

**Calendar No. 455**112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**S. 1201****[Report No. 112-187]**

To conserve fish and aquatic communities in the United States through partnerships that foster fish habitat conservation, to 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**

JUNE 15, 2011

Mr. LIEBERMAN (for himself, Mr. CRAPO, Mr. TESTER, Mr. BINGAMAN, Ms. MURKOWSKI, Mr. WHITEHOUSE, Mr. BEGICH, Mr. CARDIN, Mr. UDALL of Colorado, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

JULY 17, 2012

Reported by Mrs. BOXER, without amendment

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**A BILL**

To conserve fish and aquatic communities in the United States through partnerships that foster fish habitat conservation, to 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,*

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 Office.
- Sec. 8. Technical and scientific assistance.
- Sec. 9. Conservation of aquatic habitat for fish and other aquatic organisms on  
Federal land.
- Sec. 10. Coordination with States and Indian tribes.
- Sec. 11. Accountability and reporting.
- Sec. 12. Regulations.
- Sec. 13. Effect of Act.
- Sec. 14. Nonapplicability of Federal Advisory Committee Act.
- Sec. 15. Funding.

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

7 (a) **FINDINGS.**—Congress finds that—

8 (1) healthy populations of fish and other aquat-  
9 ic organisms depend on the conservation, protection,  
10 restoration, and enhancement of aquatic habitats in  
11 the United States;

12 (2) aquatic habitats (including wetlands,  
13 streams, rivers, lakes, estuaries, coastal and marine  
14 ecosystems, and associated riparian upland habitats  
15 that buffer those areas from external factors) per-  
16 form numerous valuable environmental functions  
17 that sustain environmental, social, and cultural val-  
18 ues, including recycling nutrients, purifying water,

1 attenuating floods, augmenting and maintaining  
2 stream flows, recharging ground water, acting as  
3 primary producers in the food chain, and providing  
4 essential and significant habitat for plants, fish,  
5 wildlife, and other dependent species;

6 (3) the extensive and diverse aquatic habitat re-  
7 sources of the United States are of enormous signifi-  
8 cance to the economy of the United States, pro-  
9 viding—

10 (A) recreation for 44,000,000 anglers;

11 (B) more than 1,000,000 jobs and approxi-  
12 mately \$125,000,000,000 in economic impact  
13 each year relating to recreational fishing; and

14 (C) approximately 500,000 jobs and an ad-  
15 ditional \$35,000,000,000 in economic impact  
16 each year relating to commercial fishing;

17 (4) at least 40 percent of all threatened species  
18 and endangered species in the United States are di-  
19 rectly dependent on aquatic habitats;

20 (5) certain fish species are considered to be eco-  
21 logical indicators of aquatic habitat quality, such  
22 that the presence of those species in an aquatic eco-  
23 system reflects high-quality habitat for other fish;

24 (6) loss and degradation of aquatic habitat, ri-  
25 parian habitat, water quality, and water volume

1 caused by activities such as alteration of water-  
2 courses, stream blockages, water withdrawals and di-  
3 versions, erosion, pollution, sedimentation, and de-  
4 struction or modification of wetlands have—

5 (A) caused significant declines in fish pop-  
6 ulations throughout the United States, espe-  
7 cially declines in native fish populations; and

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

10 (7)(A) providing for the conservation and sus-  
11 tainability of fish and other aquatic organisms has  
12 not been fully realized, despite federally funded fish  
13 and wildlife restoration programs and other activi-  
14 ties intended to conserve aquatic resources; and

15 (B) that conservation and sustainability may be  
16 significantly advanced through a renewed commit-  
17 ment and sustained, cooperative efforts that are  
18 complementary to existing fish and wildlife restora-  
19 tion programs and clean water programs;

20 (8) the National Fish Habitat Action Plan pro-  
21 vides a framework for maintaining and restoring  
22 aquatic habitats to ensure perpetuation of popu-  
23 lations of fish and other aquatic organisms;

24 (9) the United States can achieve significant  
25 progress toward providing aquatic habitats for the

1 conservation and restoration of fish and other aquat-  
2 ic organisms through a voluntary, nonregulatory in-  
3 centive program that is based on technical and fi-  
4 nancial assistance provided by the Federal Govern-  
5 ment;

6 (10) the creation of partnerships between local  
7 citizens, Indian tribes, Alaska Native organizations,  
8 corporations, nongovernmental organizations, and  
9 Federal, State, and tribal agencies is critical to the  
10 success of activities to restore aquatic habitats and  
11 ecosystems;

12 (11) the Federal Government has numerous  
13 regulatory and land and water management agencies  
14 that are critical to the implementation of the Na-  
15 tional Fish Habitat Action Plan, including—

16 (A) the United States Fish and Wildlife  
17 Service;

18 (B) the Bureau of Land Management;

19 (C) the National Park Service;

20 (D) the Bureau of Reclamation;

21 (E) the Bureau of Indian Affairs;

22 (F) the National Marine Fisheries Service;

23 (G) the Forest Service;

24 (H) the Natural Resources Conservation  
25 Service; and

1 (I) the Environmental Protection Agency;

2 (12) the United States Fish and Wildlife Serv-  
3 ice, the Forest Service, the Bureau of Land Manage-  
4 ment, and the National Marine Fisheries Service  
5 each play a vital role in—

6 (A) the protection, restoration, and en-  
7 hancement of the fish communities and aquatic  
8 habitats in the United States; and

9 (B) the development, operation, and long-  
10 term success of fish habitat partnerships and  
11 project implementation;

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

17 (14) the State and territorial fish and wildlife  
18 agencies play a vital role in—

19 (A) the protection, restoration, and en-  
20 hancement of the fish communities and aquatic  
21 habitats in the respective States and territories;  
22 and

23 (B) the development, operation, and long-  
24 term success of fish habitat partnerships and  
25 project implementation; and

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

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

13           (1) to protect and maintain intact and healthy  
14 aquatic habitats;

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

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

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

23           (5) to improve fisheries habitat in a manner  
24 that leads to improvement of the annual economic

1 output from recreational, subsistence, and commer-  
2 cial fishing;

3 (6) to ensure coordination and facilitation of ac-  
4 tivities carried out by Federal departments and  
5 agencies under the leadership of—

6 (A) the Director of the United States Fish  
7 and Wildlife Service;

8 (B) the Assistant Administrator for Fish-  
9 eries of the National Oceanic and Atmospheric  
10 Administration; and

11 (C) the Director of the United States Geo-  
12 logical Survey; and

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

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**  
19 **TEES.**—The term “appropriate congressional com-  
20 mittees” means—

21 (A) the Committee on Commerce, Science,  
22 and Transportation and the Committee on En-  
23 vironment and Public Works of the Senate; and

24 (B) the Committee on Natural Resources  
25 of the House of Representatives.



1 (2) AQUATIC HABITAT.—

2 (A) IN GENERAL.—The term “aquatic  
3 habitat” means any area on which an aquatic  
4 organism depends, directly or indirectly, to  
5 carry out the life processes of the organism, in-  
6 cluding an area used by the organism for  
7 spawning, incubation, nursery, rearing, growth  
8 to maturity, food supply, or migration.

9 (B) INCLUSIONS.—The term “aquatic  
10 habitat” includes an area adjacent to an aquat-  
11 ic environment, if the adjacent area—

12 (i) contributes an element, such as the  
13 input of detrital material or the promotion  
14 of a planktonic or insect population pro-  
15 viding food, that makes fish life possible;

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

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

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

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

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

4           (5) CONSERVATION; CONSERVE; MANAGE; MAN-  
5           AGEMENT.—The terms “conservation”, “conserve”,  
6           “manage”, and “management” mean to protect, sus-  
7           tain, and, where appropriate, 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 regulated taking)—

13                 (A) a healthy population of fish, wildlife,  
14                 or plant life;

15                 (B) a habitat required to sustain fish, wild-  
16                 life, or plant life; or

17                 (C) a habitat required to sustain fish, wild-  
18                 life, or plant life productivity.

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

22          (7) FISH.—

23                 (A) IN GENERAL.—The term “fish” means  
24                 any freshwater, diadromous, estuarine, or ma-  
25                 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 (8) FISH HABITAT CONSERVATION PROJECT.—

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

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

11 (ii) provides for the conservation or  
12 management of an aquatic habitat.

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

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

22 (ii) the obtaining of a real property  
23 interest in land or water, including water  
24 rights, in accordance with terms and condi-  
25 tions that ensure that the real property

1 will be administered for the long-term con-  
2 servation of—

3 (I) the land or water; and

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

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

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

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

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

22 (A) land;

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

24 (C) a building or object that is perma-  
25 nently affixed to 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—

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

6                   (B) any department or division of a de-  
7 partment or agency of a State that manages in  
8 the public trust the inland or marine fishery re-  
9 sources or the habitat for those fishery re-  
10 sources of the State pursuant to State law or  
11 the constitution of the State; or

12                   (C) the fish and wildlife agency of the  
13 Commonwealth of Puerto Rico, Guam, the Vir-  
14 gin Islands, or any other territory or possession  
15 of the United States.

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

17           (a) ESTABLISHMENT.—

18                   (1) IN GENERAL.—There is established a board,  
19 to be known as the “National Fish Habitat  
20 Board”—

21                           (A) to promote, oversee, and coordinate the  
22 implementation of this Act and the National  
23 Fish Habitat Action Plan;

24                           (B) to establish national goals and prior-  
25 ities for aquatic habitat conservation;

1 (C) to designate Partnerships; and

2 (D) to review and make recommendations  
3 regarding fish habitat conservation projects.

4 (2) MEMBERSHIP.—The Board shall be com-  
5 posed of 27 members, of whom—

6 (A) 1 shall be the Director;

7 (B) 1 shall be the Assistant Administrator;

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

10 (D) 1 shall be the Chief of the Forest  
11 Service;

12 (E) 1 shall be the Assistant Administrator  
13 for Water of the Environmental Protection  
14 Agency;

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

17 (G) 1 shall be the Secretary of the Board  
18 of Directors of the National Fish and Wildlife  
19 Foundation appointed pursuant to section  
20 3(g)(2)(B) of the National Fish and Wildlife  
21 Foundation Establishment Act (16 U.S.C.  
22 3702(g)(2)(B));

23 (H) 4 shall be representatives of State  
24 agencies, 1 of whom shall be nominated by a re-  
25 gional association of fish and wildlife agencies

1 from each of the Northeast, Southeast, Mid-  
2 west, and Western regions of the United States;

3 (I) 1 shall be a representative of the Amer-  
4 ican Fisheries Society;

5 (J) 2 shall be representatives of Indian  
6 tribes, of whom—

7 (i) 1 shall represent Indian tribes  
8 from the State of Alaska; and

9 (ii) 1 shall represent Indian tribes  
10 from the other States;

11 (K) 1 shall be a representative of the Re-  
12 gional Fishery Management Councils estab-  
13 lished under section 302 of the Magnuson-Ste-  
14 vens Fishery Conservation and Management  
15 Act (16 U.S.C. 1852);

16 (L) 1 shall be a representative of the Ma-  
17 rine Fisheries Commissions, which is composed  
18 of—

19 (i) the Atlantic States Marine Fish-  
20 eries Commission;

21 (ii) the Gulf States Marine Fisheries  
22 Commission; and

23 (iii) the Pacific States Marine Fish-  
24 eries Commission;

1 (M) 1 shall be a representative of the  
2 Sportfishing and Boating Partnership Council;  
3 and

4 (N) 10 shall be representatives selected  
5 from each of the following groups:

6 (i) The recreational sportfishing in-  
7 dustry.

8 (ii) The commercial fishing industry.

9 (iii) Marine recreational anglers.

10 (iv) Freshwater recreational anglers.

11 (v) Terrestrial resource conservation  
12 organizations.

13 (vi) Aquatic resource conservation or-  
14 ganizations.

15 (vii) The livestock and poultry produc-  
16 tion industry.

17 (viii) The land development industry.

18 (ix) The row crop industry.

19 (x) Natural resource commodity inter-  
20 ests, such as petroleum or mineral extrac-  
21 tion.

22 (3) COMPENSATION.—A member of the Board  
23 shall serve without compensation.

24 (4) TRAVEL EXPENSES.—A member of the  
25 Board shall be allowed travel expenses, including per



1 diem in lieu of subsistence, at rates authorized for  
2 an employee of an agency under subchapter I of  
3 chapter 57 of title 5, United States Code, while  
4 away from the home or regular place of business of  
5 the member in the performance of the duties of the  
6 Board.

7 (b) APPOINTMENT AND TERMS.—

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

12 (2) INITIAL BOARD MEMBERSHIP.—

13 (A) IN GENERAL.—Not later than 180  
14 days after the date of enactment of this Act,  
15 the representatives of the board established by  
16 the National Fish Habitat Action Plan shall ap-  
17 point the initial members of the Board de-  
18 scribed in subparagraphs (H) through (I) and  
19 (K) through (N) of subsection (a)(2).

20 (B) TRIBAL REPRESENTATIVES.—Not  
21 later than 180 days after the enactment of this  
22 Act, the Secretary shall provide to the board es-  
23 tablished by the National Fish Habitat Action  
24 Plan a recommendation of not less than 4 tribal  
25 representatives, from which that board shall ap-

1 point 2 representatives pursuant to subpara-  
2 graph (J) of subsection (a)(2).

3 (3) TRANSITIONAL TERMS.—Of the members  
4 described in subsection (a)(2)(N) initially appointed  
5 to the Board—

6 (A) 4 shall be appointed for a term of 1  
7 year;

8 (B) 4 shall be appointed for a term of 2  
9 years; and

10 (C) 3 shall be appointed for a term of 3  
11 years.

12 (4) VACANCIES.—

13 (A) IN GENERAL.—A vacancy of a member  
14 of the Board described in any of subparagraphs  
15 (H) through (I) or (K) through (N) of sub-  
16 section (a)(2) shall be filled by an appointment  
17 made by the remaining members of the Board.

18 (B) TRIBAL REPRESENTATIVES.—Fol-  
19 lowing a vacancy of a member of the Board de-  
20 scribed in subparagraph (J) of subsection  
21 (a)(2), the Secretary shall recommend to the  
22 Board not less than 4 tribal representatives,  
23 from which the remaining members of the  
24 Board shall appoint a representative to fill the  
25 vacancy.

1           (5) CONTINUATION OF SERVICE.—An individual  
2 whose term of service as a member of the Board ex-  
3 pires may continue to serve on the Board until a  
4 successor is appointed.

5           (6) REMOVAL.—If a member of the Board de-  
6 scribed in any of subparagraphs (H) through (N) of  
7 subsection (a)(2) misses 3 consecutive regularly  
8 scheduled Board meetings, the members of the  
9 Board may—

10                   (A) vote to remove that member; and

11                   (B) appoint another individual in accord-  
12                   ance with paragraph (4).

13           (c) CHAIRPERSON.—

14           (1) IN GENERAL.—The Board shall elect a  
15 member of the Board to serve as Chairperson of the  
16 Board.

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

19           (d) MEETINGS.—

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

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

22                   (B) not less frequently than twice each cal-  
23                   endar year.

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

1 (e) PROCEDURES.—

2 (1) IN GENERAL.—The Board shall establish  
3 procedures to carry out the business of the Board,  
4 including—

5 (A) a requirement that a quorum of the  
6 members of the Board be present to transact  
7 business;

8 (B) a requirement that no recommenda-  
9 tions may be adopted by the Board, except by  
10 the vote of  $\frac{2}{3}$  of all members present and vot-  
11 ing;

12 (C) procedures for establishing national  
13 goals and priorities for aquatic habitat con-  
14 servation for the purposes of this Act;

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

17 (E) procedures for reviewing, evaluating,  
18 and making recommendations regarding fish  
19 habitat conservation projects.

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

22 **SEC. 5. FISH HABITAT PARTNERSHIPS.**

23 (a) AUTHORITY TO DESIGNATE.—The Board may  
24 designate Fish Habitat Partnerships in accordance with  
25 this section.

1 (b) PURPOSES.—The purposes of a Partnership shall  
2 be—

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

5 (2) to identify strategic priorities for fish habi-  
6 tat conservation;

7 (3) to recommend to the Board fish habitat  
8 conservation projects that address a strategic pri-  
9 ority of the Board; and

10 (4) to develop and carry out fish habitat con-  
11 servation projects.

12 (c) APPLICATIONS.—An entity seeking to be des-  
13 igned as a Partnership shall submit to the Board an  
14 application at such time, in such manner, and containing  
15 such information as the Board may reasonably require.

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

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

1           (2) is organized to promote the health of impor-  
2           tant aquatic habitats and distinct geographical  
3           areas, keystone fish species, or system types, includ-  
4           ing reservoirs, natural lakes, coastal and marine en-  
5           vironments, and estuaries;

6           (3) identifies strategic fish and aquatic habitat  
7           priorities for the Partnership area in the form of  
8           geographical focus areas or key stressors or impair-  
9           ments to facilitate strategic planning and decision-  
10          making;

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

13          (5) includes a governance structure that—

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

15                (B) promotes joint strategic planning and  
16          decisionmaking by the applicant;

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

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

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

2 (a) SUBMISSION TO BOARD.—Not later than March  
3 31 of each calendar year, each Partnership shall submit  
4 to the Board a list of fish habitat conservation projects  
5 recommended by the Partnership for annual funding  
6 under this Act.

7 (b) RECOMMENDATIONS BY BOARD.—Not later than  
8 July 1 of each calendar year, the Board shall submit to  
9 the Secretary a description, including estimated costs, of  
10 each fish habitat conservation project that the Board rec-  
11 ommends that the Secretary approve and fund under this  
12 Act, in order of priority, for the following fiscal year.

13 (c) CONSIDERATIONS.—The Board shall select each  
14 fish habitat conservation project to be recommended to the  
15 Secretary under subsection (b)—

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

19 (2) after taking into consideration—

20 (A) the extent to which the fish habitat  
21 conservation project fulfills a purpose of this  
22 Act or a goal of the National Fish Habitat Ac-  
23 tion Plan;

24 (B) the extent to which the fish habitat  
25 conservation project addresses the national pri-  
26 orities established by the Board;

1 (C) the availability of sufficient non-Fed-  
2 eral funds to match Federal contributions for  
3 the fish habitat conservation project, as re-  
4 quired by subsection (e);

5 (D) the extent to which the fish habitat  
6 conservation project—

7 (i) increases fishing opportunities for  
8 the public;

9 (ii) will be carried out through a coop-  
10 erative agreement among Federal, State,  
11 and local governments, Indian tribes, and  
12 private entities;

13 (iii) increases public access to land or  
14 water;

15 (iv) advances the conservation of fish  
16 and wildlife species that are listed, or are  
17 candidates to be listed, as threatened spe-  
18 cies or endangered species under the En-  
19 dangered Species Act of 1973 (16 U.S.C.  
20 1531 et seq.);

21 (v) where appropriate, advances the  
22 conservation of fish and fish habitats  
23 under the Magnuson-Stevens Act (16  
24 U.S.C. 1801 et seq.) and other relevant



1 Federal law and State wildlife action plans;  
2 and

3 (vi) promotes resilience such that de-  
4 sired biological communities are able to  
5 persist and adapt to environmental  
6 stressors such as climate change; and

7 (E) the substantiality of the character and  
8 design of the fish habitat conservation project.

9 (d) LIMITATIONS.—

10 (1) REQUIREMENTS FOR EVALUATION.—No  
11 fish habitat conservation project may be rec-  
12 ommended by the Board under subsection (b) or  
13 provided financial assistance under this Act unless  
14 the fish habitat conservation project includes an  
15 evaluation plan designed—

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

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

1 (C) to require the submission to the Board  
2 of a report describing the findings of the assess-  
3 ment.

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

6 (A) IN GENERAL.—No fish habitat con-  
7 servation project that will result in the acquisi-  
8 tion by the State, local government, or other  
9 non-Federal entity, in whole or in part, of any  
10 real property interest may be recommended by  
11 the Board under subsection (b) or provided fi-  
12 nancial assistance under this Act unless the  
13 project meets the requirements of subparagraph  
14 (B).

15 (B) REQUIREMENTS.—

16 (i) IN GENERAL.—A real property in-  
17 terest may not be acquired pursuant to a  
18 fish habitat conservation project by a  
19 State, public agency, or other non-Federal  
20 entity unless the State, agency, or other  
21 non-Federal entity is obligated to under-  
22 take the management of the property being  
23 acquired in accordance with the purposes  
24 of this Act.

1                   (ii) ADDITIONAL CONDITIONS.—Any  
2                   real property interest acquired by a State,  
3                   local government, or other non-Federal en-  
4                   tity pursuant to a fish habitat conservation  
5                   project shall be subject to terms and condi-  
6                   tions that ensure that the interest will be  
7                   administered for the long-term conserva-  
8                   tion and management of the aquatic eco-  
9                   system and the fish and wildlife dependent  
10                  on that ecosystem.

11               (e) NON-FEDERAL CONTRIBUTIONS.—

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

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

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

4                   (A) may not be derived from a Federal  
5 grant program; but

6                   (B) may include in-kind contributions and  
7 cash.

8           (4) SPECIAL RULE FOR INDIAN TRIBES.—Not-  
9 withstanding paragraph (1) or any other provision of  
10 law, any funds made available to an Indian tribe  
11 pursuant to this Act may be considered to be non-  
12 Federal funds for the purpose of paragraph (1).

13 (f) APPROVAL.—

14           (1) IN GENERAL.—Not later than 180 days  
15 after the date of receipt of the recommendations of  
16 the Board for fish habitat conservation projects  
17 under subsection (b), and based, to the maximum  
18 extent practicable, on the criteria described in sub-  
19 section (c)—

20                   (A) the Secretary shall approve, reject, or  
21 reorder the priority of any fish habitat con-  
22 servation project recommended by the Board  
23 that is not within a marine or estuarine habitat;  
24 and

1           (B) the Secretary and the Secretary of  
2 Commerce shall jointly approve, reject, or reor-  
3 der the priority of any fish habitat conservation  
4 project recommended by the Board that is with-  
5 in a marine or estuarine habitat.

6           (2) FUNDING.—If the Secretary, or the Sec-  
7 retary and the Secretary of Commerce jointly, ap-  
8 proves a fish habitat conservation project under  
9 paragraph (1), the Secretary, or the Secretary and  
10 the Secretary of Commerce jointly, shall use  
11 amounts made available to carry out this Act to pro-  
12 vide funds to carry out the fish habitat conservation  
13 project.

14           (3) NOTIFICATION.—If the Secretary, or the  
15 Secretary and the Secretary of Commerce jointly, re-  
16 jects or reorders the priority of any fish habitat con-  
17 servation project recommended by the Board under  
18 subsection (b), the Secretary, or the Secretary and  
19 the Secretary of Commerce jointly, shall provide to  
20 the Board and the appropriate Partnership a written  
21 statement of the reasons that the Secretary, or the  
22 Secretary and the Secretary of Commerce jointly, re-  
23 jected or modified the priority of the fish habitat  
24 conservation project.



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

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

5           (6) facilitate communication, cohesiveness, and  
6 efficient operations for the benefit of Partnerships  
7 and the Board;

8           (7) facilitate, with assistance from the Director,  
9 the Assistant Administrator, and the President of  
10 the Association of Fish and Wildlife Agencies, the  
11 consideration of fish habitat conservation projects by  
12 the Board;

13           (8) provide support to the Director regarding  
14 the development and implementation of the inter-  
15 agency operational plan under subsection (c);

16           (9) coordinate technical and scientific reporting  
17 as required by section 11;

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

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

24           (c) INTERAGENCY OPERATIONAL PLAN.—Not later  
25 than 1 year after the date of enactment of this Act, and

1 every 5 years thereafter, the Director, in cooperation with  
2 the Assistant Administrator and the heads of other appro-  
3 priate Federal departments and agencies, shall develop an  
4 interagency operational plan for the National Fish Habi-  
5 tat Conservation Partnership Office that describes—

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

9 (2) any interagency agreements between or  
10 among Federal departments and agencies to address  
11 those needs.

12 (d) STAFF AND SUPPORT.—

13 (1) DEPARTMENTS OF INTERIOR AND COM-  
14 MERCE.—The Director and the Assistant Adminis-  
15 trator shall each provide appropriate staff to support  
16 the National Fish Habitat Conservation Partnership  
17 Office, subject to the availability of funds under sec-  
18 tion 15.

19 (2) STATES AND INDIAN TRIBES.—Each State  
20 and Indian tribe is encouraged to provide staff to  
21 support the National Fish Habitat Conservation  
22 Partnership Office.

23 (3) DETAILEES AND CONTRACTORS.—The Na-  
24 tional Fish Habitat Conservation Partnership Office



1       may accept staff or other administrative support  
2       from other entities—

3               (A) through interagency details; or

4               (B) as contractors.

5           (4) QUALIFICATIONS.—The staff of the Na-  
6       tional Fish Habitat Conservation Partnership Office  
7       shall include members with education and experience  
8       relating to the principles of fish, wildlife, and aquat-  
9       ic habitat conservation.

10          (5) WAIVER OF REQUIREMENT.—The Secretary  
11       may waive all or part of the non-Federal contribu-  
12       tion requirement under section 6(e)(1) if the Sec-  
13       retary determines that—

14               (A) no reasonable means are available  
15       through which the affected applicant can meet  
16       the requirement; and

17               (B) the probable benefit of the relevant  
18       fish habitat conservation project outweighs the  
19       public interest in meeting the requirement.

20          (e) REPORTS.—Not less frequently than once each  
21       year, the Director shall provide to the Board a report de-  
22       scribing the activities of the National Fish Habitat Con-  
23       servation Partnership Office.

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

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

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

11 (1) providing technical and scientific assistance  
12 to States, Indian tribes, regions, local communities,  
13 and nongovernmental organizations in the develop-  
14 ment and implementation of Partnerships;

15 (2) providing technical and scientific assistance  
16 to Partnerships for habitat assessment, strategic  
17 planning, and prioritization;

18 (3) supporting the development and implemen-  
19 tation of fish habitat conservation projects that are  
20 identified as high priorities by Partnerships and the  
21 Board;

22 (4) supporting and providing recommendations  
23 regarding the development of science-based moni-  
24 toring and assessment approaches for implementa-  
25 tion through Partnerships;

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

3           (6) ensuring the availability of experts to con-  
4           duct scientifically based evaluation and reporting of  
5           the results of fish habitat conservation projects.

6 **SEC. 9. CONSERVATION OF AQUATIC HABITAT FOR FISH**  
7                                   **AND OTHER AQUATIC ORGANISMS ON FED-**  
8                                   **ERAL LAND.**

9           To the extent consistent with the mission and author-  
10          ity of the applicable department or agency, the head of  
11          each Federal department and agency responsible for ac-  
12          quiring, managing, or disposing of Federal land or water  
13          shall cooperate with the Assistant Administrator and the  
14          Director to conserve the aquatic habitats for fish and  
15          other aquatic organisms within the land and water of the  
16          department or agency.

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

18          The Secretary shall provide a notice to, and coordi-  
19          nate with, the appropriate State agency or tribal agency,  
20          as applicable, of each State and Indian tribe within the  
21          boundaries of which an activity is planned to be carried  
22          out pursuant to this Act by not later than 30 days before  
23          the date on which the activity is implemented.

24 **SEC. 11. ACCOUNTABILITY AND REPORTING.**

25          (a) IMPLEMENTATION REPORTS.—

1           (1) IN GENERAL.—Not later than 2 years after  
2 the date of enactment of this Act, and every 2 years  
3 thereafter, the Board shall submit to the appropriate  
4 congressional committees a report describing the im-  
5 plementation of—

6                   (A) this Act; and

7                   (B) the National Fish Habitat Action  
8 Plan.

9           (2) CONTENTS.—Each report submitted under  
10 paragraph (1) shall include—

11                   (A) an estimate of the number of acres,  
12 stream miles, or acre-feet (or other suitable  
13 measure) of aquatic habitat that was protected,  
14 restored, or enhanced under the National Fish  
15 Habitat Action Plan by Federal, State, or local  
16 governments, Indian tribes, or other entities in  
17 the United States during the 2-year period end-  
18 ing on the date of submission of the report;

19                   (B) a description of the public access to  
20 aquatic habitats protected, restored, or estab-  
21 lished under the National Fish Habitat Action  
22 Plan during that 2-year period;

23                   (C) a description of the opportunities for  
24 public fishing established under the National

1 Fish Habitat Action Plan during that period;  
2 and

3 (D) an assessment of the status of fish  
4 habitat conservation projects carried out with  
5 funds provided under this Act during that pe-  
6 riod, disaggregated by year, including—

7 (i) a description of the fish habitat  
8 conservation projects recommended by the  
9 Board under section 6(b);

10 (ii) a description of each fish habitat  
11 conservation project approved by the Sec-  
12 retary under section 6(f), in order of pri-  
13 ority for funding;

14 (iii) a justification for—

15 (I) the approval of each fish  
16 habitat conservation project; and

17 (II) the order of priority for  
18 funding of each fish habitat conserva-  
19 tion project;

20 (iv) a justification for any rejection or  
21 reordering of the priority of each fish habi-  
22 tat conservation project recommended by  
23 the Board under section 6(b) that was  
24 based on a factor other than the criteria  
25 described in section 6(c); and

1                   (v) an accounting of expenditures by  
2                   Federal, State, or local governments, In-  
3                   dian tribes, or other entities to carry out  
4                   fish habitat conservation projects.

5           (b) STATUS AND TRENDS REPORT.—Not later than  
6 December 31, 2012, and every 5 years thereafter, the  
7 Board shall submit to the appropriate congressional com-  
8 mittees a report describing the status of aquatic habitats  
9 in the United States.

10          (c) REVISIONS.—Not later than December 31, 2013,  
11 and every 5 years thereafter, the Board shall revise the  
12 goals and other elements of the National Fish Habitat Ac-  
13 tion Plan, after consideration of each report required by  
14 subsection (b).

15 **SEC. 12. REGULATIONS.**

16          The Secretary may promulgate such regulations as  
17 the Secretary determines to be necessary to carry out this  
18 Act.

19 **SEC. 13. 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 the Act regarding  
5 water quality or water quantity.

6           (b) STATE AUTHORITY.—Nothing in this Act—

7           (1) affects the authority, jurisdiction, or respon-  
8 sibility of a State to manage, control, or regulate  
9 fish and wildlife under the laws and regulations of  
10 the State; or

11           (2) authorizes the Secretary to control or regu-  
12 late within a State the fishing or hunting of fish and  
13 wildlife.

14           (c) EFFECT ON INDIAN TRIBES.—Nothing in this  
15 Act abrogates, abridges, affects, modifies, supersedes, or  
16 alters any right of an Indian tribe recognized by treaty  
17 or any other means, including—

18           (1) an agreement between the Indian tribe and  
19 the United States;

20           (2) Federal law (including regulations);

21           (3) an Executive order; or

22           (4) a judicial decree.

23           (d) ADJUDICATION OF WATER RIGHTS.—Nothing in  
24 this Act diminishes or affects the ability of the Secretary  
25 to join an adjudication of rights to the use of water pursu-

1 ant to subsection (a), (b), or (c) of section 208 of the De-  
2 partment of Justice Appropriation Act, 1953 (43 U.S.C.  
3 666).

4 (e) EFFECT ON OTHER AUTHORITIES.—

5 (1) ACQUISITION OF LAND AND WATER.—Noth-  
6 ing in this Act alters or otherwise affects the au-  
7 thorities, responsibilities, obligations, or powers of  
8 the Secretary to acquire land, water, or an interest  
9 in land or water under any other provision of law.

10 (2) PRIVATE PROPERTY PROTECTION.—Nothing  
11 in this Act permits the use of funds made available  
12 to carry out this Act to acquire real property or a  
13 real property interest without the written consent of  
14 each owner of the real property or real property in-  
15 terest.

16 (3) MITIGATION.—Nothing in this Act permits  
17 the use of funds made available to carry out this Act  
18 for fish and wildlife mitigation purposes under—

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

21 (B) the Fish and Wildlife Coordination Act  
22 (16 U.S.C. 661 et seq.);

23 (C) the Water Resources Development Act  
24 of 1986 (Public Law 99–662; 100 Stat. 4082);

25 or



1 (D) any other Federal law or court settle-  
2 ment.

3 **SEC. 14. NONAPPLICABILITY OF FEDERAL ADVISORY COM-  
4 MITTEE ACT.**

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

- 7 (1) the Board; or  
8 (2) any Partnership.

9 **SEC. 15. FUNDING.**

10 (a) AUTHORIZATION OF APPROPRIATIONS.—

11 (1) FISH HABITAT CONSERVATION PROJECTS.—

12 There is authorized to be appropriated to the Sec-  
13 retary \$7,200,000 for each of fiscal years 2012  
14 through 2016 to provide funds for fish habitat con-  
15 servation projects approved under section 6(f), of  
16 which 5 percent shall be made available for each fis-  
17 cal year for projects carried out by Indian tribes.

18 (2) NATIONAL FISH HABITAT CONSERVATION  
19 PARTNERSHIP OFFICE.—

20 (A) IN GENERAL.—There is authorized to  
21 be appropriated to the Secretary for each of fis-  
22 cal years 2012 through 2016 for the National  
23 Fish Habitat Conservation Partnership Office,  
24 and to carry out section 11, an amount equal  
25 to 5 percent of the amount appropriated for the

1 applicable fiscal year pursuant to paragraph  
2 (1).

3 (B) REQUIRED TRANSFERS.—The Sec-  
4 retary shall annually transfer to other Federal  
5 departments and agencies such percentage of  
6 the amounts made available pursuant to sub-  
7 paragraph (A) as is required to support partici-  
8 pation by those departments and agencies in  
9 the National Fish Habitat Conservation Part-  
10 nership Office pursuant to the interagency  
11 operational plan under section 7(e).

12 (3) TECHNICAL AND SCIENTIFIC ASSISTANCE.—  
13 There are authorized to be appropriated for each of  
14 fiscal years 2012 through 2016 to carry out, and  
15 provide technical and scientific assistance under, sec-  
16 tion 8—

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

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

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

24 (4) PLANNING AND ADMINISTRATIVE EX-  
25 PENSES.—There is authorized to be appropriated to

1 the Secretary for each of fiscal years 2012 through  
2 2016 for use by the Board, the Director, and the  
3 Assistant Administrator for planning and adminis-  
4 trative expenses an amount equal to 3 percent of the  
5 amount appropriated for the applicable fiscal year  
6 pursuant to paragraph (1).

7 (b) AGREEMENTS AND GRANTS.—The Secretary  
8 may—

9 (1) on the recommendation of the Board, and  
10 notwithstanding sections 6304 and 6305 of title 31,  
11 United States Code, and the Federal Financial As-  
12 sistance Management Improvement Act of 1999 (31  
13 U.S.C. 6101 note; Public Law 106–107), enter into  
14 a grant agreement, cooperative agreement, or con-  
15 tract with a Partnership or other entity for a fish  
16 habitat conservation project or restoration or en-  
17 hancement project;

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

21 (3) make funds available to any Federal depart-  
22 ment or agency for use by that department or agen-  
23 cy to provide grants for any fish habitat protection  
24 project, restoration project, or enhancement project

1 that the Secretary determines to be consistent with  
2 this Act.

3 (c) DONATIONS.—

4 (1) IN GENERAL.—The Secretary may—

5 (A) enter into an agreement with any orga-  
6 nization described in section 501(c)(3) of the  
7 Internal Revenue Code of 1986 that is exempt  
8 from taxation under section 501(a) of that  
9 Code to solicit private donations to carry out  
10 the purposes of this Act; and

11 (B) accept donations of funds, property,  
12 and services to carry out the purposes of this  
13 Act.

14 (2) TREATMENT.—A donation accepted under  
15 this section—

16 (A) shall be considered to be a gift or be-  
17 quest to, or otherwise for the use of, the United  
18 States; and

19 (B) may be—

20 (i) used directly by the Secretary; or

21 (ii) provided to another Federal de-  
22 partment or agency through an inter-  
23 agency agreement.



Calendar No. 455

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 1201**

[Report No. 112-187]

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## **A BILL**

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

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JULY 17, 2012

Reported without amendment