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SENATE

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TO CONSERVE FISH AND AQUATIC COMMUNITIES IN THE UNITED STATES
THROUGH PARTNERSHIPS THAT FOSTER FISH HABITAT CONSERVATION,
TO IMPROVE THE QUALITY OF LIFE FOR THE PEOPLE OF THE UNITED
STATES, AND FOR OTHER PURPOSES

MAY 17, 2010.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public
Works, submitted the following

R E P O R T

[To accompany S. 1214]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 1214) to conserve fish and aquatic communities in the United States through partnerships that foster fish habitat conservation, to improve the quality of life for the people of the United States, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

S. 1214 seeks to reverse the declines in aquatic habitat and species across the nation and would codify the National Fish Habitat Action Plan (Action Plan). The Action Plan focuses financial and technical resources on the root causes of fish habitat declines. The Action Plan focuses on the protection and conservation of intact and healthy aquatic habitats to prevent their future decline and disruption.

According to U.S. Fish and Wildlife Service (FWS) testimony before the Committee, aquatic species are some of the most at risk organisms in the United States. Since 1900, 123 freshwater species have become extinct in North America. Hundreds of other fish, mollusks, crayfish and amphibians are imperiled. A 2008 study by USGS scientists concluded that nearly 40 percent of the nation's fish populations are in decline. The loss and degradation of aquatic habitat are considered one of the primary reasons for the vulnerable condition of aquatic species.

S. 1214 would foster science, communication, and partnerships to unite diverse stakeholders and focus voluntary action on conserving priority habitats and encourage private-public partnerships that are consistent with the goals and mission of the National Fish Habitat Action Plan, which was released in 2006.

The goals of the plan are:

- (1) to protect and maintain intact and healthy aquatic systems;
- (2) to prevent further degradation of fish habitats that have been adversely affected;
- (3) to reverse declines in the quality and quantity of aquatic habitats to improve the overall health of fish and other aquatic organisms;
- (4) to increase the quality and quantity of fish habitats that support a broad natural diversity of fish and other species.

The legislation would establish a National Fish Habitat Board, composed of members from federal, state, and tribal agencies, and non-governmental organizations, which would approve Fish Habitat Partnerships (FHP) and make recommendations to the Secretary of the Interior regarding the funding of conservation projects. The bill also requires the Director of the U.S. Fish and Wildlife Service to establish the National Fish Habitat Conservation Partnership Office within the Service and NOAA and USGS to provide technical and scientific assistance to the Partnerships, the project participants, and the Board. The bill authorizes appropriations for each of fiscal years 2010 through 2014.

OBJECTIVES OF THE LEGISLATION

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

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents

Section 1 provides that this Act may be cited as the 'National Fish Habitat Conservation Act' and includes the table of contents of the Act.

Section 2. Findings; purpose

Section 2 provides the general purpose of the bill, along with several findings highlighting the economic, social, and environmental importance of aquatic habitats; acknowledge the harmful impacts to the national economy, environment, and wildlife that result from the destruction or alteration of aquatic habitats; and, recognize the need to protect, conserve, and restore the quality of aquatic habitats.

Section 3. Definitions

Section 3 provides definitions of several terms used in the Act.

Section 4. National Fish Habitat Board

Section 4 establishes the National Fish Habitat Board to oversee and promote the implementation of this Act, to establish national

goals and priorities, to designate partnerships, and to review and recommend aquatic habitat projects. This section describes the composition of the board and the procedures for appointing and replacing members.

Section 5. Fish Habitat Partnerships

Section 5 establishes procedures for designating Fish Habitat Partnerships and outlines criteria approval of partnerships. Criteria included are that the partnership: (1) includes a diverse group of public and private partners; (2) is organized to promote the health of important aquatic habitats and distinct geographical areas, keystone fish species, or system types; (3) identifies strategic fish and aquatic habitat priorities for the Partnership area; (4) is able to address issues on a nationally-significant scale; (5) includes a governance structure that reflects the range of all partners and promotes joint strategic planning; (6) demonstrates completion of or progress toward development of a strategic plan to address causes of fish decline; (7) ensures collaboration in implementing a scientifically-sound and achievable implementation program.

Section 6. Fish habitat conservation projects

Section 6 establishes procedures for consideration of fish habitat projects by the Board and criteria for the board to use in evaluating and recommending projects for funding to the Secretaries of Interior and Commerce, which the Secretaries must approve, reject, or reorder within 180 days. All fish habitat projects must include an evaluation plan designed to—appropriately assess the biological, ecological, or other results of the project and reflect appropriate changes to the fish habitat conservation project if the assessment finds that the project objectives are not being met. The report must be submitted to the board. This section also establishes cost-sharing requirements and includes requirements related to the acquisition of real property through a fish habitat project.

Section 7. National Fish Habitat Conservation Partnership Office

Section 7 establishes the National Fish Habitat Conservation Partnership Office and describes its functions, which include: providing funding for Partnership projects; facilitating communication and operations of the Partnerships and the Board; coordinating scientific reporting on projects; and providing support to the Board for national communication and outreach efforts that promote public awareness of fish habitat conservation. This section also requires the Director of the FWS, in cooperation with the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration (NOAA) and heads of other appropriate Federal agencies, to establish an interagency operational plan to guide the efforts of the Partnership Office and ensure inter-agency coordination. This section directs the Director of the FWS and Assistant Administrator for Fisheries of NOAA to provide staff to support the work of the Partnership Office.

Section 8. Technical and scientific assistance

Section 8 directs the Director of the FWS, Assistant Administrator for Fisheries of NOAA, and Director of the United States Geological Survey (USGS), in coordination with other appropriate fed-

eral agencies, to provide technical and scientific assistance for assessments of projects, support the development and implementation of fish habitat conservation projects, and provide recommendations for a national fish habitat assessment.

Section 9. Conservation of aquatic habitat for fish and other aquatic organisms on Federal land

Section 9 provides that the head of each Federal department and agency responsible for acquiring, managing, or disposing of Federal land or water must cooperate with the FWS and NOAA to conserve the aquatic habitats and organisms within the land and water of the department or agency.

Section 10. Coordination with States and Indian Tribes

Section 10 provides that the Secretary of the Interior shall provide a notice to the appropriate State or tribal agency within which an activity is planned to be carried out pursuant with this Act no later than 30 days before the planned activity is implemented.

Section 11. Accountability and reporting

Section 11 requires the Board to submit reports to appropriate congressional committees on the implementation of this Act and the National Fish Habitat Action Plan, which shall include descriptions of those aquatic habitats protected or restored under the National Fish Habitat Action Plan and an assessment of the status of the fish habitat conservation projects funded under this Act.

Section 12. Regulations

Section 12 provides that the Secretary of the Interior may promulgate such regulations as the Secretary determines necessary to carry out this Act.

Section 13. Effect of Act

Section 13 states that nothing in this Act establishes a water right in the United States, affects any water right in existence, or affects state water law. This section further clarifies that nothing in the Act affects state rights to manage wildlife and fish, affects tribal rights, affects existing federal authorities for land or water acquisition, or enables the use of funds provided by the Act to acquire real property without the consent of the property owner. This section also states that nothing in this Act allows the use of funds for fish and wildlife mitigation under existing Federal laws and court settlements.

Section 14. Nonapplicability of Federal Advisory Committee Act

Section 14 provides that the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the National Fish Habitat Board or any Partnership.

Section 15. Funding.

Section 15 authorizes \$75,000,000 for the Secretary of the Interior to provide funds for fish habitat conservation projects approved under section 6(f), of which 5 percent shall be made available for each fiscal year for projects carried out by Indian tribes. This section authorizes the greater of \$3,000,000 or 25 percent of the funds

appropriated for fish habitat conservation projects for the National Fish Habitat Conservation Office and requires the Secretary to annually transfer appropriate amounts to other federal agencies pursuant to the interagency operation plan under section 7(c). \$10,000,000 is authorized for FWS, NOAA, and USGS to provide technical and scientific assistance. This section authorizes \$300,000 or 4 percent of the funds appropriated for fish habitat conservation projects for administrative expenses. All authorizations are for fiscal years 2010 through 2014.

LEGISLATIVE HISTORY

S. 1214 was introduced by Sen. Joe Lieberman (IN-CT), Sen. Kit Bond (R-MO), and six other co-sponsors on June 9, 2009. The bill was referred to the Committee on Environment and Public Works. On December 10, 2009, the full Environment and Public Works Committee met to consider the bill. The bill was ordered favorably reported by voice vote with an amendment in the nature of a substitute.

HEARINGS

On December 3, 2009, the Water and Wildlife Subcommittee of the Senate Environment and Public Works Committee held a legislative hearing on multiple wildlife and invasive species bills, including S. 1214.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 1214 on December 10, 2009. The bill was ordered favorably reported by voice vote with an amendment in the nature of a substitute.

REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 1214 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee noted that the Congressional Budget Office has found, "S. 1214 contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments."

JANUARY 14, 2010.

Hon. BARBARA BOXER,
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1214, the National Fish Habitat Conservation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Daniel Hoople.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1214—National Fish Habitat Conservation Act

Summary: S. 1214 would authorize the appropriation of \$500 million over the 2010–2014 period for the Department of the Interior (DOI) to fund projects to conserve fish habitats and establish a National Fish Habitat Conservation Office. The legislation also would establish a National Fish Habitat Board and authorize the appropriation of \$150 million over the same period to provide technical and scientific assistance to the board, Fish Habitat Partnerships (FHPs), and conservation project participants.

CBO estimates that implementing S. 1214 would cost \$591 million over the 2010–2015 period, assuming appropriation of the specified amounts. Because the legislation would authorize DOI to accept and use gifts and donations, enacting the bill could have a negligible impact on offsetting receipts and associated direct spending. Enacting the bill would not affect revenues.

S. 1214 contains no intergovernmental or private sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1214 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—						
	2010	2011	2012	2013	2014	2015	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Fish Habitat Conservation Projects:							
Authorization Level	75	75	75	75	75	0	375
Estimated Outlays	0	57	65	75	75	50	322
Technical and Scientific Assistance:							
Authorization Level	30	30	30	30	30	0	150
Estimated Outlays	8	32	38	32	30	8	148
National Fish Habitat Conservation Partnership Office:							
Authorization Level	22	22	22	22	22	0	110
Estimated Outlays	2	18	32	26	22	6	106
Planning and Administration:							
Authorization Level	3	3	3	3	3	0	15
Estimated Outlays	1	3	3	3	3	2	15
Total Changes:							
Authorization Level	130	130	130	130	130	0	650
Estimated Outlays	11	110	138	136	130	66	591

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted in fiscal year 2010 and that amounts specified in the bill will be appropriated for each year.

S. 1214 would establish a National Fish Habitat Board composed of 27 members from federal, state, and tribal agencies, and non-governmental organizations. The board would approve FHPs formed around specific aquatic habitats and geographic areas and make recommendations to the Secretary of the Interior regarding the funding of conservation projects. Those recommendations would

be informed primarily by the FHPs, which would conduct scientific assessments and identify strategic priorities on behalf of public and private partners.

Fish habitat conservation projects

S. 1214 would authorize the appropriation of \$75 million in each of fiscal years 2010 through 2014 for DOI to provide funding for fish habitat conservation projects, including the acquisition of property. Projects would increase fishing opportunities for the public; increase public access to land; protect threatened and endangered species, fish, and fish habitats; and promote resilience to environmental change. No project could derive more than 50 percent of its funding from the federal government, unless the project was located on federal land or water.

CBO estimates that no spending for conservation projects would occur in 2010 because few projects would likely be approved before the conclusion of that fiscal year. Based on the historical expenditures for other conservation and land acquisition projects, we estimate that implementing this provision would cost \$322 million over the 2011–2015 period.

Technical and scientific assistance

S. 1214 would authorize the appropriation of \$30 million in each of fiscal years 2010 through 2014 for technical and scientific assistance to the board, the FHPs, and conservation project participants. The legislation would provide equal funding in each year to the Fish and Wildlife Service (FWS), the National Oceanic and Atmospheric Administration (NOAA), and the United States Geological Survey for those purposes. Based on the historical spending patterns for programs carried out by each of those agencies, CBO estimates that this provision would cost \$148 million over the 2010–2015 period.

National Fish Habitat Conservation Partnership Office

S. 1214 would authorize the appropriation of \$3 million, plus an amount equal to 25 percent of the funds provided for fish habitat conservation projects (which, assuming appropriation of the full amount, would total about \$19 million), in each of fiscal years 2010 through 2014 to establish a National Fish Habitat Conservation Partnership Office within FWS. The office would provide funding for operation of FHPs, including planning, outreach, implementation, and evaluation. The office also would help administer other provisions of the bill, including developing an interagency operational plan and reporting to the Congress regarding implementation of the bill and the status of aquatic habitats in the United States. CBO estimates that spending by the new office would total \$106 million over the 2010–2015 period.

Planning and administration

S. 1214 would authorize the appropriation of \$300,000, plus an amount equal to 4 percent of the funds provided for fish habitat conservation programs (which, assuming appropriation of the full amount, would total \$3 million), in each of fiscal years 2010 through 2014 for planning and administrative expenses. Such funds would be used by FWS, NOAA, and the board. CBO esti-

mates that those expenses would total \$15 million over the 2010–2015 period.

Intergovernmental and private-sector impact: S. 1214 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. State, local, and tribal governments would benefit from technical and financial assistance authorized in the bill. Any costs to those governments would be incurred voluntarily as a condition of receiving federal assistance.

Estimate prepared by: Federal Costs: Daniel Hoople; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate requires the committee to publish changes in existing law made by the bill as reported. Passage of this bill will make no changes to existing law.