

106TH CONGRESS
2D SESSION

H. R. 4278

To amend the Federal Water Pollution Control Act to establish a program for fisheries habitat protection, restoration, and enhancement, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 2000

Mr. TANNER (for himself, Mr. BLUNT, Mr. DINGELL, Mrs. JOHNSON of Connecticut, Mr. STENHOLM, Mr. BOEHLERT, Mr. GILCHREST, Ms. DANNER, Mr. ENGLISH, Mr. JOHN, and Mr. SAXTON) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Federal Water Pollution Control Act to establish a program for fisheries habitat protection, restoration, and enhancement, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fishable Waters Act
5 of 2000”.

1 **SEC. 2. FINDINGS AND POLICY.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) The extensive and diverse fishery resources
4 of the United States are of enormous recreational
5 and economic benefit to the Nation, providing em-
6 ployment, subsistence, tourism, and wholesome, fam-
7 ily-oriented recreational opportunities for millions of
8 people and contributing billions of dollars to the Na-
9 tion's economy. It is in the best interest of the Na-
10 tion to secure these benefits by protecting and re-
11 storing healthy fish populations in our inland and
12 coastal aquatic environment and by enhancing fish-
13 ing opportunities. Sufficient water of good quality is
14 among the most significant requirements for sus-
15 taining and restoring the productivity of fisheries in
16 the Nation's watersheds and coastal areas.

17 (2) Despite the success of federally funded fish
18 and wildlife restoration programs in restoring fish
19 and wildlife across the Nation and the success of the
20 Federal Water Pollution Control Act in improving
21 water quality in the Nation's surface waters, the na-
22 tional goal of providing for the protection and propa-
23 gation of fish, shellfish, and wildlife has not been
24 fully realized. This important goal can be signifi-
25 cantly advanced through a renewed commitment and
26 sustained effort, complementary to fish and wildlife

1 restoration programs and clean water programs, to
2 protect and restore freshwater and marine fisheries
3 habitat and to enhance access for fisheries uses for
4 present and future generations. Loss of aquatic and
5 riparian habitat through activities such as physical
6 alteration of watercourses, stream blockages, erosion
7 and sedimentation, destruction or modification of
8 wetlands, and other physical impacts have caused
9 significant declines in fish populations throughout
10 the Nation.

11 (3) Urban communities are disproportionately
12 affected by aquatic habitat loss, loss of species diver-
13 sity, invasion of exotic species, and lack of public ac-
14 cess to waterways and fishing opportunities.

15 (4) The Nation can achieve significant progress
16 toward providing for the protection and propagation
17 of fish, shellfish, and wildlife through a voluntary,
18 non-regulatory, incentive-based program based on
19 Federal technical and financial assistance, coupled
20 with planning and implementation on a watershed
21 basis by local, regional, State, and tribal organiza-
22 tions. The program should be designed and carried
23 out to characterize aquatic habitats in terms of their
24 suitability for fisheries, to review and supplement ex-
25 isting fisheries objectives or establish new objectives,

1 to identify the factors and activities causing adverse
2 impacts or threats to fisheries habitats and uses,
3 and to define and implement site-specific projects
4 and measures, with the willing consent of affected
5 landowners, necessary for the protection and res-
6 toration of fisheries habitat and enhancement of ac-
7 cess. Flexibility and innovation that lead to improved
8 habitat and sustained fish production, together with
9 a special emphasis on identifying and prioritizing
10 program efforts for urban and other high priority
11 watersheds, will be necessary for achieving the nec-
12 essary progress on an equitable, cost-effective basis.

13 (b) POLICY.—Subsection 101(a) of the Federal
14 Water Pollution Control Act (33 U.S.C. 1251(a)) is
15 amended—

16 (1) by striking “and” at the end of paragraph
17 (6);

18 (2) by striking the period at the end of para-
19 graph (7) and inserting “; and”; and

20 (3) by adding at the end the following:

21 “(8) it is the national policy to achieve the pro-
22 tection and restoration of sustained fish production
23 and fisheries habitat in the Nation’s watersheds and
24 marine environment and the enhancement of access
25 for fisheries uses through a combination of voluntary

1 watershed planning and incentives for the implemen-
2 tation of site-specific, fisheries habitat-related
3 projects and measures.”.

4 **SEC. 3. FISHERIES HABITAT PROTECTION, RESTORATION,**
5 **AND ENHANCEMENT PROGRAM.**

6 (a) IN GENERAL.—Title III of the Federal Water
7 Pollution Control Act (33 U.S.C. 1311–1330) is amended
8 by adding at the end the following:

9 **“SEC. 321. FISHERIES HABITAT PROTECTION, RESTORA-**
10 **TION, AND ENHANCEMENT.**

11 “(a) STATE PROGRAMS.—

12 “(1) IN GENERAL.—

13 “(A) ESTABLISHMENT.—In order to be eli-
14 gible for assistance under this section, a State
15 shall establish a program for the protection and
16 restoration of fresh water, estuarine, and ma-
17 rine fisheries habitat and for the enhancement
18 of access for fisheries uses through watershed
19 planning and the implementation of projects,
20 activities, and measures that meet the require-
21 ments of this section.

22 “(B) LIMITATION ON STATUTORY CON-
23 STRUCTION.—Nothing in this section—

1 “(i) alters, or requires alteration of,
2 the authority or jurisdiction of a State fish
3 and wildlife agency;

4 “(ii) affects the authority, jurisdiction,
5 or responsibility of the several States to
6 manage, control, and regulate fish and
7 resident wildlife and their habitat under
8 State laws and regulations;

9 “(iii) except as specifically provided in
10 this section, affects, alters, suspends, or
11 delays implementation of any other provi-
12 sion of this Act (including any requirement
13 under a program established under this
14 Act), or the obligations of any party under
15 any such provision; or

16 “(iv) authorizes any watershed coun-
17 cil, State, or Indian tribe to recommend or
18 approve the imposition of any new or more
19 stringent regulatory or compliance obliga-
20 tions pursuant to any provision of this Act
21 (including any requirement under a pro-
22 gram established under this Act).

23 “(2) MINIMUM REQUIREMENTS.—The Secretary
24 may approve a State program submitted under para-
25 graph (3) only if the Secretary determines that the

1 State has the following authorities required for im-
2 plementation of the program:

3 “(A) To establish an advisory review
4 board, committee, or other advisory body, or ex-
5 pand the authority and duties of any existing
6 body, to provide recommendations with respect
7 to each decision taken under the program. The
8 membership of the advisory review board shall
9 be fairly balanced in terms of the points of view
10 represented and the functions to be performed
11 and shall be representative of interests affected
12 by activities carried out under the program, in-
13 cluding tribal, private, public, governmental,
14 and nonprofit interests. The membership of the
15 advisory review board shall include one or more
16 members who represent the interests of des-
17 ignated watershed councils.

18 “(B) To designate, and terminate the des-
19 ignation of watershed councils and associated
20 watersheds within the State to be addressed
21 through the program. In designating a water-
22 shed, the State shall determine, based on a re-
23 view of the best available scientific information
24 conducted in cooperation with appropriate State
25 fish and wildlife agencies, whether the water-

1 shed shall be considered a high priority water-
2 shed.

3 “(C) To solicit, encourage, and facilitate
4 the formation of watershed councils for high
5 priority watersheds and support the formation
6 of watershed councils voluntarily proposed in
7 other watersheds.

8 “(D) To develop, in cooperation with ap-
9 propriate State fish and wildlife agencies and
10 the State technical committee, and provide to
11 designated watershed councils, a uniform sys-
12 tem for assigning priority rankings to rec-
13 ommended projects and measures contained in
14 plans submitted for review under the program.
15 Priority ranking systems shall be based pri-
16 marily on the likelihood that such recommenda-
17 tions would achieve significant progress toward
18 protection or restoration of habitat or enhance-
19 ment of uses for important (or potentially im-
20 portant) recreational and subsistence fisheries.

21 “(E) To review, in cooperation with appro-
22 priate State fish and wildlife agencies, and issue
23 decisions with respect to all fisheries habitat
24 protection, restoration, and enhancement plans
25 and all interim recommendations developed, re-

1 vised, or updated by designated watershed
2 councils and to provide for judicial review of
3 such decisions under State law. Nothing in this
4 paragraph authorizes the Secretary to require
5 any particular form of judicial review, standard
6 of review, or standing requirements to obtain
7 judicial review.

8 “(F) To receive and administer funds pro-
9 vided and reserved pursuant to this section, and
10 administer a fisheries habitat account for the
11 purpose of providing funds for implementation
12 of watershed council recommendations.

13 “(G) To coordinate, through the appro-
14 priate State fish and wildlife agency, with the
15 watershed planning programs of other States
16 wherever necessary for the development of com-
17 plementary approaches to the protection and
18 restoration of fisheries habitat and the enhance-
19 ment of access for uses in watersheds in com-
20 mon with such States.

21 “(H) To provide annually to the Secretary,
22 the Administrator, and the Secretary of the In-
23 terior, and make available publicly within each
24 designated watershed, a report on the progress
25 achieved, funds expended, and monitoring re-

1 sults obtained by watershed councils under the
2 program, as well as on the State's plans and
3 objectives for future activities under the pro-
4 gram.

5 “(I) To transmit to affected and interested
6 departments and agencies of the Federal Gov-
7 ernment all recommendations contained in ap-
8 proved plans and interim recommendations per-
9 taining to the activities or lands under the ju-
10 risdiction of such departments and agencies.

11 “(J) If the State elects to consider plan-
12 ning for major waterway segments under the
13 program, to review and issue decisions accept-
14 ing or rejecting such recommendations as may
15 be provided by the Secretary of the Interior
16 pursuant to subsection (g)(4).

17 “(3) APPROVAL.—A State, in cooperation with
18 and, wherever applicable, through the authority of
19 the State fish and wildlife agency or regional fish-
20 eries commission, may submit to the Secretary for
21 approval a program described in subsection (a)(1).
22 The Secretary shall approve the program if the Sec-
23 retary finds, after public notice and opportunity for
24 public comment, and after consideration of com-

1 ments provided by the Secretary of the Interior and
2 the Administrator, that—

3 “(A) the program satisfies the require-
4 ments of paragraph (2); and

5 “(B) the State has the capability to imple-
6 ment such requirements.

7 “(4) GRANTS FOR IMPLEMENTATION.—Upon
8 approval of a program submitted by a State under
9 this subsection—

10 “(A) the Secretary may make grants to the
11 State for administration of the program, as pro-
12 vided by subsection (g)(3)(A); and

13 “(B) the Secretary may enter into a
14 memorandum of understanding with the State,
15 as provided by subsection (g)(3)(A), under
16 which the State may make grants to designated
17 watershed councils for development of plans
18 and interim recommendations under subsection
19 (c).

20 “(b) WATERSHED COUNCILS.—

21 “(1) IN GENERAL.—A State, pursuant to a pro-
22 gram approved under subsection (a), may designate
23 1 or more watershed councils to carry out the plan-
24 ning functions identified in subsection (c). The State
25 shall also designate and describe the watershed for

1 which the council shall have planning responsibil-
2 ities.

3 “(2) CAPABILITIES AND PURPOSES OF COUN-
4 CILS.—A watershed council shall be eligible for des-
5 ignation under an approved State program if the
6 council meets the following conditions:

7 “(A) The council is a voluntary organiza-
8 tion possessing no direct or indirect regulatory
9 authority, convened by a State, a local gov-
10 erning body such as a city, county, town, water
11 supply or sewer district, watershed district,
12 drainage district, soil and water conservation
13 district, flood control district, resource con-
14 servation district, or irrigation district, or by
15 any combination of such governing bodies.

16 “(B) The council’s membership is fairly
17 balanced in terms of the points of view rep-
18 resented and the functions to be performed and
19 is representative of interests within the water-
20 shed, including tribal, private, public, govern-
21 mental, and nonprofit interests, as well as exist-
22 ing special purpose districts, as appropriate,
23 that may be affected by the activities of the
24 council.

1 “(C) The council has a specific charter, to
2 be approved by the State upon designation, that
3 commits the council to achieving the objectives
4 of this section in a timely manner.

5 “(D) The council has available to it,
6 through its members, through cooperation with
7 the State fish and wildlife agency and the State
8 technical committee, or through identified advi-
9 sory groups, institutions, or individuals, the ex-
10 pertise necessary to perform the functions iden-
11 tified in this section in a timely manner.

12 “(E) The council has adopted procedures
13 to ensure public participation in the council’s
14 activities.

15 “(F) The council has authority, through an
16 agreement with the council’s member agencies
17 (including conservation districts and resource
18 conservation districts), to ensure proper admin-
19 istration of and accounting for grant funds pro-
20 vided under this section, as well as other public
21 or private funds.

22 “(3) OTHER CONSIDERATIONS.—

23 “(A) WATERSHEDS LOCATED IN MORE
24 THAN 1 STATE.—Two or more States may joint-
25 ly designate a watershed council to carry out

1 planning functions for any watershed, the lands
2 and waters of which lie within more than 1 ju-
3 risdiction, and may choose to facilitate such a
4 program through an appropriate regional fish-
5 eries commission.

6 “(B) PREFERENCE FOR EXISTING COUN-
7 CILS.—In designating watershed councils under
8 this subsection, the State shall give preference
9 to existing watershed councils or similar bodies
10 organized under other authorities for purposes
11 similar to the purposes of this section, and to
12 existing local and regional resource planning or-
13 ganizations, if such councils or organizations, or
14 portions thereof, substantially satisfy the re-
15 quirements of paragraph (2).

16 “(4) APPLICATION AND DESIGNATION PROC-
17 ESS.—

18 “(A) APPLICATIONS.—An organization
19 meeting the requirements of paragraph (2) may
20 apply for designation as a watershed council by
21 submitting a description of its capabilities and
22 purposes, together with its proposed charter
23 and a description of the relevant watershed, to
24 the State whose program has been approved
25 pursuant to subsection (a).

1 “(B) DESIGNATIONS.—The State shall—

2 “(i) review and evaluate the adequacy
3 of the descriptions together with any sup-
4 plemental information that may be re-
5 quired and, if determined complete by the
6 State, publish the description for public
7 comment; and

8 “(ii) within a reasonable time after
9 the close of the public comment period,
10 issue a decision, under State law, together
11 with a response to significant public com-
12 ments, either designating the watershed
13 council and the watershed, with or without
14 conditions, or denying the application.

15 “(C) EFFECT OF DESIGNATIONS.—Upon
16 the designation of a watershed council and as-
17 sociated watershed, the council shall be eligible
18 to receive funding to carry out its planning
19 functions, as provided in subsection (g). A des-
20 ignated watershed council shall remain eligible
21 to receive funding and to have its plan or revi-
22 sions thereto considered for approval, as pro-
23 vided by this section, so long as it continues to
24 serve the purposes of its charter, as determined
25 by the State.

1 “(c) WATERSHED PLANNING PROCESS.—

2 “(1) COMPREHENSIVE PLANS.—A designated
3 watershed council shall develop a comprehensive
4 fisheries habitat protection, restoration, and en-
5 hancement plan for submission to the State that, at
6 a minimum, meets the requirements of paragraph
7 (4). The designated watershed council shall consider
8 the views of the appropriate State fish and wildlife
9 agency in order to ensure that the comprehensive
10 plan will complement the implementation of existing
11 fisheries-related plans developed pursuant to other
12 laws or requirements. The designated watershed
13 council shall consult with the State technical com-
14 mittee, the State department of agriculture, and
15 other appropriate organizations with relevant exper-
16 tise in order to ensure that the comprehensive plan
17 will complement the implementation of existing plans
18 developed by State technical committees and reflect
19 a thorough evaluation of the effect of the council’s
20 recommendations on existing land use activities, in-
21 cluding agricultural uses.

22 “(2) INTERIM RECOMMENDATIONS.—In addi-
23 tion to developing a comprehensive plan, a des-
24 ignated watershed council may submit for approval
25 interim recommendations that address high priority

1 factors or activities causing imminent adverse im-
2 pacts or threats to fisheries habitat located in high
3 priority portions of waters within the watershed. The
4 interim recommendations shall conform to the re-
5 quirements of paragraph (4)(D), shall be reviewed in
6 accordance with subsection (d), and shall have the
7 same effect as recommendations contained in ap-
8 proved plans, as provided by subsection (e).

9 “(3) DATA COLLECTION AND EXPERTISE.—A
10 designated watershed council—

11 “(A) shall collect and consider the best
12 available scientific information;

13 “(B) may develop such additional data and
14 information as may be necessary or desirable;
15 and

16 “(C) shall consult with the appropriate
17 State fish and wildlife agency, the State tech-
18 nical committee, the State water quality agency,
19 and such other experts, including relevant Fed-
20 eral land and resource management agencies, as
21 may be necessary to carry out the comprehen-
22 sive planning process described in paragraph
23 (4).

24 “(4) PLANNING ELEMENTS.—A comprehensive
25 plan developed and submitted for approval pursuant

1 to this section shall include a discussion of each of
2 the following planning elements:

3 “(A) CHARACTERIZATION OF WATERS AND
4 WATERSHEDS.—A characterization of the wa-
5 ters of the watershed in terms of—

6 “(i) any fisheries-related indicators
7 and habitat characteristics that have been
8 established by the State fish and wildlife
9 agency pursuant to subsection (g)(2) or,
10 prior to such establishment, the informa-
11 tion issued by the Secretary of the Interior
12 pursuant to such subsection;

13 “(ii) existing geomorphological charac-
14 teristics;

15 “(iii) existing manmade topographic
16 features that govern the quantity or flow
17 of waters;

18 “(iv) existing and historic wetlands,
19 channels, meander belts, erosion zones,
20 and low lying areas of the floodplain, in-
21 cluding a description of any historic and
22 present flooding patterns;

23 “(v) existing watershed soils, their po-
24 tential to erode, and measures taken by
25 landowners to prevent runoff and erosion;

1 “(vi) existing land cover and land uses
2 that affect the watershed’s ability to sup-
3 port fishery resources;

4 “(vii) existing and potential fisheries-
5 related uses of such waters, including rec-
6 reational, subsistence, and economic uses,
7 that are or may be affected by adverse im-
8 pacts on fisheries habitats or by restric-
9 tions on public access;

10 “(viii) whether such waters, or por-
11 tions of such waters, should be considered
12 to be habitat limited, of high value, or ac-
13 cess restricted for fisheries uses; and

14 “(ix) existing protections for fishery
15 and habitat values.

16 “(B) RECOMMENDED OBJECTIVES.—The
17 council’s near-term and long-term objectives for
18 the protection and restoration of fisheries habi-
19 tat and enhancement of access within the wa-
20 tershed, including, as relevant and appropriate,
21 recommendations for—

22 “(i) protection of high-value waters
23 through implementation of measures to
24 maintain habitat conditions that will sus-

tain a healthy, resilient, diverse, and productive aquatic system;

“(ii) restoration of habitat limited waters or portions of such waters through implementation of measures to produce habitat conditions that will sustain a healthy, resilient, diverse, and productive aquatic system; and

“(iii) enhancement of access for fisheries uses in restricted waters through implementation of projects or measures to increase public access, use, and enjoyment.

“(C) IDENTIFICATION OF EXISTING FACTORS, ACTIVITIES, PROJECTS, AND MEASURES.—An identification of the factors and activities causing adverse impacts or threats to fisheries habitat, and restrictions on access for fisheries uses, within the watershed and an identification of the projects and measures, either planned or currently being implemented, that are designed to address the adverse impacts, threats, or restrictions. At a minimum, a comprehensive plan shall specifically consider the following categories of factors and activities:

1 “(i) Degraded or modified fisheries
2 habitat (such as channelized streams, ero-
3 sion sources, reduced or modified in-stream
4 flows, disrupted sediment transport mecha-
5 nisms, damaged or destroyed riparian
6 vegetation, damaged or destroyed spawning
7 beds, and drained backwaters or wetlands)
8 and any upland activities that are contrib-
9 uting to such degradation.

10 “(ii) The principal categories of point
11 and nonpoint sources of pollution adversely
12 affecting fisheries habitat.

13 “(iii) Flood control measures and
14 other floodplain management factors that
15 may have an adverse impact on fisheries
16 habitat.

17 “(iv) Alteration or reduction of water
18 flows, timing, and magnitude of water-flow
19 management measures, and acceleration of
20 runoff that have an adverse impact on
21 fisheries habitat.

22 “(v) Factors and activities causing de-
23 struction, modification, or degradation of
24 wetlands that may have an adverse impact
25 on fisheries habitat.

1 “(D) RECOMMENDED PROJECTS AND
2 MEASURES.—

3 “(i) IN GENERAL.—A comprehensive
4 plan shall set forth the council’s rec-
5 ommendations for specific projects and
6 measures that should be undertaken,
7 strengthened, supported, or modified in
8 order to achieve the objectives rec-
9 ommended pursuant to subparagraph (B)
10 and to address the factors and activities
11 identified pursuant to subparagraph (C).

12 “(ii) PRIORITY RANKINGS.—The coun-
13 cil shall assign a priority ranking to each
14 project and measure for which implementa-
15 tion payments are recommended pursuant
16 to the authority provided by subsection (e).

17 “(iii) ANTICIPATED EFFECTS.—The
18 plan shall identify anticipated effects on
19 existing land use activities.

20 “(iv) SOURCES OF FUNDING.—With
21 respect to each recommendation, the plan
22 shall identify potential sources of Federal,
23 State, local, or other financial support to
24 facilitate implementation of the rec-
25 ommendation.

1 “(E) CATEGORIES.—In setting forth its
2 recommendations, a comprehensive plan shall
3 address at least the following categories:

4 “(i) For high value and habitat lim-
5 ited waters, any necessary projects and
6 measures that should be undertaken,
7 strengthened, supported, or modified, with
8 the willing consent of persons holding a
9 property interest in affected lands, to pro-
10 tect or improve physical fisheries habitat
11 conditions, such as—

12 “(I) instream modifications and
13 structures;

14 “(II) streamside vegetation;

15 “(III) modifications to flood con-
16 trol measures and structures to im-
17 prove the connection of rivers to low-
18 lying areas such as backwaters, side
19 channels, oxbows, and tributary
20 mouths;

21 “(IV) improvement of floodplain
22 management practices and flood con-
23 trol programs;

1 “(V) improved stream flow con-
2 trol practices to simulate more nat-
3 ural flow regimes;

4 “(VI) flood-response and dis-
5 aster-relief planning and measures
6 that will preserve or improve habitat
7 integrity in connection with decisions
8 regarding flood response, cleanup,
9 levee restoration, or other alternatives
10 following future floods; and

11 “(VII) other appropriate tech-
12 niques for the protection or improve-
13 ment of fisheries habitat.

14 “(ii) For nonpoint sources or cat-
15 egories of nonpoint sources contributing
16 pollutants, including sediments, to habitat
17 limited waters, any necessary incentives,
18 funding, or other assistance to facilitate
19 implementation, with the willing consent of
20 persons holding a property interest in af-
21 fected lands, of additional or different best
22 management practices.

23 “(iii) For high value and habitat lim-
24 ited waters, any necessary incentives, fund-
25 ing, or other assistance, to be undertaken

1 with the willing consent of persons holding
2 a property interest in affected lands, for
3 the prevention or mitigation of adverse im-
4 pacts on fisheries habitat from the destruc-
5 tion or modification of wetlands.

6 “(iv) For restricted waters, any nec-
7 essary incentives, funding, or other assist-
8 ance, to be undertaken with the willing
9 consent of persons holding a property in-
10 terest in affected lands, for improvement of
11 public access to such waters for enhance-
12 ment of fisheries uses. The Council shall
13 include in any recommendation for im-
14 provement of public access a determination
15 that enhancement of fisheries uses will be
16 consistent with sustaining a healthy, resil-
17 ient, diverse, and productive aquatic sys-
18 tem in the affected waters.

19 “(F) RECOMMENDED MONITORING.—A
20 comprehensive plan shall set forth the council’s
21 recommendations for biological, water quality,
22 water quantity, and other monitoring activities
23 that are necessary to assess the protection, res-
24 toration, and enhancement benefits realized
25 from implementation of the plan, together with

1 the potential sources of funding and other re-
2 sources necessary for their implementation.
3 Monitoring should be consistent with the dura-
4 tion of the activity being monitored and the
5 need to evaluate the results of the activity.

6 “(G) PLANNING PROCESS DOCUMENTA-
7 TION.—A comprehensive plan should describe
8 and document the steps taken by the watershed
9 council during the planning process to meet its
10 consultation and public participation obligations
11 and shall describe the results of its consulta-
12 tions with persons holding a property interest in
13 the affected lands that potentially would be af-
14 fected by recommendations contained in the
15 plan.

16 “(5) PERIODIC REVIEW AND REVISION.—

17 “(A) IN GENERAL.—A designated water-
18 shed council shall review and, as necessary or
19 appropriate, revise or update an approved plan
20 on a regular basis for as long as the watershed
21 council continues to be designated, but not less
22 frequently than once every 5 years.

23 “(B) APPROVAL.—Revised or updated
24 plans shall be submitted for approval as re-
25 quired by subsection (d), and if approved as

1 provided therein, shall have the effect of an ap-
2 proved plan pursuant to subsection (e).

3 “(C) PLANS TO TERMINATE COUNCILS.—

4 The State shall periodically review each ap-
5 proved plan for which a watershed council has
6 been terminated and shall decide whether to
7 continue, terminate, or modify the plan in ac-
8 cordance with the requirements of subsection
9 (d).

10 “(d) APPROVAL OF PLANS AND INTERIM REC-
11 OMMENDATIONS.—

12 “(1) SUBMISSION OF PLANS.—A watershed
13 council shall submit its comprehensive plan or in-
14 terim recommendations to the State for approval in
15 accordance with this subsection.

16 “(2) PUBLIC PARTICIPATION.—If the State ten-
17 tatively determines that the plan or interim rec-
18 ommendations meets the requirements of subsection
19 (c), the State shall promptly issue a public notice
20 and provide an opportunity for public comment and
21 shall ensure that each Federal and State agency
22 with jurisdiction over any expenditures, projects,
23 measures, or management decisions that are the
24 subject of any recommendations shall receive a copy
25 of the plan or interim recommendations submitted

1 for approval and be given an opportunity to consult
2 with the State prior to the State's decision. A public
3 hearing shall be held during the public comment pe-
4 riod if requested and if significant issues are raised
5 by any interested person.

6 “(3) DECISIONS.—Following the close of the
7 public comment period, the State shall issue, and
8 provide public notice of, a decision approving or dis-
9 approving, in whole or in part, the plan or interim
10 recommendations. The decision shall—

11 “(A) provide any necessary conditions of,
12 or limitations on, an approval or partial ap-
13 proval;

14 “(B) describe the grounds for any dis-
15 approval or partial disapproval and specify
16 those changes that will be necessary before the
17 plan or interim recommendations may be fully
18 approved;

19 “(C) indicate whether the appropriate
20 State and Federal agencies have expressly sup-
21 ported, conditionally supported, or disagreed
22 with any recommendations applicable to such
23 agencies;

24 “(D) take into consideration the balance
25 and representation of the council's membership

1 at the time of submission, as well as the views
2 expressed by council members who do not sup-
3 port 1 or more of the recommendations;

4 “(E) respond to all significant comments
5 received during the public comment process;
6 and

7 “(F) prescribe a specific date, not later
8 than 30 days after the date of the decision, on
9 which the decision shall be effective.

10 “(4) RESUBMISSION OF PLANS.—If any plan or
11 interim recommendation, or any portion thereof, is
12 disapproved, or if conditions or limitations are pre-
13 scribed in connection with approval or partial ap-
14 proval, the designated council may revise the plan or
15 interim recommendation in response to the condi-
16 tions, limitations, or grounds for disapproval and re-
17 submit the plan or interim recommendation for re-
18 consideration in accordance with the requirements of
19 this subsection.

20 “(e) EFFECT OF PLAN APPROVAL.—

21 “(1) IN GENERAL.—After the effective date of
22 any approved plan or interim recommendation, the
23 expenditures, management, planning, and activities
24 described in this subsection shall be subject to the
25 conditions and procedures of this subsection to the

1 extent that such expenditures, management, plan-
2 ning, or activities take place on or directly affect
3 lands or waters within the watershed. Nothing in
4 this section shall be construed to require any person
5 to undertake or refrain from any action pursuant to
6 any recommendation contained in an approved plan
7 or interim recommendation unless willing written
8 consent is obtained from each person holding a prop-
9 erty interest in the lands affected by such action.

10 “(2) IMPLEMENTATION EXPENDITURES.—

11 “(A) IN GENERAL.—Subject to the re-
12 quirements of this paragraph, projects and
13 measures that support or implement specific
14 recommendations contained in an approved plan
15 or interim recommendation shall be eligible for
16 financial support from the State’s fisheries
17 habitat account established pursuant to sub-
18 section (g)(3)(B).

19 “(B) USE OF FUNDS IN STATE FISHERIES
20 HABITAT ACCOUNTS.—

21 “(i) PROVISION OF FUNDS.—A State
22 is authorized to provide funds from the
23 State’s fisheries habitat account to persons
24 who enter into legally binding contracts or
25 other agreements for implementation of ex-

1 isting or new projects and measures rec-
2 ommended by watershed councils pursuant
3 to approved plans or interim recommenda-
4 tions.

5 “(ii) PERMITTED USES OF FUNDS.—
6 Funds from a State’s fisheries habitat ac-
7 count may be provided for any purpose
8 identified in an approved plan or interim
9 recommendation, including—

10 “(I) design, construction, oper-
11 ation, maintenance or removal of any
12 structures;

13 “(II) conduct of activities, such
14 as management practices, not other-
15 wise prohibited by law;

16 “(III) acquisition of lands or
17 easements with the written consent of
18 each person holding a property inter-
19 est in the affected lands;

20 “(IV) offset payments to local
21 governments when acquisitions reduce
22 local tax revenues;

23 “(V) restriction of livestock ac-
24 cess to waters and provision of alter-

1 native water supplies for such live-
2 stock; and

3 “(VI) payments for the purpose
4 of funding, in whole or in part, the in-
5 creased premiums for crop insurance
6 made necessary by, and for a period
7 consistent with, reduced flood protec-
8 tion caused by projects or measures
9 recommended pursuant to subsection
10 (c)(4)(E)(i).

11 “(iv) PROHIBITED USES OF FUNDS.—
12 No funds may be expended from a State’s
13 fisheries habitat account for the planning,
14 engineering, design, or construction of
15 dams or the planning, design, engineering
16 or construction of roads on public lands.

17 “(C) The State shall establish a system of
18 appropriate limits on the maximum percentage
19 of total costs for a project or measure that may
20 be provided from the fisheries habitat account.
21 The system shall reflect the priority rankings
22 assigned to recommendations contained in ap-
23 proved plans and interim recommendations. In
24 addition, the State shall utilize its priority
25 ranking system to establish, and revise annu-

1 ally, a comprehensive priority sequence for
2 funding the projects and measures that have
3 been recommended by watershed councils.

4 “(D) If recommended in the approved plan
5 or interim recommendation, expenditures from
6 fisheries habitat accounts also may be made for
7 the payment of not to exceed 15 percent of the
8 non-Federal share required pursuant to the pro-
9 grams listed in subparagraph (E). Such expend-
10 itures may be made without regard to otherwise
11 applicable limitations under such programs on
12 the maximum funding for individual projects or
13 activities, or the maximum duration of funding,
14 and may be used to fund portions of projects
15 and measures under such programs that may
16 be ineligible due to size restrictions or other
17 limitations.

18 “(E) The following programs shall be sub-
19 ject to the authority provided by subparagraph
20 (D):

21 “(i) The wetlands reserve program es-
22 tablished by subchapter C of chapter 1 of
23 subtitle D of title XII of the Food Security
24 Act of 1985 (16 U.S.C. 3837–3837f).

1 “(ii) The environmental quality incen-
2 tives program established by chapter 4 of
3 subtitle D of title XII of the Food Security
4 Act of 1985 (16 U.S.C. 3839aa–3839aa–
5 8).

6 “(iii) The emergency conservation
7 program established by title IV of the Ag-
8 ricultural Credit Act of 1978 (16 U.S.C.
9 2201–2205).

10 “(iv) The national estuary program
11 established by section 320 of the Federal
12 Water Pollution Control Act (33 U.S.C.
13 1330).

14 “(v) The wildlife conservation and ap-
15 preciation program established by title VII
16 of the Oceans Act of 1992 (16 U.S.C.
17 3741–3744).

18 “(vi) The farmland protection pro-
19 gram established by the Farmland Protec-
20 tion Policy Act (7 U.S.C. 4201–4209).

21 “(vii) The North American Wetlands
22 Conservation Act (16 U.S.C. 4401–4414).

23 “(viii) The forestry incentives pro-
24 gram established by section 4 of the Coop-

1 erative Forestry Assistance Act of 1978
2 (16 U.S.C. 2103).

3 “(ix) The cooperative forestry assist-
4 ance program established by sections 5 and
5 6 of the Cooperative Forestry Assistance
6 Act of 1978 (16 U.S.C. 2103a and 2103b).

7 “(x) The Federal aid in wildlife res-
8 toration program established by the Act of
9 September 2, 1937 (Chapter 899; 50 Stat.
10 917; 16 U.S.C. 669–669i).

11 “(xi) The Federal aid in sportfish res-
12 toration program established by the Act of
13 August 9, 1950 (Chapter 658; 64 Stat.
14 430; 16 U.S.C. 777–777l).

15 “(xii) The watershed protection and
16 flood prevention program established by
17 the Watershed Protection and Flood Pre-
18 vention Act (16 U.S.C. 1001–1008).

19 “(xiii) The wildlife habitat incentives
20 program established by section 387 of the
21 Federal Agricultural Improvement and Re-
22 form Act of 1996 (16 U.S.C. 3836a).

23 “(xiv) The partners for fish and wild-
24 life habitat restoration program established
25 under the Fish and Wildlife Act of 1956

1 (16 U.S.C. 742a et seq.) and the Fish and
2 Wildlife Coordination Act (16 U.S.C. 661
3 et seq.).

4 “(xv) The emergency protection pro-
5 gram established by section 216 of the
6 Flood Control Act of 1950 (33 U.S.C.
7 701b–1; 64 Stat. 184).

8 “(xvi) The conservation reserve pro-
9 gram established by sections 1231 through
10 1236 of Public Law 99–198 (16 U.S.C.
11 3831–3836).

12 “(xvii) The clean lakes program estab-
13 lished by section 314 of the Federal Water
14 Pollution Control Act (33 U.S.C. 1324).

15 “(xviii) The Great Lakes program es-
16 tablished by section 118 of the Federal
17 Water Pollution Control Act (33 U.S.C.
18 1268).

19 “(xix) The flood hazard mitigation
20 and riverine ecosystem restoration program
21 (also known as “Challenge 21”) estab-
22 lished under section 212 of the Water Re-
23 sources Development Act of 1999 (33
24 U.S.C. 2332).

1 “(F) If specifically recommended in the ap-
2 proved plan or interim recommendation, ex-
3 penditures pursuant to any Federal program,
4 the purpose of which is to provide for flood
5 damage compensation payments for loss of
6 crops, livestock, or structures, may be in-
7 creased, notwithstanding any otherwise applica-
8 ble restriction provided by law, with respect to
9 specifically designated lands within the water-
10 shed that are or would be subject to increased
11 flooding due to projects or measures rec-
12 ommended pursuant to subsection (c)(4)(E)(i).
13 Expenditures described in the preceding sen-
14 tence may be made either upon the incidence of
15 a compensable loss or pursuant to a binding
16 agreement providing for future fixed payments
17 that are subject to such conditions and limita-
18 tions as may be necessary or appropriate to
19 carry out the purposes of the watershed coun-
20 cil’s recommendations.

21 “(3) FEDERAL LANDS.—Each Federal depart-
22 ment or agency with jurisdiction to manage Federal
23 lands within a designated watershed shall consider
24 those recommendations related to improvements in
25 the management of such lands that are contained in

1 approved plans or interim recommendations in all
2 future decisions respecting planning and activities on
3 such lands that will have significant impacts on fish-
4 eries habitat and uses and shall issue and make pub-
5 licly available a written explanation of its decisions
6 setting forth its rationale for adopting or departing
7 from such recommendations.

8 “(4) FEDERAL PLANNING AND ACTIVITIES.—

9 “(A) IN GENERAL.—Federal departments
10 and agencies, States, and units of local govern-
11 ment undertaking federally funded planning
12 and activities on non-Federal lands affecting
13 waters within the watershed shall consider those
14 recommendations pertaining to such planning
15 or activities contained in an approved plan or
16 interim recommendation and shall issue and
17 make publicly available a written explanation
18 setting forth its rationale for adopting or de-
19 parting from such recommendations.

20 “(B) PLANNING AND ACTIVITIES ON NON-
21 FEDERAL LANDS AFFECTING WATERS WITHIN
22 THE WATERSHED.—In this paragraph, the term
23 ‘planning and activities on non-Federal lands
24 affecting waters within the watershed’ means
25 the planning, design, or conduct of actions that

1 substantially and physically alter structures,
2 lands, or waters within the 100-year floodplain
3 in a manner that directly and significantly af-
4 fects fisheries habitat.

5 “(C) MAINTENANCE OF NAVIGATION.—

6 This section shall not be construed as affecting
7 or impairing any authority of the Federal Gov-
8 ernment to maintain navigation.

9 “(5) WETLANDS JURISDICTION.—The baseline
10 jurisdictional status of any agricultural lands on
11 which wetlands may be created or expanded as a re-
12 sult of increased flooding or altered drainage pursu-
13 ant to projects or measures recommended pursuant
14 to subsection (c)(4)(E)(i) shall, upon expiration or
15 termination of the agreement pursuant to which
16 such projects or measures were implemented, revert
17 to their baseline jurisdictional status. The jurisdic-
18 tional status of any agricultural lands on which wet-
19 lands may be created or expanded as a result of in-
20 creased flooding or altered drainage pursuant to
21 projects or measures recommended pursuant to sub-
22 section (c)(4)(E)(i) shall, to the extent of such cre-
23 ation or expansion, be governed by the methods and
24 regulations of the applicable program listed in sub-
25 section (e)(2)(E), as well as any regulations issued

1 under section 404 that are applicable to such pro-
2 gram, as those methods and regulations exist at the
3 time such funding is approved. The discharges from
4 any wetlands that are created or expanded for agri-
5 cultural pollution control purposes pursuant to rec-
6 ommendations contained in an approved plan or in-
7 terim recommendation shall not be required to ob-
8 tain a permit pursuant to sections 301 and 402 if
9 pollutants entering such wetlands result only from
10 normal agricultural practices such as crop produc-
11 tion, raising of livestock, or silvicultural activities.

12 “(f) COMMUNITY FISHERIES HABITAT REVITALIZA-
13 TION PROGRAM.—

14 “(1) IN GENERAL.—The Secretary of the Inte-
15 rior, acting through the Director of the United
16 States Fish and Wildlife Service, shall establish a
17 community fisheries habitat revitalization program
18 in accordance with this subsection. Pursuant to the
19 program, the Secretary of the Interior shall provide
20 funding and technical assistance to each State fish
21 and wildlife agency for development and construction
22 of projects designed to improve urban watersheds
23 and public access to the waters of urban watersheds
24 in order to restore fisheries habitat or enhance fish-
25 eries uses and to provide recreational opportunities.

1 In cooperation with the State fish and wildlife agen-
2 cies, the Secretary of the Interior shall issue such
3 guidance as may be necessary to provide for the
4 planning and implementation of the program.

5 “(2) ELIGIBLE PROJECTS.—In accordance with
6 the guidance issued pursuant to paragraph (1), each
7 State fish and wildlife agency may provide funding
8 and technical assistance to a project sponsor, as de-
9 fined by paragraph (3), for any project designed to
10 restore or enhance urban watersheds or waterways
11 in order to achieve 1 or more of the following objec-
12 tives:

13 “(A) Watershed restoration and protection.

14 “(B) Creation of floodplain riparian zones.

15 “(C) Restoration or creation of wetlands.

16 “(D) Stormwater management or treat-
17 ment.

18 “(E) Removal of barriers to fish passage.

19 “(F) Reestablishment of stream channel
20 environments.

21 “(G) Creation or enhancement of rec-
22 reational fishing opportunities.

23 “(H) Support for the formation and activi-
24 ties of local organizations to plan and imple-
25 ment restoration or enhancement projects.

1 “(3) PROJECT SPONSORS AND COSPONSORS.—

2 Each project for which funding or technical assist-
3 ance is provided by a State fish and wildlife agency
4 under the program shall have a project sponsor. The
5 project sponsor may be a nonprofit organization or
6 a State, sub-State, tribal, or local unit of govern-
7 ment, agency, or district within the project area that
8 is authorized to receive, account for, and administer
9 funding and to execute such other responsibilities as
10 the Secretary of the Interior may prescribe for grant
11 agreements between the State agency and project
12 sponsor under the program. Any other such person
13 may be a project cosponsor.

14 “(4) PROJECT AREAS AND LOCATIONS.—

15 Projects receiving funding or assistance under this
16 program shall be located within the boundaries of an
17 urban watershed. Such projects may be eligible if
18 carried out on any municipal, Federal, State, county,
19 tribal, or private lands owned by the project sponsor
20 or a cosponsor.

21 “(5) PROGRAM PRIORITIES.—Each State fish
22 and wildlife agency shall give priority to funding and
23 providing technical assistance for projects—

1 “(A) for which support and participation
2 by local citizens, governmental entities and
3 other affected interests has been demonstrated;

4 “(B) located in or directly benefiting low-
5 income or economically depressed areas;

6 “(C) designed to provide significant im-
7 provement in fisheries habitat and other eco-
8 logical values and functions in the watershed;

9 “(D) that will integrate local communities,
10 schools, and for-profit and nonprofit organiza-
11 tions in efforts to restore or enhance commu-
12 nity fisheries or water quality and to provide
13 education and training opportunities in connec-
14 tion with such efforts; or

15 “(E) that will contribute to the improve-
16 ment or creation of local business related to the
17 access to, and recreational use of, urban water-
18 sheds.

19 “(6) GRANT APPLICATION, APPROVAL, AND
20 PROGRAM IMPLEMENTATION.—The Secretary of the
21 Interior shall ensure that each State fish and wildlife
22 agency to which funding is provided under this sub-
23 section has the capability to efficiently and effec-
24 tively administer the program, including procedures
25 for—

1 “(A) furnishing application procedures, eli-
2 gibility criteria, and other necessary informa-
3 tion to prospective project sponsors;

4 “(B) simplifying or streamlining con-
5 tracting processes for grants not exceeding
6 \$100,000; and

7 “(C) reviewing applications and recom-
8 mending grant awards by an interdisciplinary
9 team possessing expertise in hydrology, ecology,
10 biology, recreation, agriculture, or such other
11 disciplines as may be necessary.

12 “(7) FEDERAL SUPPORT AND REPORTING.—

13 “(A) COMPILATION OF INFORMATION.—

14 The Secretary of the Interior shall compile in-
15 formation received from State fish and wildlife
16 agencies, based on annual reports to be pro-
17 vided by project sponsors, and transmit to ap-
18 propriate committees of the Congress not later
19 than January 1 of each year a comprehensive
20 report on implementation of the program, to-
21 gether with recommendations for any necessary
22 improvements or changes to program.

23 “(B) ESTABLISHMENT OF COMMUNITY
24 FISHERIES HABITAT CLEARINGHOUSE.—In
25 order to support local implementation of

1 projects under the program, the Secretary of
2 the Interior, not later than 12 months after the
3 date of enactment of this section, shall establish
4 a community fisheries habitat clearinghouse
5 that will develop and maintain—

6 “(i) a comprehensive and electroni-
7 cally accessible database, including a li-
8 brary of urban watershed restoration mate-
9 rials such as publications, periodicals, tech-
10 nical references, and videotaped informa-
11 tion; and

12 “(ii) a listing of grassroots organiza-
13 tions, State, Federal, and tribal agencies,
14 and non-profit groups involved in urban
15 watershed restoration activities.

16 “(C) LOCATION OF DATABASE.—The loca-
17 tion of the database will be selected by the Sec-
18 retary of the Interior after considering applica-
19 tions received from interested parties solicited
20 through public notice.

21 “(8) CONDITIONS AND LIMITATIONS ON FUND-
22 ING.—The Secretary of the Interior shall establish
23 appropriate conditions and limitations applicable to
24 funding provided under the program, including the
25 following:

1 “(A) A requirement that the Federal share
 2 of the cost for implementing each project shall
 3 not exceed 70 percent of the cost of the project
 4 in any fiscal year and shall not exceed a total
 5 of \$500,000. Not more than 10 percent of the
 6 Federal share of the cost of a project provided
 7 in any fiscal year may be used for administra-
 8 tive expenses.

9 “(B) A provision allowing the non-Federal
 10 share of such cost to consist, in whole or in
 11 part, of in-kind services provided by project
 12 participants and allowing the non-Federal share
 13 to be waived in the case of any project carried
 14 out in an economically depressed community
 15 with a population of 50,000 or less.

16 “(9) AUTHORIZATIONS.—There is authorized to
 17 be appropriated to the Secretary of the Interior, to
 18 carry out the program established by this subsection,
 19 such sums as may be necessary for each of fiscal
 20 years 2002 through 2006. Such sums shall remain
 21 available until expended.

22 “(g) FEDERAL SUPPORT.—

23 “(1) TECHNICAL SUPPORT AND REPORTING.—

24 “(A) INFORMATION AND GUIDELINES.—

25 Not later than 90 days after the date of enact-

1 ment of this section, and after consultation with
2 the Secretary of the Interior and the Adminis-
3 trator, the Secretary shall issue—

4 “(i) information and guidelines on the
5 minimum content of State programs to be
6 approved under subsection (a);

7 “(ii) information and guidelines on
8 the capabilities and purposes that should
9 be demonstrated by watershed councils
10 under subsection (b)(2); and

11 “(iii) compilations of information,
12 such as bibliographies, manuals, sum-
13 maries or other appropriate means of orga-
14 nizing and disseminating information per-
15 taining to each of the planning elements
16 specified under subsection (c)(4).

17 “(B) GUIDANCE.—The Secretary, after
18 consultation with the Administrator and the
19 Secretary of the Interior, shall issue guidance
20 to the States setting forth minimum require-
21 ments for applications to receive program
22 grants under paragraph (3)(A).

23 “(C) PROGRESS REPORTS.—For purposes
24 of evaluating the progress of State and tribal
25 programs approved under this section, the Sec-

1 retary, in consultation with the Secretary of the
2 Interior and the Administrator, shall assemble
3 and review all reports on monitoring activities
4 carried out pursuant to watershed council rec-
5 ommendations and publish a report at least bi-
6 ennially describing the progress and accomplish-
7 ments of such programs, as well as rec-
8 ommendations for improvements in the design
9 or implementation of such programs.

10 “(D) REPORT ON STATE OF FISHERIES
11 HABITATS.—The Secretary of the Interior shall
12 review the reports prepared by the Secretary of
13 Agriculture pursuant to the subparagraph (C),
14 together with any other information or data the
15 Secretary of the Interior may develop or deter-
16 mine to be necessary, and shall publish a report
17 at least biennially describing the state of the
18 Nation’s fishery habitats as well as the overall
19 progress being achieved in protecting and re-
20 storing such habitats.

21 “(2) FISHERIES-RELATED INFORMATION INDI-
22 CATORS AND HABITAT CHARACTERISTICS.—

23 “(A) IN GENERAL.—The Secretary of the
24 Interior, in cooperation with State fish and
25 wildlife agencies, shall compile and provide sci-

entific information for consideration by such agencies in developing fisheries-related indicators and associated habitat characteristics, as described in this paragraph, and for consideration by designated watershed councils in characterizing waters and establishing watershed objectives pursuant to subsection (c)(4).

“(B) CONTENT OF CRITERIA.—Fisheries-related indicators may be established by the State fish and wildlife agencies pursuant to this paragraph to set forth the appropriate factors, indicators, measurements, and other considerations which, independently or in combination, will be indicative of a healthy, resilient, diverse, and productive aquatic system and may distinguish among general categories of fisheries based upon natural variations such as water temperature and chemistry, flow regime, biotic factors, habitat structure and composition, drought, and any other relevant and appropriate considerations.

“(C) HABITAT CHARACTERISTICS.—With respect to each general category of fisheries for which criteria are established pursuant to this paragraph, the State fish and wildlife agencies

1 should set forth those habitat characteristics
2 that are determined to be necessary or desirable
3 for a healthy, resilient, diverse, and productive
4 aquatic system, together with a description of
5 the most significant factors, including water
6 quality and quantity, that can cause adverse
7 impacts on or threats to those characteristics.

8 “(3) FUNDING.—

9 “(A) GRANTS FOR OPERATION OF STATE
10 PROGRAMS.—

11 “(i) IN GENERAL.—The Secretary
12 shall make grants to any State, with a pro-
13 gram approved under subsection (a) for
14 payment of the reasonable costs of car-
15 rying out the responsibilities described in
16 subsection (a)(2). Not less than 90 percent
17 of the amount of such grants made pursu-
18 ant to this paragraph shall be reserved for
19 supporting the planning and implementa-
20 tion of approved activities of designated
21 watershed councils.

22 “(ii) MEMORANDUM OF UNDER-
23 STANDING.—As a condition of such grants,
24 the Secretary and the State shall enter
25 into a memorandum of understanding set-

1 ting forth the objectives and funding prior-
2 ities for the program, including conditions
3 requiring the State to undertake specific
4 activities to promote the formation of wa-
5 tershed councils through education, out-
6 reach, and the provision of funding for or-
7 ganizational and planning efforts to de-
8 velop requests for designation, as well as
9 conditions requiring the State or regional
10 fisheries commission to provide a substan-
11 tial portion of the funds available for wa-
12 tershed planning to those watershed coun-
13 cils associated with high priority water-
14 sheds.

15 “(iii) LIMITATION ON ADMINISTRA-
16 TIVE EXPENSES.—Not more than 10 per-
17 cent of the amount of any grant made by
18 a State to a designated watershed council
19 may be used to pay the cost of administra-
20 tion or overhead in connection with the
21 council’s activities.

22 “(iv) AUTHORIZATION OF APPROPRIA-
23 TIONS.—There is authorized to be appro-
24 priated to the Secretary to carry out this
25 paragraph such sums as may be necessary

1 for each of fiscal years 2002 through
2 2006. Such sums shall remain available
3 until expended

4 “(B) FISHERIES HABITAT ACCOUNTS FOR
5 IMPLEMENTATION SUPPORT.—

6 “(i) ESTABLISHMENT.—Each State
7 with a program approved pursuant to sub-
8 section (a) shall establish a fisheries habi-
9 tat account for the purpose of providing fi-
10 nancial support for implementation of
11 projects and measures recommended by
12 watershed councils pursuant to approved
13 plans and interim recommendations.

14 “(ii) TRANSFERS.—Each State with a
15 program approved pursuant to this section
16 may reserve and transfer into its fisheries
17 habitat account an amount not to exceed
18 20 percent of the funds received in fiscal
19 year 2002 and each fiscal year thereafter
20 pursuant to section 319. Amounts so
21 transferred shall remain available until ex-
22 pended.

23 “(iii) AUTHORIZED FUNDING FOR RE-
24 STRICTING LIVESTOCK ACCESS TO WATERS
25 WITHIN A DESIGNATED WATERSHED.—

1 There is authorized to be appropriated to
2 the Secretary not to exceed \$25,000,000
3 for fiscal year 2002 and each fiscal year
4 thereafter for the purpose of making
5 grants to States with programs approved
6 under subsection (a) to enable such States
7 to provide funds to any person, through an
8 account within a State's fisheries habitat
9 account, for implementation of any appro-
10 priate measures recommended in an ap-
11 proved plan or interim recommendation for
12 restricting livestock access to waters within
13 a designated watershed and for providing
14 alternative water supplied for such live-
15 stock. Such sums shall remain available
16 until expended.

17 “(iv) AUTHORIZED FUNDING FOR IM-
18 PLEMENTATION OF APPROVED REC-
19 COMMENDATIONS.—There is authorized to
20 be appropriated to the Secretary not to ex-
21 ceed \$250,000,000 for each of fiscal years
22 2002 through 2006 for the purpose of
23 making grants to States with programs ap-
24 proved pursuant to subsection (a) to enable
25 each such State to provide funds to any

1 person, through the State’s fisheries habi-
2 tat account, for implementation of ap-
3 proved recommendations, as provided by
4 subsection (e)(2). Such sums shall remain
5 available until expended.

6 “(v) ALLOCATIONS OF AMOUNTS.—
7 Amounts appropriated pursuant to clause
8 (iv) shall be allocated among States with
9 programs approved pursuant to subsection
10 (a) giving priority consideration to States
11 that exceed other States in the following
12 categories:

13 “(I) The amount of hydroelectric
14 instream use (millions of gallons per
15 day) in the State in the previous cal-
16 endar year, as identified by the
17 United States Geological Service.

18 “(II) The total number of fishing
19 licenses, tags, permits, and stamps
20 sold by the State in the previous cal-
21 endar year.

22 “(III) The degree of degraded
23 waters in the State.

24 “(IV) The number of river miles
25 and lake acres in the State.

1 “(V) The population of the State.

2 “(vi) ANNUAL SURVEY.—The Sec-
3 retary shall provide to Congress an annual
4 survey of projected funding needs identi-
5 fied for each State with a program ap-
6 proved pursuant to subsection (a).

7 “(C) FEDERAL PROGRAM AUTHORIZA-
8 TIONS.—

9 “(i) RESPONSIBILITIES OF THE SEC-
10 RETARY.—There is authorized to be appro-
11 priated to the Secretary such sums as may
12 be necessary for the administration and
13 implementation of the responsibilities re-
14 quired by this section. Such sums shall re-
15 main available until expended.

16 “(ii) RESPONSIBILITIES OF THE SEC-
17 RETARY OF THE INTERIOR.—There is au-
18 thorized to be appropriated to the Sec-
19 retary of the Interior such sums as may be
20 necessary for the administration and im-
21 plementation of the responsibilities re-
22 quired by this section. Such sums shall re-
23 main available until expended.

24 “(iii) RESPONSIBILITIES OF THE AD-
25 MINISTRATOR.—There is authorized to be

1 appropriated to the Administrator such
2 sums as may be necessary for the adminis-
3 tration and implementation of the respon-
4 sibilities required under this section. Such
5 sums shall remain available until expended.

6 “(4) PLANNING AND RECOMMENDATIONS FOR
7 MAJOR WATERWAYS.—

8 “(A) IN GENERAL.—The Secretary of the
9 Interior, acting through the Directors of the
10 United States Fish and Wildlife Service and the
11 Geological Survey and in consultation with the
12 Secretaries of Agriculture, Commerce, and En-
13 ergy, the Director of the Federal Emergency
14 Management Agency, the Chief of Engineers,
15 State fish and wildlife agencies, river basin
16 commissions, and Indian tribes, shall establish
17 and carry out a national planning program for
18 protection and restoration of fisheries habitat
19 through improved floodplain management prac-
20 tices on major waterways.

21 “(B) IDENTIFICATION OF WATERWAYS
22 SEGMENTS.—Pursuant to the national planning
23 program, the Secretary of the Interior shall
24 identify discrete segments of major waterways
25 for which a watershed council has not been des-

1 ignated pursuant to subsection (b) and for
2 which, in the Secretary of the Interior’s judg-
3 ment, there is a high likelihood that significant
4 progress can be achieved through the implemen-
5 tation of measures identified in subsection
6 (c)(4)(E)(i) toward the protection or restoration
7 of habitat for fisheries that exhibit substantial
8 existing or potential biological, commercial, or
9 recreational value.

10 “(C) RECOMMENDATIONS FOR HIGHEST
11 PRIORITY SEGMENTS.—With respect to each of
12 the highest priority segments identified by the
13 Secretary of the Interior that is subject to a
14 State program which has chosen to address
15 major waterways pursuant to subsection
16 (a)(2)(J), or by more than 1 such program, the
17 Secretary of the Interior shall issue, after pro-
18 viding notice and opportunity for comment, rec-
19 ommendations to the appropriate State, or any
20 combination of States, for consideration of al-
21 ternative floodplain management measures of
22 the types identified in subsection (c)(4)(E)(i) to
23 improve fisheries habitat conditions in the iden-
24 tified segment or in downstream segments. The
25 State shall consider and act upon such rec-

ommendations in accordance with the provisions of subsection (d).

“(D) APPLICABILITY OF REQUIREMENTS.—Subsection (e), including the requirement that approved recommendations may be undertaken only with the willing consent of persons holding a property interest in affected lands, shall apply with respect to any recommendations issued by the Secretary of the Interior and approved pursuant to subsection (d).

“(h) INSTREAM FLOWS AND WATER QUALITY.—

“(1) WATER QUALITY INFORMATION.—In order to encourage the maintenance of adequate water flows and volumes in the Nation’s rivers, streams, and lakes so as to protect and restore fisheries habitat, the Secretary of the Interior, in cooperation with the State fish and wildlife agencies, shall, not later than 12 months after the date of enactment of this section, issue information describing methodologies for identifying instream flows that are necessary to protect fisheries habitat.

“(2) INSTREAM FLOW AND WATER VOLUME DESIGNATIONS AND RECOMMENDATIONS.—Any State may designate fisheries uses for waters within

1 the State’s jurisdiction, together with instream flows
2 or water volumes, that are necessary to support such
3 uses. Any watershed council designated pursuant to
4 this section may include recommendations in its plan
5 for fisheries objectives pertaining to waters within
6 the designated watershed, together with instream
7 flows or volumes that are necessary to support such
8 objectives.

9 “(3) INFORMATION EXCHANGE/TECHNICAL AS-
10 SISTANCE.—In cooperation with State fish and wild-
11 life agencies, the Secretary of the Interior, acting
12 through the Directors of the United States Geologi-
13 cal Survey and the United States Fish and Wildlife
14 Service, shall provide technical assistance and pre-
15 pare and disseminate technical information on the
16 fisheries-related needs for instream flows to water-
17 shed councils designated pursuant to this section, to
18 others involved in land and water management, and
19 to the general public.

20 “(4) EXPENDITURES.—As necessary and appro-
21 priate to support the maintenance of instream flows
22 or volumes designated or recommended pursuant to
23 paragraph (2), the Secretary of the Interior, acting
24 through the Directors of the United States Fish and
25 Wildlife Service and the Geological Survey and in co-

1 operation with the Secretary and the Administrator,
2 as appropriate, is authorized to provide funds to
3 States, from such appropriations as may be made
4 pursuant to the authorization provided by this sub-
5 section, for expenditures—

6 “(A) to obtain, under State law, an inter-
7 est in instream water flows, including the pur-
8 chase of a water right or lease of a water right;

9 “(B) to obtain, under State law, and man-
10 age an interest in land as a means of exercising
11 an associated interest in water for the purpose
12 of augmenting instream flows;

13 “(C) to pay the cost, or any portion of the
14 cost, of making improvements to water control
15 structures, such as dams, in return for obtain-
16 ing, under State law, an interest in water for
17 the purpose of augmenting instream flows;

18 “(D) to pay the cost, or any portion of the
19 cost, of constructing, maintaining, repairing, or
20 implementing water conservation measures,
21 such as improved irrigation equipment and
22 practices and water conveyance structures, in
23 return for obtaining, under State law, an inter-
24 est in water or a right to place conditions on
25 the use of water or for obtaining an interest in

1 water for the purpose of augmenting instream
2 flows; and

3 “(E) to obtain, under State law, an inter-
4 est in reservoir storage rights and the right to
5 release water from storage to maintain instream
6 flows.

7 Any right or interest obtained under State law in
8 connection with an expenditure made under this
9 paragraph shall be held by the appropriate State
10 agency or private entity or individual (as permitted
11 under State law) for its intended purpose in per-
12 petuity with respect to the purchase of a water right
13 or for the full term of the lease or other contractual
14 instrument with respect to any partial interest in a
15 water right.

16 “(5) AUTHORIZATION; CONDITIONS ON EX-
17 PENDITURES.—The following conditions shall apply
18 to any expenditures made pursuant to paragraph
19 (4):

20 “(A) Expenditures will result in, or make
21 a substantial contribution to, the maintenance
22 of instream flows or volumes that are necessary
23 to support the associated fisheries objectives or
24 uses designated pursuant to paragraph (2).

1 “(B) Any right or interest in water ac-
2 quired or otherwise obtained under State law in
3 connection with such expenditures shall be so
4 acquired or otherwise obtained only with the
5 written consent of a willing seller of such right
6 or interest.

7 “(C) The Secretary of the Interior shall
8 manage the funds appropriated pursuant to the
9 authority provided by this subsection so as to
10 place the highest priority on expenditures to
11 support the recommendations pertaining to
12 instream flows or volumes contained in plans
13 approved pursuant to subsection (d).

14 “(6) AUTHORIZATION OF APPROPRIATIONS.—

15 There is authorized to be appropriated to the Sec-
16 retary of the Interior to carry out paragraph (4)
17 \$50,000,000 for each of fiscal years 2002 through
18 2006. Such sums shall remain available until ex-
19 pended.

20 “(7) LIMITATION ON STATUTORY CONSTRUC-

21 TION.—Nothing in this section shall be construed to
22 supersede, abrogate, or otherwise impair the author-
23 ity of a State to allocate quantities of water within
24 its jurisdiction or, except as provided by paragraph

1 (4), to authorize the transfer of rights to quantities
2 of water which have been established by any State.

3 “(i) DEFINITIONS.—In this section, the following
4 definitions apply:

5 “(1) SECRETARY.—The term ‘Secretary’ means
6 the Secretary of Agriculture.

7 “(2) HABITAT LIMITED WATERS.—The term
8 ‘habitat limited waters’ means those waters in which
9 the attainment of healthy, resilient, diverse, and pro-
10 ductive aquatic systems necessary to sustain socially,
11 ecologically, or economically important fisheries is
12 adversely affected by existing physical, chemical, or
13 biological conditions that can be remediated.

14 “(3) HIGH VALUE WATERS.—The term ‘high
15 value waters’ means those waters in which existing
16 physical, chemical, and biological conditions sustain
17 socially, ecologically, or economically important fish-
18 eries.

19 “(4) ACCESS RESTRICTED WATERS.—The term
20 ‘access restricted waters’ means those high value wa-
21 ters in which public use and enjoyment of fisheries
22 is significantly limited by lack of access.

23 “(5) WATERSHED.—The term ‘watershed’
24 means, with respect to a river, stream, or other sur-

1 face water body, the drainage area that contributes
2 water to that river, stream, or water body.

3 “(6) URBAN WATERSHED.—The term ‘urban
4 watershed’ means a watershed or portion of a water-
5 shed located wholly or substantially within the
6 boundaries of an urbanized area, as designated by
7 the Bureau of the Census, or a municipality of
8 10,000 or more persons.

9 “(7) STATE FISH AND WILDLIFE AGENCY.—The
10 term ‘State fish and wildlife agency’ means the com-
11 mission, department, agency, or agencies within each
12 State that has primary legal authority for the con-
13 servation of fish and wildlife in the State.

14 “(8) HIGH PRIORITY WATERSHED.—The term
15 ‘high priority watershed’ means a watershed des-
16 ignated pursuant to State law, as described in sub-
17 section (a), for which available information dem-
18 onstrates a high likelihood that the planning and
19 other activities authorized under this section could
20 achieve significant progress toward protection or res-
21 toration of habitat for fisheries that exhibit substan-
22 tial existing or potential biological, commercial, or
23 recreational value.

1 “(9) STATE.—The term ‘State’ means any 1, or
 2 a combination, of the following authorities acting
 3 pursuant to jurisdiction provided under State law:

4 “(A) The Governor.

5 “(B) A State agency charged with ensur-
 6 ing water quality standards.

7 “(C) A State fish and wildlife agency.

8 “(10) STATE TECHNICAL COMMITTEE.—The
 9 term ‘State technical committee’ means a technical
 10 committee established by the Secretary pursuant to
 11 section 1261 of the Food Security Act of 1985 (16
 12 U.S.C. 3861).”.

13 (b) INCLUSION OF INDIAN TRIBES.—Section 518(e)
 14 of the Federal Water Pollution Control Act (33 U.S.C.
 15 1377(e)) is amended by inserting “321,” after “319,”.

16 **SEC. 4. AUTHORIZATIONS OF APPROPRIATIONS.**

17 Section 319(j) of the Federal Water Pollution Control
 18 Act (33 U.S.C. 1329(j)) is amended to read as follows:

19 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
 20 is authorized to be appropriated to carry out subsections
 21 (h) and (i) of this section and section 321 such sums as
 22 may be necessary for fiscal years 2002 through 2006.
 23 Such sums shall remain available until expended.”.

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