

110TH CONGRESS
2D SESSION

S. 3552

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 24 (legislative day, SEPTEMBER 17), 2008

Mr. LIEBERMAN (for himself, Mr. BOND, Mr. VOINOVICH, and Mrs. CLINTON) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To conserve the United States fish and aquatic communities through partnerships that foster fish habitat conservation and improve the quality of life for the people of the United States, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “National Fish Habitat Conservation Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

- Sec. 2. Findings; purposes.
- Sec. 3. Definitions.
- Sec. 4. National Fish Habitat Board.
- Sec. 5. Fish Habitat Conservation Partnerships.
- Sec. 6. Fish habitat conservation projects.
- Sec. 7. National Fish Habitat Conservation Partnership Office.
- Sec. 8. Conservation of aquatic habitat for fish and other aquatic organisms on Federal land.
- Sec. 9. Coordination with States.
- Sec. 10. Accountability and reporting.
- Sec. 11. Regulations.
- Sec. 12. Construction.
- Sec. 13. Applicability of Federal Advisory Committee Act.
- Sec. 14. Funding.

1 **SEC. 2. FINDINGS; PURPOSES.**

2 (a) FINDINGS.—Congress makes the following find-
 3 ings:

4 (1) Healthy populations of fish and other
 5 aquatic organisms depend on the conservation, pro-
 6 tection, restoration, and enhancement of aquatic
 7 habitats in the United States.

8 (2) Aquatic habitats, including wetlands,
 9 streams, rivers, lakes, estuaries, coastal and marine
 10 ecosystems, and associated riparian upland habitats
 11 that buffer those areas from external factors, per-
 12 form numerous valuable environmental functions
 13 which sustain environmental, social, and cultural val-
 14 ues, including recycling nutrients, purifying water,
 15 attenuating floods, augmenting and maintaining
 16 stream flows, recharging ground water, acting as
 17 primary producers in the food chain, and providing
 18 essential and significant habitat for plants, fish and
 19 wildlife, and other dependent species.

1 (3) The extensive and diverse aquatic habitat
2 resources of the United States are of enormous sig-
3 nificance to the economy of the United States, pro-
4 viding recreation for 44,000,000 anglers, more than
5 1,000,000 jobs and approximately \$125,000,000,000
6 in economic impact each year related to recreational
7 fishing, and approximately 500,000 jobs and an ad-
8 ditional \$35,000,000,000 in economic impact from
9 commercial fishing each year.

10 (4) At least 40 percent of all threatened and
11 endangered species in the United States are directly
12 dependent upon aquatic habitats.

13 (5) Certain fish species are considered to be ec-
14 ological indicators of aquatic habitat quality, such
15 that the presence of such species in an aquatic eco-
16 system reflects high-quality habitat for other fish.

17 (6) Loss and degradation of aquatic habitat, ri-
18 parian habitat, water quality, and water volume
19 caused by activities such as alteration of water-
20 courses, stream blockages, water withdrawals and di-
21 versions, erosion, pollution, sedimentation, and de-
22 struction or modification of wetlands have caused
23 significant declines in fish populations throughout
24 the United States, especially declines in native fish

1 populations, and result in economic losses to the
2 United States.

3 (7) Providing for the conservation and sustain-
4 ability of fish and other aquatic organisms has not
5 been fully realized despite federally funded fish and
6 wildlife restoration programs and other activities in-
7 tended to conserve aquatic resources. Such conserva-
8 tion and sustainability may be significantly advanced
9 through a renewed commitment and sustained, coop-
10 erative efforts that are complementary to existing
11 fish and wildlife restoration programs and clean
12 water programs.

13 (8) The National Fish Habitat Action Plan pro-
14 vides a framework for maintaining and restoring
15 aquatic habitats to ensure perpetuation of popu-
16 lations of fish and other aquatic organisms.

17 (9) The United States can achieve significant
18 progress toward providing aquatic habitats for the
19 conservation and restoration of fish and other aquat-
20 ic organisms through a voluntary, nonregulatory, in-
21 centive program that is based on technical and fi-
22 nancial assistance provided by the Federal Govern-
23 ment.

24 (10) Creation of partnerships between local citi-
25 zens, Indian tribes, Alaska Native organizations,

1 corporations, nongovernmental organizations, and
2 Federal, State, and Indian tribal agencies is critical
3 to the success of activities to restore aquatic habi-
4 tats and ecosystems.

5 (11) The Federal Government has numerous
6 regulatory and land and water management agen-
7 cies, including the United States Fish and Wildlife
8 Service, the Bureau of Land Management, the Na-
9 tional Park Service, the Bureau of Reclamation, the
10 Bureau of Indian Affairs, the National Marine Fish-
11 eries Service, the Forest Service, the Fishery Man-
12 agement Councils, the Environmental Protection
13 Agency, and the several interjurisdictional fishery
14 commissions that are critical to the implementation
15 of the National Fish Habitat Action Plan.

16 (12) The United States Fish and Wildlife Serv-
17 ice, the Forest Service, and the National Marine
18 Fisheries Service each play a vital role in the protec-
19 tion, restoration, and enhancement of the fish com-
20 munities and aquatic habitats in the United States
21 and the development, operation, and long-term suc-
22 cess of fish habitat partnerships and project imple-
23 mentation.

24 (13) The United States Geological Survey plays
25 a vital role in scientific evaluation, data collection,

1 and mapping for fishery resources in the United
2 States.

3 (14) Many of the programs for conservation on
4 private farmland, ranchland, and forestland that are
5 carried out by the Secretary of Agriculture, includ-
6 ing the Natural Resources Conservation Service and
7 the State and Private Forestry programs of the For-
8 est Service, are able to significantly contribute to the
9 implementation of the National Fish Habitat Action
10 Plan through the engagement of private landowners.

11 (b) PURPOSES.—The purposes of this Act are to en-
12 courage partnerships among public agencies and other in-
13 terests consistent with the mission and goals of the Na-
14 tional Fish Habitat Action Plan—

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

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

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

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

1 (5) to improve fisheries habitat, thereby improv-
2 ing the annual economic output from recreational,
3 subsistence, and commercial fishing;

4 (6) to ensure coordination and facilitation of ac-
5 tivities carried out by agencies or departments of the
6 United States under the leadership of the Director
7 of the United States Fish and Wildlife Service, the
8 Under Secretary for Oceans and Atmosphere of the
9 Department of Commerce, and the Director of the
10 United States Geological Survey; and

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

14 **SEC. 3. DEFINITIONS.**

15 In this Act:

16 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**
17 **TEES.**—The term “appropriate congressional com-
18 mittees” means the Committee on Commerce,
19 Science and Transportation and the Committee on
20 Environment and Public Works of the Senate and
21 the Committee on Natural Resources of the House
22 of Representatives.

23 (2) **AQUATIC HABITAT.**—The term “aquatic
24 habitat”—

(A) means any area upon which aquatic organisms depend, directly or indirectly, to carry out the life processes of such organisms, including an area used by such organisms for spawning, incubation, nursery, rearing, growth to maturity, food supply, or migration; and

(B) includes an area adjacent to an aquatic environment if such adjacent area—

(i) contributes elements, such as the input of detrital material or the promotion of planktonic and insect populations providing food, which make fish life possible;

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

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

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

(3) ASSISTANT ADMINISTRATOR.—The term “Assistant Administrator” means the Assistant Administrator for Fisheries of the National Marine Fisheries Service.

(4) CONSERVATION; CONSERVE; MANAGE; MANAGEMENT.—The terms “conservation”, “conserve”, “manage”, and “management” mean to protect, sus-

1 tain and, where appropriate, restore and enhance,
2 healthy populations of fish, wildlife, and plant life,
3 as well as the habitats that are required to sustain
4 fish, wildlife, and plant life, as well as the habitats
5 that are required to sustain fish, wildlife, and plant
6 life productivity by utilizing methods and procedures
7 associated with modern scientific resource programs,
8 including protection, research, census, law enforce-
9 ment, habitat management, propagation, live trap-
10 ping and transplantation, and regulated taking.

11 (5) DIRECTOR.—Except as otherwise provided,
12 the term “Director” means the Director of the
13 United States Fish and Wildlife Service.

14 (6) FISH.—The term “fish” means any fresh-
15 water, diadromous, estuarine, or marine finfish or
16 shellfish, including the egg, spawn, spat, larval, and
17 other juvenile stages of such an organism.

18 (7) FISH HABITAT CONSERVATION PARTNER-
19 SHIP; PARTNERSHIP.—The terms “Fish Habitat
20 Conservation Partnership” and “Partnership” mean
21 an entity designated by the Board as a Fish Habitat
22 Conservation Partnership pursuant to section 5(c).

23 (8) FISH HABITAT CONSERVATION PROJECT;
24 PROJECT.—The terms “fish habitat conservation
25 project” and “project” mean a project submitted to

1 the Board by a Fish Habitat Conservation Partner-
2 ship and approved by the Secretary under section 6
3 that provides for the conservation or management of
4 aquatic habitat and that may include—

5 (A) the provision of technical assistance to
6 a State, Indian tribe, or local community by the
7 National Fish Habitat Partnerships Office or
8 other agency to facilitate the development of
9 strategies and priorities for the conservation of
10 aquatic habitats; or

11 (B) the obtaining of a real property inter-
12 est in land or waters, including water rights, if
13 the obtaining of such interest is subject to
14 terms and conditions that will ensure that the
15 real property will be administered for the long-
16 term conservation of such lands and waters and
17 the fish dependent thereon.

18 (9) INDIAN TRIBE.—The term “Indian tribe”
19 has the meaning given the term in section 4 of the
20 Indian Self-Determination and Education Assistance
21 Act (25 U.S.C. 450b).

22 (10) NATIONAL FISH HABITAT ACTION PLAN;
23 PLAN.—The terms “National Fish Habitat Action
24 Plan” and “Plan” mean the National Fish Habitat

1 Action Plan dated April 24, 2006, and any subse-
2 quent revision or amendment to that Plan.

3 (11) NATIONAL FISH HABITAT BOARD;
4 BOARD.—Except as otherwise provided, the terms
5 “National Fish Habitat Board” and “Board” mean
6 the National Fish Habitat Board established in sec-
7 tion 4(a).

8 (12) REAL PROPERTY INTEREST.—The term
9 “real property interest” means an ownership interest
10 in land or waters, including water rights, or a build-
11 ing or object that is permanently affixed to the land.

12 (13) SECRETARY.—The term “Secretary”
13 means the Secretary of the Interior.

14 (14) STATE AGENCY.—The term “State agen-
15 cy” means the fish and wildlife agency of a State,
16 or any department, or division of a department or
17 agency of a State that is empowered by statute or
18 by the constitution of the State to manage in the
19 public trust the inland or marine fishery resources
20 of the State.

21 **SEC. 4. NATIONAL FISH HABITAT BOARD.**

22 (a) ESTABLISHMENT.—

23 (1) IN GENERAL.—There is established a Na-
24 tional Fish Habitat Board—

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

4 (B) to review and recommend fish habitat
5 conservation projects.

6 (2) MEMBERSHIP.—The members of the Board
7 shall be as follows:

8 (A) The Director.

9 (B) The Assistant Administrator.

10 (C) The Chief of the Natural Resources
11 Conservation Service.

12 (D) The Director of the Watershed, Fish,
13 Wildlife, Air & Rare Plants program of the For-
14 est Service.

15 (E) The Assistant Administrator for Water
16 of the Environmental Protection Agency.

17 (F) The President of the Association of
18 Fish and Wildlife Agencies.

19 (G) The Secretary of the Board of Direc-
20 tors of the National Fish and Wildlife Founda-
21 tion appointed pursuant to section 3(g)(2)(B)
22 of the National Fish and Wildlife Foundation
23 Establishment Act (16 U.S.C. 3702(g)(2)(B)).

24 (H) Four representatives of State agencies,
25 each 1 of whom is nominated by 1 of the re-

1 gions Associations of Fish and Wildlife Agen-
2 cies (Northeast, Southeast, Midwest, and West-
3 ern).

4 (I) One representative of the American
5 Fisheries Society.

6 (J) Two representatives of Indian tribes, 1
7 of whom shall represent Indian tribes from
8 Alaska and 1 of whom shall represent Indian
9 tribes from the other States.

10 (K) One member who represents the Re-
11 gional Fishery Management Councils estab-
12 lished under section 302 of the Magnuson-Ste-
13 vens Fishery Conservation and Management
14 Act (16 U.S.C. 1852).

15 (L) One member who represents the Ma-
16 rine Fisheries Commissions (the Atlantic States
17 Marine Fisheries Commission, the Gulf States
18 Marine Fisheries Commission, and the Pacific
19 States Marine Fisheries Commission).

20 (M) One representative from the
21 Sportfishing and Boating Partnership Council.

22 (N) Eleven members each of whom rep-
23 resents the interests of 1 of the following:

24 (i) The recreational sportfishing in-
25 dustry.

1 (ii) The commercial sportfishing in-
2 dustry.

3 (iii) Subsistence fishermen.

4 (iv) Marine recreational anglers.

5 (v) Freshwater recreational anglers.

6 (vi) Terrestrial resource conservation
7 organizations.

8 (vii) Aquatic resource conservation or-
9 ganizations.

10 (viii) The livestock and poultry pro-
11 duction industry.

12 (ix) The housing development indus-
13 try.

14 (x) The row crop industry.

15 (xi) Natural resource commodity in-
16 terests, such as petroleum or mineral ex-
17 traction.

18 (3) COMPENSATION.—Members of the Board
19 shall serve without compensation for that service.

20 (b) APPOINTMENT AND TERMS.—

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

1 (2) INITIAL BOARD MEMBERSHIP.—Not later
2 than 6 months after the date of the enactment of
3 this Act, the representatives of the National Fish
4 Habitat Board established by the Plan shall appoint
5 the initial members of the Board described in sub-
6 paragraphs (H) through (N) of subsection (a)(2).

7 (3) TRANSITIONAL TERMS.—The initial ap-
8 pointments of the members of the Board described
9 in subparagraph (N) of subsection (a)(2) shall be for
10 terms as follows:

11 (A) Four shall be appointed for a term of
12 1 year.

13 (B) Four shall be appointed for a term of
14 2 years.

15 (C) Three shall be appointed for a term of
16 3 years.

17 (4) VACANCIES.—A vacancy of a member of the
18 Board described in subparagraphs (H) through (N)
19 of subsection (a)(2) shall be filled by an appointment
20 made by the remaining members of the Board.

21 (5) CONTINUATION OF SERVICE.—An individual
22 whose term of service as a member of the Board ex-
23 pires may continue to serve on the Board until a
24 successor is appointed.

1 (6) REMOVAL.—If a member of the Board de-
2 scribed in subparagraphs (H) through (N) of sub-
3 section (a)(2) misses 3 consecutive regularly sched-
4 uled Board meetings, the members of the Board
5 may vote to remove that member and appoint an-
6 other individual in accordance with paragraph (4).

7 (c) CHAIR.—

8 (1) ELECTION.—A Chair of the Board shall be
9 elected by the Board from among its members.

10 (2) TERM.—The Chair of the Board shall serve
11 for a term of 3 years.

12 (d) MEETINGS.—

13 (1) IN GENERAL.—The Board shall meet at the
14 call of the Chair but in no case less often than twice
15 a year.

16 (2) PUBLIC ACCESS.—All meetings of the
17 Board shall be open to the public.

18 (e) BOARD PROCEDURES.—

19 (1) IN GENERAL.—The Board shall establish
20 procedures to carry out the business of the Board
21 that include the following:

22 (A) A requirement that a quorum of the
23 members of the Board be present to transact
24 business.

1 (B) A requirement that no recommenda-
2 tions may be adopted by the Board, except by
3 the vote of $\frac{2}{3}$ of all members present and vot-
4 ing.

5 (C) Procedures for setting national goals
6 and priorities for aquatic habitat conservation
7 for the purposes of this Act.

8 (D) Procedures for designating Fish Habi-
9 tat Conservation Partnerships under section 5.

10 (E) Procedures for reviewing, evaluating,
11 and recommending fish habitat conservation
12 projects.

13 (2) QUORUM.—A majority of the members of
14 the Board shall constitute a quorum.

15 **SEC. 5. FISH HABITAT CONSERVATION PARTNERSHIPS.**

16 (a) AUTHORITY TO DESIGNATE.—The Board is au-
17 thorized to designate Fish Habitat Conservation Partner-
18 ships.

19 (b) APPLICATION.—An entity seeking to be des-
20 ignated as a Fish Habitat Conservation Partnership shall
21 submit an application to the Board at such time and in
22 such manner as the Board may reasonably require.

23 (c) PURPOSES.—The purposes of a Partnership shall
24 be—

1 (1) to coordinate implementation of the Plan at
2 a regional level; and

3 (2) to develop and carry out fish habitat con-
4 servation projects.

5 (d) APPROVAL.—The Board may approve an applica-
6 tion for a Partnership submitted under subsection (b) if
7 the Board determines that the applicant—

8 (1) includes representatives of a diverse group
9 of public and private partners, including Federal,
10 State, or local governments, nonprofit entities, In-
11 dian tribes, or private individuals, that are focused
12 on conservation of aquatic habitats to achieve results
13 across jurisdictional boundaries and public and pri-
14 vate lands;

15 (2) is organized to promote the health of impor-
16 tant aquatic habitats and distinct geographic areas,
17 keystone fish species, or system types, including res-
18 ervoirs, natural lakes, or estuaries;

19 (3) identifies strategic fish and aquatic habitat
20 priorities for the Partnership area in the form of ge-
21 ographic focus areas or key stressors or impairments
22 to facilitate strategic planning and decisionmaking;

23 (4) is able to address issues and priorities at a
24 nationally significant scale;

1 (5) includes governance structures that reflect
2 the range of all partners and promotes joint strategic
3 planning and decisionmaking by the applicant;

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

9 (7) ensures collaboration in developing a strategic
10 vision and implementation program that is scientifically
11 sound and achievable.

12 **SEC. 6. FISH HABITAT CONSERVATION PROJECTS.**

13 (a) SUBMISSION TO THE BOARD.—A Partnership
14 seeking funding for a fish habitat conservation project
15 shall submit an application to the Board for such funding
16 at such time and in such manner as the Board may reasonably
17 require.

18 (b) RECOMMENDATIONS BY THE BOARD.—Not later
19 than July 1 of each year, the Board shall submit to the
20 Secretary a description, including estimated costs, of each
21 fish habitat conservation project that the Board recommends
22 that the Secretary approve and fund under this
23 Act, in order of priority of the Board's recommendations,
24 for the following fiscal year.

1 (c) CONSIDERATIONS.—The Board shall select each
2 project to be recommended to the Secretary under sub-
3 section (b)—

4 (1) based on a recommendation of the Partner-
5 ship that is, or that will be, participating actively in
6 carrying out the project; and

7 (2) after consideration of—

8 (A) the extent to which the project fulfills
9 a purpose of this Act or a goal of the Plan;

10 (B) the extent to which the project ad-
11 dresses the national priorities set by the Board;

12 (C) the availability of sufficient non-Fed-
13 eral funds to match Federal contributions for
14 the project, as required by subsection (e);

15 (D) the extent to which the project—

16 (i) increases fishing opportunities for
17 the public;

18 (ii) will be carried out through a coop-
19 erative agreement among Federal, State,
20 and local governments, Indian tribes, and
21 private entities;

22 (iii) increases public access to land
23 and waters; and

24 (iv) advances the conservation of fish
25 and wildlife species that are listed, or are

1 candidates to be listed, as threatened spe-
2 cies and endangered species under the En-
3 dangered Species Act of 1973 (16 U.S.C.
4 1531 et seq.); and

5 (E) the substantiality of the character and
6 design of the project.

7 (d) LIMITATIONS.—

8 (1) REQUIREMENTS FOR MONITORING.—No
9 fish habitat conservation project may be rec-
10 ommended by the Board under subsection (b) or
11 provided financial assistance under this Act unless
12 the project includes a monitoring plan designed to—

13 (A) appropriately assess the results of the
14 habitat protection, restoration, or enhancement
15 activities carried out with such assistance;

16 (B) recommend appropriate changes to the
17 project if such assessment substantiates that
18 the project objectives are not being met; and

19 (C) report findings of such assessment to
20 the Board.

21 (2) ACQUISITION OF REAL PROPERTY INTER-
22 ESTS.—

23 (A) IN GENERAL.—No fish habitat con-
24 servation project that will result in the acquisi-
25 tion by the Secretary, in whole or in part, of

any real property interest may be recommended by the Board under subsection (b) or provided financial assistance under this Act unless the project meets the requirements of subparagraph (B).

(B) REQUIREMENTS.—

(i) IN GENERAL.—Any real property interest described in subparagraph (A) may not be conveyed to a State, another public agency, or other entity unless—

(I) the Secretary determines that such State, agency, or other entity is obligated to undertake the management of the property being conveyed in accordance with the purposes of this Act; and

(II) the deed or other instrument of transfer contains provisions for the reversion of title to the property to the United States if such State, agency, or other entity fails to manage the property in accordance with the purposes of this Act.

(ii) ADDITIONAL CONVEYANCE CONDITIONS.—Any real property interest de-

scribed in subparagraph (A) conveyed as described in clause (i) shall be subject to such terms and conditions that will ensure that the interest will be administered for the long-term conservation and management of the aquatic ecosystem and the fish and wildlife dependent thereon.

(e) NON-FEDERAL CONTRIBUTION FOR PROJECTS.—

(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 project will be funded with non-Federal funds.

(2) PROJECTS ON FEDERAL LAND OR WATERS.—Notwithstanding paragraph (1), Federal funds may be used for payment of 100 percent of the costs of a project located on Federal land or waters, including the acquisition of inholdings within such land and waters.

(3) NON-FEDERAL SHARE.—The non-Federal share of the cost of a project may not be derived from a Federal grant program, but may include in-kind contributions and cash.

1 (4) SPECIAL RULE FOR ALASKA NATIVE ORGA-
2 NIZATIONS.—Notwithstanding paragraph (1) or any
3 other provision of law, any funds made available to
4 an Indian tribe pursuant to this Act may be consid-
5 ered non-Federal funds for the purpose of paragraph
6 (1).

7 (f) CONSIDERATION BY THE SECRETARY.—

8 (1) IN GENERAL.—Not later than 180 days
9 after receiving the recommendations of the Board
10 for fish habitat conservation projects under sub-
11 section (b), the Secretary shall approve, reject, or re-
12 order the priority of each such recommendation
13 based on, to the greatest extent practicable, the cri-
14 teria described in subsection (c).

15 (2) FUNDING.—If the Secretary approves a
16 project, the Secretary shall use amounts made avail-
17 able pursuant to an authorization of appropriations
18 in this Act to provide funds to carry out the project.

19 (3) NOTIFICATION BY THE SECRETARY.—If the
20 Secretary rejects or reorders the priority of any
21 project recommended by the Board under subsection
22 (b), the Secretary shall provide to the Board and the
23 appropriate Fish Habitat Conservation Partnership
24 a written statement of the reasons that the Sec-

1 retary rejected or modified the priority of the
2 project.

3 **SEC. 7. NATIONAL FISH HABITAT CONSERVATION PART-**
4 **NERSHIP OFFICE.**

5 (a) REQUIREMENT TO ESTABLISH.—Not later than
6 1 year after the date of the enactment of this Act, the
7 Director shall create the National Fish Habitat Conserva-
8 tion Partnership Office within the United States Fish and
9 Wildlife Service.

10 (b) FUNCTIONS.—The National Fish Habitat Con-
11 servation Partnership Office shall—

12 (1) provide funding for the operational needs of
13 the Fish Habitat Conservation Partnerships, includ-
14 ing funding for activities such as planning, project
15 development and implementation, coordination, mon-
16 itoring, communication, and outreach;

17 (2) facilitate the cooperative development and
18 approval of Partnerships;

19 (3) support the development and implementa-
20 tion of fish habitat conservation projects that are
21 identified as high priorities by the Board;

22 (4) assist the Secretary and the Board in car-
23 rying out this Act;

24 (5) assist the Secretary in carrying out the re-
25 quirements of section 9;

1 (6) facilitate communication, cohesiveness, and
2 efficient operations for the benefit of the Partner-
3 ships and the Board;

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

8 (8) provide support to the Director in the devel-
9 opment and implementation of the interagency oper-
10 ational plan required in subsection (c);

11 (9) provide technical and scientific assistance
12 pursuant to the technical and scientific assistance
13 program required by subsection (d); and

14 (10) coordinate and facilitate the resources and
15 activities of the agencies and departments of the
16 United States to carry out this Act in an efficient
17 manner.

18 (c) INTERAGENCY OPERATIONAL PLAN.—Not later
19 than 1 year after the date of the enactment of this Act
20 and every 5 years thereafter, the Director, in cooperation
21 with the Assistant Administrator and the heads of other
22 appropriate Federal agencies and departments, shall de-
23 velop an interagency operational plan for the National
24 Fish Habitat Conservation Partnership Office that de-
25 scribes—

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

4 (2) any interagency agreements between or
5 among Federal agencies or departments to address
6 such needs.

7 (d) TECHNICAL AND SCIENTIFIC ASSISTANCE.—The
8 Director, in coordination with the Assistance Adminis-
9 trator and the heads of the United States Geological Sur-
10 vey, the Forest Service, and other appropriate Federal
11 agencies and departments, shall develop a technical and
12 scientific assistance program within the National Fish
13 Habitat Conservation Partnership Office—

14 (1) to provide scientific and technical assistance
15 to States, Indian tribes, regions, local communities,
16 and nongovernmental organizations in the develop-
17 ment and implementation of Fish Habitat Conserva-
18 tion Partnerships; and

19 (2) to ensure the availability of expertise to con-
20 duct scientifically based evaluation and reporting of
21 results of fish habitat conservation projects to meet
22 the reporting requirements described in section 10.

23 (e) STAFF AND SUPPORT.—

24 (1) DEPARTMENTS OF THE INTERIOR AND COM-
25 MERCE.—The Director and the Assistant Adminis-

1 trator shall each provide appropriate staff to support
 2 the National Fish Habitat Conservation Partnership
 3 Office.

4 (2) STATES.—The States are encouraged to
 5 provide staff to support the National Fish Habitat
 6 Conservation Partnership Office.

7 (3) DETAILEES AND CONTRACTORS.—The Na-
 8 tional Fish Habitat Conservation Partnership Office
 9 may accept staff or other administrative support
 10 from other entities through interagency details or as
 11 contractors.

12 (4) QUALIFICATIONS.—The members of the
 13 staff of the National Fish Habitat Conservation
 14 Partnership Office shall have education and experi-
 15 ence in the principles of fish, wildlife, and aquatic
 16 habitat conservation.

17 (f) REPORTING.—Not less frequently than once each
 18 year, the Director shall provide to the Board a report on
 19 the activities of the National Fish Habitat Conservation
 20 Partnership Office.

21 **SEC. 8. CONSERVATION OF AQUATIC HABITAT FOR FISH**
 22 **AND OTHER AQUATIC ORGANISMS ON FED-**
 23 **ERAL LAND.**

24 The head of each Federal agency or department re-
 25 sponsible for acquiring, managing, or disposing of Federal

1 land and waters shall, to the extent consistent with the
 2 mission of such agency or department and existing statu-
 3 tory authorities, cooperate with the Assistant Adminis-
 4 trator and the Director to conserve the aquatic habitats
 5 for fish and other aquatic organisms within the land and
 6 waters of each such agency.

7 **SEC. 9. COORDINATION WITH STATES.**

8 The Secretary shall notify and coordinate with the
 9 State agency of a State not later than 30 days prior to
 10 the date that any action is planned or carried out within
 11 the State related to the implementation of this Act.

12 **SEC. 10. ACCOUNTABILITY AND REPORTING.**

13 (a) IMPLEMENTATION REPORTS.—

14 (1) REQUIREMENT FOR REPORTS.—Not later
 15 than 2 years after the date of the enactment of this
 16 Act, and every 2 years thereafter, the Board shall
 17 submit to the appropriate congressional committees
 18 a report on the implementation of this Act and of
 19 the Plan.

20 (2) CONTENT.—Each report submitted under
 21 paragraph (1) shall include—

22 (A) an estimate of the number of acres,
 23 stream miles, or acre feet of aquatic habitat, or
 24 other suitable measures of aquatic habitat, that
 25 was protected, restored, or enhanced under the

1 Plan by Federal, State, or local governments,
2 Indian tribes, or other entities in the United
3 States during the previous 2-year period;

4 (B) a description of the public access to
5 aquatic habitats protected, restored, or created
6 under the Plan during such period;

7 (C) a description of the opportunities for
8 public fishing created under the Plan during
9 such period; and

10 (D) an assessment of the status of fish
11 habitat conservation projects carried out with
12 funds provided under this Act, disaggregated by
13 year, including—

14 (i) a description of the fish habitat
15 conservation projects that the Board rec-
16 ommended under section 6(b);

17 (ii) a description of each such project
18 approved by the Secretary under section
19 6(f), in order of priority of receiving such
20 funding;

21 (iii) a justification for the approval of
22 each such project and for the order of pri-
23 ority for its funding;

24 (iv) a justification for any rejection or
25 reordering of the priority of each such

1 project recommended by the Board under
2 section 6(b) that was based on factors
3 other than the criteria set out in section
4 6(c); and

5 (v) an accounting of expenditures by
6 Federal, State, or local governments, In-
7 dian tribes, or other entities in the United
8 States to carry out such projects.

9 (b) STATUS AND TRENDS REPORT.—Not later than
10 December 31, 2010, and every 5 years thereafter, the
11 Board shall submit to the appropriate congressional com-
12 mittees a report on the status of aquatic habitats in the
13 United States.

14 (c) REVISIONS TO THE PLAN.—Not later than De-
15 cember 31, 2011, and every 5 years thereafter, the Board
16 shall undertake to revise the goals and other elements of
17 the Plan after consideration of each report required by
18 subsection (b).

19 **SEC. 11. REGULATIONS.**

20 The Secretary may promulgate regulations to carry
21 out this Act.

22 **SEC. 12. CONSTRUCTION.**

23 (a) WATER RIGHTS.—

24 (1) IN GENERAL.—Nothing in this Act may be
25 construed—

1 (A) to create a reserved water right, ex-
 2 pressed or implied, in the United States for any
 3 purpose or to affect any water right in existence
 4 on the date of the enactment of this Act; or

5 (B) to affect any Federal or State law in
 6 existence on the date of the enactment of the
 7 Act regarding water quality or water quantity.

8 (2) AUTHORITY TO ACQUIRE WATER RIGHTS.—

9 The Secretary may acquire, under State law, water
 10 rights that are needed to carry out this Act.

11 (b) STATE AUTHORITY.—Nothing in this Act may be
 12 construed—

13 (1) to affect the authority, jurisdiction, or re-
 14 sponsibility of a State to manage, control, or regu-
 15 late fish and wildlife under the laws and regulations
 16 of the State; or

17 (2) to authorize the Secretary to control or reg-
 18 ulate within a State the fishing or hunting of fish
 19 and wildlife within the State.

20 (c) CONSTRUCTION WITH RESPECT TO RIGHTS OF
 21 INDIAN TRIBES.—Nothing in this Act may be construed
 22 to abrogate, abridge, affect, modify, supersede, or alter
 23 any treaty-reserved right or other right of an Indian tribe
 24 as recognized by any other means, including agreements

1 with the United States, Federal law, Executive orders,
2 statutes, and judicial decrees.

3 (d) CONSTRUCTION WITH RESPECT TO SUITS FOR
4 ADJUDICATION OF WATER RIGHTS.—Nothing in this Act
5 diminishes or affects the ability of the Secretary to join
6 an adjudication of rights to the use of water pursuant to
7 subsections (a), (b), and (c) of section 208 of the Depart-
8 ment of Justice Appropriation Act (43 U.S.C. 666).

9 (e) CONSTRUCTION WITH RESPECT TO OTHER AU-
10 THORITIES.—

11 (1) ACQUISITION OF LANDS AND WATERS.—
12 Nothing in this Act may be construed to affect,
13 alter, or modify the authorities, responsibilities, obli-
14 gations, or powers of the Secretary to acquire land
15 or waters or interests therein under any other provi-
16 sion of law.

17 (2) PRIVATE PROPERTY PROTECTION.—Nothing
18 in this Act may be construed to permit funds made
19 available to carry out this Act to be used to acquire
20 any real property or any interest in any real prop-
21 erty without the written consent of each owner of
22 that property or interest in property.

23 (3) MITIGATION.—Nothing in this Act may be
24 construed to permit funds made available to carry
25 out this Act to be used for fish and wildlife mitiga-

1 tion purposes under the Federal Water Pollution
 2 Control Act (33 U.S.C. 1251 et seq.), the Fish and
 3 Wildlife Coordination Act (16 U.S.C. 661 et seq.),
 4 or the Water Resources Development Act of 1986
 5 (Public Law 99–662; 100 Stat. 4082).

6 **SEC. 13. APPLICABILITY OF FEDERAL ADVISORY COM-**
 7 **MITTEE ACT.**

8 Any action taken to coordinate the carrying out of
 9 this Act with the personnel of a State agency shall not
 10 be subject to the Federal Advisory Committee Act (5
 11 U.S.C. App).

12 **SEC. 14. FUNDING.**

13 (a) AUTHORIZATION OF APPROPRIATIONS.—

14 (1) FISH HABITAT CONSERVATION PROJECTS.—

15 There are authorized to be appropriated to the Sec-
 16 retary for each of the fiscal years 2009 through
 17 2013, \$75,000,000 to provide funds for fish habitat
 18 conservation projects approved under section 6(f), of
 19 which 5 percent shall be made available each fiscal
 20 year for projects carried out by Indian tribes.

21 (2) NATIONAL FISH HABITAT CONSERVATION
 22 PARTNERSHIP OFFICE.—There are authorized to be
 23 appropriated to the Secretary for each of the fiscal
 24 years 2009 through 2013, \$3,000,000 or 25 percent
 25 of the amount appropriated for each such fiscal year

1 pursuant to paragraph (1), whichever is greater, for
2 the National Fish Habitat Conservation Partnership
3 Office.

4 (3) PLANNING, REPORTING, AND ADMINISTRA-
5 TIVE EXPENSES.—There are authorized to be appro-
6 priated to the Secretary for each of the fiscal years
7 2009 through 2013, \$300,000 or 4 percent of the
8 amount appropriated for each such year under para-
9 graph (1), whichever is greater, for the Board, the
10 Director, and the Assistant Administrator to utilize
11 for planning and administrative expenses, and to
12 carry out section 10.

13 (4) AVAILABILITY OF FUNDS.—Funds made
14 available pursuant to this subsection shall remain
15 available until expended.

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

18 (1) upon the recommendation of the Board, and
19 notwithstanding sections 6304 and 6305 of title 31,
20 United States Code, or the Federal Financial Assist-
21 ance Management Improvement Act of 1999 (Public
22 Law 106–107; 31 U.S.C. 6101 note) enter into a co-
23 operative agreement or contract with a Fish Habitat
24 Conservation Partnership for fish habitat conserva-
25 tion, restoration, and enhancement projects;

1 (2) apply for, accept, and use grants from any
 2 person or entity to carry out the purposes of this
 3 Act; and

4 (3) make funds available to any Federal agency
 5 or department to be used by that agency or depart-
 6 ment to award grants for any fish habitat protec-
 7 tion, restoration, and enhancement project that the
 8 Secretary determines to be consistent with this Act.

9 (c) DONATIONS.—

10 (1) IN GENERAL.—The Secretary may—

11 (A) enter into an agreement with any orga-
 12 nization described in section 501(c)(3) of the
 13 Internal Revenue Code of 1986 to solicit private
 14 donations to carry out the purposes and policies
 15 of this Act; and

16 (B) accept donations of funds, property,
 17 and services for use in carrying out the pur-
 18 poses and policies of this Act.

19 (2) TREATMENT OF DONATIONS.—Donations
 20 accepted under this section shall be considered as
 21 gifts or bequests to, or for the use of, the United
 22 States and may be used directly by the Secretary or
 23 provided to other Federal agencies or departments
 24 through interagency agreements.

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