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[Report No. 113–192]

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

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2014

Mr. CARDIN (for himself, Mr. CRAPO, and Mr. BEGICH) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

JUNE 5, 2014

Reported by Mrs. BOXER, without amendment

A BILL

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

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

4 (b) TABLE OF CONTENTS.—The table of contents of
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings; purpose.
- Sec. 3. Definitions.
- Sec. 4. National Fish Habitat Board.
- Sec. 5. Fish habitat partnerships.
- Sec. 6. Fish habitat conservation projects.
- Sec. 7. National Fish Habitat Conservation Partnership Program.
- Sec. 8. Technical and scientific assistance.
- Sec. 9. Conservation of fish habitat on Federal land.
- Sec. 10. Coordination with States and Indian tribes.
- Sec. 11. Accountability and reporting.
- Sec. 12. Effect of Act.
- Sec. 13. Nonapplicability of Federal Advisory Committee Act.
- Sec. 14. Funding.

6 **SEC. 2. FINDINGS; PURPOSE.**

7 (a) FINDINGS.—Congress finds that—

8 (1) healthy populations of fish depend on the
9 conservation, protection, restoration, and enhance-
10 ment of fish habitats in the United States;

11 (2) fish habitats (including wetlands, streams,
12 rivers, lakes, estuaries, and coastal and marine habi-
13 tats) perform numerous valuable environmental
14 functions that sustain environmental, social, and cul-
15 tural values, including recycling nutrients, purifying
16 water, attenuating floods, augmenting and maintain-
17 ing stream flows, recharging ground water, acting as
18 primary producers in the food chain, and providing

1 essential and significant habitat for plants, fish,
2 wildlife, and other dependent species;

3 (3) the extensive and diverse fish habitat re-
4 sources of the United States are of enormous signifi-
5 cance to the economy of the United States, pro-
6 viding—

7 (A) recreation for 60,000,000 anglers;

8 (B) more than 828,000 jobs and approxi-
9 mately \$115,000,000,000 in economic impact
10 each year relating to recreational fishing; and

11 (C) approximately 575,000 jobs and an ad-
12 ditional \$36,000,000,000 in economic impact
13 each year relating to commercial fishing;

14 (4) at least 40 percent of all threatened species
15 and endangered species in the United States are di-
16 rectly dependent on fish habitats;

17 (5) certain fish species are considered to be eco-
18 logical indicators of fish habitat quality, such that
19 the presence of those species reflects high-quality
20 habitat for fish species;

21 (6) loss and degradation of fish habitat, ripar-
22 ian habitat, water quality, and water volume caused
23 by activities such as alteration of watercourses,
24 stream blockages, water withdrawals and diversions,

erosion, pollution, sedimentation, and destruction or modification of wetlands have—

(A) caused significant declines in fish populations throughout the United States, especially declines in native fish populations; and

(B) resulted in economic losses to the United States;

(7)(A) providing for the conservation and sustainability of fish populations has not been fully realized, despite federally funded fish and wildlife restoration programs and other activities intended to conserve fish habitat; and

(B) conservation and sustainability may be significantly advanced through a renewed commitment and sustained, cooperative efforts that are complementary to existing fish and wildlife restoration programs and clean water programs;

(8) the National Fish Habitat Action Plan provides a framework for maintaining and restoring fish habitats to perpetuate populations of fish species;

(9) the United States can achieve significant progress toward providing fish habitats for the conservation and restoration of fish species through a voluntary, nonregulatory incentive program that is

1 based on technical and financial assistance provided
2 by the Federal Government;

3 (10) the creation of partnerships between local
4 citizens, Indian tribes, Alaska Native organizations,
5 corporations, nongovernmental organizations, and
6 Federal, State, and tribal agencies is critical to the
7 success of activities to restore fish habitats;

8 (11) the Federal Government has numerous
9 land and water management agencies that are crit-
10 ical to the implementation of the National Fish
11 Habitat Action Plan, including—

12 (A) the United States Fish and Wildlife
13 Service;

14 (B) the Bureau of Land Management;

15 (C) the National Park Service;

16 (D) the Bureau of Reclamation;

17 (E) the Bureau of Indian Affairs;

18 (F) the National Marine Fisheries Service;

19 (G) the Forest Service;

20 (H) the Natural Resources Conservation
21 Service; and

22 (I) the Environmental Protection Agency;

23 (12) the United States Fish and Wildlife Serv-
24 ice, the Forest Service, the Bureau of Land Manage-

1 ment, and the National Marine Fisheries Service
2 each play a vital role in—

3 (A) the protection, restoration, and en-
4 hancement of the fish communities and fish
5 habitats in the United States; and

6 (B) the development, operation, and long-
7 term success of fish habitat partnerships and
8 project implementation;

9 (13) the United States Geological Survey, the
10 United States Fish and Wildlife Service, and the
11 National Marine Fisheries Service each play a vital
12 role in scientific evaluation, data collection, and
13 mapping for fishery resources in the United States;

14 (14) the State and Territorial fish and wildlife
15 agencies play a vital role in—

16 (A) the protection, restoration, and en-
17 hancement of the fish communities and fish
18 habitats in their respective States and terri-
19 tories; and

20 (B) the development, operation, and long-
21 term success of fish habitat partnerships and
22 project implementation; and

23 (15) many of the programs for conservation on
24 private farmland, ranchland, and forestland that are
25 carried out by the Secretary of Agriculture, includ-

1 ing the Natural Resources Conservation Service and
2 the State and Private Forestry programs of the For-
3 est Service, are able to significantly contribute to the
4 implementation of the National Fish Habitat Action
5 Plan through the engagement of private landowners.

6 (b) PURPOSE.—The purpose of this Act is to encour-
7 age partnerships among public agencies and other inter-
8 ested parties consistent with the mission and goals of the
9 National Fish Habitat Action Plan—

10 (1) to promote intact and healthy fish habitats;

11 (2) to improve the quality and quantity of fish
12 habitats and overall health of fish species;

13 (3) to increase the quality and quantity of fish
14 habitats that support a broad natural diversity of
15 fish and other aquatic species;

16 (4) to improve fish habitats in a manner that
17 leads to improvement of the annual economic output
18 from recreational, subsistence, and commercial fish-
19 ing;

20 (5) to enhance fish and wildlife-dependent
21 recreation;

22 (6) to coordinate and facilitate activities carried
23 out by Federal departments and agencies under the
24 leadership of—

1 (A) the Director of the United States Fish
2 and Wildlife Service;

3 (B) the Assistant Administrator for Fish-
4 eries of the National Oceanic and Atmospheric
5 Administration; and

6 (C) the Director of the United States Geo-
7 logical Survey; and

8 (7) to achieve other purposes in accordance
9 with the mission and goals of the National Fish
10 Habitat Action Plan.

11 **SEC. 3. DEFINITIONS.**

12 In this Act:

13 (1) APPROPRIATE CONGRESSIONAL COMMIT-
14 TEES.—The term “appropriate congressional com-
15 mittees” means—

16 (A) the Committee on Commerce, Science,
17 and Transportation and the Committee on En-
18 vironment and Public Works of the Senate; and

19 (B) the Committee on Natural Resources
20 of the House of Representatives.

21 (2) ASSISTANT ADMINISTRATOR.—The term
22 “Assistant Administrator” means the Assistant Ad-
23 ministrator for Fisheries of the National Oceanic
24 and Atmospheric Administration.

1 (3) BOARD.—The term “Board” means the Na-
2 tional Fish Habitat Board established by section
3 4(a)(1).

4 (4) CONSERVATION; CONSERVE; MANAGE; MAN-
5 AGEMENT.—The terms “conservation”, “conserve”,
6 “manage”, and “management” mean to maintain,
7 sustain, and, where practicable, restore and enhance,
8 using methods and procedures associated with mod-
9 ern scientific resource programs (including protec-
10 tion, research, census, law enforcement, habitat
11 management, propagation, live trapping and trans-
12 plantation, and the regulated harvesting of fish)—

13 (A) a healthy population of fish;

14 (B) a habitat required to sustain fish and
15 fish populations; or

16 (C) a habitat required to sustain fish pro-
17 ductivity.

18 (5) DIRECTOR.—The term “Director” means
19 the Director of the United States Fish and Wildlife
20 Service.

21 (6) FISH.—

22 (A) IN GENERAL.—The term “fish” means
23 any freshwater, diadromous, estuarine, or ma-
24 rine finfish or shellfish.

1 (B) INCLUSIONS.—The term “fish” in-
 2 cludes the egg, spawn, spat, larval, and other
 3 juvenile stages of an organism described in sub-
 4 paragraph (A).

5 (7) FISH AND WILDLIFE-DEPENDENT RECRE-
 6 ATION.—The term “fish and wildlife-dependent
 7 recreation” means a use involving hunting, fishing,
 8 wildlife observation and photography, or conserva-
 9 tion education and interpretation.

10 (8) FISH HABITAT.—

11 (A) IN GENERAL.—The term “fish habi-
 12 tat” means an area on which fish depend to
 13 carry out the life processes of the fish, includ-
 14 ing an area used by the fish for spawning, incu-
 15 bation, nursery, rearing, growth to maturity,
 16 food supply, or migration.

17 (B) INCLUSIONS.—The term “fish habitat”
 18 may include—

19 (i) an area immediately adjacent to an
 20 aquatic environment, if the immediately
 21 adjacent area—

22 (I) contributes to the quality and
 23 quantity of water sources; or

24 (II) provides public access for the
 25 use of fishery resources; and

1 (ii) an area inhabited by saltwater
2 and brackish fish, including an offshore ar-
3 tificial marine reef in the Gulf of Mexico.

4 (9) FISH HABITAT CONSERVATION PROJECT.—

5 (A) IN GENERAL.—The term “fish habitat
6 conservation project” means a project that—

7 (i) is submitted to the Board by a
8 Partnership and approved by the Secretary
9 under section 6; and

10 (ii) provides for the conservation or
11 management of a fish habitat.

12 (B) INCLUSIONS.—The term “fish habitat
13 conservation project” includes—

14 (i) the provision of technical assist-
15 ance to a State, Indian tribe, or local com-
16 munity by the National Fish Habitat Con-
17 servation Partnership Program or any
18 other agency to facilitate the development
19 of strategies and priorities for the con-
20 servation of fish habitats; or

21 (ii) the voluntary obtaining of a real
22 property interest in land or water, by a
23 State, local government, or other non-Fed-
24 eral entity, including water rights, in ac-
25 cordance with terms and conditions that

1 ensure that the real property will be ad-
2 ministered for the long-term conservation
3 of—

4 (I) the land or water; and

5 (II) the fish dependent on the
6 land or water.

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

11 (11) NATIONAL FISH HABITAT ACTION PLAN.—
12 The term “National Fish Habitat Action Plan”
13 means the National Fish Habitat Action Plan dated
14 April 24, 2006, and any subsequent revisions or
15 amendments to that plan.

16 (12) PARTNERSHIP.—The term “Partnership”
17 means an entity designated by the Board as a Fish
18 Habitat Conservation Partnership pursuant to sec-
19 tion 5(a).

20 (13) REAL PROPERTY INTEREST.—The term
21 “real property interest” means an ownership interest
22 in—

23 (A) land;

24 (B) water (including water rights); or

1 (C) a building or object that is perma-
2 nently affixed to land.

3 (14) SECRETARY.—The term “Secretary”
4 means the Secretary of the Interior.

5 (15) STATE.—The term “State” means—

6 (A) each of the several States;

7 (B) the District of Columbia;

8 (C) the Commonwealth of Puerto Rico;

9 (D) Guam;

10 (E) the Virgin Islands; and

11 (F) any other territory or possession of the
12 United States.

13 (16) STATE AGENCY.—The term “State agen-
14 cy” means—

15 (A) the fish and wildlife agency of a State;

16 (B) any department or division of a de-
17 partment or agency of a State that manages in
18 the public trust the inland or marine fishery re-
19 sources or sustains the habitat for those fishery
20 resources of the State pursuant to State law or
21 the constitution of the State; or

22 (C) the fish and wildlife agency of the
23 Commonwealth of Puerto Rico, Guam, the Vir-
24 gin Islands, or any other territory or possession
25 of the United States.

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

2 (a) ESTABLISHMENT.—

3 (1) FISH HABITAT BOARD.—There is estab-
4 lished a board, to be known as the “National Fish
5 Habitat Board”, whose duties are—

6 (A) to promote, oversee, and coordinate the
7 implementation of this Act and the National
8 Fish Habitat Action Plan;

9 (B) to establish national goals and prior-
10 ities for fish habitat conservation;

11 (C) to approve Partnerships; and

12 (D) to review and make recommendations
13 regarding fish habitat conservation projects.

14 (2) MEMBERSHIP.—The Board shall be com-
15 posed of 28 members, of whom—

16 (A) 1 shall be the Director;

17 (B) 1 shall be the Assistant Administrator;

18 (C) 1 shall be the Chief of the Natural Re-
19 sources Conservation Service;

20 (D) 1 shall be the Chief of the Forest
21 Service;

22 (E) 1 shall be the Assistant Administrator
23 for Water of the Environmental Protection
24 Agency;

25 (F) 1 shall be the President of the Associa-
26 tion of Fish and Wildlife Agencies;

1 (G) 1 shall be the Secretary of the Board
2 of Directors of the National Fish and Wildlife
3 Foundation appointed pursuant to section
4 3(g)(2)(B) of the National Fish and Wildlife
5 Foundation Establishment Act (16 U.S.C.
6 3702(g)(2)(B));

7 (H) 4 shall be representatives of State
8 agencies, 1 of whom shall be nominated by a re-
9 gional association of fish and wildlife agencies
10 from each of the Northeast, Southeast, Mid-
11 west, and Western regions of the United States;

12 (I) 1 shall be a representative of the Com-
13 monwealth of Puerto Rico, Guam, the Virgin
14 Islands, or any other territory or possession of
15 the United States;

16 (J) 1 shall be a representative of the
17 American Fisheries Society;

18 (K) 2 shall be representatives of Indian
19 tribes, of whom—

20 (i) 1 shall represent Indian tribes
21 from the State of Alaska; and

22 (ii) 1 shall represent Indian tribes
23 from the other States;

24 (L) 1 shall be a representative of the Re-
25 gional Fishery Management Councils estab-

lished under section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852);

(M) 1 shall be a representative of the Marine Fisheries Commissions, which is composed of—

(i) the Atlantic States Marine Fisheries Commission;

(ii) the Gulf States Marine Fisheries Commission; and

(iii) the Pacific States Marine Fisheries Commission;

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

(O) 10 shall be representatives selected from each of the following groups:

(i) The recreational sportfishing industry.

(ii) The commercial fishing industry.

(iii) Marine recreational anglers.

(iv) Freshwater recreational anglers.

(v) Terrestrial resource conservation organizations.

1 (vi) Aquatic resource conservation or-
2 ganizations.

3 (vii) The livestock and poultry produc-
4 tion industry.

5 (viii) The land development industry.

6 (ix) The row crop industry.

7 (x) Natural resource commodity inter-
8 ests, such as petroleum or mineral extrac-
9 tion.

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

12 (4) TRAVEL EXPENSES.—A member of the
13 Board may be allowed travel expenses, including per
14 diem in lieu of subsistence, at rates authorized for
15 an employee of an agency under subchapter I of
16 chapter 57 of title 5, United States Code, while
17 away from the home or regular place of business of
18 the member in the performance of the duties of the
19 Board.

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 any of subparagraphs (H) through (O) of
24 subsection (a)(2) shall serve for a term of 3 years.

25 (2) INITIAL BOARD MEMBERSHIP.—

1 (A) IN GENERAL.—Not later than 180
 2 days after the date of enactment of this Act,
 3 the representatives of the board established by
 4 the National Fish Habitat Action Plan shall ap-
 5 point the initial members of the Board de-
 6 scribed in subparagraphs (H), (I), (J), (L),
 7 (M), (N), and (O) of subsection (a)(2).

8 (B) TRIBAL REPRESENTATIVES.—Not
 9 later than 180 days after the enactment of this
 10 Act, the Secretary shall provide to the board es-
 11 tablished by the National Fish Habitat Action
 12 Plan a recommendation of not less than 4 tribal
 13 representatives, from which that board shall ap-
 14 point 2 representatives pursuant to subpara-
 15 graph (K) of subsection (a)(2).

16 (3) TRANSITIONAL TERMS.—Of the members
 17 described in subsection (a)(2)(O) initially appointed
 18 to the Board—

19 (A) 4 shall be appointed for a term of 1
 20 year;

21 (B) 4 shall be appointed for a term of 2
 22 years; and

23 (C) 3 shall be appointed for a term of 3
 24 years.

25 (4) VACANCIES.—

1 (A) IN GENERAL.—A vacancy of a member
 2 of the Board described in subparagraphs (H),
 3 (I), (J), (L), (M), (N), and (O) of subsection
 4 (a)(2) shall be filled by an appointment made
 5 by the remaining members of the Board.

6 (B) TRIBAL REPRESENTATIVES.—Fol-
 7 lowing a vacancy of a member of the Board de-
 8 scribed in subparagraph (K) of subsection
 9 (a)(2), the Secretary shall recommend to the
 10 Board a list of not less than 4 tribal represent-
 11 atives, from which the remaining members of
 12 the Board shall appoint a representative to fill
 13 the vacancy.

14 (5) CONTINUATION OF SERVICE.—An individual
 15 whose term of service as a member of the Board ex-
 16 pires may continue to serve on the Board until a
 17 successor is appointed.

18 (6) REMOVAL.—If a member of the Board de-
 19 scribed in any of subparagraphs (H) through (O) of
 20 subsection (a)(2) misses 3 consecutive regularly
 21 scheduled Board meetings, the members of the
 22 Board may—

23 (A) vote to remove that member; and

24 (B) appoint another individual in accord-
 25 ance with paragraph (4).

1 (c) CHAIRPERSON.—

2 (1) IN GENERAL.—The Board shall elect a
3 member of the Board to serve as Chairperson of the
4 Board.

5 (2) TERM.—The Chairperson of the Board shall
6 serve for a term of 3 years.

7 (d) MEETINGS.—

8 (1) IN GENERAL.—The Board shall meet—

9 (A) at the call of the Chairperson; but

10 (B) not less frequently than twice each cal-
11 endar year.

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

14 (e) PROCEDURES.—

15 (1) IN GENERAL.—The Board shall establish
16 procedures to carry out the business of the Board,
17 including—

18 (A) a requirement that a quorum of the
19 members of the Board be present to transact
20 business;

21 (B) a requirement that no recommenda-
22 tions may be adopted by the Board, except by
23 the vote of $\frac{2}{3}$ of all members;

1 (C) procedures for establishing national
2 goals and priorities for fish habitat conservation
3 for the purposes of this Act;

4 (D) procedures for designating Partner-
5 ships under section 5; and

6 (E) procedures for reviewing, evaluating,
7 and making recommendations regarding fish
8 habitat conservation projects.

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

11 **SEC. 5. FISH HABITAT PARTNERSHIPS.**

12 (a) AUTHORITY TO APPROVE.—The Board may ap-
13 prove and designate Fish Habitat Partnerships in accord-
14 ance with this section.

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

17 (1) to coordinate the implementation of the Na-
18 tional Fish Habitat Action Plan at a regional level;

19 (2) to identify strategic priorities for fish habi-
20 tat conservation;

21 (3) to recommend to the Board fish habitat
22 conservation projects that address a strategic pri-
23 ority of the Board; and

24 (4) to develop and carry out fish habitat con-
25 servation projects.

1 (c) APPLICATIONS.—An entity seeking to be des-
 2 ignated as a Partnership shall submit to the Board an
 3 application at such time, in such manner, and containing
 4 such information as the Board may reasonably require.

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

8 (1) identifies representatives to provide support
 9 and technical assistance to the Partnership from a
 10 diverse group of public and private partners, which
 11 may include Federal, State, or local governments,
 12 nonprofit entities, Indian tribes, and private individ-
 13 uals, that are focused on conservation of fish habi-
 14 tats to achieve results across jurisdictional bound-
 15 aries on public and private land;

16 (2) is organized to promote the health of impor-
 17 tant fish habitats and distinct geographical areas,
 18 important fish species, or system types, including
 19 reservoirs, natural lakes, coastal and marine envi-
 20 ronments, and estuaries;

21 (3) identifies strategic fish and fish habitat pri-
 22 orities for the Partnership area in the form of geo-
 23 graphical focus areas or key stressors or impair-
 24 ments to facilitate strategic planning and decision-
 25 making;

1 (4) is able to address issues and priorities on a
2 nationally significant scale;

3 (5) includes a governance structure that—

4 (A) reflects the range of all partners; and

5 (B) promotes joint strategic planning and
6 decisionmaking by the applicant;

7 (6) demonstrates completion of, or significant
8 progress toward the development of, a strategic plan
9 to address the decline in fish populations, rather
10 than simply treating symptoms in accordance with
11 the National Fish Habitat Action Plan; and

12 (7) promotes collaboration in developing a stra-
13 tegic vision and implementation program that is sci-
14 entifically sound and achievable.

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

16 (a) SUBMISSION TO BOARD.—Not later than March
17 31 of each calendar year, each Partnership shall submit
18 to the Board a list of fish habitat conservation projects
19 recommended by the Partnership for annual funding
20 under this Act.

21 (b) RECOMMENDATIONS BY BOARD.—Not later than
22 July 1 of each calendar year, the Board shall submit to
23 the Secretary a description, including estimated costs, of
24 each fish habitat conservation project that the Board rec-

1 omends that the Secretary approve and fund under this
2 Act, in order of priority, for the following fiscal year.

3 (c) CONSIDERATIONS.—The Board shall select each
4 fish habitat conservation project to be recommended to the
5 Secretary under subsection (b)—

6 (1) based on a recommendation of the Partner-
7 ship that is, or will be, participating actively in car-
8 rying out the fish habitat conservation project; and

9 (2) after taking into consideration—

10 (A) the extent to which the fish habitat
11 conservation project fulfills a purpose of this
12 Act or a goal of the National Fish Habitat Ac-
13 tion Plan;

14 (B) the extent to which the fish habitat
15 conservation project addresses the national pri-
16 orities established by the Board;

17 (C) the availability of sufficient non-Fed-
18 eral funds to match Federal contributions for
19 the fish habitat conservation project, as re-
20 quired by subsection (e);

21 (D) the extent to which the fish habitat
22 conservation project—

23 (i) increases recreational fishing op-
24 portunities for the public;

1 (ii) will be carried out through a coop-
 2 erative agreement among Federal, State,
 3 and local governments, Indian tribes, and
 4 private entities;

5 (iii) increases public access to land or
 6 water for fish and wildlife-dependent rec-
 7 reational opportunities;

8 (iv) advances the conservation of fish
 9 and wildlife species that have been identi-
 10 fied by the States as species in greatest
 11 need of conservation;

12 (v) where appropriate, advances the
 13 conservation of fish and fish habitats
 14 under the Magnuson-Stevens Fishery Con-
 15 servation and Management Act (16 U.S.C.
 16 1801 et seq.), other relevant Federal law,
 17 and State wildlife action plans; and

18 (vi) promotes strong and healthy fish
 19 habitats such that desired biological com-
 20 munities are able to persist and adapt; and

21 (E) the substantiality of the character and
 22 design of the fish habitat conservation project.

23 (d) LIMITATIONS.—

24 (1) REQUIREMENTS FOR EVALUATION.—No
 25 fish habitat conservation project may be rec-

ommended by the Board under subsection (b) or
 provided financial assistance under this Act unless
 the fish habitat conservation project includes an
 evaluation plan designed—

(A) to appropriately assess the biological,
 ecological, or other results of the habitat protec-
 tion, restoration, or enhancement activities car-
 ried out using the assistance;

(B) to reflect appropriate changes to the
 fish habitat conservation project if the assess-
 ment substantiates that the fish habitat con-
 servation project objectives are not being met;

(C) to identify improvements to existing
 recreational fishing opportunities and the over-
 all economic benefits for the local community of
 the fish habitat conservation project; and

(D) to require the submission to the Board
 of a report describing the findings of the assess-
 ment.

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

(A) ACQUISITION OF REAL PROPERTY IN-
 TERESTS.—

(i) IN GENERAL.—Subject to clause

(ii), a State, local government, or other

1 non-Federal entity shall be eligible to re-
2 ceive funds under this Act for the acquisi-
3 tion of real property.

4 (ii) RESTRICTION.—No fish habitat
5 conservation project that will result in the
6 acquisition by a State, local government, or
7 other non-Federal entity, in whole or in
8 part, of any real property interest may be
9 recommended by the Board under sub-
10 section (b) or provided financial assistance
11 under this Act unless the project meets the
12 requirements of subparagraph (B).

13 (B) REQUIREMENTS.—

14 (i) IN GENERAL.—A real property in-
15 terest may not be acquired pursuant to a
16 fish habitat conservation project by a
17 State, local government, or other non-Fed-
18 eral entity unless—

19 (I) the Secretary determines that
20 the State, local government, or other
21 non-Federal entity is obligated to un-
22 dertake the management of the real
23 property being acquired in accordance
24 with the purposes of this Act; and

1 (II) the owner of the real prop-
2 erty authorizes the State, local gov-
3 ernment, or other non-Federal entity
4 to acquire the real property.

5 (ii) ADDITIONAL CONDITIONS.—Any
6 real property interest acquired by a State,
7 local government, or other non-Federal en-
8 tity pursuant to a fish habitat conservation
9 project shall be subject to terms and condi-
10 tions established by the Secretary pro-
11 viding for the long-term conservation and
12 management of the fish habitat and the
13 fish and wildlife dependent on that habitat.

14 (iii) PUBLIC ACCESS.—

15 (I) IN GENERAL.—Any acquisi-
16 tion of fee title to real property by a
17 State, local government, or non-Fed-
18 eral entity pursuant to this Act shall,
19 where applicable and consistent with
20 State laws and regulations, provide
21 public access to that real property for
22 compatible fish and wildlife-dependent
23 recreation.

24 (II) PUBLIC ACCESS.—Public ac-
25 cess to real property described in sub-

1 clause (I) shall be closed only for pur-
 2 poses of protecting public safety, the
 3 property, or habitat.

4 (iv) STATE AGENCY APPROVAL.—

5 (I) IN GENERAL.—Any real prop-
 6 erty interest acquired by a State, local
 7 government, or other non-Federal en-
 8 tity under this Act shall be approved
 9 by the applicable State agency in the
 10 State in which the fish habitat con-
 11 servation project is carried out.

12 (II) ADMINISTRATION.—The
 13 Board shall not recommend, and the
 14 Secretary shall not provide any fund-
 15 ing under this Act for, the acquisition
 16 of any real property interest described
 17 in subclause (I) that has not been ap-
 18 proved by the applicable State agency.

19 (v) VIOLATION.—If the State, local
 20 government, or other non-Federal entity
 21 violates any term or condition established
 22 by the Secretary under clause (ii), the Sec-
 23 retary may require the State, local govern-
 24 ment, or other non-Federal entity to re-
 25 fund all or part of any payments received

1 under this Act, with interest on the pay-
2 ments as determined appropriate by the
3 Secretary.

4 (e) NON-FEDERAL CONTRIBUTIONS.—

5 (1) IN GENERAL.—Except as provided in para-
6 graph (2), no fish habitat conservation project may
7 be recommended by the Board under subsection (b)
8 or provided financial assistance under this Act un-
9 less at least 50 percent of the cost of the fish habi-
10 tat conservation project will be funded with non-
11 Federal funds.

12 (2) PROJECTS ON FEDERAL LAND OR WATER.—
13 Notwithstanding paragraph (1), Federal funds may
14 be used for payment of 100 percent of the costs of
15 a fish habitat conservation project located on Fed-
16 eral land or water.

17 (3) NON-FEDERAL SHARE.—The non-Federal
18 share of the cost of a fish habitat conservation
19 project—

20 (A) may not be derived from a Federal
21 grant program; but

22 (B) may include in-kind contributions and
23 cash.

24 (4) SPECIAL RULE FOR INDIAN TRIBES.—Not-
25 withstanding paragraph (1) or any other provision of

1 law, any funds made available to an Indian tribe
2 pursuant to this Act may be considered to be non-
3 Federal funds for the purpose of paragraph (1).

4 (f) APPROVAL.—

5 (1) IN GENERAL.—Not later than 180 days
6 after the date of receipt of the recommendations of
7 the Board for fish habitat conservation projects
8 under subsection (b), subject to the limitations
9 under subsection (d), and based, to the maximum
10 extent practicable, on the criteria described in sub-
11 section (c)—

12 (A) the Secretary shall approve, reject, or
13 reorder the priority of any fish habitat con-
14 servation project recommended by the Board
15 that is not within a marine or estuarine habitat;
16 and

17 (B) the Secretary and the Secretary of
18 Commerce shall jointly approve, reject, or reor-
19 der the priority of any fish habitat conservation
20 project recommended by the Board that is with-
21 in a marine or estuarine habitat.

22 (2) FUNDING.—If a fish habitat conservation
23 project under paragraph (1) is approved by the Sec-
24 retary, or the Secretary and the Secretary of Com-
25 merce jointly, the Secretary, or the Secretary and

1 the Secretary of Commerce jointly, as applicable,
 2 shall use amounts made available to carry out this
 3 Act to provide funds to carry out the fish habitat
 4 conservation project.

5 (3) NOTIFICATION.—If the priority of any fish
 6 habitat conservation project recommended by the
 7 Board under subsection (b) is rejected or reordered
 8 by the Secretary, or the Secretary and the Secretary
 9 of Commerce jointly, the Secretary, or the Secretary
 10 and the Secretary of Commerce jointly, shall, not
 11 later than 180 days after the date of receipt of the
 12 recommendations, provide to the Board, the appro-
 13 priate Partnership, and the appropriate congres-
 14 sional committees a written statement of the Sec-
 15 retary, or the Secretary and the Secretary of Com-
 16 merce jointly, as applicable, detailing the reasons
 17 why the Secretary or the Secretary and the Sec-
 18 retary of Commerce jointly rejected or reordered the
 19 priority of the fish habitat conservation project.

20 **SEC. 7. NATIONAL FISH HABITAT CONSERVATION PART-**
 21 **NERSHIP PROGRAM.**

22 (a) ESTABLISHMENT.—Not later than 1 year after
 23 the date of enactment of this Act, the Director shall estab-
 24 lish a program, to be known as the “National Fish Habi-
 25 tat Conservation Partnership Program”, within the Divi-

1 sion of Fish and Aquatic Conservation of the United
2 States Fish and Wildlife Service.

3 (b) FUNCTIONS.—The National Fish Habitat Con-
4 servation Partnership Program shall—

5 (1) provide funding for the operational needs of
6 the Partnerships, including funding for activities
7 such as planning, project development and imple-
8 mentation, coordination, monitoring, evaluation,
9 communication, and outreach;

10 (2) provide funding to support the detail of
11 State and tribal fish and wildlife staff to the Pro-
12 gram;

13 (3) facilitate the cooperative development and
14 approval of Partnerships;

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

17 (5) assist the Secretary in carrying out the re-
18 quirements of sections 8 and 10;

19 (6) facilitate communication, cohesiveness, and
20 efficient operations for the benefit of Partnerships
21 and the Board;

22 (7) facilitate, with assistance from the Director,
23 the Assistant Administrator, and the President of
24 the Association of Fish and Wildlife Agencies, the

1 consideration of fish habitat conservation projects by
2 the Board;

3 (8) provide support to the Director regarding
4 the development and implementation of the inter-
5 agency operational plan under subsection (c);

6 (9) coordinate technical and scientific reporting
7 as required by section 11;

8 (10) facilitate the efficient use of resources and
9 activities of Federal departments and agencies to
10 carry out this Act in an efficient manner; and

11 (11) provide support to the Board for national
12 communication and outreach efforts that promote
13 public awareness of fish habitat conservation.

14 (c) INTERAGENCY OPERATIONAL PLAN.—Not later
15 than 1 year after the date of enactment of this Act, and
16 every 5 years thereafter, the Director, in cooperation with
17 the Assistant Administrator and the heads of other appro-
18 priate Federal departments and agencies, shall develop an
19 interagency operational plan for the National Fish Habi-
20 tat Conservation Partnership Program that describes—

21 (1) the functional, operational, technical, sci-
22 entific, and general staff, administrative, and mate-
23 rial needs of the Program; and

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

4 (d) STAFF AND SUPPORT.—

5 (1) DEPARTMENTS OF INTERIOR AND COM-
6 MERCE.—The Director and the Assistant Adminis-
7 trator shall each provide appropriate staff to support
8 the National Fish Habitat Conservation Partnership
9 Program, subject to the availability of funds under
10 section 14.

11 (2) STATES AND INDIAN TRIBES.—Each State
12 and Indian tribe is encouraged to provide staff to
13 support the National Fish Habitat Conservation
14 Partnership Program.

15 (3) DETAILEES AND CONTRACTORS.—The Na-
16 tional Fish Habitat Conservation Partnership Pro-
17 gram may accept staff or other administrative sup-
18 port from other entities—

19 (A) through interagency details; or

20 (B) as contractors.

21 (4) QUALIFICATIONS.—The staff of the Na-
22 tional Fish Habitat Conservation Partnership Pro-
23 gram shall include members with education and ex-
24 perience relating to the principles of fish, wildlife,
25 and habitat conservation.

1 (e) REPORTS.—Not less frequently than once each
2 year, the Director shall provide to the Board a report de-
3 scribing the activities of the National Fish Habitat Con-
4 servation Partnership Program.

5 **SEC. 8. TECHNICAL AND SCIENTIFIC ASSISTANCE.**

6 (a) IN GENERAL.—The Director, the Assistant Ad-
7 ministrator, and the Director of the United States Geo-
8 logical Survey, in coordination with the Forest Service and
9 other appropriate Federal departments and agencies, shall
10 provide scientific and technical assistance to the Partner-
11 ships, participants in fish habitat conservation projects,
12 and the Board.

13 (b) INCLUSIONS.—Scientific and technical assistance
14 provided pursuant to subsection (a) may include—

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

19 (2) providing technical and scientific assistance
20 to Partnerships for habitat assessment, strategic
21 planning, and prioritization;

22 (3) supporting the development and implemen-
23 tation of fish habitat conservation projects that are
24 identified as high priorities by Partnerships and the
25 Board;

1 (4) supporting and providing recommendations
2 regarding the development of science-based moni-
3 toring and assessment approaches for implementa-
4 tion through Partnerships;

5 (5) supporting and providing recommendations
6 for a national fish habitat assessment;

7 (6) ensuring the availability of experts to con-
8 duct scientifically based evaluation and reporting of
9 the results of fish habitat conservation projects; and

10 (7) providing resources to secure State agency
11 scientific and technical assistance to support Part-
12 nerships, participants in fish habitat conservation
13 projects, and the Board.

14 **SEC. 9. CONSERVATION OF FISH HABITAT ON FEDERAL**
15 **LAND.**

16 To the extent consistent with the mission and author-
17 ity of the applicable department or agency, the head of
18 each Federal department and agency may coordinate with
19 the Assistant Administrator and the Director to promote
20 healthy fish populations and fish habitats.

21 **SEC. 10. COORDINATION WITH STATES AND INDIAN TRIBES.**

22 The Secretary shall provide a notice to, and cooperate
23 with, the appropriate State agency or tribal agency, as ap-
24 plicable, of each State and Indian tribe within the bound-
25 aries of which an activity is planned to be carried out pur-

1 suant to this Act, including notification, by not later than
2 30 days before the date on which the activity is imple-
3 mented.

4 **SEC. 11. ACCOUNTABILITY AND REPORTING.**

5 (a) REPORTING.—

6 (1) IN GENERAL.—Not later than 2 years after
7 the date of enactment of this Act, and every 2 years
8 thereafter, the Board shall submit to the appropriate
9 congressional committees a report describing the
10 progress of—

11 (A) this Act; and

12 (B) the National Fish Habitat Action
13 Plan.

14 (2) CONTENTS.—Each report submitted under
15 paragraph (1) shall include—

16 (A) an estimate of the number of acres,
17 stream miles, or acre-feet (or other suitable
18 measure) of fish habitat that was maintained or
19 improved under the National Fish Habitat Ac-
20 tion Plan by Federal, State, or local govern-
21 ments, Indian tribes, or other entities in the
22 United States during the 2-year period ending
23 on the date of submission of the report;

24 (B) a description of the public access to
25 fish habitats established or improved under the

1 National Fish Habitat Action Plan during that
2 2-year period;

3 (C) a description of the opportunities for
4 public recreational fishing established under the
5 National Fish Habitat Action Plan during that
6 period; and

7 (D) an assessment of the status of fish
8 habitat conservation projects carried out with
9 funds provided under this Act during that pe-
10 riod, disaggregated by year, including—

11 (i) a description of the fish habitat
12 conservation projects recommended by the
13 Board under section 6(b);

14 (ii) a description of each fish habitat
15 conservation project approved by the Sec-
16 retary under section 6(f), in order of pri-
17 ority for funding;

18 (iii) a justification for—

19 (I) the approval of each fish
20 habitat conservation project; and

21 (II) the order of priority for
22 funding of each fish habitat conserva-
23 tion project;

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

1 tat conservation project recommended by
 2 the Board under section 6(b) that was
 3 based on a factor other than the criteria
 4 described in section 6(c); and

5 (v) an accounting of expenditures by
 6 Federal, State, or local governments, In-
 7 dian tribes, or other entities to carry out
 8 fish habitat conservation projects.

9 (b) STATUS AND TRENDS REPORT.—Not later than
 10 December 31, 2015, and every 5 years thereafter, the
 11 Board shall submit to the appropriate congressional com-
 12 mittees a report describing the status of fish habitats in
 13 the United States.

14 (c) REVISIONS.—Not later than December 31, 2015,
 15 and every 5 years thereafter, the Board shall revise the
 16 goals and other elements of the National Fish Habitat Ac-
 17 tion Plan, after consideration of each report required by
 18 subsection (b).

19 **SEC. 12. EFFECT OF ACT.**

20 (a) WATER RIGHTS.—Nothing in this Act—

21 (1) establishes any express or implied reserved
 22 water right in the United States for any purpose;

23 (2) affects any water right in existence on the
 24 date of enactment of this Act;

1 (3) preempts or affects any State water law or
2 interstate compact governing water; or

3 (4) affects any Federal or State law in exist-
4 ence on the date of enactment of this Act regarding
5 water quality or water quantity.

6 (b) AUTHORITY TO ACQUIRE WATER RIGHTS OR
7 RIGHTS TO PROPERTY.—In carrying out section 6(d)(2),
8 only a State, local government, or other non-Federal entity
9 may acquire, in accordance with applicable State law,
10 water rights or rights to property pursuant to a fish habi-
11 tat conservation projected funded under this Act.

12 (c) STATE AUTHORITY.—Nothing in this Act—

13 (1) affects the authority, jurisdiction, or respon-
14 sibility of a State to manage, control, or regulate
15 fish and wildlife under the laws and regulations of
16 the State; or

17 (2) authorizes the Secretary to control or regu-
18 late within a State the fishing or hunting of fish and
19 wildlife.

20 (d) EFFECT ON INDIAN TRIBES.—Nothing in this
21 Act abrogates, abridges, affects, modifies, supersedes, or
22 alters any right of an Indian tribe recognized by treaty
23 or any other means, including—

24 (1) an agreement between the Indian tribe and
25 the United States;

1 (2) Federal law (including regulations);

2 (3) an Executive order; or

3 (4) a judicial decree.

4 (e) ADJUDICATION OF WATER RIGHTS.—Nothing in
5 this Act diminishes or affects the ability of the Secretary
6 to join an adjudication of rights to the use of water pursu-
7 ant to subsection (a), (b), or (c) of section 208 of the De-
8 partment of Justice Appropriation Act, 1953 (43 U.S.C.
9 666).

10 (f) DEPARTMENT OF COMMERCE AUTHORITY.—
11 Nothing in this Act affects the authority, jurisdiction, or
12 responsibility of the Department of Commerce to manage,
13 control, or regulate fish or fish habitats under the Magnu-
14 son-Stevens Fishery Conservation and Management Act
15 (16 U.S.C. 1801 et seq.).

16 (g) EFFECT ON OTHER AUTHORITIES.—

17 (1) PRIVATE PROPERTY PROTECTION.—Nothing
18 in this Act permits the use of funds made available
19 to carry out this Act to acquire real property or a
20 real property interest without the written consent of
21 each owner of the real property or real property in-
22 terest.

23 (2) MITIGATION.—Nothing in this Act permits
24 the use of funds made available to carry out this Act
25 for fish and wildlife mitigation purposes under—

1 (A) the Federal Water Pollution Control
2 Act (33 U.S.C. 1251 et seq.);

3 (B) the Fish and Wildlife Coordination Act
4 (16 U.S.C. 661 et seq.);

5 (C) the Water Resources Development Act
6 of 1986 (Public Law 99–662; 100 Stat. 4082);
7 or

8 (D) any other Federal law or court settle-
9 ment.

10 (3) CLEAN WATER ACT.—Nothing in this Act
11 affects or alters any provision of the Federal Water
12 Pollution Control Act (33 U.S.C. 1251 et seq.), in-
13 cluding any definition in that Act.

14 **SEC. 13. NONAPPLICABILITY OF FEDERAL ADVISORY COM-**
15 **MITTEE ACT.**

16 The Federal Advisory Committee Act (5 U.S.C. App.)
17 shall not apply to—

18 (1) the Board; or

19 (2) any Partnership.

20 **SEC. 14. FUNDING.**

21 (a) AUTHORIZATION OF APPROPRIATIONS.—

22 (1) FISH HABITAT CONSERVATION PROJECTS.—

23 There is authorized to be appropriated to the Sec-
24 retary \$7,200,000 for each of fiscal years 2014
25 through 2018 to provide funds for fish habitat con-

1 servation projects approved under section 6(f), of
2 which 5 percent shall be made available for each fis-
3 cal year for projects carried out by Indian tribes.

4 (2) NATIONAL FISH HABITAT CONSERVATION
5 PARTNERSHIP PROGRAM.—

6 (A) IN GENERAL.—There is authorized to
7 be appropriated to the Secretary for each of fis-
8 cal years 2014 through 2018 for the National
9 Fish Habitat Conservation Partnership Pro-
10 gram, and to carry out section 11, an amount
11 equal to 5 percent of the amount appropriated
12 for the applicable fiscal year pursuant to para-
13 graph (1).

14 (B) REQUIRED TRANSFERS.—The Sec-
15 retary shall annually transfer to other Federal
16 departments and agencies such percentage of
17 the amounts made available pursuant to sub-
18 paragraph (A) as is required to support partici-
19 pation by those departments and agencies in
20 the National Fish Habitat Conservation Part-
21 nership Program pursuant to the interagency
22 operational plan under section 7(c).

23 (3) TECHNICAL AND SCIENTIFIC ASSISTANCE.—

24 There are authorized to be appropriated for each of
25 fiscal years 2014 through 2018 to carry out, and

1 provide technical and scientific assistance under, sec-
2 tion 8—

3 (A) \$500,000 to the Secretary for use by
4 the United States Fish and Wildlife Service;

5 (B) \$500,000 to the Assistant Adminis-
6 trator for use by the National Oceanic and At-
7 mospheric Administration; and

8 (C) \$500,000 to the Secretary for use by
9 the United States Geological Survey.

10 (4) PLANNING AND ADMINISTRATIVE EX-
11 PENSES.—There is authorized to be appropriated to
12 the Secretary for each of fiscal years 2014 through
13 2018 for use by the Board, the Director, and the
14 Assistant Administrator for planning and adminis-
15 trative expenses an amount equal to 3 percent of the
16 amount appropriated for the applicable fiscal year
17 pursuant to paragraph (1).

18 (b) AGREEMENTS AND GRANTS.—The Secretary
19 may—

20 (1) on the recommendation of the Board, and
21 notwithstanding sections 6304 and 6305 of title 31,
22 United States Code, and the Federal Financial As-
23 sistance Management Improvement Act of 1999 (31
24 U.S.C. 6101 note; Public Law 106–107), enter into
25 a grant agreement, cooperative agreement, or con-

1 tract with a Partnership or other entity for a fish
2 habitat conservation project or restoration or en-
3 hancement project;

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

7 (3) make funds available to any Federal depart-
8 ment or agency for use by that department or agen-
9 cy to provide grants for any fish habitat protection
10 project, restoration project, or enhancement project
11 that the Secretary determines to be consistent with
12 this Act.

13 (c) DONATIONS.—

14 (1) IN GENERAL.—The Secretary may—

15 (A) enter into an agreement with any orga-
16 nization described in section 501(c)(3) of the
17 Internal Revenue Code of 1986 that is exempt
18 from taxation under section 501(a) of that
19 Code to solicit private donations to carry out
20 the purposes of this Act; and

21 (B) accept donations of funds, property,
22 and services to carry out the purposes of this
23 Act.

24 (2) TREATMENT.—A donation accepted under
25 this section—

1 (A) shall be considered to be a gift or be-
2 quest to, or otherwise for the use of, the United
3 States; and

4 (B) may be—

5 (i) used directly by the Secretary; or

6 (ii) provided to another Federal de-
7 partment or agency through an inter-
8 agency agreement.

Calendar No. 424

113TH CONGRESS
2D Session

S. 2080

[Report No. 113-192]

A BILL

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

JUNE 5, 2014

Reported without amendment