

111TH CONGRESS  
1ST SESSION

# S. 1214

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 9, 2009

Mr. LIEBERMAN (for himself, Mr. CASEY, Mr. BOND, Ms. STABENOW, Mr. CARDIN, Mr. SANDERS, Mr. WHITEHOUSE, and Mr. CRAPO) 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 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,*

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 of  
7 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.

**1 SEC. 2. FINDINGS; PURPOSE.**

2 (a) FINDINGS.—Congress finds that—

3 (1) healthy populations of fish and other aquat-  
 4 ic organisms depend on the conservation, protection,  
 5 restoration, and enhancement of aquatic habitats in  
 6 the United States;

7 (2) aquatic habitats (including wetlands,  
 8 streams, rivers, lakes, estuaries, coastal and marine  
 9 ecosystems, and associated riparian upland habitats  
 10 that buffer those areas from external factors) per-  
 11 form numerous valuable environmental functions  
 12 that sustain environmental, social, and cultural val-  
 13 ues, including recycling nutrients, purifying water,  
 14 attenuating floods, augmenting and maintaining  
 15 stream flows, recharging ground water, acting as  
 16 primary producers in the food chain, and providing  
 17 essential and significant habitat for plants, fish,  
 18 wildlife, and other dependent species;

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

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

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

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

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

15           (5) certain fish species are considered to be eco-  
16 logical indicators of aquatic habitat quality, such  
17 that the presence of those 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—

1 (A) caused significant declines in fish pop-  
2 ulations throughout the United States, espe-  
3 cially declines in native fish populations; and

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

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

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

16 (8) the National Fish Habitat Action Plan pro-  
17 vides a framework for maintaining and restoring  
18 aquatic habitats to ensure perpetuation of popu-  
19 lations of fish and other aquatic organisms;

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

1 nancial assistance provided by the Federal Govern-  
2 ment;

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

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

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

15 (B) the Bureau of Land Management;

16 (C) the National Park Service;

17 (D) the Bureau of Reclamation;

18 (E) the Bureau of Indian Affairs;

19 (F) the National Marine Fisheries Service;

20 (G) the Forest Service;

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

23 (I) the Environmental Protection Agency;

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

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

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

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

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

15 (14) many of the programs for conservation on  
16 private farmland, ranchland, and forestland that are  
17 carried out by the Secretary of Agriculture, includ-  
18 ing the Natural Resources Conservation Service and  
19 the State and Private Forestry programs of the For-  
20 est Service, are able to significantly contribute to the  
21 implementation of the National Fish Habitat Action  
22 Plan through the engagement of private landowners.

23 (b) PURPOSE.—The purpose of this Act is to encour-  
24 age partnerships among public agencies and other inter-

1 ested parties consistent with the mission and goals of the  
2 National Fish Habitat Action Plan—

3 (1) to protect and maintain intact and healthy  
4 aquatic habitats;

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

7 (3) to reverse declines in the quality and quan-  
8 tity of aquatic habitats to improve the overall health  
9 of fish and other aquatic organisms;

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

13 (5) to improve fisheries habitat in a manner  
14 that leads to improvement of the annual economic  
15 output from recreational, subsistence, and commer-  
16 cial fishing;

17 (6) to ensure coordination and facilitation of ac-  
18 tivities carried out by Federal departments and  
19 agencies under the leadership of—

20 (A) the Director of the United States Fish  
21 and Wildlife Service;

22 (B) the Assistant Administrator for Fish-  
23 eries of the National Oceanic and Atmospheric  
24 Administration; and

1 (C) the Director of the United States Geo-  
2 logical Survey; and

3 (7) to achieve other purposes in accordance  
4 with the mission and goals of the National Fish  
5 Habitat Action Plan.

6 **SEC. 3. DEFINITIONS.**

7 In this Act:

8 (1) APPROPRIATE CONGRESSIONAL COMMIT-  
9 TEES.—The term “appropriate congressional com-  
10 mittees” means—

11 (A) the Committee on Commerce, Science,  
12 and Transportation and the Committee on En-  
13 vironment and Public Works of the Senate; and

14 (B) the Committee on Natural Resources  
15 of the House of Representatives.

16 (2) AQUATIC HABITAT.—

17 (A) IN GENERAL.—The term “aquatic  
18 habitat” means any area on which an aquatic  
19 organism depends, directly or indirectly, to  
20 carry out the life processes of the organism, in-  
21 cluding an area used by the organism for  
22 spawning, incubation, nursery, rearing, growth  
23 to maturity, food supply, or migration.



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

4 (i) contributes an element, such as the  
5 input of detrital material or the promotion  
6 of a planktonic or insect population pro-  
7 viding food, that makes fish life possible;

8 (ii) protects the quality and quantity  
9 of water sources;

10 (iii) provides public access for the use  
11 of fishery resources; or

12 (iv) serves as a buffer protecting the  
13 aquatic environment.

14 (3) ASSISTANT ADMINISTRATOR.—The term  
15 “Assistant Administrator” means the Assistant Ad-  
16 ministrator for Fisheries of the National Oceanic  
17 and Atmospheric Administration.

18 (4) BOARD.—The term “Board” means the Na-  
19 tional Fish Habitat Board established by section  
20 4(a)(1).

21 (5) CONSERVATION; CONSERVE; MANAGE; MAN-  
22 AGEMENT.—The terms “conservation”, “conserve”,  
23 “manage”, and “management” mean to protect, sus-  
24 tain, and, where appropriate, restore and enhance,  
25 using methods and procedures associated with mod-

1 ern scientific resource programs (including protec-  
 2 tion, research, census, law enforcement, habitat  
 3 management, propagation, live trapping and trans-  
 4 plantation, and regulated taking)—

5 (A) a healthy population of fish, wildlife,  
 6 or plant life;

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

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

11 (6) DIRECTOR.—The term “Director” means  
 12 the Director of the United States Fish and Wildlife  
 13 Service.

14 (7) FISH.—

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

18 (B) INCLUSIONS.—The term “fish” in-  
 19 cludes the egg, spawn, spat, larval, and other  
 20 juvenile stages of an organism described in sub-  
 21 paragraph (A).

22 (8) FISH HABITAT CONSERVATION PROJECT.—

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

1 (i) is submitted to the Board by a  
2 Partnership and approved by the Secretary  
3 under section 6; and

4 (ii) provides for the conservation or  
5 management of an aquatic habitat.

6 (B) INCLUSIONS.—The term “fish habitat  
7 conservation project” includes—

8 (i) the provision of technical assist-  
9 ance to a State, Indian tribe, or local com-  
10 munity by the National Fish Habitat Con-  
11 servation Partnership Office or any other  
12 agency to facilitate the development of  
13 strategies and priorities for the conserva-  
14 tion of aquatic habitats; or

15 (ii) the obtaining of a real property  
16 interest in land or water, including water  
17 rights, in accordance with terms and condi-  
18 tions that ensure that the real property  
19 will be administered for the long-term con-  
20 servation of—

21 (I) the land or water; and

22 (II) the fish dependent on the  
23 land or water.

24 (9) INDIAN TRIBE.—The term “Indian tribe”  
25 has the meaning given the term in section 4 of the

1 Indian Self-Determination and Education Assistance  
2 Act (25 U.S.C. 450b).

3 (10) NATIONAL FISH HABITAT ACTION PLAN.—  
4 The term “National Fish Habitat Action Plan”  
5 means the National Fish Habitat Action Plan dated  
6 April 24, 2006, and any subsequent revisions or  
7 amendments to that plan.

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

12 (12) REAL PROPERTY INTEREST.—The term  
13 “real property interest” means an ownership interest  
14 in—

15 (A) land;

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

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

19 (13) SECRETARY.—The term “Secretary”  
20 means the Secretary of the Interior.

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

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

24 (B) any department or division of a de-  
25 partment or agency of a State that manages in

1 the public trust the inland or marine fishery re-  
 2 sources of the State pursuant to State law or  
 3 the constitution of the State; or

4 (C) the fish and wildlife agency of the  
 5 Commonwealth of Puerto Rico, Guam, the Vir-  
 6 gin Islands, or any other territory or possession  
 7 of the United States.

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

9 (a) ESTABLISHMENT.—

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

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

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

18 (C) to designate Partnerships; and

19 (D) to review and make recommendations  
 20 regarding fish habitat conservation projects.

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

23 (A) 1 shall be the Director;

24 (B) 1 shall be the Assistant Administrator;

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

3 (D) 1 shall be the Chief of the Forest  
4 Service;

5 (E) 1 shall be the Assistant Administrator  
6 for Water of the Environmental Protection  
7 Agency;

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

10 (G) 1 shall be the Secretary of the Board  
11 of Directors of the National Fish and Wildlife  
12 Foundation appointed pursuant to section  
13 3(g)(2)(B) of the National Fish and Wildlife  
14 Foundation Establishment Act (16 U.S.C.  
15 3702(g)(2)(B));

16 (H) 4 shall be representatives of State  
17 agencies, 1 of whom shall be nominated by a re-  
18 gional association of fish and wildlife agencies  
19 from each of the Northeast, Southeast, Mid-  
20 west, and Western regions of the United States;

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

23 (J) 2 shall be representatives of Indian  
24 tribes, of whom—

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

3 (ii) 1 shall represent Indian tribes  
4 from the other States;

5 (K) 1 shall be a representative of the Re-  
6 gional Fishery Management Councils estab-  
7 lished under section 302 of the Magnuson-Ste-  
8 vens Fishery Conservation and Management  
9 Act (16 U.S.C. 1852);

10 (L) 1 shall be a representative of the Ma-  
11 rine Fisheries Commissions, which is composed  
12 of—

13 (i) the Atlantic States Marine Fish-  
14 eries Commission;

15 (ii) the Gulf States Marine Fisheries  
16 Commission; and

17 (iii) the Pacific States Marine Fish-  
18 eries Commission;

19 (M) 1 shall be a representative of the  
20 Sportfishing and Boating Partnership Council;  
21 and

22 (N) 10 shall be representatives selected  
23 from each of the following groups:

24 (i) The recreational sportfishing in-  
25 dustry.

- 1 (ii) The commercial fishing industry.
- 2 (iii) Marine recreational anglers.
- 3 (iv) Freshwater recreational anglers.
- 4 (v) Terrestrial resource conservation  
5 organizations.
- 6 (vi) Aquatic resource conservation or-  
7 ganizations.
- 8 (vii) The livestock and poultry produc-  
9 tion industry.
- 10 (viii) The land development industry.
- 11 (ix) The row crop industry.
- 12 (x) Natural resource commodity inter-  
13 ests, such as petroleum or mineral extrac-  
14 tion.

15 (3) COMPENSATION.—A member of the Board  
16 shall serve without compensation.

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

25 (b) APPOINTMENT AND TERMS.—



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

5           (2) INITIAL BOARD MEMBERSHIP.—Not later  
6           than 180 days after the date of enactment of this  
7           Act, the representatives of the board established by  
8           the National Fish Habitat Action Plan shall appoint  
9           the initial members of the Board described in sub-  
10          paragraphs (H) through (N) of subsection (a)(2).

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

14                 (A) 4 shall be appointed for a term of 1  
15                 year;

16                 (B) 4 shall be appointed for a term of 2  
17                 years; and

18                 (C) 3 shall be appointed for a term of 3  
19                 years.

20          (4) VACANCIES.—A vacancy of a member of the  
21          Board described in any of subparagraphs (H)  
22          through (N) of subsection (a)(2) shall be filled by an  
23          appointment made by the remaining members of the  
24          Board.

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 Secretary, in whole or in part, of  
9 any real property interest may be recommended  
10 by the Board under subsection (b) or provided  
11 financial assistance under this Act unless the  
12 project meets the requirements of subparagraph  
13 (B).

14 (B) REQUIREMENTS.—

15 (i) IN GENERAL.—A real property in-  
16 terest acquired by the Secretary pursuant  
17 to a fish habitat conservation project may  
18 not be conveyed to a State, public agency,  
19 or other entity unless—

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

1 (II) the deed or other instrument  
2 of transfer contains provisions for the  
3 reversion to the United States of title  
4 to the property if the State, agency,  
5 or other entity fails to manage the  
6 property in accordance with the pur-  
7 poses of this Act.

8 (ii) ADDITIONAL CONVEYANCE CONDI-  
9 TIONS.—Any real property interest ac-  
10 quired by the Secretary pursuant to a fish  
11 habitat conservation project that is con-  
12 veyed under clause (i) shall be subject to  
13 terms and conditions that ensure that the  
14 interest will be administered for the long-  
15 term conservation and management of the  
16 aquatic ecosystem and the fish and wildlife  
17 dependent on that ecosystem.

18 (e) NON-FEDERAL CONTRIBUTIONS.—

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

1           (2) PROJECTS ON FEDERAL LAND OR WATER.—  
2           Notwithstanding paragraph (1), Federal funds may  
3           be used for payment of 100 percent of the costs of  
4           a fish habitat conservation project located on Fed-  
5           eral land or water, including the acquisition of  
6           inholdings within such land or water.

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

10                   (A) may not be derived from a Federal  
11                   grant program; but

12                   (B) may include in-kind contributions and  
13                   cash.

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

19           (f) CONSIDERATION BY SECRETARY.—

20                   (1) IN GENERAL.—Not later than 180 days  
21                   after the date of receipt of the recommendations of  
22                   the Board for fish habitat conservation projects  
23                   under subsection (b), the Secretary shall approve,  
24                   reject, or reorder the priority of each such rec-

1 ommendation based on, to the maximum extent  
2 practicable, the criteria described in subsection (c).

3 (2) FUNDING.—If the Secretary approves a fish  
4 habitat conservation project under paragraph (1),  
5 the Secretary shall use amounts made available to  
6 carry out this Act to provide funds to carry out the  
7 fish habitat conservation project.

8 (3) NOTIFICATION BY SECRETARY.—If the Sec-  
9 retary rejects or reorders the priority of any fish  
10 habitat conservation project recommended by the  
11 Board under subsection (b), the Secretary shall pro-  
12 vide to the Board and the appropriate Partnership  
13 a written statement of the reasons that the Sec-  
14 retary rejected or modified the priority of the fish  
15 habitat conservation project.

16 **SEC. 7. NATIONAL FISH HABITAT CONSERVATION PART-**  
17 **NERSHIP OFFICE.**

18 (a) ESTABLISHMENT.—Not later than 1 year after  
19 the date of enactment of this Act, the Director shall estab-  
20 lish an office, to be known as the “National Fish Habitat  
21 Conservation Partnership Office”, within the United  
22 States Fish and Wildlife Service.

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

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

6           (2) provide funding to support the detail of  
7 State and tribal fish and wildlife staff to the Office;

8           (3) facilitate the cooperative development and  
9 approval of Partnerships;

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

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

14          (6) facilitate communication, cohesiveness, and  
15 efficient operations for the benefit of Partnerships  
16 and the Board;

17          (7) facilitate, with assistance from the Director,  
18 the Assistant Administrator, and the President of  
19 the Association of Fish and Wildlife Agencies, the  
20 consideration of fish habitat conservation projects by  
21 the Board;

22          (8) provide support to the Director regarding  
23 the development and implementation of the inter-  
24 agency operational plan under subsection (c);

1           (9) coordinate technical and scientific reporting  
2 as required by section 11;

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

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

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

16           (1) the functional, operational, technical, sci-  
17 entific, and general staff, administrative, and mate-  
18 rial needs of the Office; and

19           (2) any interagency agreements between or  
20 among Federal departments and agencies to address  
21 those needs.

22           (d) STAFF AND SUPPORT.—

23           (1) DEPARTMENTS OF INTERIOR AND COM-  
24 MERCE.—The Director and the Assistant Adminis-  
25 trator shall each provide appropriate staff to support

1 the National Fish Habitat Conservation Partnership  
2 Office, subject to the availability of funds under sec-  
3 tion 15.

4 (2) STATES AND INDIAN TRIBES.—Each State  
5 and Indian tribe is encouraged to provide staff to  
6 support the National Fish Habitat Conservation  
7 Partnership Office.

8 (3) DETAILEES AND CONTRACTORS.—The Na-  
9 tional Fish Habitat Conservation Partnership Office  
10 may accept staff or other administrative support  
11 from other entities—

12 (A) through interagency details; or

13 (B) as contractors.

14 (4) QUALIFICATIONS.—The staff of the Na-  
15 tional Fish Habitat Conservation Partnership Office  
16 shall include members with education and experience  
17 relating to the principles of fish, wildlife, and aquat-  
18 ic habitat conservation.

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

23 (A) no reasonable means are available  
24 through which the affected applicant can meet  
25 the requirement; and

1 (B) the probable benefit of the relevant  
2 fish habitat conservation project outweighs the  
3 public interest in meeting the requirement.

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

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

9 The Director, the Assistant Administrator, and the  
10 Director of the United States Geological Survey, in coordi-  
11 nation with the Forest Service and other appropriate Fed-  
12 eral departments and agencies, shall provide scientific and  
13 technical assistance to the Partnerships, participants in  
14 fish habitat conservation projects, and the Board, includ-  
15 ing by—

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

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

23 (3) supporting the development and implemen-  
24 tation of fish habitat conservation projects that are



1 identified as high priorities by Partnerships and the  
2 Board;

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

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

9 (6) ensuring the availability of experts to con-  
10 duct scientifically based evaluation and reporting of  
11 the results of fish habitat conservation projects.

12 **SEC. 9. CONSERVATION OF AQUATIC HABITAT FOR FISH**  
13 **AND OTHER AQUATIC ORGANISMS ON FED-**  
14 **ERAL LAND.**

15 To the extent consistent with the mission and author-  
16 ity of the applicable department or agency, the head of  
17 each Federal department and agency responsible for ac-  
18 quiring, managing, or disposing of Federal land or water  
19 shall cooperate with the Assistant Administrator and the  
20 Director to conserve the aquatic habitats for fish and  
21 other aquatic organisms within the land and water of the  
22 department or agency.

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

24 The Secretary shall provide a notice to, and coordi-  
25 nate with, the appropriate State agency or tribal agency,

1 as applicable, of each State and Indian tribe within the  
2 boundaries of which an activity is planned to be carried  
3 out pursuant to this Act by not later than 30 days before  
4 the date on which the activity is implemented.

5 **SEC. 11. ACCOUNTABILITY AND REPORTING.**

6 (a) IMPLEMENTATION REPORTS.—

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

12 (A) this Act; and

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

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

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

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

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

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

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

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

20 (iii) a justification for—

21 (I) the approval of each fish  
22 habitat conservation project; and

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

1 (iv) a justification for any rejection or  
2 reordering of the priority of each fish habi-  
3 tat conservation project recommended by  
4 the Board under section 6(b) that was  
5 based on a factor other than the criteria  
6 described in section 6(c); and

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

11 (b) STATUS AND TRENDS REPORT.—Not later than  
12 December 31, 2010, and every 5 years thereafter, the  
13 Board shall submit to the appropriate congressional com-  
14 mittees a report describing the status of aquatic habitats  
15 in the United States.

16 (c) REVISIONS.—Not later than December 31, 2011,  
17 and every 5 years thereafter, the Board shall revise the  
18 goals and other elements of the National Fish Habitat Ac-  
19 tion Plan, after consideration of each report required by  
20 subsection (b).

21 **SEC. 12. REGULATIONS.**

22 The Secretary may promulgate such regulations as  
23 the Secretary determines to be necessary to carry out this  
24 Act.

1 **SEC. 13. EFFECT OF ACT.**

2 (a) WATER RIGHTS.—

3 (1) IN GENERAL.—Nothing in this Act—

4 (A) establishes any express or implied re-  
5 served water right in the United States for any  
6 purpose;

7 (B) affects any water right in existence on  
8 the date of enactment of this Act; or

9 (C) affects any Federal or State law in ex-  
10 istence on the date of enactment of the Act re-  
11 garding water quality or water quantity.

12 (2) AUTHORITY TO ACQUIRE WATER RIGHTS.—

13 The Secretary may acquire, under State law, such  
14 water rights as the Secretary determines to be nec-  
15 essary to carry out this Act.

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

17 (1) affects the authority, jurisdiction, or respon-  
18 sibility of a State to manage, control, or regulate  
19 fish and wildlife under the laws and regulations of  
20 the State; or

21 (2) authorizes the Secretary to control or regu-  
22 late within a State the fishing or hunting of fish and  
23 wildlife.

24 (c) EFFECT ON INDIAN TRIBES.—Nothing in this  
25 Act abrogates, abridges, affects, modifies, supersedes, or

1 alters any right of an Indian tribe recognized by treaty  
2 or any other means, including—

3           (1) an agreement between the Indian tribe and  
4           the United States;

5           (2) Federal law (including regulations);

6           (3) an Executive order; or

7           (4) a judicial decree.

8           (d) ADJUDICATION OF WATER RIGHTS.—Nothing in  
9 this Act diminishes or affects the ability of the Secretary  
10 to join an adjudication of rights to the use of water pursu-  
11 ant to subsection (a), (b), or (c) of section 208 of the De-  
12 partment of Justice Appropriation Act, 1953 (43 U.S.C.  
13 666).

14           (e) EFFECT ON OTHER AUTHORITIES.—

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

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

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

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

6           (B) the Fish and Wildlife Coordination Act  
7 (16 U.S.C. 661 et seq.);

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

10          or

11          (D) any other Federal law or court settle-  
12 ment.

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

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

17          (1) the Board; or

18          (2) any Partnership.

19 **SEC. 15. FUNDING.**

20          (a) AUTHORIZATION OF APPROPRIATIONS.—

21           (1) FISH HABITAT CONSERVATION PROJECTS.—

22          There is authorized to be appropriated to the Sec-  
23 retary \$75,000,000 for each of fiscal years 2010  
24 through 2014 to provide funds for fish habitat con-  
25 servation projects approved under section 6(f), of

1 which 5 percent shall be made available for each fis-  
2 cal year for projects carried out by Indian tribes.

3 (2) NATIONAL FISH HABITAT CONSERVATION  
4 PARTNERSHIP OFFICE.—

5 (A) IN GENERAL.—There is authorized to  
6 be appropriated to the Secretary for each of fis-  
7 cal years 2010 through 2014 for the National  
8 Fish Habitat Conservation Partnership Office,  
9 and to carry out section 11, an amount equal  
10 to the greater of—

11 (i) \$3,000,000; and

12 (ii) 25 percent of the amount appro-  
13 priated for the applicable fiscal year pursu-  
14 ant to paragraph (1).

15 (B) REQUIRED TRANSFERS.—The Sec-  
16 retary shall transfer such percentage of the  
17 amounts made available pursuant to subpara-  
18 graph (A) as is required under section 7 to sup-  
19 port participation by other Federal departments  
20 and agencies in the National Fish Habitat Con-  
21 servation Partnership Office.

22 (3) TECHNICAL AND SCIENTIFIC ASSISTANCE.—  
23 There are authorized to be appropriated for each of  
24 fiscal years 2010 through 2014 to carry out, and



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

3 (A) \$10,000,000 to the Secretary for use  
4 by the United States Fish and Wildlife Service;

5 (B) \$10,000,000 to the Assistant Adminis-  
6 trator for use by the National Oceanic and At-  
7 mospheric Administration; and

8 (C) \$10,000,000 to the Secretary for use  
9 by the United States Geological Survey.

10 (4) PLANNING AND ADMINISTRATIVE EX-  
11 PENSES.—There is authorized to be appropriated to  
12 the Secretary for each of fiscal years 2010 through  
13 2014 for use by the Board, the Director, and the  
14 Assistant Administrator for planning and adminis-  
15 trative expenses an amount equal to the greater of—

16 (A) \$300,000; and

17 (B) 4 percent of the amount appropriated  
18 for the applicable fiscal year pursuant to para-  
19 graph (1).

20 (5) AVAILABILITY OF FUNDS.—Funds made  
21 available under this subsection shall remain available  
22 until expended.

23 (b) AGREEMENTS AND GRANTS.—The Secretary  
24 may—

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

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

13           (3) make funds available to any Federal depart-  
14           ment or agency for use by that department or agen-  
15           cy to provide grants for any fish habitat protection  
16           project, restoration project, or enhancement project  
17           that the Secretary determines to be consistent with  
18           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 that is exempt  
24           from taxation under section 501(a) of that

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

3 (B) accept donations of funds, property,  
4 and services to carry out the purposes of this  
5 Act.

6 (2) TREATMENT.—A donation accepted under  
7 this section—

8 (A) shall be considered to be a gift or be-  
9 quest to, or otherwise for the use of, the United  
10 States; and

11 (B) may be—

12 (i) used directly by the Secretary; or

13 (ii) provided to another Federal de-  
14 partment or agency through an inter-  
15 agency agreement.

○