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(Original Signature of Member)

110TH CONGRESS
2D SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Mr. KIND introduced the following bill; which was referred to the Committee
on _____

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

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

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

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

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

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

1 the United States, especially declines in native fish
2 populations, and result in economic losses to the
3 United States.

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

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

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

1 (10) Creation of partnerships between local citi-
2 zens, Indian tribes, Alaska Native organizations,
3 corporations, nongovernmental organizations, and
4 Federal, State, and Indian tribal agencies is critical
5 to the success of activities to restore aquatic habi-
6 tats and ecosystems.

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

18 (12) The United States Fish and Wildlife Serv-
19 ice, the Forest Service, and the National Marine
20 Fisheries Service each plays a vital role in the pro-
21 tection, restoration, and enhancement of the fish
22 communities and aquatic habitats in the United
23 States and the development, operation, and long-
24 term success of fish habitat partnerships and project
25 implementation.

1 (13) The United States Geological Survey plays
2 a vital role in scientific evaluation, data collection,
3 and mapping for fishery resources in the United
4 States.

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

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

17 (1) to protect and maintain intact and healthy
18 aquatic habitats;

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

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

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

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

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

14 (7) to achieve other purposes in accordance
15 with the mission and goals of the National Fish
16 Habitat Action Plan.

17 **SEC. 3. DEFINITIONS.**

18 In this Act:

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

1 (2) AQUATIC HABITAT.—The term “aquatic
2 habitat”—

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

9 (B) includes an area adjacent to an aquat-
10 ic environment if such adjacent area—

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

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

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

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

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

1 (4) CONSERVATION; CONSERVE; MANAGE; MAN-
2 AGEMENT.—The terms “conservation”, “conserve”,
3 “manage”, and “management” mean to protect, sus-
4 tain, and, where appropriate, restore and enhance,
5 healthy populations of fish, wildlife, and plant life,
6 as well as the habitats that are required to sustain
7 fish, wildlife, and plant life, as well as the habitats
8 that are required to sustain fish, wildlife, and plant
9 life productivity by utilizing methods and procedures
10 associated with modern scientific resource programs,
11 including protection, research, census, law enforce-
12 ment, habitat management, propagation, live trap-
13 ping and transplantation, and regulated taking.

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

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

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

1 (8) FISH HABITAT CONSERVATION PROJECT;
2 PROJECT.—The terms “fish habitat conservation
3 project” and “project” mean a project submitted to
4 the Board by a Fish Habitat Conservation Partner-
5 ship and approved by the Secretary under section 6
6 that provides for the conservation or management of
7 aquatic habitat.

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

12 (10) NATIONAL FISH HABITAT ACTION PLAN;
13 PLAN.—The terms “National Fish Habitat Action
14 Plan” and “Plan” mean the National Fish Habitat
15 Action Plan dated April 24, 2006, and any subse-
16 quent revision or amendment to that Plan.

17 (11) NATIONAL FISH HABITAT BOARD;
18 BOARD.—Except as otherwise provided, the terms
19 “National Fish Habitat Board” and “Board” mean
20 the National Fish Habitat Board established in sec-
21 tion 4(a).

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

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

3 (14) STATE AGENCY.—The term “State agen-
4 cy” means the fish and wildlife agency of a State,
5 or any department, or division of a department or
6 agency of a State that is empowered by statute or
7 by the constitution of the State to manage in the
8 public trust the inland or marine fishery resources
9 of the State.

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

11 (a) ESTABLISHMENT.—

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

14 (A) to promote, oversee, and coordinate the
15 implementation of this Act and the National
16 Fish Habitat Action Plan; and

17 (B) to review and recommend fish habitat
18 conservation projects.

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

21 (A) The Director

22 (B) The Assistant Administrator.

23 (C) The Chief of the Natural Resources
24 Conservation Service.

1 (D) The Director of the Watershed, Fish,
2 Wildlife, Air & Rare Plants program of the For-
3 est Service.

4 (E) The Assistant Administrator for Water
5 of the Environmental Protection Agency.

6 (F) The President of the Association of
7 Fish and Wildlife Agencies.

8 (G) The Secretary of the Board of Direc-
9 tors of the National Fish and Wildlife Founda-
10 tion appointed pursuant to section 3(g)(2)(B)
11 of the National Fish and Wildlife Foundation
12 Establishment Act (16 U.S.C. 3702(g)(2)(B)).

13 (H) Four representatives of State agencies,
14 each 1 of whom is nominated by 1 of the re-
15 gions Associations of Fish and Wildlife Agen-
16 cies (Northeast, Southeast, Midwest, and West-
17 ern).

18 (I) One representative of the American
19 Fisheries Society.

20 (J) Two representatives of Indian tribes, 1
21 of whom shall represent Indian tribes from
22 Alaska and 1 of whom shall represent Indian
23 tribes from the other States.

24 (K) One member who represents the Re-
25 gional Fishery Management Councils estab-

1 lished under section 302 of the Magnuson-Ste-
2 vens Fishery Conservation and Management
3 Act (16 U.S.C. 1852).

4 (L) One member who represents the Ma-
5 rine Fisheries Commissions (the Atlantic States
6 Marine Fisheries Commission, the Gulf States
7 Marine Fisheries Commission, and the Pacific
8 States Marine Fisheries Commission).

9 (M) One representative from the
10 Sportfishing and Boating Partnership Council.

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

13 (i) The recreational sportfishing in-
14 dustry.

15 (ii) The commercial sportfishing in-
16 dustry.

17 (iii) Subsistence fishermen.

18 (iv) Marine recreational anglers.

19 (v) Freshwater recreational anglers.

20 (vi) Terrestrial resource conservation
21 organizations.

22 (vii) Aquatic resource conservation or-
23 ganizations.

24 (viii) The livestock and poultry pro-
25 duction industry.

1 (ix) The housing development indus-
2 try.

3 (x) The row crop industry.

4 (xi) Natural resource commodity in-
5 terests, such as petroleum or mineral ex-
6 traction.

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

9 (b) APPOINTMENT AND TERMS.—

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

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

20 (3) TRANSITIONAL TERMS.—The initial ap-
21 pointments of the members of the Board described
22 in subparagraph (N) of subsection (a)(2) shall be for
23 terms as follows:

24 (A) Four shall be appointed for a term of
25 1 year.

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

3 (C) Three shall be appointed for a term of
4 3 years.

5 (4) VACANCIES.—A vacancy of a member of the
6 Board described in subparagraphs (H) through (N)
7 of subsection (a)(2) shall be filled by an appointment
8 made by the remaining members of the Board.

9 (5) CONTINUATION OF SERVICE.—An individual
10 whose term of service as a member of the Board ex-
11 pires may continue to serve on the Board until a
12 successor is appointed.

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

19 (c) CHAIR.—

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

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

24 (d) MEETINGS.—

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

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

6 (e) BOARD PROCEDURES.—

7 (1) IN GENERAL.—The Board shall establish
8 procedures to carry out the business of the Board
9 that include the following:

10 (A) A requirement that a quorum of the
11 members of the Board be present to transact
12 business.

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

17 (C) Procedures for setting national goals
18 and priorities for aquatic habitat conservation
19 for the purposes of this Act.

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

22 (E) Procedures for reviewing, evaluating,
23 and recommending fish habitat conservation
24 projects.

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

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

4 (a) AUTHORITY TO DESIGNATE.—The Board is au-
5 thorized to designate Fish Habitat Conservation Partner-
6 ships.

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

11 (c) PURPOSES.—The purposes of a Partnership shall
12 be—

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

15 (2) to develop and carry out fish habitat con-
16 servation projects.

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

20 (1) includes representatives of a diverse group
21 of public and private partners, including Federal,
22 State, or local governments, nonprofit entities, In-
23 dian tribes, or private individuals, that are focused
24 on conservation of aquatic habitats to achieve results

1 across jurisdictional boundaries and public and pri-
2 vate lands;

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

7 (3) identifies strategic fish and aquatic habitat
8 priorities for the Partnership area in the form of ge-
9 ographic focus areas or key stressors or impairments
10 to facilitate strategic planning and decisionmaking;

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

13 (5) includes governance structures that reflect
14 the range of all partners and promotes joint stra-
15 tegic planning and decisionmaking by the applicant;

16 (6) demonstrates completion of, or significant
17 progress toward the development of, a strategic plan
18 to address the causes of system decline in fish popu-
19 lations rather than simply treating symptoms in ac-
20 cordance with the Plan; and

21 (7) ensures collaboration in developing a stra-
22 tegic vision and implementation program that is sci-
23 entifically sound and achievable.

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

25 (a) SUBMISSION TO THE BOARD.—

1 (1) IN GENERAL.—A Partnership seeking fund-
2 ing for a fish habitat conservation project shall sub-
3 mit an application to the Board for such funding at
4 such time and in such manner as the Board may
5 reasonably require.

6 (2) PROJECT FEATURES.—A fish habitat con-
7 servation project for which an application is sub-
8 mitted under this section may include—

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

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

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

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

4 (c) CONSIDERATIONS.—The Board shall select each
5 project to be recommended to the Secretary under sub-
6 section (b)—

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

10 (2) after consideration of—

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

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

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

18 (D) the extent to which the project—

19 (i) increases fishing opportunities for
20 the public;

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

1 (iii) increases public access to land
2 and waters; and

3 (iv) advances the conservation of fish
4 and wildlife species that are listed, or are
5 candidates to be listed, as threatened spe-
6 cies and endangered species under the En-
7 dangered Species Act of 1973 (16 U.S.C.
8 1531 et seq.); and

9 (E) the substantiality of the character and
10 design of the project.

11 (d) LIMITATIONS.—

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

17 (A) appropriately assess the results of the
18 habitat protection, restoration, or enhancement
19 activities carried out with such assistance;

20 (B) recommend appropriate changes to the
21 project if such assessment substantiates that
22 the project objectives are not being met; and

23 (C) report findings of such assessment to
24 the Board.

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

3 (A) IN GENERAL.—No fish habitat con-
4 servation project that will result in the acqui-
5 sition by the Secretary, in whole or in part, of
6 any real property interest may be recommended
7 by the Board under subsection (b) or provided
8 financial assistance under this Act unless the
9 project meets the requirements of subparagraph
10 (B).

11 (B) REQUIREMENTS.—

12 (i) IN GENERAL.—Any real property
13 interest acquired by the Secretary pursu-
14 ant to a fish habitat conservation project
15 may not be conveyed to a State, another
16 public agency, or another entity unless—

17 (I) the Secretary determines that
18 such State, agency, or other entity is
19 obligated to undertake the manage-
20 ment of the property being conveyed
21 in accordance with the purposes of
22 this Act; and

23 (II) the deed or other instrument
24 of transfer contains provisions for the
25 reversion of title to the property to

1 the United States if such State, agen-
2 cy, or other entity fails to manage the
3 property in accordance with the pur-
4 poses of this Act.

5 (ii) ADDITIONAL CONVEYANCE CONDI-
6 TIONS.—Any real property interest ac-
7 quired by the Secretary pursuant to a fish
8 habitat conservation project conveyed as
9 described in clause (i) shall be subject to
10 such terms and conditions that will ensure
11 that the interest will be administered for
12 the long-term conservation and manage-
13 ment of the aquatic ecosystem and the fish
14 and wildlife dependent thereon.

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

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

22 (2) PROJECTS ON FEDERAL LAND OR WA-
23 TERS.—Notwithstanding paragraph (1), Federal
24 funds may be used for payment of 100 percent of
25 the costs of a project located on Federal land or wa-

1 ters, including the acquisition of inholdings within
2 such land and waters.

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

7 (4) SPECIAL RULE FOR ALASKA NATIVE ORGA-
8 NIZATIONS.—Notwithstanding paragraph (1) or any
9 other provision of law, any funds made available to
10 an Indian tribe pursuant to this Act may be consid-
11 ered non-Federal funds for the purpose of paragraph
12 (1).

13 (f) CONSIDERATION BY THE SECRETARY.—

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

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

1 (3) NOTIFICATION BY THE SECRETARY.—If the
2 Secretary rejects or reorders the priority of any
3 project recommended by the Board under subsection
4 (b), the Secretary shall provide to the Board and the
5 appropriate Fish Habitat Conservation Partnership
6 a written statement of the reasons that the Sec-
7 retary rejected or modified the priority of the
8 project.

9 **SEC. 7. NATIONAL FISH HABITAT CONSERVATION PART-**
10 **NERSHIP OFFICE.**

11 (a) REQUIREMENT TO ESTABLISH.—Not later than
12 1 year after the date of the enactment of this Act, the
13 Director shall create the National Fish Habitat Conserva-
14 tion Partnership Office within the United States Fish and
15 Wildlife Service.

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

18 (1) provide funding for the operational needs of
19 the Fish Habitat Conservation Partnerships, includ-
20 ing funding for activities such as planning, project
21 development and implementation, coordination, mon-
22 itoring, communication, and outreach;

23 (2) facilitate the cooperative development and
24 approval of Partnerships;

- 1 (3) support the development and implementa-
2 tion of fish habitat conservation projects that are
3 identified as high priorities by the Board;
- 4 (4) assist the Secretary and the Board in car-
5 rying out this Act;
- 6 (5) assist the Secretary in carrying out the re-
7 quirements of section 9;
- 8 (6) facilitate communication, cohesiveness, and
9 efficient operations for the benefit of the Partner-
10 ships and the Board;
- 11 (7) facilitate, with assistance from the Director,
12 the Assistant Administrator, and the President of
13 the Association of Fish and Wildlife Agencies, the
14 consideration of projects by the Board;
- 15 (8) provide support to the Director in the devel-
16 opment and implementation of the interagency oper-
17 ational plan required in subsection (c);
- 18 (9) provide technical and scientific assistance
19 pursuant to the technical and scientific assistance
20 program required by subsection (d); and
- 21 (10) coordinate and facilitate the resources and
22 activities of the agencies and departments of the
23 United States to carry out this Act in an efficient
24 manner.

1 (c) INTERAGENCY OPERATIONAL PLAN.—Not later
2 than 1 year after the date of the enactment of this Act
3 and every 5 years thereafter, the Director, in cooperation
4 with the Assistant Administrator and the heads of other
5 appropriate Federal agencies and departments, shall de-
6 velop an interagency operational plan for the National
7 Fish Habitat Conservation Partnership Office that de-
8 scribes—

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

12 (2) any interagency agreements between or
13 among Federal agencies or departments to address
14 such needs.

15 (d) TECHNICAL AND SCIENTIFIC ASSISTANCE.—The
16 Director, in coordination with the Assistance Adminis-
17 trator and the heads of the United States Geological Sur-
18 vey, the Forest Service, and other appropriate Federal
19 agencies and departments, shall develop a technical and
20 scientific assistance program within the National Fish
21 Habitat Conservation Partnership Office—

22 (1) to provide scientific and technical assistance
23 to States, Indian tribes, regions, local communities,
24 and nongovernmental organizations in the develop-

1 ment and implementation of Fish Habitat Conserva-
2 tion Partnerships; and

3 (2) to ensure the availability of expertise to con-
4 duct scientifically based evaluation and reporting of
5 results of fish habitat conservation projects to meet
6 the reporting requirements described in section 10.

7 (e) STAFF AND SUPPORT.—

8 (1) DEPARTMENTS OF THE INTERIOR AND COM-
9 MERCE.—The Director and the Assistant Adminis-
10 trator shall each provide appropriate staff to support
11 the National Fish Habitat Conservation Partnership
12 Office.

13 (2) STATES.—The States are encouraged to
14 provide staff to support the National Fish Habitat
15 Conservation Partnership Office.

16 (3) DETAILEES AND CONTRACTORS.—The Na-
17 tional Fish Habitat Conservation Partnership Office
18 may accept staff or other administrative support
19 from other entities through interagency details or as
20 contractors.

21 (4) QUALIFICATIONS.—The members of the
22 staff of the National Fish Habitat Conservation
23 Partnership Office shall have education and experi-
24 ence in the principles of fish, wildlife, and aquatic
25 habitat conservation.

1 (f) REPORTING.—Not less frequently than once each
2 year, the Director shall provide to the Board a report on
3 the activities of the National Fish Habitat Conservation
4 Partnership Office.

5 **SEC. 8. CONSERVATION OF AQUATIC HABITAT FOR FISH**
6 **AND OTHER AQUATIC ORGANISMS ON FED-**
7 **ERAL LAND.**

8 The head of each Federal agency or department re-
9 sponsible for acquiring, managing, or disposing of Federal
10 land and waters shall, to the extent consistent with the
11 mission of such agency or department and existing statu-
12 tory authorities, cooperate with the Assistant Adminis-
13 trator and the Director to conserve the aquatic habitats
14 for fish and other aquatic organisms within the land and
15 waters of each such agency.

16 **SEC. 9. COORDINATION WITH STATES.**

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

21 **SEC. 10. ACCOUNTABILITY AND REPORTING.**

22 (a) IMPLEMENTATION REPORTS.—

23 (1) REQUIREMENT FOR REPORTS.—Not later
24 than 2 years after the date of the enactment of this
25 Act, and every 2 years thereafter, the Board shall

1 submit to the appropriate congressional committees
2 a report on the implementation of this Act and of
3 the Plan.

4 (2) CONTENT.—Each report submitted under
5 paragraph (1) shall include—

6 (A) an estimate of the number of acres,
7 stream miles, or acre feet of aquatic habitat, or
8 other suitable measures of aquatic habitat, that
9 was protected, restored, or enhanced under the
10 Plan by Federal, State, or local governments,
11 Indian tribes, or other entities in the United
12 States during the previous 2-year period;

13 (B) a description of the public access to
14 aquatic habitats protected, restored, or created
15 under the Plan during such period;

16 (C) a description of the opportunities for
17 public fishing created under the Plan during
18 such period; and

19 (D) an assessment of the status of fish
20 habitat conservation projects carried out with
21 funds provided under this Act, disaggregated by
22 year, including—

23 (i) a description of the fish habitat
24 conservation projects that the Board rec-
25 ommended under section 6(b);

1 (ii) a description of each such project
2 approved by the Secretary under section
3 6(f), in order of priority of receiving such
4 funding;

5 (iii) a justification for the approval of
6 each such project and for the order of pri-
7 ority for its funding;

8 (iv) a justification for any rejection or
9 reordering of the priority of each such
10 project recommended by the Board under
11 section 6(b) that was based on factors
12 other than the criteria set out in section
13 6(c); and

14 (v) an accounting of expenditures by
15 Federal, State, or local governments, In-
16 dian tribes, or other entities in the United
17 States to carry out such projects.

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

23 (c) REVISIONS TO THE PLAN.—Not later than De-
24 cember 31, 2011, and every 5 years thereafter, the Board
25 shall undertake to revise the goals and other elements of

1 the Plan after consideration of each report required by
2 subsection (b).

3 **SEC. 11. REGULATIONS.**

4 The Secretary may promulgate regulations to carry
5 out this Act.

6 **SEC. 12. CONSTRUCTION.**

7 (a) WATER RIGHTS.—

8 (1) IN GENERAL.—Nothing in this Act may be
9 construed—

10 (A) to create a reserved water right, ex-
11 pressed or implied, in the United States for any
12 purpose or to affect any water right in existence
13 on the date of the enactment of this Act; or

14 (B) to affect any Federal or State law in
15 existence on the date of the enactment of the
16 Act regarding water quality or water quantity.

17 (2) AUTHORITY TO ACQUIRE WATER RIGHTS.—

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

20 (b) STATE AUTHORITY.—Nothing in this Act may be
21 construed—

22 (1) to affect the authority, jurisdiction, or re-
23 sponsibility of a State to manage, control, or regu-
24 late fish and wildlife under the laws and regulations
25 of the State; or

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

4 (c) CONSTRUCTION WITH RESPECT TO RIGHTS OF
5 INDIAN TRIBES.—Nothing in this Act may be construed
6 to abrogate, abridge, affect, modify, supersede, or alter
7 any treaty-reserved right or other right of an Indian tribe
8 as recognized by any other means, including agreements
9 with the United States, Federal law, Executive orders,
10 statutes, and judicial decrees.

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

17 (e) CONSTRUCTION WITH RESPECT TO OTHER AU-
18 THORITIES.—

19 (1) ACQUISITION OF LANDS AND WATERS.—
20 Nothing in this Act may be construed to alter or
21 otherwise affect the authorities, responsibilities, obli-
22 gations, or powers of the Secretary to acquire land
23 or waters or interests therein under any other provi-
24 sion of law.

1 (2) PRIVATE PROPERTY PROTECTION.—Nothing
2 in this Act may be construed to permit funds made
3 available to carry out this Act to be used to acquire
4 any real property or any interest in any real prop-
5 erty without the written consent of each owner of
6 that property or interest in property.

7 (3) MITIGATION.—Nothing in this Act may be
8 construed to permit funds made available to carry
9 out this Act to be used for fish and wildlife mitiga-
10 tion purposes under the Federal Water Pollution
11 Control Act (33 U.S.C. 1251 et seq.), the Fish and
12 Wildlife Coordination Act (16 U.S.C. 661 et seq.),
13 or the Water Resources Development Act of 1986
14 (Public Law 99–662; 100 Stat. 4082).

15 **SEC. 13. APPLICABILITY OF FEDERAL ADVISORY COM-**
16 **MITTEE ACT.**

17 Any action taken to coordinate the carrying out of
18 this Act with the personnel of a State agency shall not
19 be subject to the Federal Advisory Committee Act (5
20 U.S.C. App).

21 **SEC. 14. FUNDING.**

22 (a) AUTHORIZATION OF APPROPRIATIONS.—

23 (1) FISH HABITAT CONSERVATION PROJECTS.—

24 There are authorized to be appropriated to the Sec-
25 retary for each of the fiscal years 2009 through

1 2013, \$75,000,000 to provide funds for fish habitat
2 conservation projects approved under section 6(f), of
3 which 5 percent shall be made available each fiscal
4 year for projects carried out by Indian tribes.

5 (2) NATIONAL FISH HABITAT CONSERVATION
6 PARTNERSHIP OFFICE.—There are authorized to be
7 appropriated to the Secretary for each of the fiscal
8 years 2009 through 2013, \$3,000,000 or 25 percent
9 of the amount appropriated for such fiscal year pur-
10 suant to paragraph (1), whichever is greater, for the
11 National Fish Habitat Conservation Partnership Of-
12 fice.

13 (3) PLANNING, REPORTING, AND ADMINISTRA-
14 TIVE EXPENSES.—There are authorized to be appro-
15 priated to the Secretary for each of the fiscal years
16 2009 through 2013, \$300,000 or 4 percent of the
17 amount appropriated for such year under paragraph
18 (1), whichever is greater, for the Board, the Direc-
19 tor, and the Assistant Administrator to utilize for
20 planning and administrative expenses, and to carry
21 out section 10.

22 (4) AVAILABILITY OF FUNDS.—Funds made
23 available under this subsection shall remain available
24 until expended.

1 (b) AGREEMENTS AND GRANTS.—The Secretary
2 may—

3 (1) upon the recommendation of the Board, and
4 notwithstanding sections 6304 and 6305 of title 31,
5 United States Code, and the Federal Financial As-
6 sistance Management Improvement Act of 1999
7 (Public Law 106–107; 31 U.S.C. 6101 note), enter
8 into a cooperative agreement or contract with a Fish
9 Habitat Conservation Partnership for fish habitat
10 conservation, restoration, and enhancement projects;

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

14 (3) make funds available to any Federal agency
15 or department for use by that agency or department
16 to award grants for any fish habitat protection, res-
17 toration, and enhancement project that the Sec-
18 retary determines to be consistent with this Act.

19 (c) DONATIONS.—

20 (1) IN GENERAL.—The Secretary may—

21 (A) enter into an agreement with any orga-
22 nization described in section 501(c)(3) of the
23 Internal Revenue Code of 1986 and exempt
24 from taxation under section 501(a) of such

1 Code to solicit private donations to carry out
2 the purposes and policies of this Act; and

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

6 (2) TREATMENT OF DONATIONS.—Donations
7 accepted under this section shall be considered as
8 gifts or bequests to, or for the use of, the United
9 States and may be used directly by the Secretary or
10 provided to other Federal agencies or departments
11 through interagency agreements.