

107TH CONGRESS
1ST SESSION

S. 678

To amend the Federal Water Pollution Control Act to establish a program for fisheries habitat protection, restoration, and enhancement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 3, 2001

Mr. BOND introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Federal Water Pollution Control Act to establish a program for fisheries habitat protection, restoration, and enhancement, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fishable Waters Act
5 of 2001”.

6 **SEC. 2. FINDINGS AND POLICY.**

7 (a) FINDINGS.—Congress finds that—

8 (1) the extensive and diverse fishery resources
9 of the United States—

1 (A) are of enormous recreational and eco-
2 nomic benefit to the United States, providing
3 employment, subsistence, tourism, and whole-
4 some, family-oriented recreational opportunities
5 for millions of people; and

6 (B) contribute billions of dollars to the
7 economy of the United States;

8 (2) it is in the best interest of the United
9 States to secure the benefits of fishery resources
10 by—

11 (A) protecting and restoring healthy fish
12 populations in inland and coastal aquatic envi-
13 ronments; and

14 (B) enhancing fishing opportunities;

15 (3) sufficient water of good quality is 1 of the
16 most significant requirements for sustaining and re-
17 storing the productivity of fisheries in the water-
18 sheds and coastal areas of the United States;

19 (4) despite the success of federally funded fish
20 and wildlife restoration programs in restoring fish
21 and wildlife across the United States, and the suc-
22 cess of the Federal Water Pollution Control Act (33
23 U.S.C. 1251 et seq.) in improving water quality in
24 the surface water of the United States, the national
25 goal of providing for the protection and propagation

1 of fish, shellfish, and wildlife has not been fully real-
2 ized;

3 (5) the goal of providing for the protection and
4 propagation of fish, shellfish, and wildlife could be
5 significantly advanced through a renewed commit-
6 ment and sustained effort, in coordination with fish
7 and wildlife restoration programs and clean water
8 programs—

9 (A) to protect and restore freshwater and
10 marine fisheries habitat; and

11 (B) to enhance access for fisheries uses for
12 present and future generations;

13 (6) the loss of aquatic and riparian habitat
14 through activities such as physical alteration of wa-
15 tercourses, obsolete flood-control structures and
16 practices, stream blockages, erosion and sedimenta-
17 tion, excessive water flow diversion and consumption,
18 and destruction or modification of wetland have
19 caused significant declines in fish populations and
20 access to fishing opportunities throughout the
21 United States;

22 (7) urban communities are disproportionately
23 affected by aquatic habitat loss, loss of species diver-
24 sity, invasion of exotic species, and lack of public ac-
25 cess to waterways and fishing opportunities;

1 (8) the United States can achieve significant
2 progress toward providing for the protection and
3 propagation of fish, shellfish, and wildlife through a
4 voluntary, non-regulatory, incentive-based program
5 that is—

6 (A) based on Federal technical and finan-
7 cial assistance; and

8 (B) coupled with planning and implemen-
9 tation on a watershed basis by local, regional,
10 State, and tribal organizations;

11 (9) the program referred to in paragraph (8)
12 should be designed and carried out—

13 (A) to characterize aquatic habitats in
14 terms of suitability for fisheries;

15 (B) to review and supplement established
16 fisheries objectives or to establish new objec-
17 tives;

18 (C) to identify the factors and activities
19 causing adverse impacts or threats to fisheries
20 habitats and uses; and

21 (D) to define and implement site-specific
22 projects and measures, with the willing consent
23 of affected landowners, necessary for the pro-
24 tection and restoration of fisheries habitat and
25 enhancement of access; and

1 (10) flexibility and innovation that lead to im-
2 proved habitat and sustained fish production, to-
3 gether with a special emphasis on identifying and
4 prioritizing program efforts for urban and other
5 high priority watersheds, is necessary to achieve the
6 necessary progress on an equitable, cost-effective
7 basis.

8 (b) POLICY.—Section 101(a) of the Federal Water
9 Pollution Control Act (33 U.S.C. 1251(a)) is amended—

10 (1) by striking “and” at the end of paragraph
11 (6);

12 (2) by striking the period at the end of para-
13 graph (7) and inserting “; and”; and

14 (3) by adding at the end the following:

15 “(8) it is the national policy to achieve—

16 “(A) the protection and restoration of sus-
17 tained fish production and fisheries habitat in
18 the watersheds and marine environment of the
19 United States; and

20 “(B) the enhancement of access for fish-
21 eries uses through a combination of voluntary
22 watershed planning and incentives for the im-
23 plementation of site-specific, fisheries habitat-
24 related projects and measures.”.

1 **SEC. 3. FISHERIES HABITAT PROTECTION, RESTORATION,**
2 **AND ENHANCEMENT PROGRAM.**

3 (a) IN GENERAL.—Title III of the Federal Water
4 Pollution Control Act (33 U.S.C. 1311 et seq.) is amended
5 by adding at the end the following:

6 **“SEC. 321. FISHERIES HABITAT PROTECTION, RESTORA-**
7 **TION, AND ENHANCEMENT.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) ACCESS RESTRICTED WATER.—The term
10 ‘access restricted water’ means high value water, the
11 public use and enjoyment of fisheries of which is sig-
12 nificantly limited by lack of access.

13 “(2) COUNCIL.—The term ‘council’ means a
14 watershed council designated under subsection
15 (c)(4).

16 “(3) HABITAT LIMITED WATER.—The term
17 ‘habitat limited water’ means water in which the at-
18 tainment of healthy, resilient, diverse, and produc-
19 tive aquatic systems necessary to sustain socially,
20 ecologically, or economically important fisheries is
21 adversely affected by physical, chemical, or biological
22 conditions that can be remediated.

23 “(4) HIGH PRIORITY WATERSHED.—The term
24 ‘high priority watershed’ means a watershed des-
25 igned under State law, as described in subsection
26 (b), for which available information demonstrates a

1 high likelihood that the planning and other activities
2 authorized under this section could achieve signifi-
3 cant progress toward protection or restoration of
4 habitat for fisheries that exhibit substantial existing
5 or potential biological, commercial, or recreational
6 value.

7 “(5) HIGH VALUE WATER.—The term ‘high
8 value water’ means water, the physical, chemical,
9 and biological conditions of which sustain socially,
10 ecologically, or economically important fisheries.

11 “(6) PROGRAM.—The term ‘program’ means a
12 program for the protection and restoration of the
13 fisheries habitat and uses described in subsection
14 (b)(1)(A).

15 “(7) PLAN.—The term ‘plan’ means a com-
16 prehensive fisheries habitat protection, restoration,
17 and enhancement plan developed by a council under
18 subsection (d)(1)(A).

19 “(8) REVITALIZATION PROGRAM.—The term
20 ‘revitalization program’ means the community fish-
21 eries habitat revitalization program established
22 under subsection (g).

23 “(9) REVITALIZATION PROJECT.—The term ‘re-
24 vitalization project’ means a project for community

1 fisheries habitat revitalization conducted under a re-
2 vitalization program.

3 “(10) SECRETARY.—The term ‘Secretary’
4 means the Secretary of Agriculture, acting in con-
5 sultation with—

6 “(A) the Administrator of the Environ-
7 mental Protection Agency;

8 “(B) the Secretary of Commerce; and

9 “(C) the Secretary of the Interior.

10 “(11) STATE FISH AND WILDLIFE AGENCY.—
11 The term ‘State fish and wildlife agency’ means the
12 commission, department, agency, or agencies within
13 each State that has or have primary legal authority
14 for the conservation of fish and wildlife in the State.

15 “(12) STATE.—The term ‘State’, when used in
16 a political sense, means any 1 or more of the fol-
17 lowing authorities of a State receiving assistance
18 under this section acting under jurisdiction provided
19 under State law:

20 “(A) The chief executive officer of a State.

21 “(B) A State agency charged with ensur-
22 ing water quality standards.

23 “(C) A State fish and wildlife agency.

24 “(13) STATE TECHNICAL COMMITTEE.—The
25 term ‘State technical committee’ means a State tech-

1 nical committee established by the Secretary under
2 subtitle G of the Food Security Act of 1985 (16
3 U.S.C. 3861 et seq.) to provide technical assistance
4 relating to conservation.

5 “(14) WATERSHED.—The term ‘watershed’
6 means, with respect to a river, stream, or other sur-
7 face water body, the drainage area that contributes
8 water to that river, stream, or water body.

9 “(15) URBAN WATERSHED.—The term ‘urban
10 watershed’ means a watershed or portion of a water-
11 shed located wholly or substantially within the
12 boundaries of an urbanized area, as designated by
13 the Bureau of the Census, or a municipality of
14 10,000 or more persons.

15 “(b) STATE PROGRAMS.—

16 “(1) IN GENERAL.—

17 “(A) ESTABLISHMENT.—To be eligible for
18 assistance under this section, a State shall es-
19 tablish a program for—

20 “(i) the protection and restoration of
21 fresh water, estuarine, and marine fish-
22 eries habitat; and

23 “(ii) the enhancement of access for
24 fisheries uses through watershed planning
25 and the implementation of projects, activi-

1 ties, and measures that meet the require-
2 ments of this section.

3 “(B) EFFECT OF SECTION.—Nothing in
4 this section—

5 “(i) alters, or requires alteration of,
6 the authority or jurisdiction of a State fish
7 and wildlife agency;

8 “(ii) affects the authority, jurisdiction,
9 or responsibility of a State to manage, con-
10 trol, and regulate fish and resident wildlife
11 (including habitat of fish and resident
12 wildlife) under State law (including regula-
13 tions);

14 “(iii) except as specifically provided in
15 this section, affects, alters, suspends, or
16 delays implementation of any other provi-
17 sion of this Act (including any requirement
18 under a program established under this
19 Act), or the obligations of any party under
20 such a provision; or

21 “(iv) authorizes any council, State, or
22 Indian tribe to recommend or approve the
23 imposition of any new or more stringent
24 regulatory or compliance obligations under
25 any provision of this Act (including any re-

1 requirement under a program established
2 under this Act).

3 “(2) APPLICATION FOR PROGRAM APPROVAL.—

4 “(A) IN GENERAL.—A State, in coopera-
5 tion with and, wherever applicable, through the
6 authority of the State fish and wildlife agency
7 or regional fisheries commission, may submit to
8 the Secretary for approval a program described
9 in paragraph (1).

10 “(B) APPROVAL.—The Secretary shall ap-
11 prove the program if the Secretary finds, after
12 public notice and opportunity for public com-
13 ment, that the program satisfies, and the State
14 has the capability to implement, the conditions
15 described in paragraph (3).

16 “(3) CONDITIONS FOR PROGRAM APPROVAL.—

17 “(A) ESTABLISHMENT OF ADVISORY RE-
18 VIEW BOARD.—

19 “(i) IN GENERAL.—A State shall es-
20 tablish an advisory review board, com-
21 mittee, or other advisory body (or expand
22 the authority and duties of any body) to
23 provide recommendations with respect to
24 each decision taken under the program.

1 “(ii) MEMBERSHIP.—The membership
2 of the advisory review board shall—

3 “(I) be fairly balanced in terms
4 of the points of view represented and
5 the functions to be performed;

6 “(II) be representative of inter-
7 ests affected by activities carried out
8 under the program (including tribal,
9 private, public, governmental, and
10 nonprofit interests); and

11 “(III) include 1 or more mem-
12 bers who represent the interests of
13 designated watershed councils.

14 “(B) DESIGNATION AND TERMINATION OF
15 COUNCILS.—

16 “(i) IN GENERAL.—A State shall des-
17 ignate (or terminate the designation of)
18 councils and associated watersheds in ac-
19 cordance with subsection (c)(4).

20 “(ii) DETERMINATION OF HIGH PRI-
21 ORITY.—In designating a watershed, the
22 State shall determine, based on a review of
23 the best available scientific information col-
24 lected in cooperation with appropriate
25 State fish and wildlife agencies, whether

1 the watershed shall be considered a high
2 priority watershed.

3 “(iii) FORMATION.—A State shall—

4 “(I) solicit, encourage, and facili-
5 tate the formation of councils for high
6 priority watersheds; and

7 “(II) support the formation of
8 councils voluntarily proposed in other
9 watersheds.

10 “(C) PRIORITY RANKING SYSTEM.—

11 “(i) IN GENERAL.—A State shall de-
12 velop, in cooperation with appropriate
13 State fish and wildlife agencies and State
14 technical committees, and provide to coun-
15 cils, a uniform system for assigning pri-
16 ority rankings for recommended projects
17 and measures contained in plans submitted
18 for review under the program.

19 “(ii) SIGNIFICANT PROGRESS.—A pri-
20 ority ranking system shall be based pri-
21 marily on the likelihood that recommended
22 projects would achieve significant progress
23 toward protection or restoration of habitat
24 or enhancement of uses for important (or

1 potentially important) recreational and
2 subsistence fisheries.

3 “(D) REVIEW OF DECISIONS.—

4 “(i) IN GENERAL.—A State shall re-
5 view and issue, in cooperation with appro-
6 priate State fish and wildlife agencies, de-
7 cisions concerning—

8 “(I) fisheries habitat protection,
9 restoration, and enhancement plans;
10 and

11 “(II) all interim recommenda-
12 tions to the plans developed, revised,
13 or updated by councils.

14 “(ii) JUDICIAL REVIEW.—

15 “(I) IN GENERAL.—A decision
16 referred to under clause (i) shall be
17 subject to judicial review under State
18 law.

19 “(II) NO FEDERAL REQUIRE-
20 MENT.—Nothing in this paragraph
21 authorizes the Secretary to require
22 any particular form of judicial review,
23 standard of review, or standing re-
24 quirements to obtain judicial review.

25 “(E) FUNDS.—A State shall—

1 “(i) receive and administer funds pro-
2 vided and reserved under this section; and

3 “(ii) maintain and administer a fish-
4 eries habitat account for the purpose of
5 providing funds for implementation of
6 council recommendations.

7 “(F) COORDINATION.—A State shall co-
8 ordinate (in the case of a shared fisheries habi-
9 tat, with the watershed planning programs of
10 another State) the development of complemen-
11 tary approaches to—

12 “(i) the protection and restoration of
13 fisheries habitat; and

14 “(ii) the enhancement of access for
15 uses in watersheds.

16 “(G) REPORT.—A State shall annually
17 submit, to the Secretary, the Administrator,
18 and the Secretary of the Interior, and make
19 available publicly within each designated water-
20 shed, a report that describes—

21 “(i) the progress achieved, funds ex-
22 pended, and monitoring results obtained by
23 councils in the State under the program;
24 and

1 “(ii) the plans and objectives of the
2 State for future activities under the pro-
3 gram.

4 “(H) RECOMMENDATIONS.—A State shall
5 submit to each affected and interested depart-
6 ment and agency of the Federal Government all
7 recommendations contained in approved plans
8 and interim recommendations that pertain to
9 the activities or land under the jurisdiction of
10 the department or agency.

11 “(I) MAJOR WATERWAY SEGMENTS.—A
12 State that elects to consider planning for major
13 waterway segments under the program shall re-
14 view and issue decisions accepting or rejecting
15 any recommendation provided by the Secretary
16 of the Interior under subsection (h)(4).

17 “(4) GRANTS FOR IMPLEMENTATION.—On ap-
18 proval of a program submitted by a State under this
19 subsection, the Secretary may—

20 “(A) make grants to the State for adminis-
21 tration of the program, in accordance with sub-
22 section (h)(3)(A); and

23 “(B) enter into a memorandum of under-
24 standing with the State, in accordance with
25 subsection (h)(3)(A)(iii), under which the State

1 may make grants to councils for development
2 of plans and interim recommendations under
3 subsection (c).

4 “(c) WATERSHED COUNCILS.—

5 “(1) IN GENERAL.—A State, under a program
6 approved under subsection (b)—

7 “(A) may designate 1 or more councils to
8 carry out the planning functions identified in
9 subsection (d); and

10 “(B) shall designate and describe the wa-
11 tershed for which each council has planning re-
12 sponsibility.

13 “(2) CAPABILITIES AND PURPOSES OF COUN-
14 CILS.—A council shall be eligible for designation
15 under an approved State program if the council—

16 “(A) is a voluntary organization that—

17 “(i) possesses no direct or indirect
18 regulatory authority; and

19 “(ii) is convened by—

20 “(I) a State;

21 “(II) a local governing body, such
22 as a city, county, town, water supply
23 or sewer district, watershed district,
24 drainage district, soil and water con-

1 servation district, flood control dis-
2 trict, or irrigation district; or

3 “(III) any combination of the
4 governing bodies referred to in sub-
5 clauses (I) and (II).

6 “(B) has a membership that—

7 “(i) is fairly balanced, in terms of the
8 points of view represented and the func-
9 tions to be performed; and

10 “(ii) is representative of interests
11 within the watershed that may be affected
12 by the activities of the council (including
13 tribal, private, public, governmental, and
14 nonprofit interests, and the interests of
15 special purpose districts, as appropriate);

16 “(C) has a specific charter, to be approved
17 by the State on designation, that commits the
18 council to achieving the objectives of this sec-
19 tion in a timely manner;

20 “(D) has access to expertise that is nec-
21 essary to perform the objectives of this section
22 in a timely manner, including expertise of—

23 “(i) members of the council;

24 “(ii) the State fish and wildlife agency
25 and the State technical committee; or

1 “(iii) identified advisory groups, insti-
2 tutions, or individuals;

3 “(E) has adopted procedures to ensure
4 public participation in the activities of the coun-
5 cil; and

6 “(F) has authority, through an agreement
7 with the member agencies of the council (in-
8 cluding conservation districts and resource con-
9 servation districts), to ensure proper adminis-
10 tration of and accounting for—

11 “(i) grant funds provided under this
12 section; and

13 “(ii) other public or private funds.

14 “(3) OTHER CONSIDERATIONS.—

15 “(A) WATERSHEDS LOCATED IN MORE
16 THAN 1 STATE.—

17 “(i) IN GENERAL.—In the case of a
18 watershed, the land and water of which lie
19 within the jurisdiction of more than 1
20 State, the States exercising jurisdiction
21 over the watershed may—

22 “(I) jointly designate a council to
23 carry out planning functions for the
24 watershed; and

1 “(II) choose to facilitate a pro-
2 gram through establishment of an ap-
3 propriate regional fisheries commis-
4 sion.

5 “(ii) ELECTION NOT TO PARTICI-
6 PATE.—If a State that shares jurisdiction
7 over a watershed elects not to designate a
8 council as described in clause (i), the re-
9 maining State or States with jurisdiction
10 over the watershed may exercise the au-
11 thority under clause (i) with respect to the
12 portions of the watershed under their re-
13 spective jurisdictions.

14 “(B) PREFERENCE FOR EXISTING COUN-
15 CILS.—In designating councils under this sub-
16 section, a State shall give preference to councils
17 or similar bodies (or portions of councils or
18 similar bodies) that—

19 “(i) are in existence on the date of en-
20 actment of this section;

21 “(ii) are organized under other au-
22 thorities for purposes similar to the pur-
23 poses of this section;

24 “(iii) are local or regional resource
25 planning organizations; and

1 “(iv) substantially satisfy the require-
2 ments of paragraph (2).

3 “(4) APPLICATION AND DESIGNATION PROC-
4 ESS.—

5 “(A) APPLICATIONS.—An organization
6 that meets the requirements of paragraph (2)
7 may apply for designation as a council by sub-
8 mitting to a State with a program that has
9 been approved under subsection (b)—

10 “(i) a description of the capabilities
11 and purpose of the organization;

12 “(ii) the proposed charter of the orga-
13 nization; and

14 “(iii) a description of the relevant wa-
15 tershed.

16 “(B) DESIGNATIONS.—The State shall—

17 “(i) review and evaluate the adequacy
18 of the materials submitted under subpara-
19 graph (A);

20 “(ii) publish the materials for public
21 comment, if the State determines that all
22 required materials have been submitted;
23 and

24 “(iii) within a reasonable time after
25 the close of the public comment period,

1 issue a decision (including a response to
2 significant public comments) that—

3 “(I) designates the organization
4 as a council, with or without condi-
5 tions; or

6 “(II) denies the application for
7 designation.

8 “(C) EFFECT OF DESIGNATIONS.—If a
9 council continues to serve the purposes of the
10 charter of the council, as determined by the
11 State, the council shall be eligible to receive—

12 “(i) funding to carry out planning
13 functions under subsection (h); and

14 “(ii) approval of the plan or revisions
15 to the plan in accordance with this section.

16 “(d) WATERSHED PLANNING PROCESS.—

17 “(1) COMPREHENSIVE PLANS.—

18 “(A) IN GENERAL.—Each council shall de-
19 velop a comprehensive fisheries habitat protec-
20 tion, restoration, and enhancement plan for
21 submission to the State that, at a minimum,
22 meets the requirements of paragraph (4).

23 “(B) CONSIDERATIONS.—In developing a
24 plan under subparagraph (A), a council shall—

1 “(i) consider the views of the appro-
2 priate State fish and wildlife agency to en-
3 sure that the plan will complement the im-
4 plementation of fisheries-related plans de-
5 veloped under other laws or requirements;
6 and

7 “(ii) consult with the State technical
8 committee, the State department of agri-
9 culture, and other appropriate organiza-
10 tions with relevant expertise to ensure that
11 the plan—

12 “(I) will complement the imple-
13 mentation of existing State committee
14 plans; and

15 “(II) reflects a thorough evalua-
16 tion of the effect of the recommenda-
17 tions of the council on land use activi-
18 ties (including agricultural uses).

19 “(2) INTERIM RECOMMENDATIONS.—

20 “(A) IN GENERAL.—A council may submit
21 for approval interim recommendations that ad-
22 dress high priority factors or activities causing
23 imminent adverse impacts or threats to fish-
24 eries habitat located in high priority portions of
25 water within the watershed.

1 “(B) REQUIREMENTS.—An interim rec-
2 ommendation under subparagraph (A) shall—

3 “(i) conform to the requirements of
4 paragraph (4)(D);

5 “(ii) be reviewed in accordance with
6 subsection (d); and

7 “(iii) have the same effect as rec-
8 ommendations contained in plans approved
9 under subsection (e).

10 “(3) DATA COLLECTION AND EXPERTISE.—

11 Each council—

12 “(A) shall collect and consider the best
13 available scientific information;

14 “(B) may develop such additional data and
15 information as are necessary or desirable; and

16 “(C) shall consult with the appropriate
17 State fish and wildlife agency, the State tech-
18 nical committee, the State water quality agency,
19 and such other experts as are necessary to
20 carry out the comprehensive planning process
21 described in paragraph (4).

22 “(4) PLANNING ELEMENTS.—

23 “(A) IN GENERAL.—A plan developed and
24 submitted for approval under this section shall
25 include a description of each of the planning

1 elements described in subparagraphs (B)
2 through (H).

3 “(B) CHARACTERIZATION OF WATER AND
4 WATERSHEDS.—A plan described in subpara-
5 graph (A) shall include an analysis of the water
6 of the watershed in terms of—

7 “(i)(I) any fisheries-related indicators
8 and habitat characteristics that have been
9 established by the State fish and wildlife
10 agency under subsection (h)(2); or

11 “(II) before the establishment of those
12 indicators and characteristics, the informa-
13 tion issued by the Secretary of the Interior
14 under that subsection;

15 “(ii) geomorphological characteristics;

16 “(iii) manmade topographic features
17 that govern the quantity or flow of water;

18 “(iv) wetland, channels, meander
19 belts, erosion zones, and low-lying areas of
20 the floodplain (including a description of
21 any historic and present flooding patterns);

22 “(v) watershed soils that are present,
23 including—

24 “(I) the potential of the soil to
25 erode; and

1 “(II) measures taken by land-
2 owners to prevent runoff and erosion;

3 “(vi) land cover and land uses that af-
4 fect the ability of the watershed ability to
5 support fishery resources;

6 “(vii) existing and potential fisheries-
7 related uses of the watershed (including
8 recreational, subsistence, and economic
9 uses) that are or may be affected by—

10 “(I) adverse impacts on fisheries
11 habitats; or

12 “(II) restrictions on public ac-
13 cess;

14 “(viii) whether certain water in the
15 watershed should be considered to be habi-
16 tat limited, of high value, or access re-
17 stricted for fisheries uses; and

18 “(ix) protections for fishery and habi-
19 tat values in existence on the date of re-
20 ceipt of the materials under this subpara-
21 graph.

22 “(C) RECOMMENDED OBJECTIVES.—The
23 council shall develop near-term and long-term
24 objectives for the protection and restoration of
25 fisheries habitat and enhancement of access

1 within the watershed, including, as relevant and
2 appropriate, recommendations for—

3 “(i) protection of high-value water
4 through implementation of measures to
5 maintain habitat conditions that will sus-
6 tain a healthy, resilient, diverse, and pro-
7 ductive aquatic system;

8 “(ii) restoration of habitat limited
9 water or portions of habitat limited water
10 through the implementation of measures to
11 produce habitat conditions that will sustain
12 a healthy, resilient, diverse, and productive
13 aquatic system; and

14 “(iii) enhancement of access for fish-
15 eries uses in restricted water through im-
16 plementation of projects or measures to in-
17 crease public access, use, and enjoyment.

18 “(D) IDENTIFICATION OF EXISTING FAC-
19 TORS, ACTIVITIES, PROJECTS, AND MEAS-
20 URES.—

21 “(i) IN GENERAL.—The council shall
22 identify—

23 “(I) the factors and activities
24 causing adverse impacts or threats to
25 fisheries habitat in the watershed;

1 “(II) restrictions on access for
2 fisheries uses within the watershed;
3 and

4 “(III) the projects and measures,
5 in the planning and implementation
6 stages, that are designed to address
7 the adverse impacts, threats, or re-
8 strictions.

9 “(ii) SPECIFIC FACTORS AND ACTIVI-
10 TIES.—At a minimum, a plan shall specifi-
11 cally consider—

12 “(I) the causes of degradation or
13 modification of fisheries habitat (such
14 as channelized streams, erosion
15 sources, reduced or modified in-
16 stream flows, disrupted sediment
17 transport mechanisms, damaged or
18 destroyed riparian vegetation, dam-
19 aged or destroyed spawning beds, and
20 drained backwater or wetland), includ-
21 ing any upland activity that contrib-
22 utes to the degradation or modifica-
23 tion;

24 “(II) the principal categories of
25 point and nonpoint sources of pollu-

1 tion adversely affecting fisheries habi-
2 tat;

3 “(III) flood control measures and
4 other floodplain management factors
5 that may have an adverse impact on
6 fisheries habitat;

7 “(IV) the alteration or reduction
8 of water flows, the timing and mag-
9 nitude of water-flow management
10 measures, and the acceleration of run-
11 off that have an adverse impact on
12 fisheries habitat; and

13 “(V) factors and activities caus-
14 ing the destruction, modification, or
15 degradation of wetland that may have
16 an adverse impact on fisheries habi-
17 tat.

18 “(E) RECOMMENDED PROJECTS AND
19 MEASURES.—

20 “(i) IN GENERAL.—A plan shall de-
21 scribe the recommendations of the council
22 for specific projects and measures that
23 should be carried out, strengthened, sup-
24 ported, or modified—

1 “(I) to achieve the objectives rec-
2 ommended under subparagraph (C);
3 and

4 “(II) to address the factors and
5 activities identified under subpara-
6 graph (D).

7 “(ii) PRIORITY RANKINGS.—The coun-
8 cil shall assign a priority ranking to each
9 project and measure for which implementa-
10 tion payments are recommended under
11 subsection (e).

12 “(iii) ANTICIPATED EFFECTS.—The
13 plan shall identify anticipated effects on
14 land use activities in existence on the date
15 of completion of the plan.

16 “(iv) SOURCES OF FUNDING.—For
17 each recommendation, the plan shall iden-
18 tify potential sources of Federal, State,
19 local, or other financial support to facili-
20 tate implementation of the recommenda-
21 tion.

22 “(F) CATEGORIES.—In making rec-
23 ommendations, the council shall consider—

24 “(i) for high value and habitat limited
25 water, any necessary projects and meas-

1 ures that should be carried out, strength-
2 ened, supported, or modified, with the will-
3 ing consent of persons holding a property
4 interest or interests in affected land, to
5 protect or improve physical fisheries habi-
6 tat conditions such as—

7 “(I) instream modifications and
8 structures;

9 “(II) streamside vegetation;

10 “(III) modifications to flood con-
11 trol measures and structures to im-
12 prove the connection of rivers to low-
13 lying areas such as backwaters, side
14 channels, oxbows, and tributary
15 mouths;

16 “(IV) improved floodplain man-
17 agement practices and flood control
18 programs;

19 “(V) improved stream flow con-
20 trol practices;

21 “(VI) flood-response and dis-
22 aster-relief planning and measures
23 that will preserve or improve habitat
24 integrity in connection with decisions
25 regarding flood response, cleanup,

1 levee restoration, or other alternatives
2 following future floods; and

3 “(VII) other appropriate tech-
4 niques for the protection or improve-
5 ment of fisheries habitat;

6 “(ii) for nonpoint sources or cat-
7 egories of nonpoint sources—

8 “(I) contributing pollutants (in-
9 cluding sediments) to habitat limited
10 water; and

11 “(II) any necessary incentives,
12 funding, or other assistance to facili-
13 tate the implementation, with the will-
14 ing consent of each person holding a
15 property interest in affected land, of
16 additional or different best manage-
17 ment practices;

18 “(iii) for high value and habitat lim-
19 ited waters, any necessary incentives, fund-
20 ing, or other assistance, to be carried out
21 with the willing consent of each person
22 holding a property interest in affected
23 land, for the prevention or mitigation of
24 adverse impacts on fisheries habitat from

1 the destruction or modification of wetland;
2 and

3 “(iv) for restricted water, any nec-
4 essary incentives, funding, or other assist-
5 ance, to be carried out with the willing
6 consent of each person holding a property
7 interest in affected land, for improvement
8 of public access to the water for enhance-
9 ment of fisheries uses (including a deter-
10 mination that recommended enhancements
11 of fisheries uses would be consistent with
12 sustaining a healthy, resilient, diverse, and
13 productive aquatic system in the affected
14 water).

15 “(G) RECOMMENDED MONITORING.—

16 “(i) IN GENERAL.—A plan shall
17 describe—

18 “(I) the recommendations of the
19 council for biological, water quality,
20 water quantity, and other monitoring
21 activities that are necessary to assess
22 the protection, restoration, and en-
23 hancement benefits realized from im-
24 plementation of the plan; and

1 “(II) the potential sources of
2 funding and other resources necessary
3 to implement the recommendations.

4 “(ii) CONSISTENCY.—Monitoring
5 shall, to the maximum extent practicable,
6 be consistent with—

7 “(I) the duration of the activity
8 being monitored; and

9 “(II) the need to evaluate the re-
10 sults of the activity.

11 “(H) PLANNING PROCESS DOCUMENTA-
12 TION.—A plan shall—

13 “(i) describe and document the steps
14 taken by a council during the planning
15 process to meet consultation and public
16 participation obligations; and

17 “(ii) describe the results of consulta-
18 tions with persons holding a property in-
19 terest or interests in the affected land that
20 potentially would be affected by rec-
21 ommendations contained in the plan.

22 “(5) PERIODIC REVIEW AND REVISION.—

23 “(A) IN GENERAL.—Each council shall re-
24 view and, as necessary or appropriate, revise or
25 update an approved plan on a regular basis for

1 as long as the council continues to be author-
 2 ized, but not less frequently than once every 5
 3 years.

4 “(B) APPROVAL.—A revised or updated
 5 plan—

6 “(i) shall be submitted by a council
 7 for approval under subsection (d); and

8 “(ii) if the plan is approved under
 9 that subsection, shall have the effect of a
 10 plan approved under subsection (e).

11 “(C) PLANS OF TERMINATED COUNCILS.—
 12 The State shall—

13 “(i) periodically review each approved
 14 plan, the administering council of which
 15 has been terminated; and

16 “(ii) decide whether to continue, ter-
 17 minate, or modify the plan in accordance
 18 with subsection (d).

19 “(e) APPROVAL OF PLANS AND INTERIM REC-
 20 OMMENDATIONS.—

21 “(1) SUBMISSION OF PLANS.—Each council
 22 shall submit for approval by the State the plan or
 23 interim recommendations in accordance with this
 24 subsection.

25 “(2) PUBLIC PARTICIPATION.—

1 “(A) IN GENERAL.—If a State prelimi-
2 narily determines that a plan or interim rec-
3 ommendations submitted under paragraph (1)
4 meet the requirements of subsection (c), the
5 State shall—

6 “(i) promptly issue public notice and
7 provide an opportunity for a public com-
8 ment period on the plan or recommenda-
9 tions; and

10 “(ii) ensure that each Federal and
11 State agency with jurisdiction over any ex-
12 penditures, projects, measures, or manage-
13 ment decisions that are the subject of any
14 recommendation—

15 “(I) receives a copy of the plan
16 or interim recommendations sub-
17 mitted for approval; and

18 “(II) is given an opportunity to
19 consult with the State before the
20 State finalizes the decision on ap-
21 proval of the plan or recommenda-
22 tions.

23 “(B) HEARING.—A public hearing shall be
24 held during the public comment period referred

1 to in subparagraph (A)(i) if any interested
2 person—

3 “(i) requests a hearing; and

4 “(ii) raises significant issues.

5 “(3) DECISION.—

6 “(A) IN GENERAL.—As soon as practicable
7 after the close of the public comment period,
8 the State shall issue, and provide public notice
9 of, a final decision approving or disapproving,
10 in whole or in part, the plan or interim rec-
11 ommendations.

12 “(B) COMPONENTS OF DECISION.—The
13 decision shall—

14 “(i) describe any necessary conditions
15 of, or limitations on, an approval or partial
16 approval;

17 “(ii)(I) describe the grounds for any
18 disapproval or partial disapproval; and

19 “(II) specify changes that are re-
20 quired before the plan or interim rec-
21 ommendations may be fully approved;

22 “(iii) indicate whether the appropriate
23 Federal agencies have expressly supported,
24 conditionally supported, or disagreed with

1 any recommendations applicable to the
2 agencies;

3 “(iv) take into consideration—

4 “(I) the balance and representa-
5 tion of the membership of the council
6 at the time of submission; and

7 “(II) the views expressed by
8 council members who do not support
9 1 or more of the recommendations;

10 “(v) respond to all significant com-
11 ments received during the public comment
12 process; and

13 “(vi) prescribe a specific date that is
14 not later than 30 days after the date of the
15 decision on which the decision shall be ef-
16 fective.

17 “(4) RESUBMISSION OF PLANS.—A council
18 may—

19 “(A) revise a plan or interim recommenda-
20 tion (or a portion of a disapproved plan or in-
21 terim recommendation) that is disapproved or
22 for which conditions or limitations are pre-
23 scribed under paragraph (3) in response to the
24 conditions, limitations, or grounds for dis-
25 approval; and

1 “(B) resubmit the plan or interim rec-
2 ommendation for reconsideration in accordance
3 with the requirements of this subsection.

4 “(f) EFFECT OF PLAN APPROVAL.—

5 “(1) IN GENERAL.—

6 “(A) CONDITIONS AND PROCEDURES.—

7 After the effective date of any approved plan or
8 interim recommendation, the expenditures,
9 management, planning, and activities described
10 in this subsection shall be subject to the condi-
11 tions and procedures of this subsection only to
12 the extent that the expenditures, management,
13 planning, or activities take place on or directly
14 affect land or water within the watershed.

15 “(B) CONSENT OF WILLING SELLER.—

16 Nothing in this section requires any person to
17 undertake or refrain from taking any action
18 under any recommendation contained in an ap-
19 proved plan or interim recommendation unless
20 willing written consent is obtained from each
21 person holding a property interest in the land
22 affected by the action.

23 “(2) IMPLEMENTATION EXPENDITURES.—

24 “(A) IN GENERAL.—Subject to the re-
25 quirements of this paragraph, projects and

1 measures that support or implement specific
2 recommendations contained in an approved plan
3 or interim recommendation shall be eligible for
4 financial support from fisheries habitat account
5 of the State established under subsection
6 (h)(3)(B).

7 “(B) USE OF FUNDS IN STATE FISHERIES
8 HABITAT ACCOUNTS.—

9 “(i) PROVISION OF FUNDS.—A State
10 may provide funds from the fisheries habi-
11 tat account of the State to person that en-
12 ters into a legally binding contract or other
13 agreement for implementation of existing
14 or new projects and measures rec-
15 ommended by a council under an approved
16 plan or interim recommendation.

17 “(ii) PERMITTED USES OF FUNDS.—
18 Funds from a fisheries habitat account of
19 a State may be provided for any purpose
20 identified in an approved plan or interim
21 recommendation, including—

22 “(I) the design, construction, op-
23 eration, maintenance, or removal of
24 any structures;

1 “(II) the conduct of activities,
2 such as management practices, that
3 are not otherwise prohibited by law;

4 “(III) the acquisition of land or
5 easements with the written consent of
6 each person holding a property inter-
7 est in the affected land;

8 “(IV) offset payments to local
9 governments when acquisitions reduce
10 local tax revenues;

11 “(V) the restriction of access to
12 water by, and related provision of al-
13 ternative water supplies for, livestock;
14 and

15 “(VI) payments for the purpose
16 of funding, in whole or in part, the in-
17 creased premiums for crop insurance
18 made necessary by, and for a period
19 consistent with, reduced flood protec-
20 tion caused by projects or measures
21 recommended under subsection
22 (d)(4)(E)(i).

23 “(iii) PROHIBITED USES OF FUNDS.—
24 No funds may be expended from a fisheries
25 habitat account of a State for the plan-

1 ning, engineering, design, or construction
2 of—

3 “(I) dams; or

4 “(II) roads on public land.

5 “(C) LIMITATION ON COSTS.—

6 “(i) IN GENERAL.—Each State shall
7 establish a system of appropriate limits on
8 the maximum percentage of total costs for
9 a project or measure that may be provided
10 from the fisheries habitat account of the
11 State.

12 “(ii) REFLECTION OF PRIORITY
13 RANKINGS.—The system established under
14 clause (i) shall reflect the priority rankings
15 assigned to recommendations contained in
16 approved plans and interim recommenda-
17 tions.

18 “(iii) PRIORITY SEQUENCE.—Each
19 State shall use the priority ranking system
20 to establish, and revise annually, a com-
21 prehensive priority sequence for funding
22 the projects and measures that have been
23 recommended by councils.

24 “(D) EXPENDITURES FOR NON-FEDERAL
25 SHARE.—

1 “(i) IN GENERAL.—If recommended
2 in an approved plan or interim rec-
3 ommendation, expenditures from fisheries
4 habitat accounts may be made for the pay-
5 ment of not to exceed 15 percent of the
6 non-Federal share required under the pro-
7 grams listed in subparagraph (E).

8 “(ii) FACTORS FOR EXPENDITURES.—
9 Expenditures under clause (i) may—

10 “(I) be made for programs with-
11 out regard to—

12 “(aa) otherwise applicable
13 limitations under the programs
14 on the maximum funding for in-
15 dividual projects or activities; or

16 “(bb) the maximum dura-
17 tion of funding; and

18 “(II) be used to fund portions of
19 projects and measures under pro-
20 grams that may be ineligible for fund-
21 ing due to size restrictions or other
22 limitations.

23 “(E) PROGRAMS FOR WHICH EXPENDI-
24 TURES FROM FISHERIES HABITAT ACCOUNTS
25 MAY BE MADE.—Expenditures from a State

1 fisheries habitat account may be made in ac-
2 cordance with subparagraph (D) for—

3 “(i) the Great Lakes program under
4 section 118;

5 “(ii) the clean lakes program under
6 section 314;

7 “(iii) the national estuary program
8 under section 320;

9 “(iv) the farmland protection program
10 under the Farmland Protection Policy Act
11 (7 U.S.C. 4201 et seq.);

12 “(v) the Federal aid in wildlife res-
13 toration program under the Act of Sep-
14 tember 2, 1937 (16 U.S.C. 669 et seq.);

15 “(vi) the partners for fish and wildlife
16 habitat restoration program under the
17 Fish and Wildlife Act of 1956 (16 U.S.C.
18 742a et seq.) and the Fish and Wildlife
19 Coordination Act (16 U.S.C. 661 et seq.);

20 “(vii) the Federal aid in sportfish res-
21 toration program under the Act of August
22 9, 1950 (16 U.S.C. 777 et seq.);

23 “(viii) the watershed protection and
24 flood prevention program under the Water-

1 shed Protection and Flood Prevention Act
2 (16 U.S.C. 1001 et seq.);

3 “(ix) the forestry incentives program
4 under section 4 of the Cooperative For-
5 estry Assistance Act of 1978 (16 U.S.C.
6 2103);

7 “(x) the forest stewardship program
8 and stewardship incentive program under
9 sections 5 and 6 of the Cooperative For-
10 estry Assistance Act of 1978 (16 U.S.C.
11 2103a, 2103b);

12 “(xi) the emergency conservation pro-
13 gram under title IV of the Agricultural
14 Credit Act of 1978 (16 U.S.C. 2201 et
15 seq.);

16 “(xii) the wildlife conservation and ap-
17 preciation program under the Partnerships
18 for Wildlife Act (16 U.S.C. 3741 et seq.);

19 “(xiii) the conservation reserve pro-
20 gram under subchapter B of chapter 1 of
21 subtitle D of title XII of the Food Security
22 Act of 1985 (16 U.S.C. 3831 et seq.);

23 “(xiv) the wildlife habitat incentives
24 program under section 387 of the Federal

1 Agriculture Improvement and Reform Act
2 of 1996 (16 U.S.C. 3836a);

3 “(xv) the wetlands reserve program
4 under subchapter C of chapter 1 of subtitle
5 D of title XII of the Food Security Act of
6 1985 (16 U.S.C. 3837 et seq.);

7 “(xvi) the environmental quality in-
8 centives program under chapter 4 of sub-
9 title D of title XII of the Food Security
10 Act of 1985 (16 U.S.C. 3839aa et seq.);

11 “(xvii) the North American Wetlands
12 Conservation Act (16 U.S.C. 4401 et seq.);

13 “(xviii) the emergency protection pro-
14 gram under section 216 of the Flood Con-
15 trol Act of 1938 (33 U.S.C. 701b–1);

16 “(xix) the flood hazard mitigation and
17 riverine restoration program (commonly
18 known as “Challenge 21”) under section
19 212 of the Water Resources Development
20 Act of 1999 (33 U.S.C. 2332).

21 “(xx) the upper Mississippi River en-
22 vironmental management program under
23 section 1103 of the Water Resources De-
24 velopment Act of 1986 (33 U.S.C. 652);
25 and

1 “(xxi) the Missouri and Mississippi
2 Rivers enhancement project under section
3 514 of the Water Resources Development
4 Act of 1999 (Public Law 106–53; 113
5 Stat. 342).

6 “(F) FLOOD DAMAGE ASSISTANCE.—

7 “(i) IN GENERAL.—If specifically rec-
8 ommended in the approved plan or interim
9 recommendation, an expenditure under any
10 Federal program, the purpose of which is
11 to provide for flood damage compensation
12 payments for loss of crops, livestock, or
13 structures, may be increased, notwith-
14 standing any otherwise applicable restric-
15 tion provided by law, with respect to spe-
16 cifically designated land within a water-
17 shed that is or would be subject to in-
18 creased flooding due to projects or meas-
19 ures recommended under subsection
20 (d)(4)(E)(i).

21 “(ii) METHOD OF PAYMENT.—An ex-
22 penditure described in clause (i) may be
23 made—

24 “(I) on the incidence of a com-
25 pensable loss; or

1 “(II) under a binding agreement
2 providing for future fixed payments
3 that are subject to such conditions
4 and limitations as may be necessary
5 or appropriate to carry out the pur-
6 poses of the recommendations of the
7 council.

8 “(3) FEDERAL LAND.—Each Federal depart-
9 ment or agency with jurisdiction to manage Federal
10 land within a watershed shall—

11 “(A) consider recommendations related to
12 improvements in the management of the land
13 that are contained in approved plans or interim
14 recommendations in all future decisions respect-
15 ing planning and activities on the land that
16 would significantly impact fisheries habitat and
17 uses; and

18 “(B) issue and make publicly available a
19 written explanation of the decisions of the Fed-
20 eral department or agency describing the ra-
21 tionale for adopting or departing from the rec-
22 ommendations.

23 “(4) FEDERAL PLANNING AND ACTIVITIES.—

24 “(A) DEFINITION OF PLANNING AND AC-
25 TIVITIES ON NON-FEDERAL LAND AFFECTING

1 WATER WITHIN THE WATERSHED.—In this
2 paragraph, the term ‘planning and activities on
3 non-Federal land affecting water within the wa-
4 tershed’ means the planning, design, or conduct
5 of actions that substantially and physically alter
6 structures, land, or water within the 100-year
7 floodplain in a manner that directly and signifi-
8 cantly affects fisheries habitat.

9 “(B) RESPONSIBILITY FOR PLANNING AND
10 ACTIVITIES.—A Federal department or agency,
11 State, or unit of local government that carries
12 out federally-funded planning and activities on
13 non-Federal land that affect water in the water-
14 shed shall—

15 “(i) consider recommendations per-
16 taining to the planning or activities con-
17 tained in an approved plan or interim rec-
18 ommendation; and

19 “(ii) issue and make publicly available
20 a written explanation describing the ration-
21 ale of the Federal department or agency,
22 State, or unit of local government for
23 adopting or departing from the rec-
24 ommendations.

1 “(C) MAINTENANCE OF NAVIGATION.—
2 Nothing in this section affects or impairs any
3 authority of the Federal Government to main-
4 tain navigation.

5 “(5) WETLAND JURISDICTION.—

6 “(A) IN GENERAL.—The baseline jurisdic-
7 tional status of any agricultural land on which
8 wetland may be created or expanded as a result
9 of increased flooding or altered drainage under
10 a project or measure funded—

11 “(i) under subsection (d)(1)(A), shall,
12 on expiration or termination of the agree-
13 ment under which the project or measure
14 was implemented, revert to the baseline ju-
15 risdictional status; and

16 “(ii) in whole or in part, under para-
17 graph (2)(C), shall, to the extent of the
18 creation or expansion, be governed by—

19 “(I) applicable methods and reg-
20 ulations of the applicable program
21 listed in paragraph (2)(D) that are in
22 existence as of the date of approval of
23 the funding; and

24 “(II) any regulations promul-
25 gated under section 404 that are in

1 existence as of the date of approval of
2 the funding.

3 “(B) DISCHARGES.—The discharges from
4 any wetland that are created or expanded for
5 agricultural pollution control purposes under
6 recommendations contained in an approved plan
7 or interim recommendation shall not be re-
8 quired to be approved by a permit under sec-
9 tions 301 and 402 if pollutants entering the
10 wetland result only from normal agricultural
11 practices such as crop production and raising of
12 livestock.

13 “(g) COMMUNITY FISHERIES HABITAT REVITALIZA-
14 TION PROGRAM.—

15 “(1) IN GENERAL.—The Secretary of the Inte-
16 rior, acting through the Director of the United
17 States Fish and Wildlife Service, shall establish a
18 community fisheries habitat revitalization program
19 in accordance with this subsection.

20 “(2) FUNDING AND TECHNICAL ASSISTANCE.—
21 The Secretary of the Interior, under the revitaliza-
22 tion program established under paragraph (1), shall
23 provide funding and technical assistance to each
24 State fish and wildlife agency for development and
25 construction of revitalization projects designed to

1 improve urban watersheds and public access to the
2 water of urban watersheds—

3 “(A) to restore fisheries habitat or enhance
4 fisheries uses; and

5 “(B) to provide recreational opportunities.

6 “(3) GUIDANCE.—In cooperation with the State
7 fish and wildlife agencies, the Secretary of the Inte-
8 rior shall issue such guidance as is necessary to pro-
9 vide for the planning and implementation of the re-
10 vitalization program.

11 “(4) ELIGIBLE REVITALIZATION PROJECTS.—In
12 accordance with the guidance issued under para-
13 graph (3), each State fish and wildlife agency may
14 provide funding and technical assistance to a project
15 sponsor, as described under paragraph (5), for any
16 revitalization project designed to restore or enhance
17 urban watersheds or waterways to achieve 1 or more
18 of the following objectives:

19 “(A) Watershed restoration and protection.

20 “(B) Creation of floodplain riparian zones.

21 “(C) Restoration or creation of wetland.

22 “(D) Stormwater management or treat-
23 ment.

24 “(E) Removal of barriers to fish passage.

1 “(F) Reestablishment of stream channel
2 environments.

3 “(G) Creation or enhancement of rec-
4 reational fishing opportunities.

5 “(H) Support for the formation and activi-
6 ties of local organizations to plan and imple-
7 ment restoration or enhancement projects.

8 “(5) REVITALIZATION SPONSORS AND COSPON-
9 SORS.—

10 “(A) IN GENERAL.—Each revitalization
11 project for which funding or technical assist-
12 ance is provided by a State fish and wildlife
13 agency under the revitalization program shall
14 have a project sponsor.

15 “(B) TYPES OF SPONSORS.—A revitaliza-
16 tion project sponsor may be any person or enti-
17 ty that is authorized to receive, account for,
18 and administer funding and to execute such
19 other responsibilities as the Secretary of the In-
20 terior may prescribe for grant agreements be-
21 tween the State agency and project sponsor
22 under the revitalization program located in the
23 revitalization project area, including—

24 “(i) a nonprofit organization;

1 “(ii) a State, tribal, or local unit of
2 government;

3 “(iii) an agency; or

4 “(iv) a district.

5 “(6) REVITALIZATION PROJECT AREAS AND LO-
6 CATIONS.—

7 “(A) IN GENERAL.—A revitalization
8 project may be eligible for funding or assistance
9 under this subsection if the revitalization
10 project is carried out on—

11 “(i) any Federal, State, county, mu-
12 nicipal, or tribal land; or

13 “(ii) private land owned by the revi-
14 talization project sponsor or a cosponsor.

15 “(B) URBAN WATERSHED LOCATION.—A
16 revitalization project that receives funding or
17 assistance under this program shall be located
18 within the boundaries of an urban watershed.

19 “(7) PROGRAM PRIORITIES.—Each State fish
20 and wildlife agency shall give priority to funding and
21 providing technical assistance for revitalization
22 projects—

23 “(A) for which support and participation
24 by local citizens, governmental entities, and
25 other affected interests has been demonstrated;

1 “(B) that are located in or directly bene-
2 fitting low income or economically depressed
3 areas;

4 “(C) that are designed to provide signifi-
5 cant improvement in fisheries habitat and other
6 ecological values and functions in the water-
7 shed;

8 “(D) that will integrate local communities,
9 schools, and for-profit and nonprofit organiza-
10 tions in efforts—

11 “(i) to restore or enhance community
12 fisheries or water quality; and

13 “(ii) to provide education and training
14 opportunities in connection with those ef-
15 forts; or

16 “(E) that will contribute to the improve-
17 ment or creation of local business related to the
18 access to, and recreational use of, urban water-
19 sheds.

20 “(8) GRANT APPLICATION, APPROVAL, AND
21 PROGRAM IMPLEMENTATION.—The Secretary of the
22 Interior shall ensure, to the maximum extent prac-
23 ticable, that each State fish and wildlife agency to
24 which funding is provided under this subsection has

1 the capability to efficiently and effectively administer
2 a revitalization program, including the capability—

3 “(A) to furnish application procedures, eli-
4 gibility criteria, and other necessary informa-
5 tion to prospective project sponsors;

6 “(B) to simplify or streamline contracting
7 processes for grants not exceeding \$100,000;
8 and

9 “(C) to assemble an interdisciplinary team
10 with expertise in hydrology, ecology, biology,
11 recreation, agriculture, or such other disciplines
12 as are necessary to review applications and rec-
13 ommend grant awards.

14 “(9) FEDERAL SUPPORT AND REPORTING.—

15 “(A) COMPILATION OF INFORMATION.—

16 The Secretary of the Interior shall—

17 “(i) compile information received from
18 State fish and wildlife agencies, based on
19 annual reports to be provided by revitaliza-
20 tion project sponsors; and

21 “(ii) not later than January 1 of each
22 year, submit to appropriate committees of
23 the Congress a comprehensive report
24 describing—

1 “(I) the implementation of the
2 revitalization program; and

3 “(II) any recommendations for
4 any necessary improvements or
5 changes to revitalization program.

6 “(B) ESTABLISHMENT OF COMMUNITY
7 FISHERIES HABITAT CLEARINGHOUSE.—Not
8 later than 12 months after the date of enact-
9 ment of this section, to support local implemen-
10 tation of revitalization projects under the revi-
11 talization program, the Secretary of the Interior
12 shall establish a community fisheries habitat
13 clearinghouse to develop and maintain—

14 “(i) a comprehensive and electroni-
15 cally accessible database, including a li-
16 brary of urban watershed restoration mate-
17 rials such as publications, periodicals, tech-
18 nical references, and videotaped informa-
19 tion; and

20 “(ii) a listing of grassroots organiza-
21 tions, State, Federal, and tribal agencies,
22 and nonprofit organizations involved in
23 urban watershed restoration activities.

24 “(C) LOCATION OF DATABASE.—The loca-
25 tion of the database shall be selected by the

1 Secretary of the Interior after considering ap-
2 plications received from interested parties solie-
3 ited through public notice.

4 “(10) CONDITIONS AND LIMITATIONS ON FUND-
5 ING.—The Secretary of the Interior shall establish
6 appropriate conditions and limitations applicable to
7 funding provided under the revitalization program,
8 including—

9 “(A) a requirement that the Federal share
10 of the cost for implementing each revitalization
11 project shall not exceed—

12 “(i) 70 percent of the cost of the revi-
13 talization project in any fiscal year; and

14 “(ii) a total of \$500,000;

15 “(B) a requirement that not more than 10
16 percent of the Federal share of the cost of a re-
17 vitalization project provided in any fiscal year
18 may be used for administrative expenses; and

19 “(C) a provision that permits that the non-
20 Federal share of the cost of a revitalization
21 project—

22 “(i) to consist, in whole or in part, of
23 in-kind services provided by project partici-
24 pants; and

1 “(ii) to be waived in the case of any
2 revitalization project carried out in an eco-
3 nomically depressed community with a
4 population of 50,000 or less.

5 “(11) AUTHORIZATION OF APPROPRIATIONS.—
6 There are authorized to be appropriated to the Sec-
7 retary of the Interior, to carry out the revitalization
8 program, such sums as are necessary for each of fis-
9 cal years 2002 through 2006, to remain available
10 until expended.

11 “(h) FEDERAL SUPPORT.—

12 “(1) TECHNICAL SUPPORT AND REPORTING.—

13 “(A) INFORMATION AND GUIDELINES.—
14 Not later than 90 days after the date of enact-
15 ment of this section, the Secretary shall issue—

16 “(i) information and guidelines on the
17 minimum content of State programs to be
18 approved under subsection (b);

19 “(ii) information and guidelines on
20 the capabilities and purposes that should
21 be demonstrated by councils under sub-
22 section (c)(2); and

23 “(iii) compilations of information,
24 such as bibliographies, manuals, sum-
25 maries, or other appropriate means of or-

1 ganizing and disseminating information,
2 that pertain to each of the planning ele-
3 ments specified under subsection (d)(4).

4 “(B) GUIDANCE.—The Secretary shall
5 issue guidance to the States setting forth min-
6 imum requirements for applications to receive
7 program grants under paragraph (3)(A).

8 “(C) PROGRESS REPORTS.—For purposes
9 of evaluating the progress of State and tribal
10 programs approved under this section, the Sec-
11 retary shall—

12 “(i) assemble and review all reports
13 on monitoring activities carried out under
14 council recommendations; and

15 “(ii) publish a report at least bienni-
16 ally describing—

17 “(I) the progress and accomplish-
18 ments of the programs; and

19 “(II) any recommendations for
20 improvements in the design or imple-
21 mentation of the programs.

22 “(D) REPORT ON STATE OF FISHERIES
23 HABITATS.—The Secretary of the Interior
24 shall—

1 “(i) review the reports prepared by
2 the Secretary under the subparagraph (C),
3 together with any other information or
4 data the Secretary of the Interior develops
5 or determines to be necessary; and

6 “(ii) publish a report at least bienni-
7 ally describing—

8 “(I) the state of the fishery habi-
9 tats of the United States; and

10 “(II) the overall progress being
11 achieved in protecting and restoring
12 the habitats.

13 “(2) FISHERIES-RELATED INFORMATION INDI-
14 CATORS AND HABITAT CHARACTERISTICS.—

15 “(A) IN GENERAL.—The Secretary of the
16 Interior, in cooperation with State fish and
17 wildlife agencies, shall compile and provide sci-
18 entific information for consideration by—

19 “(i) agencies in developing fisheries-
20 related indicators and associated habitat
21 characteristics, as described in this para-
22 graph; and

23 “(ii) councils in characterizing water
24 and establishing watershed objectives
25 under subsection (c).

1 “(B) CONTENT OF CRITERIA.—A State
2 fish and wildlife agency may establish fisheries-
3 related indicators to describe the appropriate
4 factors, indicators, measurements, and other
5 considerations that, independently or in
6 combination—

7 “(i) shall be indicative of a healthy,
8 resilient, diverse, and productive aquatic
9 system, as described in subparagraph (C);
10 and

11 “(ii) may distinguish among general
12 categories of fisheries based on natural
13 variations, such as—

14 “(I) water temperature and
15 chemistry;

16 “(II) flow regime;

17 “(III) biotic factors;

18 “(IV) habitat structure and com-
19 position; and

20 “(V) any other relevant and ap-
21 propriate considerations.

22 “(C) HABITAT CHARACTERISTICS.—With
23 respect to each general category of fisheries for
24 which criteria are established under this para-
25 graph, a State fish and wildlife agency shall, to

1 the maximum extent practicable, set forth those
2 habitat characteristics that are determined to
3 be necessary or desirable for a healthy, resil-
4 ient, diverse, and productive aquatic system, to-
5 gether with a description of the most significant
6 factors (including water quality and quantity),
7 that can cause adverse impacts on or threats to
8 those characteristics.

9 “(3) FUNDING.—

10 “(A) GRANTS FOR OPERATION OF STATE
11 PROGRAMS.—

12 “(i) IN GENERAL.—The Secretary
13 shall make grants to any State with a pro-
14 gram approved under subsection (b) for
15 payment of the reasonable costs of car-
16 rying out the responsibilities described in
17 paragraph (2).

18 “(ii) PERCENT OF FUNDING FOR AC-
19 TIVITIES OF COUNCILS.—Not less than 90
20 percent of the amount of a grant made
21 under this paragraph shall be reserved for
22 supporting the implementation of approved
23 activities of councils.

24 “(iii) MEMORANDUM OF UNDER-
25 STANDING.—As a condition of receiving a

1 grant under clause (i), a State shall enter
2 into a memorandum of understanding with
3 the Secretary that describes the objectives
4 and funding priorities for the program, in-
5 cluding conditions that require—

6 “(I) the State to carry out spe-
7 cific activities to promote the forma-
8 tion of councils through education,
9 outreach, and the provision of funding
10 for organizational and planning ef-
11 forts to develop requests for designa-
12 tion; and

13 “(II) the State or regional com-
14 mission to provide a substantial por-
15 tion of the funds available for water-
16 shed planning to councils associated
17 with high priority watersheds.

18 “(iv) LIMITATION ON ADMINISTRA-
19 TIVE EXPENSES.—Not more than 10 per-
20 cent of the amount of any grant made by
21 a State to a council from funds awarded
22 under clause (i) may be used to pay the
23 administrative expenses or overhead in
24 connection with the activities of the coun-
25 cil.

1 “(v) AUTHORIZATION OF APPROPRIA-
2 TIONS.—There are authorized to be appro-
3 priated to the Secretary to carry out this
4 paragraph such sums as are necessary for
5 each of fiscal years 2002 through 2006, to
6 remain available until expended.

7 “(B) FISHERIES HABITAT ACCOUNTS FOR
8 IMPLEMENTATION SUPPORT.—

9 “(i) ESTABLISHMENT.—Each State
10 with a program approved under subsection
11 (b) shall establish a fisheries habitat ac-
12 count to provide financial support for the
13 implementation of projects and measures
14 recommended by councils under approved
15 plans and interim recommendations.

16 “(ii) TRANSFERS.—

17 “(I) IN GENERAL.—Each State
18 with a program approved under this
19 section may reserve and transfer into
20 the fisheries habitat account of the
21 State established under clause (i), in
22 accordance with section 319, an
23 amount not to exceed 20 percent of
24 the funds received for fiscal year 2001
25 and each fiscal year thereafter.

1 “(II) AVAILABILITY.—Amounts
2 transferred under subclause (I) shall
3 remain available until expended.

4 “(iii) AUTHORIZATION OF APPROPRIA-
5 TIONS.—

6 “(I) FUNDING FOR RESTRICTING
7 LIVESTOCK ACCESS TO WATER WITHIN
8 A DESIGNATED WATERSHED.—

9 “(aa) IN GENERAL.—There
10 is authorized to be appropriated
11 to the Secretary not to exceed
12 \$25,000,000 for fiscal year 2002
13 and each fiscal year thereafter to
14 make grants to States with pro-
15 grams approved under subsection
16 (b), to remain available until ex-
17 pended.

18 “(bb) USE OF FUNDS.—
19 Funds made available under item
20 (aa) shall be used by States with
21 programs approved under sub-
22 section (b) to provide funds to
23 any person, through an account
24 within the fisheries habitat ac-
25 count of the State, for implemen-

1 tation of any appropriate meas-
2 ures recommended in an ap-
3 proved plan or interim rec-
4 ommendation for restricting live-
5 stock access to water within a
6 designated watershed and for
7 providing alternative water sup-
8 plied for the livestock.

9 “(II) AUTHORIZED FUNDING FOR
10 IMPLEMENTATION OF APPROVED REC-
11 COMMENDATIONS.—There is authorized
12 to be appropriated to the Secretary
13 not to exceed \$250,000,000 for each
14 of fiscal years 2002 through 2006 for
15 the purpose of making grants to
16 States with programs approved under
17 subsection (b), to remain available
18 until expended, to enable a State to
19 provide funds to any person, through
20 the fisheries habitat account of the
21 State, for implementation of approved
22 recommendations under subsection
23 (e)(2).

24 “(iv) ALLOCATIONS OF AMOUNTS.—
25 Amounts appropriated under clause (iv)

1 shall be allocated among States with pro-
2 grams approved under subsection (b), giv-
3 ing priority consideration to States that
4 exceed other States in the following cat-
5 egories:

6 “(I) The amount of hydroelectric
7 instream use (millions of gallons per
8 day) in the State in the previous cal-
9 endar year, as identified by the
10 United States Geological Service.

11 “(II) The total number of fishing
12 and migratory bird hunting licenses,
13 tags, permits, and stamps sold by the
14 State in the previous calendar year.

15 “(III) The degree of degraded
16 water in the State.

17 “(IV) The number of river miles
18 and lake acres in the State.

19 “(v) ANNUAL SURVEY.—The Sec-
20 retary shall provide to the Committees on
21 Appropriations and the appropriate au-
22 thorizing committees of the House of Rep-
23 resentatives and the Senate an annual sur-
24 vey of projected funding needs identified

1 for each State with a program approved
2 under subsection (b).

3 “(C) AUTHORIZATIONS OF APPROPRIATION
4 FOR FEDERAL PROGRAMS.—

5 “(i) IN GENERAL.—There are author-
6 ized to be appropriated to the Secretary
7 such sums as are necessary for the admin-
8 istration and implementation of this sec-
9 tion, to remain available until expended.

10 “(ii) RESPONSIBILITIES OF THE SEC-
11 RETARY OF THE INTERIOR.—There are au-
12 thorized to be appropriated to the Sec-
13 retary of the Interior such sums as are
14 necessary for the administration and im-
15 plementation of this section, to remain
16 available until expended.

17 “(iii) RESPONSIBILITIES OF THE AD-
18 MINISTRATOR.—There are authorized to be
19 appropriated to the Administrator such
20 sums as are necessary for the administra-
21 tion and implementation of this section, to
22 remain available until expended.

23 “(4) PLANNING AND RECOMMENDATIONS FOR
24 MAJOR WATERWAYS.—

1 “(A) IN GENERAL.—The Secretary of the
2 Interior, acting through the United States Fish
3 and Wildlife Service, and the Geological Survey
4 and in consultation with the Secretaries of Ag-
5 riculture, Commerce, and Energy, the Director
6 of the Federal Emergency Management Agency,
7 appropriate State fish and wildlife agencies,
8 river basin commissions, and Indian tribes,
9 shall establish and carry out a national plan-
10 ning program for protection and restoration of
11 fisheries habitat through improved floodplain
12 management practices on major waterways.

13 “(B) IDENTIFICATION OF WATERWAYS
14 SEGMENTS.—Under the national planning pro-
15 gram established under subparagraph (A), the
16 Secretary of the Interior shall identify discrete
17 segments of major waterways for which—

18 “(i) a council has not been designated
19 under subsection (c); and

20 “(ii) in the opinion of Secretary of the
21 Interior, there is a high likelihood that sig-
22 nificant progress can be achieved through
23 the implementation of measures identified
24 in subsection (d)(4)(E)(i) toward the pro-
25 tection or restoration of habitat for fish-

1 eries that exhibit substantial present or fu-
2 ture biological, commercial, or recreational
3 value.

4 “(C) RECOMMENDATIONS FOR HIGHEST
5 PRIORITY SEGMENTS.—

6 “(i) IN GENERAL.—With respect to
7 each of the highest priority segments iden-
8 tified by the Secretary of the Interior
9 under subparagraph (B) that is subject to
10 1 or more State programs that addresses
11 major waterways under subsection
12 (b)(3)(I), the Secretary of the Interior,
13 after providing notice and the opportunity
14 for comment, shall issue recommendations
15 to the appropriate State or States for con-
16 sideration of alternative floodplain manage-
17 ment measures of the types identified in
18 subsection (d)(4)(E)(i) to improve fisheries
19 habitat conditions in the identified segment
20 or in downstream segments.

21 “(ii) STATE ACTION.—A State shall
22 consider recommendations of the Secretary
23 of the Interior under clause (i) in accord-
24 ance with subsection (e).

1 “(D) APPLICABILITY OF REQUIRE-
2 MENTS.—Subsection (f), including the require-
3 ment that approved recommendations may be
4 carried out only with the willing consent of per-
5 sons holding a property interest in affected
6 land, shall apply to any recommendations—

7 “(i) issued by the Secretary of the In-
8 terior; and

9 “(ii) approved under subsection (d).

10 “(i) INSTREAM FLOWS AND WATER QUALITY.—

11 “(1) WATER QUALITY INFORMATION.—Not
12 later than 1 year after the date of enactment of this
13 section, the Secretary of the Interior, in consultation
14 with the State fish and wildlife agencies, shall issue
15 information describing methodologies for identifying
16 instream flows that are necessary to protect fisheries
17 habitat.

18 “(2) INSTREAM FLOW AND WATER VOLUME
19 DESIGNATIONS AND RECOMMENDATIONS.—

20 “(A) IN GENERAL.—Any State, whether or
21 not the State has an approved program under
22 this section, may designate fisheries uses for
23 water within the jurisdiction of the State, to-
24 gether with instream flows or water volumes,
25 that are necessary to support the uses.

1 “(B) RECOMMENDATIONS BY COUNCIL.—

2 Any council designated under this section may
3 include recommendations in a plan for fisheries
4 objectives pertaining to water within the des-
5 ignated watershed, together with instream flows
6 or volumes that are necessary to support the
7 objectives.

8 “(3) INFORMATION EXCHANGE/TECHNICAL AS-

9 SISTANCE.—The Secretary of the Interior, acting
10 through the Director of the United States Geological
11 Survey and the Director of the United States Fish
12 and Wildlife Service, shall provide technical assist-
13 ance and prepare and disseminate technical informa-
14 tion on the fisheries-related needs for instream flows
15 to—

16 “(A) councils designated under this sec-
17 tion;

18 “(B) others involved in land and water
19 management; and

20 “(C) the general public.

21 “(4) EXPENDITURES.—To support the mainte-
22 nance of instream flows or volumes designated or
23 recommended under paragraph (2), the Secretary of
24 the Interior, acting through the Director of the
25 United States Geological Survey and the Director of

1 the United States Fish and Wildlife Service, and in
2 cooperation with the Secretary and the Adminis-
3 trator, as appropriate, may provide funds to States,
4 from such appropriations as may be made under the
5 authorization provided under this subsection, for
6 expenditures—

7 “(A) to obtain, under State law, an inter-
8 est in instream water flows, including the pur-
9 chase of a water right or lease of a water right;

10 “(B) to obtain and manage, under State
11 law, an interest in land as a means of exer-
12 cising an associated interest in water for the
13 purpose of augmenting instream flows;

14 “(C) to pay the cost, or any portion of the
15 cost, of making improvements to water control
16 structures, such as dams, in return for obtain-
17 ing, under State law, an interest in water for
18 the purpose of augmenting instream flows;

19 “(D) to pay the cost, or any portion of the
20 cost, of constructing, maintaining, repairing, or
21 implementing water conservation measures,
22 such as improved irrigation equipment and
23 practices and water conveyance structures, in
24 return for obtaining—

1 “(i) under State law, an interest in
2 water or a right to place conditions on the
3 use of water; or

4 “(ii) an interest in water for the pur-
5 pose of augmenting instream flows; and

6 “(E) to obtain, under State law, an inter-
7 est in reservoir storage rights and the right to
8 release water from storage to maintain instream
9 flows.

10 “(5) TREATMENT OF RIGHTS OBTAINED.—Any
11 right or interest obtained under State law in connec-
12 tion with an expenditure made under this paragraph
13 shall be held by the appropriate State agency or pri-
14 vate entity or individual (as permitted under State
15 law)—

16 “(A) for its intended purpose in perpetuity
17 with respect to the purchase of a water right;
18 or

19 “(B) for the full term of the lease or other
20 contractual instrument with respect to any par-
21 tial interest in a water right.

22 “(6) AUTHORIZATION; CONDITIONS ON EX-
23 PENDITURES.—The following conditions shall apply
24 to any expenditures made under paragraph (4):

1 “(A) MAINTENANCE OF INSTREAM FLOWS
2 OR VOLUMES.—An expenditures shall result in,
3 or make a substantial contribution to, the main-
4 tenance of instream flows or volumes that are
5 necessary to support the associated fisheries ob-
6 jectives or uses designated under paragraph (2).

7 “(B) CONSENT FROM WILLING SELLER.—
8 Any right or interest in water acquired or oth-
9 erwise obtained under State law in connection
10 with an expenditure shall be so acquired or oth-
11 erwise obtained only with the written consent of
12 a willing seller of the right or interest.

13 “(C) MANAGEMENT OF FUNDS.—The Sec-
14 retary of the Interior shall manage the funds
15 appropriated under this subsection so as to
16 place the highest priority on expenditures to
17 support the recommendations pertaining to
18 instream flows or volumes contained in plans
19 approved under subsection (e).

20 “(7) AUTHORIZATION OF APPROPRIATIONS.—
21 There is authorized to be appropriated to the Sec-
22 retary of the Interior to carry out this subsection
23 \$50,000,000 for each of fiscal years 2002 through
24 2006, to remain available until expended.

1 “(8) RELATIONSHIP TO STATE AUTHORITY.—
2 Nothing in this section supersedes, abrogates, or
3 otherwise impairs the authority of a State—

4 “(A) to allocate quantities of water within
5 the jurisdiction of the State; or

6 “(B) except as provided by paragraph (4),
7 to authorize the transfer of rights to quantities
8 of water that have been established by any
9 State.”.

10 (b) INCLUSION OF INDIAN TRIBES.—Section 518(e)
11 of the Federal Water Pollution Control Act (33 U.S.C.
12 1377(e)) is amended by inserting “321,” after “319,”.

13 **SEC. 4. AUTHORIZATION OF APPROPRIATIONS.**

14 Section 319 of the Federal Water Pollution Control
15 Act (33 U.S.C. 1329) is amended by striking subsection
16 (j) and inserting the following:

17 “(j) AUTHORIZATION OF APPROPRIATIONS.—There
18 are authorized to be appropriated to carry out subsections
19 (h) and (i) and section 321 such sums as are necessary
20 for each of fiscal years 2002 through 2006, to remain
21 available until expended.”.

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