 5-year period;

(C) a description of the improved opportunities for public recreational fishing achieved under this Act; 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 of a 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(c); and

(v) an accounting of expenditures by Federal, State, or local governments, Indian Tribes, or other entities to carry out fish habitat conservation projects under this Act.

(b) STATUS AND TRENDS REPORT.—Not later than December 31, 2020, and every 5 years thereafter, the Board shall submit to the appropriate congressional committees a report that includes—

- (1) a status of all Partnerships designated under this Act;
- (2) a description of the status of fish habitats in the United States as identified by designated Partnerships; and
- (3) enhancements or reductions in public access as a result of—
 - (A) the activities of the Partnerships; or
 - (B) any other activities carried out pursuant to this Act.

SEC. 11. EFFECT OF THE 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) AUTHORITY TO ACQUIRE WATER RIGHTS OR RIGHTS TO PROPERTY.—Only a State, local government, or other non-Federal entity may acquire, under State law, water rights or rights to property with funds made available through section 13.

(c) 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.

(d) 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.

(e) 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 pursuant to subsection (a), (b), or (c) of section 208 of the Departments of State, Justice, Commerce, and The Judiciary Appropriation Act, 1953 (43 U.S.C. 666).

(f) DEPARTMENT OF COMMERCE AUTHORITY.—Nothing in this Act affects the authority, jurisdiction, or responsibility of the Department of Commerce to manage, control, or regulate fish or fish habitats under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(g) EFFECT ON OTHER AUTHORITIES.—

(1) 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, respectively.

(2) MITIGATION.—Nothing in this Act authorizes 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
- (D) any other Federal law or court settlement.

(3) CLEAN WATER ACT.—Nothing in this Act affects any provision of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), including any definition in that Act.

SEC. 12. 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. 13. 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 2019 through 2023 to provide funds for fish habitat conservation projects approved under section 6(f), of which 5 percent is authorized only for projects carried out by Indian Tribes.

(2) **ADMINISTRATIVE AND PLANNING EXPENSES.**—There is authorized to be appropriated to the Secretary for each of fiscal years 2019 through 2023 an amount equal to 5 percent of the amount appropriated for the applicable fiscal year pursuant to paragraph (1)—

(A) for administrative and planning expenses under this Act; and

(B) to carry out section 10.

(3) **TECHNICAL AND SCIENTIFIC ASSISTANCE.**—There is authorized to be appropriated for each of fiscal years 2020 through 2024 to carry out, and provide technical and scientific assistance under, section 7—

(A) \$400,000 to the Secretary for use by the United States Fish and Wildlife Service;

(B) \$400,000 to the NOAA Assistant Administrator for use by the National Oceanic and Atmospheric Administration;

(C) \$400,000 to the EPA Assistant Administrator for use by the Environmental Protection Agency;

(D) \$400,000 to the Secretary for use by the United States Geological Survey; and

(E) \$400,000 to the Chief of the Forest Service for use by the United States Department of Agriculture Forest Service.

(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 to provide funds authorized by this Act for a fish habitat conservation project or restoration or enhancement project;

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

(3) subject to the availability of appropriations, make funds authorized by this Act 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 Act—

(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 interagency agreement.

SEC. 14. PROHIBITION AGAINST IMPLEMENTATION OF REGULATORY AUTHORITY BY FEDERAL AGENCIES THROUGH PARTNERSHIPS.

Any Partnership designated under this Act—

(1) shall be for the sole purpose of promoting fish conservation; and

(2) shall not be used to implement any regulatory authority of any Federal agency.

PURPOSE OF THE BILL

The purpose of H.R. 1747 is to encourage partnerships among public agencies and other interested persons to promote fish conservation.

BACKGROUND AND NEED FOR LEGISLATION

Fish habitats include all the physical and chemical factors required to support fish populations, including temperature, salinity, water depth, substrate, plants, cover, oxygen, and dissolved minerals. Natural freshwater, estuarine, and marine habitats essential to the survival of fish in the United States have been destroyed, fragmented, and degraded by human settlement and the competing use of space for agriculture, transportation, infrastructure, energy and mineral resource extraction, and other industrial development.

The National Fish Habitat Partnership estimates that approximately 22.5 percent of inland stream mileages in the continental U.S. are at “high” or “very high” risk of habitat degradation, with urban centers from Boston to Washington, D.C., Atlanta, Dallas, Houston, Chicago, Denver, southern California, San Francisco, Honolulu, and Seattle being regions of “pronounced” high risk of habitat degradation, in addition to the high risk regions of the Midwest from Ohio to North Dakota, northwestern New York, the Mississippi River basin, northwestern Texas, northwestern Utah, southern Idaho, northern Montana, central California, and southeastern Washington.¹ Estuarine habitats of the mid-Atlantic and Peninsular Florida are similarly at high or very high risk of degradation related to pollution and other human activities.² For example, in the past century, Tampa Bay has lost more than 44 percent of its coastal wetland habitats, including mangrove and salt marsh habitats that provide protected nursery areas for fish, crustaceans, and shellfish.³ While inherently valuable for the preservation of healthy and diverse ecosystems, healthy fish habitats also support \$46.1 billion in recreational fishing-related consumer spending according to the U.S. Fish and Wildlife Service (FWS),⁴ and a report commissioned by the American Sportfishing Association has estimated that this spending has a \$125 billion impact on the U.S. economy that provides more than 800,000 jobs across the United States.⁵

H.R. 1747 enacts the approach successfully used by the National Fish Habitat Partnership, a program established in 2006 through a state-led public-private partnership at the FWS. The Act is also modeled after the North American Wetlands Conservation Act⁶ as well as the state-and-locally-led collaborative joint venture model for implementing voluntary conservation action on the ground to conserve birds and their habitats. To date, the National Fish Habitat Partnership has participated in 840 projects in all 50 states and created 1,100 jobs with \$34 million invested since its inception in

¹ STEVE CRAWFORD ET AL., NAT’L FISH HABITAT P’SHIP, THROUGH A FISH’S EYE: THE STATUS OF FISH HABITATS IN THE UNITED STATES 2015 (2016), <http://assessment.fishhabitat.org/> (follow “Explore the Assessment” hyperlink; then follow “National Overview” hyperlink) (last visited Nov. 5, 2019).

² *Id.*

³ *Florida’s Mangroves*, FLA. DEP’T OF ENVTL. PROT., <https://floridadep.gov/rcp/rcp/content/floridas-mangroves> (last modified Feb. 27, 2019); *Salt Marshes*, FLA. DEP’T OF ENVTL. PROT., <https://floridadep.gov/rcp/saltmarshes> (last modified Sept. 9, 2019).

⁴ U.S. FISH AND WILDLIFE SERV. & U.S. CENSUS BUREAU, 2016 NATIONAL SURVEY OF FISHING, HUNTING, AND WILDLIFE-ASSOCIATED RECREATION 10, 11 (2018), https://wsfrprograms.fws.gov/subpages/nationalsurvey/nat_survey2016.pdf.

⁵ See TOM ALLEN ET AL., SOUTHWICK ASSOCS., SPORTFISHING IN AMERICA: AN ECONOMIC FORCE FOR CONSERVATION 10 (2018), https://www.fishwildlife.org/application/files/6015/3719/7579/Southwick_Assoc_-_ASA_Sportfishing_Econ.pdf.

⁶ Pub. L. No. 101-233, 103 Stat. 1968 (1989).

2006, with a direct economic value exceeding \$150 million. Recent and ongoing projects include:

- The Desert Fish Habitat Partnership enhancement and restoration of connectivity of the Amargo Creek with the main stem of the Navajo River in New Mexico to repatriate native Roundtail Chub, Flannelmouth Sucker, and Bluehead Sucker in lands of the Jicarilla Apache Nation, increasing the river miles available to the fish by approximately 50 percent.
- The California Fish Passage Forum restoration of fish passage and grade stabilization through a 600-foot stream reach of the Upper Green Valley Creek, enabling access for Coho salmon to almost a mile of additional rearing and spawning habitat.⁷

In addition, this bill establishes a National Fish Habitat Board to oversee and promote implementation of the bill. The Board would set procedures for considering and recommending fish habitat partnerships and conservation projects eligible for \$7.2 million of grant money authorized to be spent each year for Fiscal Years 2019-2023.

COMMITTEE ACTION

H.R. 1747 was introduced on March 13, 2019, by Representative Robert J. Wittman (R-VA). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Oceans, and Wildlife. On September 24, 2019, the Subcommittee held a hearing on the bill. On September 25, 2019, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged from further consideration of H.R. 1747 by unanimous consent. An amendment offered by Rep. Jenniffer González-Colón (R-PR) was agreed to by voice vote. No additional amendments were offered, and the bill, as amended, was adopted and ordered favorably reported to the House of Representatives by voice vote.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress—the following hearing was used to develop or consider H.R. 1747: legislative hearing by the Subcommittee on Water, Oceans, and Wildlife held on September 24, 2019.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides the short title of the bill, the “National Fish Habitat Conservation Through Partnerships Act.”

Section 2. Purpose

This section describes that the purpose of the bill is to encourage partnerships among public agencies to promote fish conservation.

Section 3. Definitions

This section defines relevant terms.

⁷2019 Waters to Watch, NAT'L FISH HABITAT P'SHIP, <http://www.fishhabitat.org/waters-to-watch/archive/2019> (last accessed on Nov. 5, 2019).

Section 4. National Fish Habitat Board

This section establishes the National Fish Habitat Board (Board) to coordinate implementation of this Act and to make recommendations regarding fish habitat conservation projects and regarding entities for designation as Fish Habitat Partnerships (Partnerships). Board membership would be composed of representatives from federal and state agencies, Indian tribes, Regional Fishery Management Councils or Marine Fisheries Commissions, the Sportfishing and Boating Partnership Council, and relevant industries and organizations on terms of three years (in some cases staggered terms). The Board would be chaired by a representative of the Association of Fish and Wildlife Agencies.

Section 5. Fish Habitat Partnerships

This section authorizes the Board to recommend to Congress the designation of Partnerships to work with other regional habitat conservation programs and local communities to, among other things, develop evaluation and assessment measures and achievable implementation plans. This section requires the Board to provide an annual report to Congress on future fish habitat partnerships and modifications.

Section 6. Fish habitat conservation projects

This section requires Partnerships to submit recommendations for funding priority fish habitat conservation projects annually to the Board, who are then required to submit recommendations to the Secretary of Interior for funding. Projects are required to have at least 50 percent of funds come from non-federal sources.

Section 7. Technical and scientific assistance

This section authorizes several federal agencies to provide scientific and technical assistance to Partnerships, project participants, and the Board.

Section 8. Coordination with states and Indian tribes

This section requires the Secretary of Interior to coordinate with appropriate state or tribal agencies within the boundaries of planned activities.

Section 9. Interagency operational plan

This section directs the Director of the U.S. Fish and Wildlife Service, in coordination with other federal departments and agencies, to develop an interagency operational plan that describes the functional, operational, technical, scientific, staffing, administrative, and material needs to implement this Act, and any interagency agreements between or among them to address those needs.

Section 10. Accountability and reporting

This section requires the Board to submit a report to Congress every five years describing the progress of this Act, including an estimate of the geographic area of habitat maintained or improved, a description of public access to habitats established or improved, a description of the improved opportunities for public recreational fishing, and an assessment of the status of fish habitat conservation projects carried out. The section also requires a report every

five years describing Partnerships and related habitats and activities.

Section 11. Effect of the Act

This section clarifies that the Act does not affect other federal or state laws regarding, among other rights: water rights, state authorities, the rights of Indian tribes, the authority of the Department of Commerce to regulate fish or fish habitats under the Magnuson-Stevens Fishery Conservation and Management Act, or private property rights.

Section 12. Nonapplicability of Federal Advisory Committee Act

This section states that the Federal Advisory Committee Act shall not apply to either the Board or any Partnership.

Section 13. Funding

This section authorizes \$7.2 million for each of fiscal years 2019 through 2023 to fund approved projects, with five percent reserved for projects carried out by Indian tribes and an additional, separate five percent for administrative and planning expenses and reporting. This section authorizes \$400,000 each fiscal year through 2023 for each of the following services for technical and scientific assistance: the U.S. Fish and Wildlife Service, the National Oceanic and Atmospheric Administration, the Environmental Protection Agency, the U.S. Geological Survey, and the U.S. Forest Service. This section authorizes the Secretary of Interior to enter into grant agreements and to accept donations.

Section 14. Prohibition against implementation of regulatory authority by federal agencies through partnerships

This section limits any Partnership from being used to implement the regulatory authority of any federal agency.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 7, 2019.

Hon. RAÚL M. GRIJALVA,
Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1747, the National Fish Habitat Conservation Through Partnerships Act.

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

Sincerely,

PHILLIP L. SWAGEL.

Enclosure.

H.R. 1747, National Fish Habitat Conservation Through Partnerships Act			
As ordered reported by the House Committee on Natural Resources on September 25, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	*	*	*
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	3	32	40
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between -\$500,000 and zero.			

H.R. 1747 would create a National Fish Habitat Board consisting of 25 members from the federal government, state governments, private industry representatives, and other private citizens. The board would recommend to the Congress organizations to be designated as Fish Habitat Partnerships. Those partnerships would be eligible to receive federal grants to improve the health of fish and fish habitats.

H.R. 1747 would authorize the appropriation of \$7.2 million annually through 2023 for grants to partnerships to implement conservation projects and an additional \$360,000 annually through 2023 for administrative expenses.

The bill also would authorize the Department of the Interior (DOI), the National Oceanic and Atmospheric Administration, the Environmental Protection Agency, and the Forest Service to provide technical and scientific assistance to any partnerships recognized under H.R. 1747. The bill would authorize the appropriation of \$2 million annually over the 2020–2024 period for those agencies to provide such assistance.

Using historical spending patterns for similar programs and assuming appropriation of the authorized amounts, CBO estimates that implementing H.R. 1747 would cost \$32 million over the 2020–

2024 period and \$8 million after 2024. The costs of the legislation, detailed in Table 1, fall within budget function 300 (natural resources and environment).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 1747

	By fiscal year, millions of dollars—					
	2020	2021	2022	2023	2024	2020–2024
Fish Habitat Conservation:						
Authorization	8	8	8	8	0	30
Estimated Outlays	2	4	5	6	5	23
Technical and Scientific Assessment:						
Authorization	2	2	2	2	2	10
Estimated Outlays	1	2	2	2	2	9
Total Changes:						
Authorization	10	10	10	10	2	40
Estimated Outlays	3	6	7	8	7	32

Components may not sum to totals because of rounding.

H.R. 1747 would allow DOI to accept and spend monetary gifts to supplement appropriated funds provided for grants to recognized partnerships. The receipt and spending of such gifts are recorded in the budget as direct spending. Because any money received would probably be spent soon thereafter, CBO estimates that the net effect on direct spending would be negligible.

The CBO staff contact for this estimate is Robert Reese. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to encourage partnerships among public agencies and other interested persons to promote fish conservation.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

This bill contains no unfunded mandates.

FEDERAL ADVISORY COMMITTEE ACT STATEMENT

This bill establishes a National Fish Habitat Board (Board), which, among other duties, would review and make recommendations to the U.S. Department of the Interior regarding fish habitat conservation projects. In reporting the bill favorably to the House of Representatives, the Committee on Natural Resources finds that the Board’s functions are not already being performed by one or more agencies or by an advisory committee already in existence. The Committee finds that the Board’s functions would be better performed by the proposed Board than by one or more agencies or an existing advisory committee.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139. The Fish Habitat Conservation Projects program established by Section 6(f) of the bill is related and complementary to, but not duplicative of, the following programs identified in the most recent Catalog of Federal Domestic Assistance published pursuant to 31 U.S.C. 6104: Stewardship Agreements (CFDA No. 10.701); Interjurisdictional Fisheries Act of 1986 (CFDA No. 11.407); Cooperative Fishery Statistics (CFDA No. 11.434); Southeast Area Monitoring and Assessment Program (CFDA No. 11.435); Regional Fishery Management Councils (CFDA No. 11.441); Gulf Coast Ecosystem Restoration Science, Observation, Monitoring, and Technology (CFDA No. 11.451); Unallied Industry Projects (CFDA No. 11.452); Unallied Management Projects (CFDA No. 11.454); Cooperative Science and Education Program (CFDA No. 11.455); Habitat Conservation (CFDA No. 11.463); Unallied Science Program (CFDA No. 11.472); Atlantic Coastal Fisheries Cooperative Management Act (CFDA No. 11.474); Marine Debris Program (CFDA No. 11.999); Sport Fish Restoration (CFDA No. 15.605); Fish and Wildlife Management Assistance (CFDA No. 15.608); Wildlife Restoration and Basic Hunter Education (CFDA No. 15.611); Enhanced Hunter Education and Safety (CFDA No. 15.626); Coastal (CFDA No. 15.630); and Partners for Fish and Wildlife (CFDA No. 15.631).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

SUPPLEMENTAL, MINORITY, ADDITIONAL, OR DISSENTING VIEWS

None.

