Memorandum of Understanding
Between
The U.S. Department of the Interior
And
The U.S. Department of Agriculture
And
The U.S. Department of Commerce
For
Implementing the National Fish Habitat Action Plan

I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to promote collaborative, science-based conservation by ensuring that the component agencies, bureaus, and offices of the Department of the Interior, the Department of Agriculture, and the Department of Commerce (Departments), with direct or indirect responsibilities for aquatic habitat conservation, protection, and restoration, support efforts to implement the National Fish Habitat Action Plan (Action Plan) in accordance with their respective agency missions, policies, and regulations and subject to the availability of funds.

The Action Plan is a science-based, voluntary, and non-regulatory effort providing a nationwide strategy to harness the energies, expertise, and existing programs of Federal and state agencies, conservation organizations, foundations, and individuals.

II. BACKGROUND

Aquatic habitat supports fish, shellfish, amphibians, and other aquatic life that is important to the Nation's biological diversity, the economies of local communities and the Nation, and recreational use and enjoyment by millions of Americans. However, coastal, marine, and freshwater habitats have been damaged and destroyed by human activities. These losses have caused significant declines in fish populations throughout the United States, and have resulted in substantial economic losses. Our Departments have substantial interests in reversing declines in aquatic communities and habitats by working with partners in state and tribal government, local government, not-for-profit organizations, private entities, and individuals.

The Action Plan provides a national strategy to address aquatic habitat from the interior to the oceans. It supports cooperative, proactive, aquatic habitat protection, and restoration goals at multiple geographic scales. Through fish habitat protection and restoration, jobs are created and

recreational and commercial fishing communities will benefit. The Action Plan's voluntary partnership approach complements Federal and state regulations that protect aquatic habitat. The Action Plan supplements, but does not replace the existing foundation of statutory authority and associated regulatory programs implemented by the Departments that presently serve to protect aquatic habitats from degradation. Communication and coordination among our Departments, whose activities affect aquatic habitat, will help to improve the quality of our stewardship and the health of our Nation's aquatic habitat.

III. AUTHORITIES

This MOU is issued by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce (Secretaries), pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*), Clean Water Act (33 U.S.C. § 1251 *et seq.*), Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-666c.), Coral Reef Conservation Act of 2000 (16 U.S.C. § 6401 *et seq.*), Coastal Zone Management Act (16 U.S.C. § 1451 *et seq.*), Estuary Restoration Act of 2000 (33 U.S.C. § 2901 *et seq.*), Endangered Species Act (16 U.S.C. § 1531 *et seq.*), and the Coastal and Estuarine Lands Conservation Program (16 U.S.C. §§ 1456-1456d), and other Federal laws. These statutes provide the Agencies with authority to, among other things:

- Conserve and manage the fishery resources of the United States;
- Cooperate with state and other public or private agencies and organizations in the conservation of fish and wildlife and their habitats;
- Protect, restore, and enhance the coastal and estuarine resources of the United States, and;
- Provide for the conservation of species that are endangered or threatened, and the ecosystems on which they depend.

IV. DEFINITIONS

As used in this MOU the following terms are specifically defined:

A. National Fish Habitat Action Plan (Action Plan). The *National Fish Habitat Action Plan* dated April 24, 2006, and any subsequent revisions or amendments.

B. National Fish Habitat Board. A governing board established by the Action Plan to promote, oversee, and coordinate implementation of the Action Plan.

C. Federal Caucus. A working group open to all Federal agencies, chaired by the U.S. Fish and Wildlife Service, organized to coordinate Federal participation in implementation of the Action Plan.

D. Fish Habitat Partnership. An entity designated by the National Fish Habitat Board as a "Fish Habitat Partnership" that coordinates the implementation of the Action Plan at a

regional level. A Fish Habitat Partnership may include among its members Federal, state, tribal, local, non-profit, or private entities or individuals.

E. Aquatic communities. Aquatic organisms living or growing in, on, or near freshwater, estuarine or marine habitats and co-occurring with one another under relatively similar environmental conditions.

F. Aquatic habitat. Any area on which an aquatic organism depends, directly or indirectly, to carryout the life processes of the organism, including an area used by the organism for spawning, incubation, nursery, rearing, growth to maturity, food supply, or migration, including an area adjacent to the aquatic environment if the adjacent area:

(1) Contributes an element, such as the input of detrital material or the promotion of a planktonic or insect population providing food, that makes fish life possible;

(2) Affects the quality and quantity of water sources;

(3) Provides public access for the use of fishery resources; or

(4) Serves as a buffer protecting the aquatic environment.

G. Aquatic organism. Species that depend upon aquatic habitat for one or more stages of their life cycle, such as spawning, incubation, nursery, rearing, growth to maturity, food supply, or migration, including but not limited to fishes, shellfish, amphibians, turtles, and aquatic invertebrates.

H. Conservation. Activities that protect, sustain, and, where appropriate, restore, and enhance populations of fish, wildlife, or plant life or a habitat required to sustain fish, wildlife, or plant life or its productivity.

V. RESPONSIBILITIES

To achieve the objectives of this MOU, the heads of all agencies, bureaus, and offices within the Departments with direct or indirect responsibilities for aquatic habitat conservation, protection, and restoration shall be responsible for ensuring that the following principles are followed:

A. Principle 1. The Departments Shall Support Implementation of the National Fish Habitat Action Plan.

(1) The Departments recognize that the Action Plan is a partnership with state and tribal fish and wildlife agencies, local agencies, not-for-profit organizations, private entities, and individuals to improve the quality and quantity of aquatic habitat.

(2) The Departments shall ensure their actions, to the extent permitted by law and subject to the availability of appropriations, and in accordance with their respective agency

missions, policies, and regulations, are consistent with and support the priorities of the Action Plan. In so doing, the Departments can improve the efficiency of Federal Government operations and ensure effective coordination with state, tribal, and local agencies, not-for-profit organizations, private entities, and individuals.

B. Principle 2. The Departments Shall Participate in National Fish Habitat Action Plan Forums.

(1) The Director, U.S. Fish and Wildlife Service; the Chief, U.S. Department of Agriculture, Forest Service; and the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration shall participate as members of the National Fish Habitat Board.

(2) Each of the component agencies, bureaus, and offices of the Departments with direct or indirect responsibilities for aquatic habitat conservation, protection, and restoration, shall as appropriate, to the extent permitted by law and subject to the availability of appropriations, and in accordance with their respective agency missions, policies, and regulations:

(a) Participate as members of the Federal Caucus at policy and technical levels to coordinate Federal participation in implementation of the Action Plan in support of state agency-led efforts to achieve the goals of the Action Plan.

(b) Review its policies, procedures, resources, and capabilities to further the goals of the Action Plan, and make revisions, where appropriate during regularly scheduled reviews of same, to support the goals.

(c) Incorporate the goals of the Action Plan in its own plans for managing Federal lands and water resources, during regularly scheduled reviews of such plans.

(d) Contribute materials, technical assistance, services, or matching funds to projects that support the goals of the Action Plan and Fish Habitat Partnerships established under the Plan.

(e) Coordinate and contribute technical assistance, services or funds for the science and data initiatives of the National Fish Habitat Board.

(f) Consider the goals of the Action Plan when awarding loans, grants, contracts, and cooperative agreements.

(g) Consider the goals of the Action Plan when issuing permits to states or private entities when such permits may influence aquatic habitat.

(h) Collect, manage, analyze, and share data and contribute information technology expertise to build or integrate databases to assess aquatic communities, habitat conditions and outcomes of projects.

(i) Encourage and support affiliated efforts by non-Federal partners to implement the Action Plan, including the fulfillment of the Federal trust responsibilities to Native American governments.

(j) Contribute to the development of informational materials for stakeholders and the general public to raise awareness of the values of aquatic habitat and the Action Plan.

(k) Coordinate its activities in support of the Action Plan with other interagency efforts, including but not limited to America's Great Outdoors, Landscape Conservation Cooperatives, the Aquatic Nuisance Species Task Force, the Coral Reef Task Force, the National Action Plan for Freshwater Resources, the National Ocean Policy Implementation Plan, and the National Fish, Wildlife and Plants Climate Adaptation Strategy.

(l) Coordinate its activities with states, territories, tribes, and local governments to meet the goals of the Action Plan.

VI. IMPLEMENTATION

This MOU shall be implemented by all agencies, bureaus, and offices of the Departments, as applicable.

VII. REPORTING

Within 180 days from the date of this MOU, and at 2-year intervals thereafter, all bureaus, agencies, and offices implementing this MOU will report to their respective Secretary on agency accomplishments and progress in support of state-led efforts to achieve the goals of the Action Plan.

VIII. GENERAL PROVISIONS

A. Nothing in this MOU shall obligate the Department of the Interior, the Department of Agriculture, or the Department of Commerce to obligate or transfer any funds. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement, contribution of funds, or other transfer of anything of value between the Parties will be handled in accordance with applicable laws, regulations, and procedures, including those for government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Parties and shall be independently authorized by appropriate statutory authority.

B. Changes to this MOU shall be made in writing by mutual consent of all Parties, through an issuance of a written modification signed and dated by all Parties.

C. Documents furnished to a Party under this MOU may be subject to the Freedom of Information Act (FOIA, 5 U.S.C. § 552). A Party shall not release to a FOIA requester documents originating with another Party. Rather, the Party that received the FOIA request shall forward such document(s) to the originating Party for review, determination, and response directly to the requester.

D. This MOU is not intended to, and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by any party against the United States, its agencies, its officers, or any person.

IX. EXPIRATION

This MOU becomes effective on the date that the last party to this agreement signs and shall remain in effect for 5 years from the date of execution. This MOU may be extended upon written request of any of the Departments and the subsequent written concurrence of the others. Any of the Departments may terminate participation in this MOU with a 60-day written notice to the others.

SIGNATURES

IN WITNESS WHEREOF, the Parties hereto executed this Memorandum of Understanding on the date(s) set forth below:

Ken Salazar

Secretary
Department of the Interior

MAR 05 2012
Date

Secretary
Department of Agriculture

MAR 07 2012
Date

Secretary
Department of Commerce

MAR - 5 2012
Date