

115TH CONGRESS
1ST SESSION

S. 1436

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

IN THE SENATE OF THE UNITED STATES

JUNE 26, 2017

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

A BILL

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

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

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

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

2 (a) FINDINGS.—Congress finds that—

3 (1) healthy populations of fish depend on the
 4 conservation, protection, restoration, and enhance-
 5 ment of fish habitats in the United States;

6 (2) fish habitats (including wetlands, streams,
 7 rivers, lakes, estuaries, and coastal and marine habi-
 8 tats) perform numerous valuable environmental
 9 functions that sustain environmental, social, and cul-
 10 tural values, including recycling nutrients, purifying
 11 water, attenuating floods, augmenting and maintain-
 12 ing stream flows, recharging ground water, acting as
 13 primary producers in the food chain, and providing
 14 essential and significant habitat for plants, fish,
 15 wildlife, and other dependent species;

16 (3) the extensive and diverse fish habitat re-
 17 sources of the United States are of enormous signifi-
 18 cance to the economy of the United States, pro-
 19 viding—

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

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

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

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

11 (5) certain fish species are considered to be eco-
12 logical indicators of fish habitat quality, such that
13 the presence of those species reflects high-quality
14 habitat for fish species;

15 (6) loss and degradation of fish habitat, ripar-
16 ian habitat, water quality, and water volume caused
17 by activities such as alteration of watercourses,
18 stream blockages, water withdrawals and diversions,
19 erosion, pollution, sedimentation, and destruction or
20 modification of wetlands have—

21 (A) caused significant declines in fish pop-
22 ulations throughout the United States, espe-
23 cially declines in native fish populations; and

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

1 (7)(A) providing for the conservation and sus-
2 tainability of fish populations has not been fully re-
3 alized, despite federally funded fish and wildlife res-
4 toration programs and other activities intended to
5 conserve fish habitat; and

6 (B) conservation and sustainability may be sig-
7 nificantly advanced through a renewed commitment
8 and sustained, cooperative efforts that are com-
9 plementary to existing fish and wildlife restoration
10 programs and clean water programs;

11 (8) the National Fish Habitat Action Plan pro-
12 vides a framework for maintaining and restoring fish
13 habitats to perpetuate populations of fish species;

14 (9) the United States can achieve significant
15 progress toward providing fish habitats for the con-
16 servation and restoration of fish species through a
17 voluntary, nonregulatory incentive program that is
18 based on technical and financial assistance provided
19 by the Federal Government;

20 (10) the creation of partnerships between local
21 citizens, Indian tribes, Alaska Native organizations,
22 corporations, nongovernmental organizations, and
23 Federal, State, and tribal agencies is critical to the
24 success of activities to restore fish habitats;

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

5 (A) the United States Fish and Wildlife
6 Service;

7 (B) the Bureau of Land Management;

8 (C) the National Park Service;

9 (D) the Bureau of Reclamation;

10 (E) the Bureau of Indian Affairs;

11 (F) the National Marine Fisheries Service;

12 (G) the Forest Service;

13 (H) the Natural Resources Conservation
14 Service; and

15 (I) the Environmental Protection Agency;

16 (12) the United States Fish and Wildlife Serv-
17 ice, the Forest Service, the Bureau of Land Manage-
18 ment, and the National Marine Fisheries Service
19 each play a vital role in—

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

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

1 (13) the United States Geological Survey, the
2 United States Fish and Wildlife Service, and the
3 National Marine Fisheries Service each play a vital
4 role in scientific evaluation, data collection, and
5 mapping for fishery resources in the United States;

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

8 (A) the protection, restoration, and en-
9 hancement of the fish communities and fish
10 habitats in their respective States and terri-
11 tories; and

12 (B) the development, operation, and long-
13 term success of fish habitat partnerships and
14 project implementation; and

15 (15) 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 promote intact and healthy fish habitats;

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

6 (3) to increase the quality and quantity of fish
7 habitats that support a broad natural diversity of
8 fish and other aquatic species;

9 (4) to improve fish habitats in a manner that
10 leads to improvement of the annual economic output
11 from recreational, subsistence, and commercial fish-
12 ing;

13 (5) to enhance fish and wildlife-dependent
14 recreation;

15 (6) to coordinate and facilitate activities carried
16 out by Federal departments and agencies under the
17 leadership of—

18 (A) the Director of the United States Fish
19 and Wildlife Service;

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

23 (C) the Director of the United States Geo-
24 logical Survey; and

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

4 **SEC. 3. DEFINITIONS.**

5 In this Act:

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

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

12 (B) the Committee on Natural Resources
13 of the House of Representatives.

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

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

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

ern scientific resource programs (including protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and the regulated harvesting of fish)—

(A) a healthy population of fish;

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

(C) a habitat required to sustain fish productivity.

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

(6) FISH.—

(A) IN GENERAL.—The term “fish” means any freshwater, diadromous, estuarine, or marine finfish or shellfish.

(B) INCLUSIONS.—The term “fish” includes the egg, spawn, spat, larval, and other juvenile stages of an organism described in subparagraph (A).

(7) FISH AND WILDLIFE-DEPENDENT RECREATION.—The term “fish and wildlife-dependent recreation” means a use involving hunting, fishing, wildlife observation and photography, or conservation education and interpretation.

1 (8) FISH HABITAT.—

2 (A) IN GENERAL.—The term “fish habi-
3 tat” means an area on which fish depend to
4 carry out the life processes of the fish, includ-
5 ing an area used by the fish for spawning, incu-
6 bation, nursery, rearing, growth to maturity,
7 food supply, or migration.

8 (B) INCLUSIONS.—The term “fish habitat”
9 may include—

10 (i) an area immediately adjacent to an
11 aquatic environment, if the immediately
12 adjacent area—

13 (I) contributes to the quality and
14 quantity of water sources; or

15 (II) provides public access for the
16 use of fishery resources; and

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

20 (9) FISH HABITAT CONSERVATION PROJECT.—

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

23 (i) is submitted to the Board by a
24 Partnership and approved by the Secretary
25 under section 6; and

1 (ii) provides for the conservation or
2 management of a fish habitat.

3 (B) INCLUSIONS.—The term “fish habitat
4 conservation project” includes—

5 (i) the provision of technical assist-
6 ance to a State, Indian tribe, or local com-
7 munity by the National Fish Habitat Con-
8 servation Partnership Program or any
9 other agency to facilitate the development
10 of strategies and priorities for the con-
11 servation of fish habitats; or

12 (ii) the voluntary obtaining of a real
13 property interest in land or water, by a
14 State, local government, or other non-Fed-
15 eral entity, including water rights, in ac-
16 cordance with terms and conditions that
17 ensure that the real property will be ad-
18 ministered for the long-term conservation
19 of—

20 (I) the land or water; and

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

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

1 Indian Self-Determination and Education Assistance
2 Act (25 U.S.C. 5304).

3 (11) 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 (12) 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 (13) 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 (14) SECRETARY.—The term “Secretary”
20 means the Secretary of the Interior.

21 (15) STATE.—The term “State” means—

22 (A) each of the several States;

23 (B) the District of Columbia;

24 (C) the Commonwealth of Puerto Rico;

25 (D) Guam;

1 (E) the Virgin Islands; and

2 (F) any other territory or possession of the
3 United States.

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

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

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

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

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

18 (a) ESTABLISHMENT.—

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

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

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

3 (C) to approve Partnerships; and

4 (D) to review and make recommendations
5 regarding fish habitat conservation projects.

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

8 (A) 1 shall be the Director;

9 (B) 1 shall be the Assistant Administrator;

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

12 (D) 1 shall be the Chief of the Forest
13 Service;

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

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

19 (G) 1 shall be the Secretary of the Board
20 of Directors of the National Fish and Wildlife
21 Foundation appointed pursuant to section
22 3(g)(2)(B) of the National Fish and Wildlife
23 Foundation Establishment Act (16 U.S.C.
24 3702(g)(2)(B));

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

6 (I) 1 shall be a representative of the Com-
7 monwealth of Puerto Rico, Guam, the Virgin
8 Islands, or any other territory or possession of
9 the United States;

10 (J) 1 shall be a representative of the
11 American Fisheries Society;

12 (K) 2 shall be representatives of Indian
13 tribes, of whom—

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

16 (ii) 1 shall represent Indian tribes
17 from the other States;

18 (L) 1 shall be a representative of the Re-
19 gional Fishery Management Councils estab-
20 lished under section 302 of the Magnuson-Ste-
21 vens Fishery Conservation and Management
22 Act (16 U.S.C. 1852);

23 (M) 1 shall be a representative of the Ma-
24 rine Fisheries Commissions, which is composed
25 of—

1 (i) the Atlantic States Marine Fish-
 2 eries Commission;

3 (ii) the Gulf States Marine Fisheries
 4 Commission; and

5 (iii) the Pacific States Marine Fish-
 6 eries Commission;

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

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

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

14 (ii) The commercial fishing industry.

15 (iii) Marine recreational anglers.

16 (iv) Freshwater recreational anglers.

17 (v) Terrestrial resource conservation
 18 organizations.

19 (vi) Aquatic resource conservation or-
 20 ganizations.

21 (vii) The livestock and poultry produc-
 22 tion industry.

23 (viii) The land development industry.

24 (ix) The row crop industry.

1 (x) Natural resource commodity inter-
 2 ests, such as petroleum or mineral extrac-
 3 tion.

4 (3) COMPENSATION.—A member of the Board
 5 shall serve without compensation.

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

14 (b) APPOINTMENT AND TERMS.—

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

19 (2) INITIAL BOARD MEMBERSHIP.—

20 (A) IN GENERAL.—Not later than 180
 21 days after the date of enactment of this Act,
 22 the representatives of the board established by
 23 the National Fish Habitat Action Plan shall ap-
 24 point the initial members of the Board de-

1 scribed in subparagraphs (H), (I), (J), (L),
2 (M), (N), and (O) of subsection (a)(2).

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

11 (3) TRANSITIONAL TERMS.—Of the members
12 described in subsection (a)(2)(O) 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.—

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

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

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

13 (6) REMOVAL.—If a member of the Board de-
 14 scribed in any of subparagraphs (H) through (O) of
 15 subsection (a)(2) misses 3 consecutive regularly
 16 scheduled Board meetings, the members of the
 17 Board may—

18 (A) vote to remove that member; and

19 (B) appoint another individual in accord-
 20 ance with paragraph (4).

21 (c) CHAIRPERSON.—

22 (1) IN GENERAL.—The Board shall elect a
 23 member of the Board to serve as Chairperson of the
 24 Board.

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

3 (d) MEETINGS.—

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

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

6 (B) not less frequently than twice each cal-
7 endar year.

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

10 (e) PROCEDURES.—

11 (1) IN GENERAL.—The Board shall establish
12 procedures to carry out the business of the Board,
13 including—

14 (A) a requirement that a quorum of the
15 members of the Board be present to transact
16 business;

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

20 (C) procedures for establishing national
21 goals and priorities for fish habitat conservation
22 for the purposes of this Act;

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

1 (E) procedures for reviewing, evaluating,
2 and making recommendations regarding fish
3 habitat conservation projects.

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

6 **SEC. 5. FISH HABITAT PARTNERSHIPS.**

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

10 (b) PURPOSES.—The purposes of a Partnership shall
11 be—

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

14 (2) to identify strategic priorities for fish habi-
15 tat conservation;

16 (3) to recommend to the Board fish habitat
17 conservation projects that address a strategic pri-
18 ority of the Board; and

19 (4) to develop and carry out fish habitat con-
20 servation projects.

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

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

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

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

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

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

24 (5) includes a governance structure that—

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

1 (B) promotes joint strategic planning and
 2 decisionmaking by the applicant;

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

8 (7) promotes collaboration in developing a stra-
 9 tegic vision and implementation program that is sci-
 10 entifically sound and achievable.

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

12 (a) SUBMISSION TO BOARD.—Not later than March
 13 31 of each calendar year, each Partnership shall submit
 14 to the Board a list of fish habitat conservation projects
 15 recommended by the Partnership for annual funding
 16 under this Act.

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

23 (c) CONSIDERATIONS.—The Board shall select each
 24 fish habitat conservation project to be recommended to the
 25 Secretary under subsection (b)—

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

4 (2) after taking into consideration—

5 (A) the extent to which the fish habitat
6 conservation project fulfills a purpose of this
7 Act or a goal of the National Fish Habitat Ac-
8 tion Plan;

9 (B) the extent to which the fish habitat
10 conservation project addresses the national pri-
11 orities established by the Board;

12 (C) the availability of sufficient non-Fed-
13 eral funds to match Federal contributions for
14 the fish habitat conservation project, as re-
15 quired by subsection (e);

16 (D) the extent to which the fish habitat
17 conservation project—

18 (i) increases recreational fishing op-
19 portunities for the public;

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

1 (iii) increases public access to land or
 2 water for fish and wildlife-dependent rec-
 3 reational opportunities;

4 (iv) advances the conservation of fish
 5 and wildlife species that have been identi-
 6 fied by the States as species in greatest
 7 need of conservation;

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

14 (vi) promotes strong and healthy fish
 15 habitats such that desired biological com-
 16 munities are able to persist and adapt; and

17 (E) the substantiality of the character and
 18 design of the fish habitat conservation project.

19 (d) LIMITATIONS.—

20 (1) REQUIREMENTS FOR EVALUATION.—No
 21 fish habitat conservation project may be rec-
 22 ommended by the Board under subsection (b) or
 23 provided financial assistance under this Act unless
 24 the fish habitat conservation project includes an
 25 evaluation plan designed—

(A) to appropriately assess the biological, ecological, or other results of the habitat protection, restoration, or enhancement activities carried out using the assistance;

(B) to reflect appropriate changes to the fish habitat conservation project if the assessment substantiates that the fish habitat conservation project objectives are not being met;

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

(D) to require the submission to the Board of a report describing the findings of the assessment.

(2) ACQUISITION OF REAL PROPERTY INTERESTS.—

(A) ACQUISITION OF REAL PROPERTY INTERESTS.—

(i) IN GENERAL.—Subject to clause (ii), a State, local government, or other non-Federal entity shall be eligible to receive funds under this Act for the acquisition of real property.

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

10 (B) REQUIREMENTS.—

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

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

22 (II) the owner of the real prop-
23 erty authorizes the State, local gov-
24 ernment, or other non-Federal entity
25 to acquire the real property.

(ii) ADDITIONAL CONDITIONS.—Any real property interest acquired by a State, local government, or other non-Federal entity pursuant to a fish habitat conservation project shall be subject to terms and conditions established by the Secretary providing for the long-term conservation and management of the fish habitat and the fish and wildlife dependent on that habitat.

(iii) PUBLIC ACCESS.—

(I) IN GENERAL.—Any acquisition of fee title to real property by a State, local government, or non-Federal entity pursuant to this Act shall, where applicable and consistent with State laws and regulations, provide public access to that real property for compatible fish and wildlife-dependent recreation.

(II) PUBLIC ACCESS.—Public access to real property described in subclause (I) shall be closed only for purposes of protecting public safety, the property, or habitat.

(iv) STATE AGENCY APPROVAL.—

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

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

15 (v) VIOLATION.—If the State, local
 16 government, or other non-Federal entity
 17 violates any term or condition established
 18 by the Secretary under clause (ii), the Sec-
 19 retary may require the State, local govern-
 20 ment, or other non-Federal entity to re-
 21 fund all or part of any payments received
 22 under this Act, with interest on the pay-
 23 ments as determined appropriate by the
 24 Secretary.

25 (e) NON-FEDERAL CONTRIBUTIONS.—

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

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

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

16 (A) may not be derived from a Federal
17 grant program; but

18 (B) may include in-kind contributions and
19 cash.

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

25 (f) APPROVAL.—

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

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

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

18 (2) FUNDING.—If a fish habitat conservation
19 project under paragraph (1) is approved by the Sec-
20 retary, or the Secretary and the Secretary of Com-
21 merce jointly, the Secretary, or the Secretary and
22 the Secretary of Commerce jointly, as applicable,
23 shall use amounts made available to carry out this
24 Act to provide funds to carry out the fish habitat
25 conservation project.

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

16 **SEC. 7. NATIONAL FISH HABITAT CONSERVATION PART-**
17 **nership Program.**

18 (a) ESTABLISHMENT.—Not later than 1 year after
19 the date of enactment of this Act, the Director shall estab-
20 lish a program, to be known as the “National Fish Habi-
21 tat Conservation Partnership Program”, within the Divi-
22 sion of Fish and Aquatic Conservation of the United
23 States Fish and Wildlife Service.

24 (b) FUNCTIONS.—The National Fish Habitat Con-
25 servation Partnership Program 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 Pro-
8 gram;

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

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

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

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

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

23 (8) provide support to the Director regarding
24 the development and implementation of the inter-
25 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 Program that describes—

16 (1) the functional, operational, technical, sci-
17 entific, and general staff, administrative, and mate-
18 rial needs of the Program; 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 Program, subject to the availability of funds under
3 section 14.

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 Program.

8 (3) DETAILEES AND CONTRACTORS.—The Na-
9 tional Fish Habitat Conservation Partnership Pro-
10 gram may accept staff or other administrative sup-
11 port 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 Pro-
16 gram shall include members with education and ex-
17 perience relating to the principles of fish, wildlife,
18 and habitat conservation.

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

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

24 (a) IN GENERAL.—The Director, the Assistant Ad-
25 ministrator, and the Director of the United States Geo-

1 logical Survey, in coordination with the Forest Service and
2 other appropriate Federal departments and agencies, shall
3 provide scientific and technical assistance to the Partner-
4 ships, participants in fish habitat conservation projects,
5 and the Board.

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

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

12 (2) providing technical and scientific assistance
13 to Partnerships for habitat assessment, strategic
14 planning, and prioritization;

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

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

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

1 (6) ensuring the availability of experts to con-
2 duct scientifically based evaluation and reporting of
3 the results of fish habitat conservation projects; and

4 (7) providing resources to secure State agency
5 scientific and technical assistance to support Part-
6 nerships, participants in fish habitat conservation
7 projects, and the Board.

8 **SEC. 9. CONSERVATION OF FISH HABITAT ON FEDERAL**
9 **LAND.**

10 To the extent consistent with the mission and author-
11 ity of the applicable department or agency, the head of
12 each Federal department and agency may coordinate with
13 the Assistant Administrator and the Director to promote
14 healthy fish populations and fish habitats.

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

16 The Secretary shall provide a notice to, and cooperate
17 with, the appropriate State agency or tribal agency, as ap-
18 plicable, of each State and Indian tribe within the bound-
19 aries of which an activity is planned to be carried out pur-
20 suant to this Act, including notification, by not later than
21 30 days before the date on which the activity is imple-
22 mented.

23 **SEC. 11. ACCOUNTABILITY AND REPORTING.**

24 (a) REPORTING.—

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
5 progress 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 fish habitat that was maintained or
14 improved under the National Fish Habitat Ac-
15 tion Plan by Federal, State, or local govern-
16 ments, Indian tribes, or other entities in the
17 United States during the 2-year period ending
18 on the date of submission of the report;

19 (B) a description of the public access to
20 fish habitats established or improved under the
21 National Fish Habitat Action Plan during that
22 2-year period;

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

1 National Fish Habitat Action Plan during that
2 period; 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, 2018, and every 5 years thereafter, the
 7 Board shall submit to the appropriate congressional com-
 8 mittees a report describing the status of fish habitats in
 9 the United States.

10 (c) REVISIONS.—Not later than December 31, 2018,
 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. EFFECT OF ACT.**

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

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

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

21 (3) preempts or affects any State water law or
 22 interstate compact governing water; or

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

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

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

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

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

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

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

21 (2) Federal law (including regulations);

22 (3) an Executive order; or

23 (4) a judicial decree.

24 (e) ADJUDICATION OF WATER RIGHTS.—Nothing in
25 this Act diminishes or affects the ability of the Secretary

1 to join an adjudication of rights to the use of water pursu-
 2 ant to subsection (a), (b), or (c) of section 208 of the De-
 3 partment of Justice Appropriation Act, 1953 (43 U.S.C.
 4 666).

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

11 (g) EFFECT ON OTHER AUTHORITIES.—

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

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

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

23 (B) the Fish and Wildlife Coordination Act
 24 (16 U.S.C. 661 et seq.);

1 (C) the Water Resources Development Act
 2 of 1986 (Public Law 99–662; 100 Stat. 4082);
 3 or

4 (D) any other Federal law or court settle-
 5 ment.

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

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

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

14 (1) the Board; or

15 (2) any Partnership.

16 **SEC. 14. FUNDING.**

17 (a) AUTHORIZATION OF APPROPRIATIONS.—

18 (1) FISH HABITAT CONSERVATION PROJECTS.—

19 There is authorized to be appropriated to the Sec-
 20 retary \$7,200,000 for each of fiscal years 2018
 21 through 2022 to provide funds for fish habitat con-
 22 servation projects approved under section 6(f), of
 23 which 5 percent shall be made available for each fis-
 24 cal year for projects carried out by Indian tribes.

1 (2) NATIONAL FISH HABITAT CONSERVATION
2 PARTNERSHIP PROGRAM.—

3 (A) IN GENERAL.—There is authorized to
4 be appropriated to the Secretary for each of fis-
5 cal years 2018 through 2022 for the National
6 Fish Habitat Conservation Partnership Pro-
7 gram, and to carry out section 11, an amount
8 equal to 5 percent of the amount appropriated
9 for the applicable fiscal year pursuant to para-
10 graph (1).

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

20 (3) TECHNICAL AND SCIENTIFIC ASSISTANCE.—
21 There are authorized to be appropriated for each of
22 fiscal years 2018 through 2022 to carry out, and
23 provide technical and scientific assistance under, sec-
24 tion 8—

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

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

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

8 (4) PLANNING AND ADMINISTRATIVE EX-
9 PENSES.—There is authorized to be appropriated to
10 the Secretary for each of fiscal years 2018 through
11 2022 for use by the Board, the Director, and the
12 Assistant Administrator for planning and adminis-
13 trative expenses an amount equal to 3 percent of the
14 amount appropriated for the applicable fiscal year
15 pursuant to paragraph (1).

16 (b) AGREEMENTS AND GRANTS.—The Secretary
17 may—

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

1 habitat conservation project or restoration or en-
2 hancement project;

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

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

12 (c) DONATIONS.—

13 (1) IN GENERAL.—The Secretary may—

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

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

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

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

4 (B) may be—

5 (i) used directly by the Secretary; or

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

○