

National Fish Habitat Action Plan Legislation

Status Report as of May 2, 2008

for

National Fish Habitat Action Plan Board Meeting

May 13-14, 2008

At the February Board meeting, the attached legislative language was approved by the Board with direction to the legislative team to make revisions as recommended by Congressional staff. The legislative team gathered for a meeting shortly thereafter to discuss strategies for the Hill. On the Senate side, another meeting was held with Lieberman's (D-CT) staff, where questions were raised and will be addressed at a future meeting. A Senate co-sponsor is most likely Senator Bond (R-MO). On the House side, meetings were held with Natural Resources Committee staff, as well as staff at Congressman Ryan (R-WI) and Kind's (D-WI) offices.

House Natural Resources Committee staff is looking for indications of interest in the bill from members. Staff from Congressman Kind's office agreed to meet with Committee staff.

The approved February draft was sent by Kind's staff to House Legislative Counsel for development of a draft bill. This was provided to the legislative team with various questions/suggestions that will be discussed at a future meeting with both Kind's staff and Legislative Counsel staff.

Additional questions were raised during the two meetings with Senator Bond's staff. The Senator's staff made substantive and technical suggestions that the legislative team is considering. The legislative team will meet for a third time with Bond's staff the second week of May to discuss the language that would be required for Bond to support the bill.

The legislative team met with FWS staff to discuss FHP criteria for possible inclusion of criteria language in the bill.

A BILL

To conserve the nation's fish and aquatic communities through partnerships that foster fish habitat conservation and improve the quality of life for the American people.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the 'National Fish Habitat Conservation Act'.

SEC. 2. FINDINGS AND STATEMENT OF PURPOSE.

(a) FINDINGS- The Congress finds and declares that--

(1) Healthy populations of fish and other aquatic organisms depend on the conservation, protection, restoration, and enhancement of aquatic habitats in the United States;

(2) Aquatic habitats, including wetlands, streams, rivers, lakes, estuaries, coastal and marine ecosystems, and associated riparian upland habitats that buffer those areas from external factors, perform numerous valuable environmental functions which sustain environmental, social, and cultural values. They recycle nutrients, purify water, attenuate floods, augment and maintain stream flow, recharge ground water, act as primary producers in the food chain, and provide essential and significant habitat for plants, fish and wildlife, and other dependent species.

(3) The extensive and diverse aquatic habitat resources of the United States are of enormous significance to the Nation's economy, providing recreation for 44 million anglers, \$125 billion in economic impact and in excess of one million jobs from recreational fishing and approximately one-half million jobs and an economic impact of \$35 billion from commercial marine fishing annually.

(4) At least 40 per centum of all threatened and endangered species in the United States are directly dependent upon aquatic habitats;

(5) Certain fish species are considered to be ecological indicators of aquatic habitat quality, such that their presence in an aquatic ecosystem reflects high quality habitat for other fish.

(6) Loss and degradation of aquatic and riparian habitat and water quality and water volume through activities such as alteration of watercourses, stream blockages, water withdrawals/diversions, erosion, pollution, sedimentation, destruction or modification of wetlands, and other impacts have caused significant declines in fish populations throughout the Nation, especially native fish populations and result in economic losses to the Nation.

(7) Providing for the conservation and sustainability of fish and other aquatic organisms has not been fully realized despite federally funded fish

and wildlife restoration programs and other acts intended for the conservation of aquatic resources. This important goal can be significantly advanced through a renewed commitment and sustained, cooperative efforts, complementary to fish and wildlife restoration programs and clean water programs.

(8) The National Fish Habitat Action Plan provides a framework for maintaining and restoring aquatic habitats to ensure perpetuation of populations of fish and other aquatic organisms.

(9) The Nation can achieve significant progress toward providing aquatic habitats for the conservation and restoration of fish and other aquatic organisms through a voluntary, non-regulatory, incentive-based program based on Federal technical and financial assistance.

(10) The creation of partnerships between local citizens, tribal organizations, corporations, non-governmental organizations, and State and Federal agencies is critical to the success of aquatic ecosystem restoration activities.

(11) The federal government has numerous regulatory and land and water management agencies, including but not limited to, the U.S. Fish and Wildlife Service, the Bureau of Land Management, the National Park Service, the Bureau of Reclamation, the Bureau of Indian Affairs, the National Marine Fisheries Service, the U.S. Forest Service the Fishery Management Councils, the U.S. Environmental Protection Agency, and the several interjurisdictional fishery commissions that will play a critical role in the implementation of the National Fish Habitat Action Plan.

(12) The United States Fish and Wildlife Service, the U.S. Forest Service and the National Oceanic and Atmospheric Administration National Marine Fisheries Service play a vital role in the protection, restoration, and enhancement of the nation's fish and aquatic communities, and the development, operation, and long-term success of fish habitat partnerships and project implementation.

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

(14) Many of the programs for conservation on private farmland, ranchland and forestland that are administered by the United States Department of Agriculture including the Natural Resources Conservation Service and the U.S. Forest Service's State and Private Forestry Programs can significantly contribute to the implementation of the National Fish Habitat Action Plan through the engagement of these private landowners.

(b) PURPOSE- The purpose of this Act is to encourage partnerships among public agencies and other interests consistent with the mission and goals of the National Fish Habitat Action Plan --

(1) To protect and maintain intact and healthy aquatic systems;

(2) To prevent further degradation of fish habitats that have been adversely affected;

(3) To reverse declines in the quality and quantity of aquatic habitats to

- improve the overall health of fish and other aquatic organisms;
- (4) To increase the quality and quantity of fish habitats that support a broad natural diversity of fish and other aquatic species; and
- (5) To improve fisheries habitat, thereby improving the annual economic output from recreational and commercial fishing.
- (6) To ensure coordination and facilitation of federal agency activities under the leadership of the United States Fish and Wildlife Service, the National Oceanic and Atmospheric Administration National Marine Fisheries Service and the United States Geological Survey.
- (7) and any other purpose which is consistent with the mission and goals of the *National Fish Habitat Action Plan*, and any amendments thereto.

SEC. 3. DEFINITIONS.

(a) For the purposes of this Act:

- (1) The term 'appropriate Committees' means the Committee on Commerce and the Committee on Environment and Public Works of the United States Senate and the Committee on Natural Resources of the United States House of Representatives.
- (2) The term 'fish' means any freshwater, diadromous, estuarine, or marine finfish or shellfish, including the egg, spawn, spat, larval, and other juvenile stages of such an organism;
- (3) The term 'aquatic habitat'--
 - (A) means any area upon which aquatic organisms depend, directly or indirectly, to carry out their life processes, including an area used by aquatic organisms for spawning, incubation, nursery, rearing, growth to maturity, food supply, or migration; and
 - (B) includes an area adjacent to the aquatic environment if such adjacent area--
 - (i) contributes elements, such as the input of detrital material or the promotion of planktonic and insect populations providing food, which make fish life possible;
 - (ii) protects water sources, quantity, and quality;
 - (iii) provides public access for the use of fishery resources;
 - or
 - (iv) serves as a buffer protecting the aquatic environment.
- (4) Fish Habitat Partnership means a National Fish Habitat Board approved group of state, federal, local, nonprofit, tribal, Alaskan Native or private individuals or entities that coordinate to implement the Plan at a regional level.
- (5) The term 'Plan' means the April 24, 2006 *National Fish Habitat Action Plan* and any subsequent revisions or amendments to the plan.
- (6) The term 'Secretary' means the Secretary of the Interior.
- (7) The term 'Assistant Administrator' means the Assistant Administrator for Fisheries of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration
- (8) The term 'Director' means the Director of the United States Fish and

Wildlife Service.

(9) The term `State' means the State fish and wildlife agency, which shall be construed to mean any department, or any division of any department of another name, of a State that is empowered by statute or its constitution to manage in the public trust the states' fishery resources, both inland and marine or either, if applicable.

(10) The term 'fish habitat conservation project means—

(A) approved actions taken for the conservation or management of aquatic habitat for fish and other aquatic organisms;

(B) the provision of technical assistance to states and local communities to facilitate development of strategies and priorities for aquatic habitat conservation; and

(C) the obtaining of a real property interest in lands or waters, including water rights, if the obtaining of such interest is subject to terms and conditions that will ensure that the real property will be administered for the long-term conservation of such lands and waters and the fish dependent thereon. Real property interest as used in this subsection means any ownership interest in lands or a building or an object that is permanently affixed to land.

(11) The terms conserve, conservation, manage, and management mean to protect, sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants and the amount and quality of habitats that are required to sustain fish wildlife and plant productivity by utilizing, in accordance with applicable federal and state laws, methods and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of this act, protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking.

SEC. 4. ESTABLISHMENT OF NATIONAL FISH HABITAT BOARD.

(a) EXECUTIVE LEADERSHIP TEAM -

There shall be established an Executive Leadership Team which shall consist of the Director, the Assistant Administrator, and the President and Executive Director of the Association of Fish and Wildlife Agencies. The Executive Leadership Team will have responsibility for appointment and, if necessary, removal of all Board members, except those serving by virtue of their office.

(b) BOARD MEMBERSHIP-

There shall be established a National Fish Habitat Board (hereinafter in this Act referred to as the `Board') which shall consist of up to twenty-two members who may not receive compensation as members of the Board. The Board's responsibility will be to promote, oversee and coordinate implementation of this Act and the National Fish Habitat Action Plan. Of the Board members--

(1) three shall be the Executive Director of the Association of Fish and Wildlife Agencies, Director of the Fish and Wildlife Service, Department of the Interior, and the Assistant Administrator, who

- shall serve by virtue of their office;
- (2) up to three shall be from other Federal agencies with programs that impact aquatic habitats;
- (3) one shall be from the National Fish and Wildlife Foundation appointed pursuant to section 3(2)(B) of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3702);
- (4) one shall be from the American Fisheries Society based upon nomination from that organization;
- (5) five shall be state fish and wildlife agency directors, four of which shall be appointed based on nominations from each of the four regional Associations of Fish and Wildlife Agencies (Northeast, Southeast, Midwest, and Western) and the fifth which shall be appointed by the Executive Leadership Team to create an appropriate geographic balance on the Board;
- (6) one shall represent Tribal governments or Alaska Natives; and
- (7) the remaining eight members shall be appointed to ensure the Board includes distinct representation from each of the following range of interests: sportfishing, commercial fishing, sportfishing industry, academic, and land and aquatic resource conservation organizations. In addition, these members shall be appointed to ensure the Board includes a balance of governmental and non-governmental organizations and a balance of freshwater and marine interests.

(c) APPOINTMENT AND TERMS-

- (1) The initial appointment of the charter Board shall be for a term of three years.
 - (2) Except as provided in paragraphs (3) and (4), the term of office of a member of the Board is three years.
 - (3) Of the Board members first appointed under subsections (b)(2), and (b)(7), four shall be re-appointed for a term of one year, four shall be appointed for a term of two years, and up to three shall be appointed for a term of three years. After these transitional terms, terms will be as provided in paragraph (2) of this Subsection.
 - (4) Whenever a vacancy occurs among members of the Board, except those appointed under subsection (b)(1) or subsection (b)(3) of this section, the Executive Leadership Team shall appoint an individual in accordance with such subsection to fill that vacancy for the remainder of the applicable term.
 - (5) Members whose terms have expired shall serve until replaced.
- (d) CHAIRMAN- The Chairman shall be elected by the Board from its members for a three-year term, except that the first elected Chairman may serve a term of less than three years.
- (e) QUORUM- A majority of the current membership of the Board shall constitute a quorum for the transaction of business.
- (f) MEETINGS- The Board shall meet at the call of the Chairman at least twice a year. Board meetings shall be open to the public. If a Board member appointed

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under subsections (b)(4), (b)(5), (b)(6), or (b)(7) of this section misses three consecutive regularly scheduled meetings, the Executive Leadership Team may remove that individual and appoint another individual in accordance with subsection (c)(4).

(g) BOARD PROCEDURES- The Board shall establish practices and procedures for the carrying out of its functions. The procedures shall include:

- (1) a requirement that a quorum of the Board must be present before any business may be transacted;
- (2) a requirement that no recommendations may be adopted by the Board except by the vote of two-thirds of all members present and voting;
- (3) procedures for recognizing Fish Habitat Partnerships;
- (4) procedures for setting national goals and priorities for fish habitat conservation; and
- (5) procedures for allocating funds among the activities authorized by this Act.

(h) BOARD STAFF- The Director and the Assistant Administrator shall each provide staff support to the Board and shall direct such staff to report to and accept direction from the Chair on behalf of the Board. The states are encouraged to provide staff support. The Board may accept additional staff or other administrative support from other entities. The Board shall use funds available under section (8)(c) for administering this Act to provide common office space for all Board staff and take such other measures as they deem appropriate to facilitate communication, cohesiveness, and efficient operations for the benefit of the Board. Staff provided by the Director, the Assistant Administrator, or any other entity should be individuals --

- (1) who shall be educated and experienced in the principles of fish, wildlife, and aquatic habitat conservation;
- (2) who shall be responsible, with assistance from the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration National Marine Fisheries Service and the Association of Fish and Wildlife Agencies, for facilitating consideration of fish habitat conservation projects by the Board and otherwise assisting the Board in carrying out its responsibilities under this Act; and
- (3) who shall assist the Secretary in fulfilling the evaluation, analysis, and reporting requirements in section 10 of this Act; and
- (4) who shall be compensated with the funds available under section 8(c) for administering this Act.

SEC. 5. APPROVAL OF FISH HABITAT PARTNERSHIPS AND PROJECTS.

(a) CONSIDERATION OF PROJECTS BY THE BOARD- The Board shall recommend fish habitat conservation projects to the Secretary based on consideration of--

- (1) the extent to which the fish habitat conservation project fulfills the purposes of this Act or goals of the Action Plan;
- (2) the extent to which the fish habitat conservation project addresses the national priorities set by the Board;

- (3) the recommendation of the Fish Habitat Partnership that is participating actively in carrying out the fish habitat conservation project;
- (4) the availability of sufficient non-Federal monies to carry out any fish habitat conservation project and to match Federal contributions in accordance with the requirements of Section 9 of this Act;
- (5) the extent to which the fish habitat conservation project increases fishing opportunities for the angling public;
- (6) the extent to which any fish habitat conservation project represents a partnership among public agencies and private entities;
- (7) the extent to which any fish habitat conservation project increases public access to lands and waters;
- (8) the extent to which any fish habitat conservation project would aid the conservation of fish and wildlife species that are listed, or are candidates to be listed, as threatened and endangered under the Endangered Species Act (16 U.S.C. 1531 et seq.); and
- (9) the substantiality of the character and design of the fish habitat conservation project.

(b) APPROVAL OF FISH HABITAT PARTNERSHIPS – The Board shall approve fish habitat partnerships based upon criteria adopted by the Board.

(c) RECOMMENDATIONS TO THE SECRETARY - The Board shall submit to the Secretary by July 1 of each year, a description, including estimated costs, of the fish habitat conservation projects which the Board has considered under subsection (a) of this section and which it recommends, in order of priority, that the Secretary approve for Federal funding under this Act for the upcoming fiscal year.

(d) APPROVAL OF BOARD RECOMMENDATIONS BY THE SECRETARY- The Secretary shall approve, reject or reorder the priority of any fish habitat conservation projects recommended by the Board within 180 days based on, to the greatest extent practicable, the criteria of subsection (a) of this section. If the Secretary approves any fish habitat conservation project, Federal funding shall be made available under this Act. If the Secretary rejects or reorders the priority of any fish habitat conservation project recommended by the Board, the Secretary shall provide the Board and the appropriate Fish Habitat Partnerships with a written statement explaining the rationale for the rejection or the priority modification.

Section 6. TECHNICAL ASSISTANCE FOR FISH HABITAT PARTNERSHIPS AND PROJECTS

(a) UNITED STATES FISH AND WILDLIFE SERVICE -

Within one year after the date of the enactment of this Act, the Director in cooperation with the Board, shall develop and implement a program within the United States Fish and Wildlife Service in coordination with other appropriate federal agencies, states and tribes to provide scientific, administrative, operational, and technical support for the Fish Habitat Partnerships and conservation projects based on the following objectives:

- (1) to provide scientific, administrative and technical assistance to states,

- tribes, regions, local communities, and nongovernmental organizations in the development and implementation of Fish Habitat Partnerships;
- (2) to provide funding for the operational needs of the Fish Habitat Partnerships, including for such activities as planning, project development and implementation, monitoring, communication and outreach;
- (3) to support the development and implementation of fish habitat conservation projects that are identified as high priorities by the Fish Habitat Partnerships and the Board;
- (4) to ensure the availability of expertise to conduct scientifically-based evaluation and reporting of results of fish habitat conservation projects to meet the reporting requirements identified in Section 11 of this Act;
- (5) to facilitate the cooperative development and implementation of new Fish Habitat Partnerships;
- (6) to coordinate and facilitate the resources and activities of the federal government, particularly those federal agencies identified in Section 4, in support of this Act; and
- (7) at least annually, the Director shall report to the Board on the program for delivery of technical assistance.

(b) NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION NATIONAL MARINE FISHERIES SERVICE HABITAT PROGRAM - Within one year after the date of the enactment of this Act, the Assistant Administrator in cooperation with the Board, shall develop and implement a program within the National Oceanic and Atmospheric Administration National Marine Fisheries Service Habitat Program, particularly with respect to coastal, marine, and anadromous fish and their habitats, in coordination with other appropriate federal agencies, states and tribes to provide scientific, administrative, operational, and technical support for the Fish Habitat Partnerships and conservation projects based on the following objectives:

- (1) to provide scientific, administrative and technical assistance to states, tribes, regions, local communities, and nongovernmental organizations in the development and implementation of Fish Habitat Partnerships;
- (2) to provide funding for the operational needs of the Fish Habitat Partnerships, including for such activities as planning, project development and implementation, monitoring, communication and outreach;
- (3) to support the development and implementation of fish habitat conservation projects that are identified as high priorities by the Fish Habitat Partnerships and the Board;
- (4) to ensure the availability of expertise to conduct scientifically-based evaluation and reporting of results of fish habitat conservation projects to meet the reporting requirements identified in Section 11 of this Act;
- (5) to facilitate the cooperative development and implementation of new Fish Habitat Partnerships; and
- (6) to coordinate and facilitate the resources and activities of the federal government, particularly those federal agencies identified in Section 4, in

support of this Act.

(7) at least annually, the Assistant Administrator shall report to the Board on the program for delivery of technical assistance, and conclude revisions thereto, if necessary.

(c) UNITED STATES GEOLOGICAL SURVEY-Within one year after the date of the enactment of this Act, the Director in cooperation with the Board, shall develop and implement a program within the United States Geological Service in coordination with other appropriate federal agencies, states and tribes to provide scientific and technical support for the Fish Habitat Partnerships and conservation projects based on the following objectives:

- (1) to provide scientific, administrative and technical assistance to states, tribes, regions, local communities, and nongovernmental organizations in the development and implementation of Fish Habitat Partnerships;
- (2) to provide funding for the operational needs of the Fish Habitat Partnerships through existing programs such as challenge cost share, and including for such activities as research, planning, project development and implementation, monitoring, communication and outreach;
- (3) to support the development and implementation of fish habitat conservation projects that are identified as high priorities by the Fish Habitat Partnerships and the Board;
- (4) to ensure the availability of expertise to conduct scientifically-based evaluation and reporting of results of fish habitat conservation projects to meet the reporting requirements identified in Section 11 of this Act;
- (5) to facilitate the cooperative development and implementation of new Fish Habitat Partnerships;
- (6) to coordinate and facilitate the resources and activities of the federal government, particularly those federal agencies identified in Section 4, in support of this Act; and
- (7) at least annually, the Director of the United States Geological Survey shall report to the Board on the program for delivery of technical assistance, and conclude revisions thereto, if necessary.

(d) UNITED STATES FOREST SERVICE-Within one year after the date of the enactment of this Act, the Chief in cooperation with the Board, shall develop and implement a program within the United States Forest Service in coordination with other appropriate federal agencies, states and tribes to provide scientific and technical support for the Fish Habitat Partnerships and conservation projects based on the following objectives:

- (1) to provide scientific, administrative and technical assistance to states, tribes, regions, local communities, and nongovernmental organizations in the development and implementation of Fish Habitat Partnerships;
- (2) to provide funding for the operational needs of the Fish Habitat Partnerships through existing programs such as challenge cost share, and including for such activities as research, planning, project development and implementation, monitoring, communication and outreach;
- (3) to support the development and implementation of fish habitat conservation projects that are identified as high priorities by the Fish

Habitat Partnerships and the Board;

(4) to ensure the availability of expertise to conduct scientifically-based evaluation and reporting of results of fish habitat conservation projects to meet the reporting requirements identified in Section 11 of this Act;

(5) to facilitate the cooperative development and implementation of new Fish Habitat Partnerships;

(6) to coordinate and facilitate the resources and activities of the federal government, particularly those federal agencies identified in Section 4, in support of this Act; and

(7) at least annually, the Chief of the United Forest Service shall report to the Board on the program for delivery of technical assistance, and conclude revisions thereto, if necessary.

(e) AUTHORIZATION – For the purposes of carrying out subsections (a), (b) and (c) of this section, there is authorized to be appropriated annually an additional ten percent of the annual amount appropriated each fiscal year in section 8(a) to each the Director and the Assistant Administrator, and an additional five percent of the annual amount appropriated each fiscal year in section 8(a) to the Director of the U.S. Geological Survey.

SEC. 7. CONDITIONS RELATING TO FISH HABITAT CONSERVATION PROJECTS.

(a) Projects funded under this Act must include a monitoring plan designed to appropriately assess the results of the habitat protection, restoration, or enhancement activities and to make appropriate changes to the project if such assessment substantiates that the project objectives are not being met and report such findings to the National Fish Habitat Board.

(b) any lands or waters or interests therein acquired in whole or in part by the Secretary with the Federal funds made available under this Act to carry out fish habitat conservation projects shall not be conveyed to a State, another public agency or other entity unless the Secretary determines that such State, agency or other entity is committed to undertake the management of the property being transferred in accordance with the objectives of this Act, and the deed or other instrument of transfer contains provisions for the reversion of title to the property to the United States if such State, agency or other entity fails to manage the property in accordance with the objectives of this Act. Any real property interest conveyed pursuant to this paragraph shall be subject to such terms and conditions that will ensure that the interest will be administered for the long-term conservation and management of the aquatic ecosystem and the fish and wildlife dependent thereon.

SEC. 8. AMOUNTS AVAILABLE TO CARRY OUT THIS ACT.

(a) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated to the Department of the Interior for purposes of allocation under section 9 of this Act not to exceed \$75,000,000 for each of fiscal years 2009 through fiscal year 2013. Of these funds appropriated annually, five percent shall be made available for tribal projects in support of the National Fish Habitat Action Plan.

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(b) AVAILABILITY OF FUNDS- Sums made available under this section shall be available until expended.

(c) PLANNING, REPORTING, AND ADMINISTRATIVE EXPENSES - Up to four percentum (4%) of the appropriated amount, but not less than \$300,000 whichever is the greater, may be made available to the Board, the Director, and the Assistant Administrator for planning and administrative expenses, and for fulfilling the reporting requirement in Section 11 of this Act .

SEC. 9. ALLOCATION OF AMOUNTS AVAILABLE TO CARRY OUT THIS ACT.

(a) FEDERAL CONTRIBUTION FOR PROJECTS- The Federal funds appropriated under this act for any fiscal year to carry out approved fish habitat conservation projects shall not exceed 50 per centum of the costs of such projects. Federal funds may be used for payment of 100 per centum of the costs of such projects located on Federal lands or waters, including the acquisition of inholdings within such lands and waters. The non-Federal share of the costs of such projects may not be derived from Federal grant programs, but may include in-kind contributions and cash.

(b) PROVIDE FUNDING — The Secretary may:

(1) Upon Recommendation of the board and notwithstanding the provisions of the Federal Grant and Cooperative Agreement Act and P.L. 106-107, enter into cooperative agreements, contracts, and grants with Board approved Partnerships for fish habitat and restoration projects; and

(2) Apply for, accept, and use grants from any person or entity to carry out the purposes of this Act, notwithstanding any provision of law that prohibits the Secretary from receiving financial assistance.

(3) Make funds available to any federal agency to be used by the agency to award financial assistance for any fish habitat protection, restoration, and enhancement projects that the Secretary determine to be consistent with this Act.

(c) DONATIONS. — The Secretary may:

(1) Enter into an agreement with any 501(c)(3) nonprofit organization authorizing the organization to solicit private donations to carry out the purposes and policies of this Act.

(2) Accept donations of funds, property, and services for use in carrying out the purposes and policies of this Act. Donations accepted under this section shall be considered as gifts or bequests to, or for the use of, the United States and may be used directly by the Secretary or provided to other federal agencies through interagency agreements.

(d) INTERAGENCY FINANCING - The Secretary may participate in interagency financing, including transferring appropriated funds and donations among, or receiving appropriated funds from, other departments or agencies for the purpose of implementing this Act.

(e) The provisions of any other Act notwithstanding, any funds made available to a tribal or an Alaska Native organization under grants pursuant to this section may be used as matching shares for any other Federal grant programs which contribute to the purposes for which grants under this section are made

SEC. 10. CONSERVATION (PROTECTION, RESTORATION, AND ENHANCEMENT) OF AQUATIC HABITAT FOR FISH AND OTHER AQUATIC ORGANISMS ON FEDERAL LANDS.

The head of each Federal agency responsible for acquiring, managing, or disposing of Federal lands and waters shall, to the extent consistent with the mission of such agency and existing statutory authorities, cooperate with the Assistant Administrator and the Director of the United States Fish and Wildlife Service to conserve the aquatic habitats for fish and other aquatic organisms within the lands and waters of each such agency.

SEC. 11. ACCOUNTABILITY AND REPORTING

(a) **REPORT TO CONGRESS.** The Board shall report to the appropriate Committees on the implementation of this Act. The report shall include--

(1) a biennial assessment of--

(A) the estimated number of acres, stream miles, or acre feet of aquatic habitat for fish and other aquatic organisms or other suitable measures of aquatic habitat protected, restored, or enhanced under the plan during such two-year period by Federal, State, and local agencies and other entities in the United States;

(B) the amount of additional public access protected, restored or created under the plan; and

(C) the additional public fishing opportunity created under the plan.

(2) an annual assessment of the status of fish habitat conservation projects, including an accounting of expenditures by Federal, State, and other United States entities to carry out these projects under the plan; a list and description of the fish habitat conservation projects approved for Federal funding under section 5(d) in order of priority; a justification for the approval of such projects and the order of priority for funding such projects; a list and description of the fish habitat conservation projects which the Board recommended, in order of priority that the Secretary approve for Federal funding; and a justification for any rejection or re-ordering of the priority of fish habitat conservation projects recommended by the Board that was based on factors other than the criteria of section 5(a) of this Act.

(c) **STATUS AND TRENDS REPORT** - The Board shall prepare and present to Congress a report on the "Status of Fish Habitats in the United States". The first report shall be completed in 2010, and additional reports shall be completed every 5 years thereafter.

SEC 12 The Secretary shall notify and coordinate with state fish and wildlife agencies within 30 days or less pertaining to any actions planned or taken within a state's boundaries related to implementation of this legislation.

SEC. 13. The Secretary may promulgate rules and regulations to carry out the purposes of this Act.

SEC. 14. Nothing in this act shall create a reserved water right, express or implied, in the united states for any purpose or affect any water right in existence on the date of the enactment of this act; or affect any federal or state law in existence on the date of the enactment of the act regarding water quality or water quantity.

SEC. 15. Nothing in this act shall be construed as affecting the authority, jurisdiction, or responsibility of the several states to manage, control, or regulate fish and resident wildlife under state law or regulation, including nothing in this act shall be construed to authorize the secretary to control or regulate state hunting or state fishing of fish and resident wildlife.

SEC 16. Nothing in this Act shall be construed to abrogate, abridge, affect, modify, supersede or alter any treaty-reserved right or other right of any Indian tribe as recognized by any other means, including, but not limited to, agreements with the United States, Executive Orders, statutes, and judicial decrees, and by Federal law.

SEC. 17. Coordination with state fish and wildlife agency personnel or with personnel of other affected state agencies pursuant to this act shall not be subject to the federal advisory committee act (5 usc app).

SEC. 18. Nothing in this act shall diminish or affect the ability of the secretary to join the adjudication of rights to the use of water pursuant to the mccarran act (43 usc 666).

SEC. 19. The secretary may acquire, under state law, water rights that are needed for to carry out purposes of this act.

SEC. 20. REVISIONS TO THE PLAN.

The Board shall, in 2011 and at five-year intervals thereafter, undertake to revise the goals and other elements of the Plan in accordance with the information required under section 11 and with the other provisions of this Act.

SEC. 21. RELATIONSHIP TO OTHER AUTHORITIES.

(a) ACQUISITION OF LANDS AND WATERS- Nothing in this Act affects, alters, or modifies the Secretaries' authorities, responsibilities, obligations, or powers to acquire lands or waters or interests therein under any other statute.

(b) PRIVATE PROPERTY PROTECTION- No Federal funds made available to carry out this Act may be used to acquire any real property or any interest in any real property without the written consent of the owner or owners of that property or interest in property.

(c) MITIGATION- The Federal funds made available under this Act may not be used for fish and wildlife mitigation purposes under the Federal Water Pollution Control Act (33 USC 1344 et seq.), Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), or the Water Resources Development Act of 1986, Public Law 99-662 (1986), 100 Stat. 4235.

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(d) FEDERAL ADVISORY COMMITTEE ACT – The Federal Advisory Committee Act (5 U.S.C. Appendix 2 §§ 1-15, October 6, 1972, as amended 1976, 1980 and 1982) does not apply to the National Fish Habitat Board.

END

DRAFT