

112TH CONGRESS  
2D SESSION

# H. R. 5931

To ensure the continuation of successful fisheries mitigation programs, and  
for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 2012

Mr. CRAWFORD introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Natural 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

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## A BILL

To ensure the continuation of successful fisheries mitigation  
programs, 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 “National Mitigation  
5 Fisheries Coordination Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The operation of dams and other water di-  
9 version projects are for the benefit of the American

1 public. They provide inexpensive energy, flood con-  
2 trol, water storage for municipal and agricultural  
3 purposes, and opportunities for recreational boating  
4 and enjoyment. The construction and operation of  
5 these Federal water resources development projects  
6 have had impacts on many water systems and their  
7 respective fish populations, resulting in the need to  
8 build and operate fish hatcheries to mitigate for  
9 aquatic resources affected by these projects.

10 (2) In accordance with the Fish and Wildlife  
11 Act of 1956 (16 U.S.C. 742a et seq.), the Fish and  
12 Wildlife Coordination Act (16 U.S.C. 661 et seq.),  
13 the Watershed Protection and Flood Prevention Act  
14 (16 U.S.C. 1001 et seq.), and the National Environ-  
15 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.),  
16 the United States Fish and Wildlife Service has es-  
17 tablished policy (501 FW 2) to seek to mitigate for  
18 fish, wildlife, and their habitats, and uses thereof,  
19 from the effects of land and water developments.

20 (3) The Service currently operates fish hatch-  
21 eries that are involved in mitigation fishery activities  
22 related to construction and operation of Federal  
23 water resources development projects.

24 (4) Inconsistency in authorities to construct  
25 and operate Federal water resources development

1 projects has led to a myriad of mechanisms for fund-  
2 ing and conducting Federal mitigation fishery activi-  
3 ties. In most cases, Federal water project develop-  
4 ment agencies fund mitigation fishery costs. In some  
5 cases, the Service expends its appropriations to off-  
6 set or completely pay for mitigation fishery costs.

7 (5) The Service is the Federal agency through  
8 which a water development agency will negotiate to  
9 provide reimbursement funding or goods and serv-  
10 ices (or both) to compensate for the impact of Fed-  
11 eral water development projects on aquatic re-  
12 sources.

13 (6) The water development agency should bear  
14 the financial responsibility for mitigation fishery  
15 costs incurred by the Service. Where applicable, the  
16 water development agency should include the costs  
17 of fisheries mitigation caused by a particular water  
18 development project as set forth in a fishery mitiga-  
19 tion plan, when eliciting reimbursement from a  
20 power management agency for the ongoing cost of  
21 maintaining and operating that water development  
22 project.

1 **SEC. 3. MITIGATION FISHERY ACTIVITIES.**

2 (a) IMPOSITION OF CHARGES.—The Director of the  
3 Service shall impose a charge for conducting mitigation  
4 fishery activities.

5 (b) FISHERY MITIGATION PLANS.—

6 (1) DEVELOPMENT.—A charge imposed by the  
7 Service under subsection (a) shall be paid by a water  
8 development agency in accordance with a fishery  
9 mitigation plan developed and approved by the Di-  
10 rector and the head of the agency.

11 (2) CONTENTS.—A fishery mitigation plan de-  
12 veloped under this subsection shall—

13 (A) describe the long-term goals and an-  
14 nual targets under which the Service will con-  
15 duct mitigation fishery activities in connection  
16 with projects carried out by a water develop-  
17 ment agency;

18 (B) establish charges to be imposed by the  
19 Service on the agency for conducting the miti-  
20 gation fishery activities; and

21 (C) include the terms under which the  
22 agency will make payments on the charges to  
23 the Service.

24 (3) PARTICIPATION OF STATES AND INDIAN  
25 TRIBES.—A fishery mitigation plan under this sec-

1       tion shall be developed in cooperation and coordina-  
2       tion with affected States and Indian tribes.

3           (4) RENEGOTIATION.—The Director of the  
4       Service and the head of a water development agency  
5       shall renegotiate a fishery mitigation plan under this  
6       subsection every 3 years to adjust for changing miti-  
7       gation fishery costs covered by the plan.

8           (c) AMOUNT OF CHARGES.—Charges imposed by the  
9       Service for conducting mitigation fishery activities shall be  
10      reasonably related to the mitigation fishery costs associ-  
11      ated with the activities.

12      (d) PAYMENT OF CHARGES.—

13           (1) IN GENERAL.—On or before the first day of  
14      each fiscal year beginning after September 30, 2012,  
15      a water development agency shall make a payment  
16      to the Service for that fiscal year as required under  
17      a fishery mitigation plan developed by the Service  
18      and the agency under subsection (b).

19           (2) CREDITING OF PAYMENTS; AVAILABILITY  
20      OF AMOUNTS.—Funds paid to the Service under this  
21      subsection shall—

22           (A) be credited to the appropriation of the  
23      Service initially charged for providing the serv-  
24      ice for which the payment is being made;

1 (B) be available to the Service for expendi-  
2 ture in amounts specified in appropriations  
3 Acts; and

4 (C) remain available until expended.

5 (3) PROJECTS WITHOUT FISHERY MITIGATION  
6 PLANS.—In the absence of a fishery mitigation plan,  
7 the Service may conduct mitigation fishery activities  
8 and receive funding from a water development agen-  
9 cy for the activities based on the terms and condi-  
10 tions that applied with respect to the activities in the  
11 prior fiscal year.

12 (e) SERVICES PROVIDED TO POWER MANAGEMENT  
13 AGENCIES.—If a water development agency collects reim-  
14 bursements from a power management agency for the on-  
15 going costs of maintaining and operating a Federal water  
16 resources development project, the water development  
17 agency may include, in those ongoing costs, the costs asso-  
18 ciated with the project’s fishery mitigation activities.

19 (f) DEFINITIONS.—In this section, the following defi-  
20 nitions apply:

21 (1) MITIGATION FISHERY ACTIVITIES.—The  
22 term “mitigation fishery activities” means rearing  
23 and stocking of native and nonnative fish to replace  
24 or maintain fishery resources or harvest levels (or  
25 both) lost as a result of a Federal water resources

1 development project, and includes project planning,  
2 population assessment and evaluation, genetic moni-  
3 toring, broodstock development, and fish health sam-  
4 pling.

5 (2) MITIGATION FISHERY COSTS.—The term  
6 “mitigation fishery costs” means the expenditures  
7 necessary to operate, maintain, and rehabilitate miti-  
8 gation fishery facilities and to conduct mitigation  
9 fishery activities, and includes personnel, transpor-  
10 tation, utilities, contractual services, fish feed, sup-  
11 plies, equipment, routine maintenance, deferred  
12 maintenance, fish eggs, technical support, fish  
13 health, management and administration, planning,  
14 and hatchery product evaluations.

15 (3) MITIGATION FISHERY FACILITY.—The term  
16 “mitigation fishery facility” means a facility de-  
17 scribed in subsection (g) that is owned and operated  
18 by the Service through the National Fish Hatchery  
19 System for the purpose, either wholly or substan-  
20 tially in part, of conducting mitigation fishery activi-  
21 ties.

22 (4) SERVICE.—The term “Service” means the  
23 United States Fish and Wildlife Service.

24 (5) WATER DEVELOPMENT AGENCY.—The term  
25 “water development agency” means the Army Corps

1 of Engineers, the Bureau of Reclamation, or the  
2 Tennessee Valley Authority.

3 (g) LISTING OF MITIGATION FISHERY FACILITIES.—

4 The mitigation fishery facilities referred to in subsection  
5 (f) are as follows:

6 (1) In Arkansas—

7 (A) Greers Ferry National Fish Hatchery;

8 and

9 (B) Norfork National Fish Hatchery.

10 (2) In California—

11 (A) California-Nevada Fish Health Center;

12 and

13 (B) Tehama-Colusa Fish Facility.

14 (3) In Colorado, Hotchkiss National Fish  
15 Hatchery.

16 (4) In Georgia—

17 (A) Chattahoochee Forest National Fish  
18 Hatchery; and

19 (B) Warm Springs Fish Health Center.

20 (5) In Kentucky, Wolf Creek National Fish  
21 Hatchery.

22 (6) In Missouri, Neosho National Fish Hatch-  
23 ery.

24 (7) In Montana—

25 (A) Ennis National Fish Hatchery;

1 (B) Bozeman Fish Health Center; and

2 (C) Creston National Fish Hatchery.

3 (8) In Nevada, Lahontan National Fish Hatch-  
4 ery.

5 (9) In North Dakota—

6 (A) Garrison Dam National Fish Hatch-  
7 ery; and

8 (B) Valley City National Fish Hatchery.

9 (10) In Pennsylvania, Lamar Fish Health Cen-  
10 ter.

11 (11) In South Dakota, Gavins Point National  
12 Fish Hatchery.

13 (12) In Tennessee—

14 (A) Dale Hollow National Fish Hatchery;  
15 and

16 (B) Erwin National Fish Hatchery.

17 (13) In Utah, Jones Hole National Fish Hatch-  
18 ery.

19 (14) In West Virginia, White Sulphur Springs  
20 National Fish Hatchery.

21 (15) In Wisconsin, LaCrosse Fish Health Cen-  
22 ter.

23 (16) In Wyoming—

24 (A) Jackson National Fish Hatchery; and

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(B) Saratoga National Fish Hatchery.

