

103^D CONGRESS
2^D SESSION

H. R. 4481

To restore the Nation's aquatic ecosystems through the voluntary cooperation of Federal, State, tribal, and corporate and other private interests.

IN THE HOUSE OF REPRESENTATIVES

MAY 24, 1994

Mr. HAMBURG (for himself, Mr. STUDDS, Mr. EDWARDS of California, Mr. MANTON, Mr. SANDERS, Ms. FURSE, Mr. HUGHES, Mr. HOCHBRUECKNER, Mr. RICHARDSON, Ms. WOOLSEY, Ms. PELOSI, Mrs. UNSOELD, Ms. ESHOO, and Mr. VENTO) introduced the following bill; which was referred jointly to the Committees on Merchant Marine and Fisheries and Public Works and Transportation

JULY 19, 1994

Additional sponsors: Mr. OBERSTAR, Mr. HINCHEY, and Mr. BEILENSON

A BILL

To restore the Nation's aquatic ecosystems through the voluntary cooperation of Federal, State, tribal, and corporate and other private interests.

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.**

4 This Act may be cited as the "National Aquatic
5 Ecosystem Restoration Act of 1994".

1 **SEC. 2. FINDINGS, PURPOSES, POLICY, AND LONG-TERM**
2 **GOALS.**

3 (a) FINDINGS.—The Congress finds the following:

4 (1) Aquatic ecosystems, including wetlands,
5 streams, rivers, lakes, estuaries, coastal marine
6 ecosystems, and associated riparian upland habitats
7 that buffer those areas from external factors, per-
8 form numerous valuable environmental functions
9 which sustain environmental, social, and cultural val-
10 ues. They recycle nutrients, purify water, attenuate
11 floods, augment and maintain streamflow, recharge
12 ground water, act as primary producers in the food
13 chain, provide habitat for plants, fish and wildlife,
14 and other dependent species, and provide rec-
15 reational opportunities.

16 (2) Physical and biological integrity of aquatic
17 ecosystems is key to maintaining biodiversity and
18 to providing for human and ecological health and
19 safety.

20 (3) Degradation of the Nation's aquatic
21 ecosystems and loss of aquatic biodiversity have
22 reached alarming levels, affecting all waters of the
23 United States, such that entire hydrologic systems
24 and natural biodiversity of all forms of aquatic and
25 riparian species are at risk.

1 (4) Federal policy has not devoted sufficient at-
2 tention to the decline of aquatic and riparian
3 ecosystems.

4 (5) Projects to restore and maintain aquatic
5 ecosystems will provide both skilled and unskilled
6 jobs to all regions of the country. After these
7 ecosystems are restored, jobs dependent on these
8 ecosystems will return, including fishing, hunting,
9 recreation, resource protection and maintenance, and
10 tourism jobs, and societal costs can be minimized
11 with adequate maintenance of these ecosystems.

12 (6) A proactive approach to reverse the deg-
13 radation of aquatic ecosystems will reverse the de-
14 cline of certain aquatic habitat-dependent species
15 and reduce the likelihood that these species will be-
16 come so diminished as to become an impediment to
17 sustainable development activities.

18 (7) Creation of partnerships between local citi-
19 zens, tribal organizations, corporations, and State
20 and Federal agencies is often critical to the success
21 of aquatic ecosystem restoration activities.

22 (b) PURPOSES.—The purposes of this Act are the
23 following:

1 (1) To provide a comprehensive and integrated
2 framework to direct long-term national aquatic eco-
3 system restoration activities.

4 (2) To coordinate existing Federal programs
5 and policies relating to aquatic ecosystem restoration
6 in order to provide the maximum benefit from Fed-
7 eral aquatic ecosystem restoration activities.

8 (3) To activate local, tribal, and State aquatic
9 ecosystem restoration initiatives by providing tech-
10 nical expertise and funding to such entities.

11 (4) To create a dedicated source of funds to
12 more effectively foster local, tribal, and State aquat-
13 ic ecosystem restoration activities.

14 (c) POLICY.—It is the policy of the United States
15 that—

16 (1) Federal, State, and local agencies, in con-
17 sultation and collaboration with private citizen orga-
18 nizations, should plan and implement aquatic eco-
19 system restoration projects resulting in achievement
20 of—

21 (A) the interim goals of a net restoration
22 of 10,000,000 acres of wetlands, 400,000 miles
23 of streams and rivers, and 1,000,000 acres of
24 lakes (excluding the Great Lakes) by the year
25 2010; and

1 (B) long-term goals published by the Coun-
2 cil under subsection (d); and

3 (2) the Federal Government should provide
4 leadership and technical and financial assistance to
5 State and local governments, tribal organizations,
6 and other management entities, and private citizens
7 to plan, implement, monitor, and evaluate aquatic
8 ecosystem restoration to improve and protect the
9 Nation's aquatic ecosystems.

10 (d) LONG-TERM GOALS.—The Council shall—

11 (1) monitor achievement of the interim goals
12 set forth in subsection (c)(1)(A); and

13 (2) upon determining that those interim goals
14 have been achieved, establish and publish in the
15 Federal Register long-term goals for aquatic eco-
16 system restoration projects planned and imple-
17 mented by Federal, State, and local agencies.

18 **SEC. 3. NATIONAL AQUATIC ECOSYSTEM RESTORATION**

19 **STRATEGY.**

20 (a) ESTABLISHMENT OF TASK FORCE.—

21 (1) IN GENERAL.—The President shall establish
22 a task force within 90 days after the date of the en-
23 actment of this Act, to develop the National Aquatic
24 Ecosystem Restoration Strategy in accordance with

1 this section. The task force shall be known as the
2 Aquatic Ecosystem Restoration Task Force.

3 (2) COMPOSITION.—The Task Force shall be
4 composed of officials and scientists appointed by the
5 President from Federal agencies involved in aquatic
6 habitat or resource management, State agencies,
7 tribes, academic institutions, local management enti-
8 ties, and nongovernmental organizations.

9 (3) ADMINISTRATIVE EXPENSES.—The adminis-
10 trative expenses of the Task Force shall be paid on
11 a pro-rata basis by all of the Federal agencies rep-
12 resented on the Task Force.

13 (4) TERMINATION.—The Task Force shall ter-
14minate on the later of—

15 (A) the submission of recommendations to
16 the President under section 7(a); or

17 (B) the date of publication of the Strategy
18 under subsection (b) of this section.

19 (b) STRATEGY.—

20 (1) IN GENERAL.—The Task Force shall, with-
21 in 2 years after the date of the enactment of this
22 Act, develop and publish in the Federal Register in
23 accordance with this Act a plan for an interagency
24 and intergovernmental process to develop, imple-
25 ment, monitor, and evaluate the national policy set

1 forth in section 2(c). The plan shall be known as the
2 National Aquatic Ecosystem Restoration Strategy.

3 (2) IMPLEMENTATION.—The Director of the
4 United States Fish and Wildlife Service shall seek to
5 implement the Strategy, including by providing as-
6 sistance to management entities conducting aquatic
7 ecosystem restoration.

8 (3) CONTENTS.—The Strategy shall contain the
9 following:

10 (A) Guidelines for coordination of aquatic
11 ecosystem restoration projects within water-
12 sheds and ecoregions.

13 (B) National restoration milestones to
14 meet the national policy set forth in section
15 2(c).

16 (C) Standards for identifying the most eco-
17 logically sound restoration projects possible
18 through the utilization of available information.
19 To the extent possible, such standards should
20 be ecoregional.

21 (D) Measurable standards for each
22 ecoregion for monitoring the success of aquatic
23 ecosystem restoration projects.

24 (E) Guidelines for maintaining pristine
25 and successfully restored aquatic ecosystems.

1 (F) Identification of riparian, floodplain,
2 wetlands, and other aquatic habitats that re-
3 tain, or could easily be restored to support, sig-
4 nificant indigenous fish, wildlife, and plant pop-
5 ulations, by coordinating existing surveys of wa-
6 tersheds. To the extent existing surveys are in-
7 adequate, the Task Force shall recommend a
8 procedure for conducting additional surveys.

9 (G) Guidelines for setting ecoregional and
10 national aquatic ecosystem restoration priorities
11 which will result in the greatest ecological re-
12 turn on investment.

13 (H) Mechanisms for ensuring access to
14 and sharing of information and providing tech-
15 nical assistance to State agencies, tribal organi-
16 zations, and management entities.

17 (I) Recommendations to the Congress re-
18 garding legislation to remove obstacles to
19 aquatic ecosystem restoration and achieve the
20 national policy set forth in section 2(c).

21 (J) Recommendations for periodic sci-
22 entific review of the Strategy by State, Federal,
23 and independent scientists to incorporate new
24 information, including a schedule for reviews

1 and revisions by the Director under subsection
2 (d).

3 (K) Procedures for disseminating new in-
4 formation regarding aquatic ecosystem restora-
5 tion to management entities and State, tribal,
6 and Federal agencies involved in implementing
7 the Strategy.

8 (L) Recommendations for reorganizing
9 aquatic ecosystem restoration activities on an
10 ecoregional basis.

11 (M) Recommendations for additional Fed-
12 eral incentives to encourage aquatic ecosystem
13 restoration on non-Federal lands.

14 (4) CONSIDERATIONS IN DEVELOPING THE
15 STRATEGY.—In developing the Strategy, the Task
16 Force shall take into consideration—

17 (A) the national policy set forth in section
18 2(c);

19 (B) the recommendations contained in the
20 National Research Council's 1992 report on
21 Restoration of Aquatic Ecosystem with regard
22 to the restoration of aquatic ecosystems; and

23 (C) the recommendations contained in the
24 1994 National Science Foundation's Fresh-

1 water Initiative with regard to the restoration
2 of aquatic ecosystems.

3 (c) SUBCOMMITTEE.—The Task Force shall establish
4 a subcommittee that shall—

5 (1) identify Federal regulatory and nonregula-
6 tory aquatic ecosystem restoration policies and pro-
7 grams that affect aquatic ecosystems,

8 (2) evaluate the roles of those policies and pro-
9 grams in promoting or degrading aquatic ecosystem
10 health,

11 (3) evaluate changes to current operation and
12 maintenance procedures that would restore aquatic
13 ecosystem functions,

14 (4) recommend appropriate times to reevaluate
15 those policies and programs,

16 (5) recommend mechanisms to coordinate im-
17 plementation of Federal policy and programs for the
18 purpose of aquatic ecosystem restoration,

19 (6) identify the portion of the national policy
20 set forth in section 2(c) that can be achieved on
21 Federal lands, and

22 (7) establish appropriate responsibilities and
23 measurable objectives for each agency involved in
24 achieving the restoration goals under section 2(c).

1 (d) REVIEW AND REVISION OF STRATEGY.—The Di-
2 rector shall periodically review and revise the Strategy to
3 reflect the best available information regarding aquatic
4 ecosystems, aquatic resources restoration techniques, and
5 watershed and ecosystem management. The Director shall
6 make such reviews and revisions at least as often as is
7 recommended in the Strategy pursuant to subsection
8 (b)(3)(J).

9 (e) INTERIM FUNDING.—The Director, subject to the
10 availability of appropriations, may make grants to fund
11 appropriate aquatic ecosystem restoration projects before
12 publication of the Strategy.

13 **SEC. 4. AQUATIC ECOSYSTEM RESTORATION ASSISTANCE.**

14 (a) PROVISION OF ASSISTANCE.—

15 (1) IN GENERAL.—The Foundation, subject to
16 the availability of amounts deposited into the Fund,
17 shall provide financial assistance to a management
18 entity in accordance with this section for carrying
19 out each aquatic ecosystem restoration project for
20 which the Council approves that assistance in ac-
21 cordance with this section.

22 (2) PRIORITY.—The Foundation shall provide
23 assistance under this subsection in accordance with
24 the priorities specified by the Council under sub-
25 section (c)(4).

1 (b) APPLICATION FOR ASSISTANCE.—

2 (1) APPLICATION.—A management entity seek-
3 ing assistance under this section for an aquatic eco-
4 system restoration project shall submit an applica-
5 tion to the Service regional office for the Service re-
6 gion in which the project will be carried out.

7 (2) TECHNICAL ASSISTANCE.—The Director
8 shall ensure that technical assistance is provided to
9 management entities.

10 (3) FORWARDING OF APPLICATIONS TO COUN-
11 CIL.—The head of a Service regional office shall for-
12 ward to the Council each application for assistance
13 received by that office.

14 (c) REVIEW AND APPROVAL OF PROPOSED PROJECTS
15 BY COUNCIL.—

16 (1) REVIEW AND DETERMINATIONS.—The
17 Council shall—

18 (A) review each application for assistance
19 that is forwarded by the head of a Service re-
20 gional office under subsection (b)(2); and

21 (B) determine whether the aquatic eco-
22 system restoration project proposed by the ap-
23 plication—

24 (i) will assist in implementing the
25 Strategy;

1 (ii) under the criteria set forth in
2 paragraph (2), is appropriate for funding
3 under this section;

4 (iii) to the extent practicable, will re-
5 turn damaged or degraded aquatic
6 ecosystems to the full range of their natu-
7 ral functions and values;

8 (iv) does not employ management ac-
9 tions that favor one function, value, or spe-
10 cies to the detriment of, or without regard
11 for, others; and

12 (v) will fulfill the purposes of this Act.

13 (2) PROJECT SELECTION CRITERIA.—The
14 Council shall determine, under paragraph (1)(B),
15 whether a project is appropriate for funding under
16 this section based on the following criteria:

17 (A) The technical feasibility of the project.

18 (B) The cost-effectiveness of the project,
19 including minimization of future operation and
20 maintenance costs.

21 (C) The expected duration of the aquatic
22 ecosystem restoration to be carried out under
23 the project.

24 (D) The extent to which habitat to be re-
25 stored under the project is degraded.

1 (E) The extent of non-Federal participa-
2 tion in payment of the costs of the project.

3 (F) The relationship of the project to a
4 watershed, ecosystem, or other landscape ap-
5 proach or plan.

6 (G) The potential benefits of the project to
7 fish and wildlife resources of special concern
8 and to the diversity of other natural functions
9 and values inherent in aquatic resources.

10 (H) The aquatic ecosystem restoration op-
11 portunities that the project will provide on
12 lands that are not eligible for restoration under
13 the Wetlands Reserve Program.

14 (I) The extent to which the project will in-
15 volve a high degree of cooperation between Fed-
16 eral and non-Federal entities.

17 (J) The extent to which sites at which the
18 project is conducted will pose a continuing con-
19 taminant threat to fish and wildlife species
20 using the sites after restoration or will require
21 chemical restoration to provide restoration of
22 beneficial uses.

23 (K) The availability of other Federal fund-
24 ing sources to carry out the project.

1 (L) Whether the project will substantially
2 contribute to long-term restoration of water
3 quality.

4 (M) The extent to which the project will
5 train and employ individuals who reside in the
6 area where the project will be carried out, par-
7 ticularly individuals displaced from resource-de-
8 pendent industries.

9 (3) APPROVAL OF PROJECTS.—The Council
10 may approve assistance under this section for an
11 aquatic ecosystem restoration project if the Council
12 makes affirmative determinations under paragraph
13 (1)(B)(i), (ii), (iii), (iv), and (v).

14 (4) NOTIFICATION OF FOUNDATION.—The
15 Council shall promptly notify the Foundation of ap-
16 proval of assistance under this section for an aquatic
17 ecosystem restoration project, specifying the priority
18 of the project for assistance under this section re-
19 lative to other projects for which the Council has ap-
20 proved such assistance.

21 **SEC. 5. NATIONAL AQUATIC RESTORATION COUNCIL.**

22 (a) ESTABLISHMENT.—There is established a council
23 to be known as the National Aquatic Restoration Council.

24 (b) MEMBERSHIP.—

1 (1) IN GENERAL.—The Council shall consist of
2 15 members, as follows:

3 (A) 4 members, of whom one shall be ap-
4 pointed by each of—

5 (i) the Under Secretary of Commerce
6 for Oceans and Atmosphere,

7 (ii) the Administrator of the Environ-
8 mental Protection Agency,

9 (iii) the Chief of the Soil Conservation
10 Service, and

11 (iv) the Secretary of the Army.

12 (B) 10 members appointed by the Direc-
13 tor, of whom 2 shall be appointed as represent-
14 atives of each of the following:

15 (i) State fish and wildlife management
16 agencies.

17 (ii) Tribal fish and wildlife manage-
18 ment agencies.

19 (iii) Academic scientists.

20 (iv) Local watershed councils.

21 (v) Non-governmental organizations.

22 (C) The Director.

23 (2) EXPERIENCE REQUIRED.—An individual
24 shall not be eligible for appointment as a member of

1 the Council unless the individual has experience in
2 aquatic ecosystem restoration.

3 (3) TERMS OF MEMBERS.—The term of a mem-
4 ber of the Council shall be 3 years.

5 (c) CHAIRPERSON.—The Director or another member
6 of the Council designated by the Director shall be the
7 chairperson of the Council.

8 (d) MEETINGS.—

9 (1) IN GENERAL.—The Council shall meet at
10 least once each year to consider projects for approval
11 of assistance under section 4.

12 (2) QUORUM.—9 members present at a meeting
13 of the Council shall constitute a quorum.

14 (e) PAY.—An individual shall not receive any pay, al-
15 lowance, or benefits by reason of service as a member of
16 the Council.

17 (f) TRAVEL EXPENSES.—Each member of the Coun-
18 cil shall receive travel expenses, including per diem in lieu
19 of subsistence, in accordance with sections 5702 and 5703
20 of title 5, United States Code.

21 (g) COUNCIL EXEMPTED.—The Federal Advisory
22 Committee Act (5 U.S.C. App. 1) shall not apply to the
23 Council.

1 **SEC. 6. AQUATIC ECOSYSTEM RESTORATION FUND.**

2 (a) ESTABLISHMENT.—There is established on the
3 books of the Treasury a separate account which shall be
4 known as the Aquatic Ecosystem Restoration Fund.

5 (b) CONTENTS.—The Fund shall consist of—

6 (1) amounts deposited into the Fund under sec-
7 tion 7; and

8 (2) such other amounts as may be appropriated
9 to the Fund.

10 (c) USE.—

11 (1) IN GENERAL.—Amounts in the Fund shall
12 be available to the Foundation subject to appropria-
13 tions, for—

14 (A) providing assistance under section 4,
15 including payment of administrative expenses
16 incurred by the Fund in providing that assist-
17 ance;

18 (B) reimbursing members of the Council
19 who are not officers or employees of the Fed-
20 eral Government for travel and transportation
21 expenses under section 5(f); and

22 (C) paying expenses of administering the
23 Fund.

24 (2) LIMITATION ON USE FOR ADMINISTRATIVE
25 EXPENSES.—Not more than 10 percent of amounts
26 deposited into the Fund each fiscal year shall be

1 available to pay administrative expenses under para-
2 graph (1)(A) or (C) or reimbursement under para-
3 graph (1)(B) with respect to costs incurred in that
4 fiscal year.

5 **SEC. 7. SOURCES OF FUNDING.**

6 (a) RECOMMENDATIONS.—

7 (1) IN GENERAL.—Not later than 1 year after
8 the date of the enactment of this Act, the Task
9 Force shall submit to the President and publish in
10 the Federal Register recommendations for sources of
11 amounts for deposit into the Fund, consisting of fees
12 imposed for use or degradation of water resources.

13 (2) AMOUNT.—In identifying sources under
14 paragraph (1), the Task Force shall seek to provide
15 the Fund with such funding as may be required to
16 fulfill the purposes set forth in section 2(b).

17 (b) REVIEW BY PRESIDENT.—Not later than 60 days
18 after publication of the recommendations of the Task
19 Force under subsection (a)(1), the President shall—

20 (1) disapprove the recommendations and trans-
21 mit the disapproval and the reasons for the dis-
22 approval to the Task Force and the Congress; or

23 (2) approve the recommendations and transmit
24 to the Congress and the Secretary a copy of the rec-
25 ommendations and certification of that approval.

1 (c) CONSIDERATION BY CONGRESS.—

2 (1) IN GENERAL.—If the recommendations of
3 the Task Force are approved and transmitted to the
4 Congress by the President under subsection (b)(2),
5 they shall be effective and apply as if enacted as
6 part of this Act unless disapproved by a joint resolu-
7 tion enacted by the Congress before the earlier of—

8 (A) the end of the 60-day period beginning
9 on the date of the transmission of certification
10 of that disapproval under that subsection; or

11 (B) an adjournment of Congress sine die
12 for the session in which the report is transmit-
13 ted.

14 (2) CALCULATION OF PERIODS.—For purposes
15 of paragraph (1), the days on which either House of
16 Congress is not in session because of an adjourn-
17 ment of more than 3 days to a day certain shall be
18 excluded in the computation of a period.

19 (d) DEPOSIT INTO FUND.—Amounts received by the
20 United States pursuant to recommendations of the Task
21 Force that are effective under subsection (c) shall be de-
22 posited into the Fund.

23 **SEC. 8. DEFINITIONS.**

24 In this Act:

1 (1) AQUATIC ECOSYSTEM.—The term “aquatic
2 ecosystem” includes wetlands, streams, rivers, lakes,
3 estuaries, coastal marine ecosystems, and associated
4 riparian upland habitats that buffer those areas
5 from exterior factors.

6 (2) AQUATIC ECOSYSTEM RESTORATION.—The
7 term “aquatic ecosystem restoration” means return-
8 ing an aquatic ecosystem to a close approximation of
9 its condition prior to its disturbance by humans,
10 such that its structure and function (including
11 chemical, physical, hydrological, geomorphological,
12 and biological characteristics) are repaired, its natu-
13 ral dynamic processes are operating effectively
14 again, and its indigenous biota are returned to
15 predisturbance levels to the greatest extent possible.

16 (3) COUNCIL.—The term “Council” means the
17 National Aquatic Restoration Council established by
18 section 5(a).

19 (4) DIRECTOR.—The term “Director” means
20 the Director of the United States Fish and Wildlife
21 Service.

22 (5) ECOREGION.—The term “ecoregion” means
23 a continuous geographical area characterized by—

24 (A) the occurrence of one or more impor-
25 tant ecological associations that differ, at least

1 in proportional area covered, from the associa-
2 tions of adjacent regions.

3 (B) distinctive flora, fauna, climate,
4 landform, soil, vegetation, and ecological climax;
5 and

6 (C) essentially similar ecological relation-
7 ships between plant species and soil and cli-
8 mate.

9 (6) FOUNDATION.—The term “Foundation”
10 means the National Fish and Wildlife Foundation.

11 (7) FUND.—The term “Fund” means the
12 Aquatic Ecosystem Restoration Fund established by
13 section 6(a).

14 (8) MANAGEMENT ENTITY.—The term “man-
15 agement entity” means an agency of a State, tribal,
16 or local government, a regional planning organiza-
17 tion, a conservation district, or any other public, pri-
18 vate, or nonprofit entity which has adequate author-
19 ity to carry out aquatic ecosystem restoration
20 projects with assistance under this Act.

21 (9) SECRETARY.—The term “Secretary” means
22 the Secretary of the Interior.

23 (10) STRATEGY.—The term “Strategy” means
24 the National Aquatic Ecosystem Restoration Strat-

1 egy developed and published under section 3(b)(1)
2 and revised under section 3(e).

3 (11) TASK FORCE.—The term “Task Force”
4 means the Aquatic Ecosystem Restoration Task
5 Force established under section 3(a)(1).

6 (12) WATERSHED COUNCIL.—The term “water-
7 shed council” means a representative group of local
8 watershed residents (including private, public, gov-
9 ernment, corporate, and nonprofit organizations) or-
10 ganized to develop and implement watershed restora-
11 tion.

12 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

13 (a) IN GENERAL.—There is authorized to be appro-
14 priated to the Fund, subject to subsection (b)—

15 (1) \$30,000,000 for fiscal year 1995;

16 (2) \$40,000,000 for fiscal year 1996; and

17 (3) \$50,000,000 for each of fiscal years 1997,
18 1998, and 1999.

19 (b) REDUCTION OF AMOUNT AUTHORIZED.—The
20 amount authorized to be appropriated to the Fund under
21 subsection (a) for a fiscal year shall be reduced by the
22 amount that will be deposited into the Fund for the fiscal
23 year under section 6(b)(1).

○

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