

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.

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## 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

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## 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”—

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

7 (B) includes an area adjacent to an aquat-  
8 ic environment if such adjacent area—

9 (i) contributes elements, such as the  
10 input of detrital material or the promotion  
11 of planktonic and insect populations pro-  
12 viding food, which make fish life possible;

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

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

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

19 (3) ASSISTANT ADMINISTRATOR.—The term  
20 “Assistant Administrator” means the Assistant Ad-  
21 ministrator for Fisheries of the National Marine  
22 Fisheries Service.

23 (4) CONSERVATION; CONSERVE; MANAGE; MAN-  
24 AGEMENT.—The terms “conservation”, “conserve”,  
25 “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 with the Plan; and

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

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 require.  
17           

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 that the Secretary approve and fund under this  
22           Act, in order of priority of the Board's recommendations,  
23           for the following fiscal year.  
24

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

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

6 (B) REQUIREMENTS.—

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

11 (I) the Secretary determines that  
12 such State, agency, or other entity is  
13 obligated to undertake the manage-  
14 ment of the property being conveyed  
15 in accordance with the purposes of  
16 this Act; and

17 (II) the deed or other instrument  
18 of transfer contains provisions for the  
19 reversion of title to the property to  
20 the United States if such State, agen-  
21 cy, or other entity fails to manage the  
22 property in accordance with the pur-  
23 poses of this Act.

24 (ii) ADDITIONAL CONVEYANCE CONDI-  
25 TIONS.—Any real property interest de-

1           scribed in subparagraph (A) conveyed as  
2           described in clause (i) shall be subject to  
3           such terms and conditions that will ensure  
4           that the interest will be administered for  
5           the long-term conservation and manage-  
6           ment of the aquatic ecosystem and the fish  
7           and wildlife dependent thereon.

8           (e) NON-FEDERAL CONTRIBUTION FOR PROJECTS.—

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

15          (2) PROJECTS ON FEDERAL LAND OR WA-  
16          TERS.—Notwithstanding paragraph (1), Federal  
17          funds may be used for payment of 100 percent of  
18          the costs of a project located on Federal land or wa-  
19          ters, including the acquisition of inholdings within  
20          such land and waters.

21          (3) NON-FEDERAL SHARE.—The non-Federal  
22          share of the cost of a project may not be derived  
23          from a Federal grant program, but may include in-  
24          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.

○