

110th CONGRESS
2d Session
S. 3552
IN THE SENATE OF THE UNITED STATES

Mr. BOND (for himself, Mr. LIEBERMAN, Mr. VOINOVICH, and Mrs. CLINTON) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

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

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the 'National Fish Habitat Conservation Act'.

SEC. 2. FINDINGS; PURPOSES.

(a) Findings- Congress makes the following findings:

- (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, including recycling nutrients, purifying water, attenuating floods, augmenting and maintaining stream flows, recharging ground water, acting as primary producers in the food chain, and providing 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 economy of the United States, providing recreation for 44,000,000 anglers, more than 1,000,000 jobs and approximately \$125,000,000,000 in economic impact each year related to recreational fishing, and approximately 500,000 jobs and an additional \$35,000,000,000 in economic impact from commercial fishing each year.
- (4) At least 40 percent 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 the presence of such species in an aquatic ecosystem reflects high-quality habitat for other fish.
- (6) Loss and degradation of aquatic habitat, riparian habitat, water quality, and water volume caused by activities such as alteration of watercourses, stream blockages, water withdrawals and diversions, erosion, pollution, sedimentation, and destruction or modification of wetlands have caused significant declines in fish populations throughout the United States, especially declines in native fish populations, and result in economic losses to the United States.
- (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 activities intended to conserve aquatic resources. Such conservation and sustainability may be significantly advanced through a renewed commitment and sustained, cooperative efforts that are complementary to existing 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 United States can achieve significant progress toward providing aquatic habitats for the conservation and restoration of fish and other aquatic organisms through a voluntary, nonregulatory, incentive program that is based on technical and financial assistance provided by the Federal Government.
- (10) Creation of partnerships between local citizens, Indian tribes, Alaska Native organizations, corporations, nongovernmental organizations, and Federal, State, and Indian tribal agencies is critical to the success of activities to restore aquatic habitats and ecosystems.
- (11) The Federal Government has numerous regulatory and land and water management agencies, including the United States 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 Forest Service, the Fishery Management Councils, the Environmental Protection Agency, and the several interjurisdictional fishery commissions that are critical to the implementation of the National Fish Habitat Action Plan.
- (12) The United States Fish and Wildlife Service, the Forest Service, and the National Marine Fisheries Service each play a vital role in the protection, restoration, and enhancement of the fish communities and aquatic habitats in the United States 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 carried out by the Secretary of Agriculture, including the Natural Resources Conservation Service and the State and Private Forestry programs of the Forest Service, are able to significantly contribute to the implementation of the National Fish Habitat Action Plan through the engagement of private landowners.

(b) Purposes- The purposes of this Act are 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 habitats;
- (2) to prevent further degradation of aquatic 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 aquatic habitats that support a broad natural diversity of fish and other aquatic species;
- (5) to improve fisheries habitat, thereby improving the annual economic output from recreational, subsistence, and commercial fishing;
- (6) to ensure coordination and facilitation of activities carried out by agencies or departments of the United States under the leadership of the Director of the United States Fish and Wildlife Service, the Under Secretary for Oceans and Atmosphere of the Department of Commerce, and the Director of the United States Geological Survey; and
- (7) to achieve other purposes in accordance with the mission and goals of the National Fish Habitat Action Plan.

SEC. 3. NATIONAL FISH HABITAT BOARD.

(a) Establishment-

- (1) IN GENERAL- There is established a National Fish Habitat Board--
 - (A) to promote, oversee, and coordinate the implementation of this Act and the National Fish Habitat Action Plan; and
 - (B) to review and recommend fish habitat conservation projects.
- (2) MEMBERSHIP- The members of the Board shall be as follows:
 - (A) The Director.
 - (B) The Assistant Administrator.

- (C) The Chief of the Natural Resources Conservation Service.
- (D) The Director of the Watershed, Fish, Wildlife, Air & Rare Plants program of the Forest Service.
- (E) The Assistant Administrator for Water of the Environmental Protection Agency.
- (F) The President of the Association of Fish and Wildlife Agencies.
- (G) The Secretary of the Board of Directors of the National Fish and Wildlife Foundation appointed pursuant to section 3(g)(2)(B) of the National Fish and Wildlife Foundation Establishment Act (16 U.S.C. 3702(g)(2)(B)).
- (H) Four representatives of State agencies, each 1 of whom is nominated by 1 of the regions Associations of Fish and Wildlife Agencies (Northeast, Southeast, Midwest, and Western).
- (I) One representative of the American Fisheries Society.
- (J) Two representatives of Indian tribes, 1 of whom shall represent Indian tribes from Alaska and 1 of whom shall represent Indian tribes from the other States.
- (K) One member who represents the Regional Fishery Management Councils established under section 302 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852).
- (L) One member who represents the Marine Fisheries Commissions (the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, and the Pacific States Marine Fisheries Commission).
- (M) One representative from the Sportfishing and Boating Partnership Council.
- (N) Eleven members each of whom represents the interests of 1 of the following:
 - (i) The recreational sportfishing industry.
 - (ii) The commercial sportfishing industry.
 - (iii) Subsistence fishermen.
 - (iv) Marine recreational anglers.
 - (v) Freshwater recreational anglers.
 - (vi) Terrestrial resource conservation organizations.
 - (vii) Aquatic resource conservation organizations.
 - (viii) The livestock and poultry production industry.
 - (ix) The housing development industry.
 - (x) The row crop industry.
 - (xi) Natural resource commodity interests, such as petroleum or mineral extraction.

(3) COMPENSATION- Members of the Board shall serve without compensation for that service.

(b) Appointment and Terms-

(1) IN GENERAL- Except as otherwise provided in this subsection, a member of the Board described in subparagraphs (H) through (N) of subsection (a)(2) shall serve for a term of 3 years.

(2) INITIAL BOARD MEMBERSHIP- Not later than 6 months after the date of the enactment of this Act, the representatives of the National Fish Habitat Board established by the Plan shall appoint the initial members of the Board described in subparagraphs (H) through (N) of subsection (a)(2).

(3) TRANSITIONAL TERMS- The initial appointments of the members of the Board described in subparagraph (N) of subsection (a)(2) shall be for terms as follows:

(A) Four shall be appointed for a term of 1 year.

(B) Four shall be appointed for a term of 2 years.

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

(4) VACANCIES- A vacancy of a member of the Board described in subparagraphs (H) through (N) of subsection (a)(2) shall be filled by an appointment made by the remaining members of the Board.

(5) CONTINUATION OF SERVICE- An individual whose term of service as a member of the Board expires may continue to serve on the Board until a successor is appointed.

(6) REMOVAL- If a member of the Board described in subparagraphs (H) through (N) of subsection (a)(2) misses 3 consecutive regularly scheduled Board meetings, the members of the Board may vote to remove that member and appoint another individual in accordance with paragraph (4).

(c) Chair-

(1) ELECTION- A Chair of the Board shall be elected by the Board from among its members.

(2) TERM- The Chair of the Board shall serve for a term of 3 years.

(d) Meetings-

(1) IN GENERAL- The Board shall meet at the call of the Chair but in no case less often than twice a year.

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

(e) Board Procedures-

(1) IN GENERAL- The Board shall establish procedures to carry out the business of the Board that include the following:

(A) A requirement that a quorum of the members of the Board be present to transact business.

(B) A requirement that no recommendations may be adopted by the Board, except by the vote of 2/3 of all members present and voting.

(C) Procedures for setting national goals and priorities for aquatic habitat conservation for the purposes of this Act.

(D) Procedures for designating Fish Habitat Conservation Partnerships under section 5.

(E) Procedures for reviewing, evaluating, and recommending fish habitat conservation projects.

(2) QUORUM- A majority of the members of the Board shall constitute a quorum.

SEC. 4. FISH HABITAT CONSERVATION PROJECTS.

(a) Submission to the Board- A Partnership seeking funding for a fish habitat conservation project shall submit an application to the Board for such funding at such time and in such manner as the Board may reasonably require.

(b) Recommendations by the Board- Not later than July 1 of each year, the Board shall submit to the Secretary a description, including estimated costs, of each fish habitat conservation project that the Board recommends that the Secretary approve and fund under this Act, in order of priority of the Board's recommendations, for the following fiscal year.

(c) Considerations- The Board shall select each project to be recommended to the Secretary under subsection (b)--

(1) based on a recommendation of the Partnership that is, or that will be, participating actively in carrying out the project; and

(2) after consideration of--

(A) the extent to which the project fulfills a purpose of this Act or a goal of the Plan;

(B) the extent to which the project addresses the national priorities set by the Board;

(C) the availability of sufficient non-Federal funds to match Federal contributions for the project, as required by subsection (e);

(D) the extent to which the project--

(i) increases fishing opportunities for the public;

(ii) will be carried out through a cooperative agreement among Federal, State, and local governments, Indian tribes, and private entities;

(iii) increases public access to land and waters; and

(iv) advances the conservation of fish and wildlife species that are listed, or are candidates to be listed, as threatened species and endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(E) the substantiality of the character and design of the project.

(d) Limitations-

(1) REQUIREMENTS FOR MONITORING- No fish habitat conservation project may be recommended by the Board under subsection (b) or provided financial assistance under this Act unless the project includes a monitoring plan designed to--

(A) appropriately assess the results of the habitat protection, restoration, or enhancement activities carried out with such assistance;

(B) recommend appropriate changes to the project if such assessment substantiates that the project objectives are not being met; and

(C) report findings of such assessment to the Board.

(2) ACQUISITION OF REAL PROPERTY INTERESTS-

(A) IN GENERAL- No fish habitat conservation project that will result in the acquisition by the Secretary, in whole or in part, of any real property interest may be recommended by the Board under subsection (b) or provided financial assistance under this Act unless the project meets the requirements of subparagraph (B).

(B) REQUIREMENTS-

(i) IN GENERAL- Any real property interest described in subparagraph (A) may not be conveyed to a State, another public agency, or other entity unless--

(I) the Secretary determines that such State, agency, or other entity is obligated to undertake the management of the property being conveyed in accordance with the purposes of this Act; and

(II) 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 purposes of this Act.

(ii) ADDITIONAL CONVEYANCE CONDITIONS- Any real property interest described in subparagraph (A) conveyed as described in clause (i) 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.

(e) Non-Federal Contribution for Projects-

(1) IN GENERAL- Except as provided in paragraph (2), no fish habitat conservation project may be recommended by the Board under subsection (b) or provided financial assistance under this Act unless at least 50 percent of the cost of the project will be funded with non-Federal funds.

(2) PROJECTS ON FEDERAL LAND OR WATERS- Notwithstanding paragraph (1), Federal funds may be used for payment of 100 percent of the costs of a project located on Federal land or waters, including the acquisition of inholdings within such land and waters.

(3) NON-FEDERAL SHARE- The non-Federal share of the cost of a project may not be derived from a Federal grant program, but may include in-kind contributions and cash.

(4) SPECIAL RULE FOR ALASKA NATIVE ORGANIZATIONS- Notwithstanding paragraph (1) or any other provision of law, any funds made available to an Indian tribe pursuant to this Act may be considered non-Federal funds for the purpose of paragraph (1).

(f) Consideration by the Secretary-

(1) IN GENERAL- Not later than 180 days after receiving the recommendations of the Board for fish habitat conservation projects under subsection (b), the Secretary shall approve, reject, or reorder the priority of each such recommendation based on, to the greatest extent practicable, the criteria described in subsection (c).

(2) FUNDING- If the Secretary approves a project, the Secretary shall use amounts made available pursuant to an authorization of appropriations in this Act to provide funds to carry out the project.

(3) NOTIFICATION BY THE SECRETARY- If the Secretary rejects or reorders the priority of any project recommended by the Board under subsection (b), the Secretary shall provide to the Board and the appropriate Fish Habitat Conservation Partnership a written statement of the reasons that the Secretary rejected or modified the priority of the project.

SEC. 5. CONSERVATION OF AQUATIC HABITAT FOR FISH AND OTHER AQUATIC ORGANISMS ON FEDERAL LAND.

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

SEC. 6. COORDINATION WITH STATES.

The Secretary shall notify and coordinate with the State agency of a State not later than 30 days prior to the date that any action is planned or carried out within the State related to the implementation of this Act.

SEC. 7. CONSTRUCTION.

(a) Water Rights-

(1) **IN GENERAL-** Nothing in this Act may be construed--

(A) to create a reserved water right, expressed or implied, in the United States for any purpose or to affect any water right in existence on the date of the enactment of this Act; or

(B) to affect any Federal or State law in existence on the date of the enactment of the Act regarding water quality or water quantity.

(2) **AUTHORITY TO ACQUIRE WATER RIGHTS-** The Secretary may acquire, under State law, water rights that are needed to carry out this Act.

(b) State Authority- Nothing in this Act may be construed--

(1) to affect the authority, jurisdiction, or responsibility of a State to manage, control, or regulate fish and wildlife under the laws and regulations of the State; or

(2) to authorize the Secretary to control or regulate within a State the fishing or hunting of fish and wildlife within the State.

(c) **Construction With Respect to Rights of Indian Tribes-** Nothing in this Act may be construed to abrogate, abridge, affect, modify, supersede, or alter any treaty-reserved right or other right of an Indian tribe as recognized by any other means, including agreements with the United States, Federal law, Executive orders, statutes, and judicial decrees.

(d) **Construction With Respect to Suits for Adjudication of Water Rights-** Nothing in this Act diminishes or affects the ability of the Secretary to join an adjudication of rights to the use of water pursuant to subsections (a), (b), and (c) of section 208 of the Department of Justice Appropriation Act (43 U.S.C. 666).

(e) Construction With Respect to Other Authorities-

(1) **ACQUISITION OF LANDS AND WATERS-** Nothing in this Act may be construed to affect, alter, or modify the authorities, responsibilities, obligations, or powers of the Secretary to acquire land or waters or interests therein under any other provision of law.

(2) **PRIVATE PROPERTY PROTECTION-** Nothing in this Act may be construed to permit funds made available to carry out this Act to be used to acquire any real property or any interest in any real property without the written consent of each owner of that property or interest in property.

(3) **MITIGATION-** Nothing in this Act may be construed to permit funds made available to carry out this Act to be used for fish and wildlife mitigation purposes under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), or the Water Resources Development Act of 1986 (Public Law 99-662; 100 Stat. 4082).

END