

**FISH AND WILDLIFE SERVICE
FISHERIES**

Fisheries

Part 717 National Fish Habitat

Chapter 1 National Fish Habitat Action Plan

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1.1 What is the purpose of this chapter? This chapter:

A. Describes the general requirements, eligibility criteria, and administrative procedures to guide the use of Service funds to implement projects and provide Federal assistance for the National Fish Habitat Action Plan; and

B. Provides guidance for Service programs whose activities may affect aquatic habitat.

1.2 What is the National Fish Habitat Action Plan?

A. The National Fish Habitat Action Plan (Action Plan) is a non-regulatory, voluntary plan designed to protect, restore, and enhance the nation's fish and aquatic communities through regional Fish Habitat Partnerships. The Action Plan is a strategy to help maximize the impact of our conservation dollars on the ground.

B. Congress appropriates funding to the Service that we use to support the Action Plan. We work with Fish Habitat Partnerships and the National Fish Habitat Board to identify projects and other activities we fund.

C. The participants in the Action Plan are:

(1) Fish Habitat Partnerships. Fish Habitat Partnerships are self-directed coalitions that may include State, Federal, and local agencies; tribes; non-governmental organizations; corporations; academia; industry; and individuals who work toward common goals under the Action Plan to protect, restore, and enhance fish habitat. The Service does not establish, manage, or control the Partnerships. The roles of Fish Habitat Partnerships are described in the Action Plan.

(2) National Fish Habitat Board. The National Fish Habitat Board was established to promote, oversee, and coordinate implementation of the Action Plan. The Service did not establish and does not manage or control the Board. The Board provides guidance for recognizing Fish Habitat Partnerships and develops processes and criteria that participants may use for allocating and providing funds. The Board consists of members drawn from the following stakeholder groups:

(a) Association of Fish and Wildlife Agencies and State fish and wildlife agency representatives;

(b) Federal agency representatives, including the Service and National Marine Fisheries Service, National Oceanic and Atmospheric Administration;

(c) Conservation/science/academic members, including the National Fish and Wildlife Foundation; and

(d) Other members representing tribal governments, multi-State management agencies, industry (fishing, boating, etc.), and other interests.

D. Examples of projects that the Service completed or provided funding for under the Action Plan include:

(1) Reconstruction and reconnection of 8 stream miles of Badger Creek to the Little Lost River, Idaho. This 2006 project removed a fish passage barrier, reconstructed the Badger Creek channel to the Little Lost River, revegetated streambanks, and fenced the Creek from cattle grazing. The Little Lost River has an isolated population of listed bull trout and Badger Creek provides important spawning and rearing habitat.

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(2) Restoration and protection of 1 riparian mile in Thorn Creek, West Virginia. This 2007 project installed instream structures, planted riparian seedlings, and restricted livestock access with fencing to reestablish the riparian corridor, reduce water temperatures, and enhance low-flow refuge habitat for eastern brook trout.

(3) Restoration of approximately 1.5 riparian miles in Stony Creek, Virginia. This 2008 project enhanced habitat by planting native trees, repairing and vegetating eroding banks, and improving in-stream habitat using log and rock structures for the threatened candy darter. The candy darter is an endemic species found only in West Virginia and Virginia.

1.3 What are the goals of the National Fish Habitat Action Plan (Action Plan)? The goals of the Action Plan are to:

- A.** Protect and maintain intact and healthy aquatic systems,
- B.** Prevent further degradation of fish habitats that have been adversely affected,
- C.** Reverse declines in the quality and quantity of aquatic habitats to improve the overall health of fish and other aquatic organisms, and
- D.** Increase the quality and quantity of fish habitats that support a broad natural diversity of fish and other aquatic species.

1.4 What are the authorities for this chapter?

- A.** Anadromous Fish Conservation Act (16 U.S.C. 757a-757g).
- B.** Endangered Species Act (16 U.S.C. 1531-1544).
- C.** Fish and Wildlife Coordination Act (16 U.S.C. 661-667e).
- D.** National Environmental Policy Act (42 U.S.C. 4321-4347).
- E.** Clean Water Act (33 U.S.C. 1251 - 1376).

1.5 What terms do you need to know to understand this chapter?

A. Evaluation. Evaluation means measuring change in condition resulting from a specific management action.

B. Federal trust species. Federal trust species include:

- (1)** Tribal trust fish resources,
- (2)** Fish species within Service lands,
- (3)** Anadromous and catadromous fishes,
- (4)** Other interjurisdictional fishes and aquatic species,
- (5)** Endangered, threatened, or candidate species under the Endangered Species Act, and

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(6) Species proposed for listing under the Endangered Species Act.

C. Fisheries Information System (FIS). FIS is a Servicewide database that provides us with a consistent means of identifying operational needs and reporting accomplishments.

D. Fisheries Operational Needs System (FONS). FONS is a module in FIS that identifies the fisheries operational needs of field stations, including fish and aquatic habitat project needs.

E. Monitoring. Monitoring means measuring trends in condition over time and does not need to be related to a specific management action.

F. Projects. Projects include fish habitat conservation activities that we perform and those that other entities perform that we fund in whole or in part.

1.6 Who in the Service is responsible for implementing the National Fish Habitat Action Plan?

A. The Director:

(1) Provides leadership, guidance, and direction to the Service for implementing the Action Plan;

(2) Ensures Servicewide coordination for Action Plan activities;

(3) Serves on the National Fish Habitat Board;

(5) Makes project funding decisions (see section 1.9); and

(6) Communicates decisions about funding to the Regional Directors and to the National Fish Habitat Board.

B. The Assistant Director - Fisheries and Habitat Conservation:

(1) Administers and oversees the Service's implementation of the Action Plan;

(2) Coordinates Action Plan activities with other Federal agencies;

(3) Provides leadership to encourage partner contributions for implementing the Action Plan;

(4) Recommends to the Director allocation of funds for Fish Habitat Partnerships, in consultation with Fisheries Assistant Regional Directors; and

(5) Supports Action Plan goals by coordinating the activities in the National Fisheries Program Strategic Plan and other Service program planning documents.

C. Regional Directors:

(1) Implement the Action Plan within their Regions;

(2) Support the development and operation of Fish Habitat Partnerships; and

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(3) Annually provide the Director, through the Chief, Division of Fisheries and Aquatic Resource Conservation, with a list of recommended projects for implementation within Fish Habitat Partnerships in their Regions (see section 1.9).

D. The Chief - Division of Fisheries and Aquatic Resource Conservation:

(1) Compiles projects that the Regional Directors recommend for funding (see section 1.6C(3));

(2) Analyzes Action Plan data from FIS to report on the nationwide accomplishments, costs, and benefits of Service activities related to the Action Plan. We must be able to discretely identify the costs and achievements of Action Plan projects to track funding and performance;

(3) Coordinates Service activities under the Action Plan with entities inside and outside the Service; and

(4) Cooperates with our offices and other partners to develop strategies to increase partner funding for projects under the Action Plan.

E. Assistant Regional Directors – Fisheries:

(1) Foster and support Fish Habitat Partnerships at the Regional level in close coordination with State fish and wildlife agencies;

(2) Provide Regional project ranking in FONS that reflects Fish Habitat Partnership priorities;

(3) Review fish and aquatic habitat projects submitted in FONS to ensure project quality and compliance with program guidance;

(4) Notify Fish Habitat Partnerships of projects we select for funding within their Regions;

(5) Send to field stations all current policies, procedures, and national directives the Washington Office issues about the Action Plan;

(6) Collect data on the accomplishments, costs, and benefits of Regional activities related to the Action Plan; and

(7) Report the data in the FIS – Accomplishments Module.

F. Assistant Regional Directors – Ecological Services, National Wildlife Refuge System, Migratory Birds, Subsistence Management, and External Affairs:

(1) Consider the goals of the Action Plan when developing and implementing programs that directly or indirectly affect fish and aquatic habitat; and

(2) Coordinate with the Assistant Regional Directors – Fisheries to identify and attain mutual benefits between the Action Plan and Service programs.

G. Field Station managers and supervisors (Fisheries program):

(1) Coordinate and implement the Action Plan at the field level in close coordination with State fish and wildlife agencies;

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- (2) Coordinate with Fish Habitat Partnerships and other Service program offices to identify potential fish and aquatic habitat projects and enter appropriate projects into FONS;
- (3) Implement fish and aquatic habitat projects in accordance with section 1.10 and in cooperation with Fish Habitat Partnerships;
- (4) Provide biological expertise and technical support to Fish Habitat Partnership projects that result in improved habitat for Federal trust species;
- (5) Direct outreach efforts for the Action Plan to those geographic areas where there are opportunities to benefit priority resources; and
- (6) Track and report accomplishments and performance information associated with fish and aquatic habitat projects in the FIS – Accomplishments Module.

H. Field Station managers and supervisors (Ecological Services and the National Wildlife Refuge System):

- (1) Consider the goals of the Action Plan and priorities of Fish Habitat Partnerships when planning and evaluating projects that directly or indirectly affect fish and aquatic habitat; and
- (2) Coordinate with Fisheries program field station managers to identify potential fish and aquatic habitat projects and to enter appropriate projects into FONS.

1.7 How does the Service use Fisheries program funds to support the National Fish Habitat Action Plan? We use Fisheries program funds to:

A. Support our participation in the National Fish Habitat Board and activities of the Board. The Board's activities include:

- (1) *Guiding the establishment of and coordinating Fish Habitat Partnerships.* The Board receives and compiles reports from the Fish Habitat Partnerships and facilitates sharing of information among the Partnerships.
- (2) *Strategic Planning.* The Board sets national goals for improving the condition of habitats and species targeted by Fish Habitat Partnerships.
- (3) *Science and Data.* The Board maintains a national framework for assessing and reporting on the condition of fish and aquatic habitats and uses it to create periodic "Status of Fish Habitats" reports.
- (4) *Communication and Outreach.* Our involvement and support of these activities must be in accordance with applicable anti-lobbying restrictions. The Board:
 - (a) Mobilizes national and local support for achieving fish and aquatic habitat conservation goals, and
 - (b) Promotes the value of fish and aquatic habitat.

B. Support Action Plan coordination and leadership at the Regional level. Activities may include:

- (1) *Fish Habitat Partnerships.* We support the development and operation of Fish Habitat Partnerships.

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- (2) *Fish Habitat Projects.* We compile, review, and rank projects Fish Habitat Partnerships identify.
- (3) *Accomplishment reporting.* We report accomplishments and performance information associated with fish habitat projects.
- (4) *Technical Assistance.* We provide biological expertise and technical support relating to Action Plan implementation.
- (5) *Communication and Outreach.* We perform and participate in outreach efforts in support of Action Plan implementation.

C. Implement habitat-based cost-shared projects. Projects must protect, restore, or enhance fish and aquatic habitats or otherwise directly support habitat-related priorities of Fish Habitat Partnerships. We encourage our field stations to develop and implement projects that meet Action Plan criteria. If we cannot implement a project, we may use a cooperative agreement, grant, or contract (under applicable and appropriate authority) to fund projects that a partner organization will complete. We only fund projects that address priorities of the Fish Habitat Partnerships, regardless of who implements them (see section 1.9).

1.8 What guidelines must managers follow when using funds for Action Plan projects?

A. Direct costs. Each Region must use at least **70 percent of fish habitat project funds** each fiscal year for habitat-based activities. Expenditures of the habitat-based funds are appropriate for the following activities:

- (1) Providing funding to other entities for Action Plan projects (see section 1.8B(1) for information about indirect costs related to preparing agreements).
- (2) Service biologists' time that directly supports projects (e.g., project planning), directing project activities (e.g., earthwork, fence installation), site assessments, inventories and feasibility studies, travel to and from the project, and project oversight.
- (3) Equipment (e.g., earth moving equipment, surveying equipment, laboratory equipment).
- (4) Earthwork (e.g., contracts for earth moving, planting, structure installation and maintenance, other site preparation) and earthwork materials (e.g., fencing, plants and planting supplies, water control structures).
- (5) Evaluation of biological response. Project design should include, to the extent possible, evaluation of biological response. We may not fund long-term monitoring using Action Plan funds.
- (6) Engineering costs.

B. Indirect costs. Regions may use **no more than 30 percent of fish habitat project funds** each fiscal year for activities that indirectly support fish habitat projects. These activities include:

- (1) Preparing cooperative agreements and overseeing performance under cooperative agreements.
- (2) Biologists' time that indirectly supports projects (e.g., training, serving on committees, annual leave and sick leave, miscellaneous technical assistance, education, outreach) and associated travel.

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(3) Office support activities (e.g., budget, accounting, and processing agreements), data entry, supervision, vehicles, vehicle maintenance, and office expenses.

C. Cost sharing by partners. We try to secure at least 50 percent of total project costs in a Region from partners. This applies to overall funds allocated to a Region and does not need to be achieved on every project. Matches may be from both Federal and non-Federal sources and can be in-kind contributions or cash.

D. Ineligible expenditures. Funds appropriated to the Service for implementation of the Action Plan may not be expended on the following activities. If any of these activities is integral to a project under the Action Plan, we may only use funds from other sources to support the activities. Those funds may qualify as matching funds as section 1.8(C) describes.

- (1) Pre-award costs associated with preliminary design, surveys, and appraisals.
- (2) Realty costs (e.g., lease or purchase interests in real property or to make rental or other land use incentive payments to landowners).
- (3) Operation and maintenance of facilities or structures. This applies to buildings and structures only and not to maintenance or construction of earthen structures.
- (4) Actions required by existing regulatory programs, except that funds may support activities under voluntary agreements that exceed regulatory requirements for conserving habitats (e.g., hydropower licensing in which the licensee enters into a voluntary agreement to restore habitat that exceeds regulatory requirements).
- (5) Projects that are primarily research studies. We address costs for national science and data efforts in section 1.7A(3) and costs for biological assessments in sections 1.8(A)(2) and (5).
- (6) Incentive payments.

1.9 How does the Service identify and prioritize Action Plan projects?

A. Service Regions have considerable flexibility for soliciting and identifying projects. However, all projects must be entered in FONS to be considered for funding. We select for funding only those projects that address priorities of the applicable Fish Habitat Partnerships.

B. Any Service Field Office or program or other appropriate partner can send the Regions descriptions of potential fish habitat projects for us to consider funding.

C. Table 1-1 shows an annual timeline for identifying and prioritizing projects. The actual timing of events may vary depending on the appropriations process.

Table 1-1: Timeline	
October	The Director: <ul style="list-style-type: none">• allocates the available project funding among Fish Habitat Partnerships consistent with the goals and strategies of the National Fish Habitat Board• issues guidance for project selection

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Table 1-1: Timeline	
November	Each Fish Habitat Partnership: <ul style="list-style-type: none"> • prioritizes projects consistent with priorities identified in its strategic plan • submits its project list to the Assistant Regional Director-Fisheries in the designated lead Region for the Fish Habitat Partnership
December	Assistant Regional Directors-Fisheries: <ul style="list-style-type: none"> • rank projects with consideration of Fish Habitat Partnership priorities and the criteria listed in section 1.10 below • submit projects through the Regional Directors to the Director
January	A national-level project review group comprised of Service staff: <ul style="list-style-type: none"> • reviews Regional project lists • makes recommendations to the Director and to the Board
February-March	The Director: <ul style="list-style-type: none"> • selects final projects for funding that are consistent with the goals and strategies of the National Fish Habitat Board • notifies Regional Directors and the National Fish Habitat Board of project selection
April	The Director: <ul style="list-style-type: none"> • allocates funds to Regional Directors to implement approved projects

D. If a Region or partners cannot implement approved projects, the Regional Director:

(1) May implement alternative fish habitat projects that address priorities of the affected Fish Habitat Partnership, and

(2) Must notify the Chief, Division of Fisheries and Aquatic Resource Conservation about changes to projects funded and implemented.

1.10 What are the criteria for ranking and selecting fish habitat projects? We use the criteria below to help us rank projects for Action Plan funding (their order does not imply order of preference). The projects should:

A. Show demonstrable ecological benefits for Federal trust species;

B. Exhibit permanence of fish habitat benefits, including consideration of climate change impacts;

C. Make use of the most current scientific knowledge and proven technology;

D. Have the greatest cost effectiveness and a high likelihood of being completed within the specified time frame and budget;

E. Generate the maximum in matching funds and cost-sharing contributions;

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F. Reduce habitat fragmentation except where a negative biological impact may occur (e.g., invasive species);

G. Result in resilient, self-sustaining systems that minimize the use and dependence on artificial structures; and

H. Include adequate evaluation protocols.

1.11 How does the Service implement Action Plan projects using Fisheries program funds?

A. Managers responsible for implementing fish habitat projects (e.g., field station managers or supervisors named in cooperative agreements):

(1) *Ensure appropriate documentation.* All agreements and supporting documentation must contain a project plan that describes responsibilities and commitments of all parties (also see section 1.11B). Each fish and aquatic habitat project file must include:

(a) Copies of any agreements, contracts, or award notices (see section 1.11B);

(b) Copies of purchase orders;

(c) Receipts for labor, materials, and supplies;

(d) Documentation of all applicable matches;

(e) Documentation of compliance with Federal, State, and local laws; and

(f) Any additional information necessary to accurately account for all expenditures.

(2) *Ensure project quality.* Projects should incorporate the best available science and management practices, including:

(a) Identification of management goals such as those outlined in species recovery, watershed restoration, and ecosystem team plans;

(b) Evaluation of population responses, where appropriate;

(c) Cost-effectiveness, reflecting best available proven technology and adaptive management; and

(d) Incorporation of lessons learned from previous projects.

(3) *Track accomplishments* to meet requirements under the Government Performance and Results Act. Managers should:

(a) When feasible, take photographs of conditions before and after project completion to document the change to habitat;

(b) Identify benefits that link back to performance measures of the Fisheries program; and

(c) Report accomplishments in the FIS – Accomplishments Module.

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(4) For projects on private property, secure a signed agreement with the landowner.

(a) For projects that we manage on private property, the project manager/supervisor must obtain a Wildlife Cooperative Extension Agreement (FWS Form 3-2257) that spans at least 10 years. Both the project manager and the landowner must sign the agreement.

(b) If a partner manages the project, the partner may use an alternate agreement as long as it allows for the habitat development to remain in place for 10 years without interference.

B. Available Tools for Documenting Agreements:

(1) Project managers must use one of the following (or similar) agreements under applicable and appropriate authority when we are providing funds to another party:

(a) *Cooperative agreement,*

(b) *Grant agreement, or*

(c) *Contract.*

(2) Authorized Service staff may also issue pre-award notices to recipients to incur pre-agreement costs to ensure timely project starts (e.g., before the field season begins).


Acting
DIRECTOR

Date: March 26, 2009