January 8, 2014

Memorandum For: NFHP Board

From: Matt Menashes, Senior Policy Advisor

Subject: REVISED Draft Articles of Incorporation and Bylaws for a Nonprofit Corporation to Support the National Fish Habitat Partnership

When we reviewed the initial draft documents for the new non-profit corporation at the October board meeting, a few issues came up. Steve Moyer, Mike Andrews, and I have discussed these and made changes to the documents which are attached for your review. Changes are in yellow.

The issues we wanted to resolve were:

- How to bind the new board to NFHP as tightly as possible.
- Tying the Articles of Incorporation more explicitly to NFHP not just to fish habitat conservation.
- Selecting the initial board members.
- Setting a maximum number of terms for board members.

The two primary and somewhat related issues were how to bind the new corporation to the National Fish Habitat Board/Partnership, and who selects the initial board members.

I talked to Jeff Tenenbaum, a senior partner at Venable in their non-profit practice (he counsels TNC and NFWF), who gave me two possible ways to make the connection. First, we could use strong language in the articles and bylaws to guide the path of the new corporation and in effect "enforce" the connection. Second, we could create some type of contractual obligation, probably through an affiliation agreement, between the new corporation and one or more of the NGOs that currently serve on the National Fish Habitat Board as a sort of check-and-balance over the power of the new c3.

After discussing these options with Mike and Steve, we agreed that it might best serve us to have the bylaws of the new corporation structured to enforce the connection with the NFH Board/Partnership, including structuring the board selection process via nomination by the NFH Board Chair and approval by the AFWA Executive Committee. The goal would be to have the board chair nominate people with the skills and abilities to serve the explicit purposes of the new corporation, and have those board members subject to approval by the state agencies.

On the issue of board member terms, I have changed the bylaws so that an individual can serve no more than two consecutive terms nor more than four terms total. That puts the maximum time able to serve at 12 years (4 three-year terms).

ARTICLES OF INCORPORATION
National Fish Habitat XXXX

The undersigned, a majority of whom are citizens of the United States, desiring to form a Non-Profit Corporation under D.C. Code Title 29 Chapter 4, do hereby certify:

First: The name of the Corporation shall be National Fish Habitat XXXX. The corporation [shall/shall not] have members.

Second: The Registered Agent is:
[must be a person or corporate registered agent in D.C.]

Third: Said corporation is organized exclusively for charitable, educational, and scientific purposes ***related to the conservation, protection, and restoration of fish and aquatic habitats in the United States through the National Fish Habitat Partnership***, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Fourth: The names and addresses of the persons who are the initial directors of the corporation are as follows:

1. Matthew E. Menashes, 2025 Glen Ross Road, Silver Spring, Maryland 20910
2. TBD
3. TBD

Fifth: No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article Third hereof. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

Notwithstanding any other provision of these articles, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of this corporation.

Sixth: Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

In witness whereof, we have hereunto subscribed our names this day of XXXXX, 201X.

BYLAWS
OF THE
CORPORATION NAME TO BE DETERMINED

ARTICLE I
OFFICE AND REGISTERED AGENT

Section 1. Principal Office. The principal office of the Corporation shall located in a place chosen by the Board of Directors.

Section 2. Registered Office and Agent. The Corporation shall have and continuously maintain a registered office and a registered agent in the District of Columbia, as required by the District of Columbia Nonprofit Corporation Act. The registered agent shall be either an individual resident of the District of Columbia or a corporation authorized to transact business in the District of Columbia.

ARTICLE II
PURPOSES

The purposes for which the Corporation is formed are as set forth in the Articles of Incorporation.

The mission of the Corporation is to conserve, protect, and restore fish and aquatic habitat in the United States by supporting the National Fish Habitat Partnership and regional Fish Habitat Partnerships. In all activities and respects, the Corporation will advance the National Fish Habitat Partnership and the regional Fish Habitat Partnerships.

ARTICLE III
MEMBERSHIP

The Corporation shall have no members.

ARTICLE IV
BOARD OF DIRECTORS

Section 1. Powers. There shall be a Board of Directors of the Corporation, which shall supervise and control the business, property, and affairs of the Corporation, except as otherwise expressly provided by law, the Articles of Incorporation of the Corporation, or these Bylaws. In the event of an emergency, the Board may assume emergency powers such as, but not limited to, modifying lines of succession, and relocating offices.

Section 2. Number and Qualifications. The members of the initial Board of Directors of the Corporation shall be those individuals named in the Articles of Incorporation and shall serve until their successors are elected and qualified. Thereafter, the Board of Directors of the Corporation shall be composed of no less than eight and no more than 12 individuals. The number of directors may be decreased, but no decrease shall have the effect of shortening the term of any incumbent director.

Section 3. Nomination, Election and Term of Office. Individuals will be nominated to the Board of Directors of the Corporation by the Chair of the National Fish Habitat Board, who is a state agency representative. Nominations will be reviewed by the Executive Committee of the Association of Fish and Wildlife Agencies (AFWA) who shall also elect directors by majority vote at their regular September meeting. Directors will take office on the first day of October following their election. At the time of his or

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her election, each director shall be assigned to Class A, Class B, or Class C, and an effort shall be made to keep each class of directors of approximately equal size. Each director shall hold office for a term of three years, except that for the Board elected at the organizational meeting in 201X:

a. Directors in Class A shall have their term expire in 201X+1 (and every three years thereafter);
b. Directors in Class B shall have their term expire in 201X+2 (and every three years thereafter); and
c. Directors in Class C shall have their term expire in 201X+3 (and every three years thereafter).

No director shall serve more than two consecutive terms nor more than four terms total.

Section 4. Resignation. Any director may resign at any time by giving written notice to the Chairman of the Board. Such resignation shall take effect at the time specified therein, or, if no time is specified, at the time of acceptance thereof as determined by the Chairman of the Board.

Section 5. Removal. Any director may be removed from such office, with or without cause, by a two-thirds vote of all of the directors then in office at any regular or special meeting of the Board called expressly for that purpose.

Section 6. Vacancies. The Chair of the National Fish Habitat Board shall nominate a candidate to fill a vacancy to the AFWA Executive Committee. A nomination will be reviewed by the Executive Committee, which shall elect a new director by majority vote at their next scheduled meeting or via email if the next meeting is more than four weeks away. A new director will take office immediately upon approval and shall serve until the regular expiration of the term for that position.

Section 7. Regular Meetings. A regular annual meeting of the Board of Directors of the Corporation shall be held each year, at such time, day and place as shall be designated by the Board of Directors.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called at the direction of the Chair or by a majority of the voting directors then in office, to be held at such time, day, and place as shall be designated in the notice of the meeting.

Section 9. Notice. Notice of the time, day, and place of any meeting of the Board of Directors shall be given at least 14 days previous to the meeting and in the manner set forth in Section 2 of Article VII. The purpose for which a special meeting is called shall be stated in the notice. Any director may waive notice of any meeting by a written statement executed either before or after the meeting. Attendance and participation at a meeting without objection to notice shall also constitute a waiver of notice.

Section 10. Quorum. A majority of the directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

Section 11. Manner of Acting. Except as otherwise expressly required by law, the Articles of Incorporation of the Corporation, or these Bylaws, the affirmative vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. Each director shall have one vote. Voting by proxy shall not be permitted.

Section 12. Unanimous Written Consent In Lieu of a Meeting. The Board may take action without a meeting if written consent to the action is signed by all of the directors.

Section 13. Telephone Meeting. Any one or more directors may participate in a meeting of the Board of Directors by means of a conference telephone or similar telecommunications device, which allows all persons participating in the meeting to hear each other. Participation by telephone shall be equivalent to presence in person at the meeting for purposes of determining if a quorum is present.

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ARTICLE V
OFFICERS

Section 1. Officers. The officers of the Corporation shall minimally consist of a Chair, a Vice Chair, a Secretary, and a Treasurer. The Corporation shall have such other assistant officers as the Board of Directors may deem necessary and such officers shall have the authority prescribed by the Board. One person shall not hold two offices.

Section 2. Election of Officers. The officers of the Corporation shall be elected by the directors at the annual meeting of the Board of Directors.

Section 3. Term of Office. The officers of the Corporation shall be installed at the annual meeting at which they are elected and shall hold office for two year until the next annual meeting or until their respective successors shall have been duly elected.

Section 4. Resignation. Any officer may resign at any time by giving written notice to the Chair of the Board. Such resignation shall take effect at the time specified in the notice, or if no time is specified, then immediately.

Section 5. Removal. Any officer may be removed from such office, with or without cause, by two-thirds vote of all of the directors then in office at any regular or special meeting of the Board called expressly for that purpose.

Section 6. Vacancies. A vacancy in any office shall be filled by the Board of Directors for the unexpired term.

Section 7. Chair. The Chair shall give active direction and exercise oversight pertaining to all affairs of the Corporation. He or she may sign contracts or other instruments, which the Board of Directors has authorized to be executed, and shall perform all duties incident to the office of Chair as may be prescribed by the Board of Directors.

Section 8. Vice Chair. The Vice Chair shall preside over meetings of the Corporation in the absence of the Chair. In addition, the Vice Chair shall exercise the powers of the Chair if the Chair is unable to perform his or her activities for any period of time.

Section 9. Secretary. The Secretary shall keep the minutes of the meetings of the Board of Directors; see that all notices are duly given in accordance with the provisions of these Bylaws, ensure staff members keep corporate records; and in general perform all duties incident to the office of Secretary and such other duties as may be assigned by the Board of Directors.

Section 10. Treasurer. The Treasurer shall be responsible for and oversee all financial matters of the Corporation. The Treasurer shall ensure staff members properly receive and give receipts for moneys due and payable to the Corporation and deposit all such moneys in the name of the Corporation in appropriate banks, and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Board of Directors.

Section 10. Bonding. If requested by the Board of Directors, any person entrusted with the handling of funds or valuable property of the Corporation shall furnish, at the expense of the Corporation, a fidelity bond approved by the Board of Directors.

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ARTICLE VI
COMMITTEES

Section 1. Standing Committees. The Board of Directors, by resolution adopted by a majority of the directors then in office may designate and appoint one or more standing committees, including but not limited to a finance committee and a nominations committee, each consisting of two or more directors, which committees shall have and exercise the authority of the Board of Directors in the governance of the Corporation. However, no committee shall have the authority to amend or repeal these Bylaws, elect or remove any officer or director, adopt a plan of merger, or authorize the voluntary dissolution of the Corporation.

Section 2. Executive Committee. Between meetings of the Board of Directors, on-going oversight of the affairs of the Corporation may be conducted by an Executive Committee, the membership of which shall be the officers of the Board of Directors and the President/Chief Executive Officer.

Section 3. Other Committees and Task Forces. The Board of Directors may create and appoint members to such other committees and task forces as they shall deem appropriate. Such committees and task forces shall have the power and duties designated by the Board of Directors, and shall give advice and make non-binding recommendations to the Board, and shall be limited to the term established by the Board and then dissolved or renewed.

Section 4. Term of Office. Each member of a committee shall serve until a successor is appointed, unless the committee is sooner dissolved.

Section 5. Vacancies. Vacancies in the membership of committees may be filled by the Chair of the Board.

Section 6. Rules. Each committee and task force may adopt rules for its meetings not inconsistent with these Bylaws or with any rules adopted by the Board of Directors.

ARTICLE VII
MEETINGS

Section 1. Annual Meeting. The organization shall hold an annual meeting of the Corporation to be held at the time and place designated by the Board, to be designated no later than three (3) months prior to the date of the meeting. Written notice specifying the time, date, and place of the annual meeting shall be given to each Board member by the secretary no later than two (2) months prior to the opening of said annual meeting. The agenda of the annual meeting shall be prepared by the Executive Committee for the approval of the board.

Section 2. Board Meetings. Board meetings of the Corporation shall be called at such time and place as the board may select. The secretary shall give thirty (30) days written notice of any Board meeting to each Board member. Board meetings may be held in conjunction with the Annual Meeting of the Corporation.

ARTICLE VIII
PRESIDENT/CHIEF EXECUTIVE OFFICER

Subject to the control of the Board and any supervisory powers the Board may give to the chairman of the Board, the president/chief executive officer shall have general supervision, direction, and control of the

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business and affairs of the Corporation including the Corporation's staff, and shall see that all orders and resolutions of the Board are carried into effect. The president/chief executive officer shall also perform all duties incidental to this office that may be required by law and all such other duties as are properly required of this office by the Board. The president/CEO shall have such other powers and perform such other duties as from time to time may be prescribed for him or her by the Board, these bylaws, or the chairman of the Board.

ARTICLE IX
CHAPTERS

Section 1. Regional Fish Habitat Partnerships. Any regional Fish Habitat Partnership (FHP) approved by the National Fish Habitat Board, may request recognition by the Corporation as a "chapter" of the Corporation. Recognition as a chapter is in addition to recognition as an FHP, and as such nothing in this article is intended to conflict with the responsibilities of the National Fish Habitat Board or with the roles and responsibilities of an FHP.

a. Any FHP requesting recognition from the Corporation as a chapter of the Corporation must comply with policies and procedures established by the Board, including entering into the standard Memorandum of Understanding with the Corporation.
a. A representative from each FHP recognized as a chapter will serve as a liaison to the Corporation. Liaisons will provide an annual report to the Corporation, provide copies of all meeting minutes and resolutions, and be responsible for ensuring communications between FHP and the Corporation.

Section 2. Financial and Other Services. The Corporation will establish policies and procedures to provide financial and other services required by chapters, including but not limited to:

a. accounting and fiscal management including the establishment of restricted and unrestricted accounts;
b. banking and investment services;
c. insurance; and
d. auditing.

Section 3. Powers, Duties, Responsibilities. FHPs hold all such powers, duties, and responsibilities as required to carry out the activities envisioned in their strategic plans that are not specifically reserved for the Corporation. Fundraising by FHPs should be coordinated with the Corporation and shall not conflict with the fundraising efforts of the Corporation. Each FHP may determine if it will be a membership organization, and if so, will determine the composition of its membership in consultation with the Corporation. Each FHP shall have at least two (2) meetings each fiscal year. No FHP shall be or hold itself out to be an agent of the Corporation.

Section 4. Standing. For a FHP to be in good standing as a chapter, it must support the purposes of the Corporation, meet requirements set out by these Bylaws and the policies and procedures of the Corporation, meet all financial obligations, file reports promptly, and participate in the annual meeting of the Corporation.

Section 5. Probation, Suspension, Revocation, or Dissolution.

a. A chapter may be placed on probation with the Corporation by the Board of Directors for failure to comply with these Bylaws and established policies and procedures of the Corporation. The board will notify the chapter leadership in writing that the chapter is on probation. The chapter will have two months to meet the necessary requirements and be removed from probationary status. Failure to comply will result in suspension.
b. The activities of a chapter may be suspended by the Board of Directors of the Corporation for

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failure to comply with these Bylaws and established Policies and Procedures of the Corporation.

c. A chapter's status may be withdrawn by a majority vote of the Board of Directors of the Corporation.
d. A FHP may choose to drop its chapter status.
e. If an FHP drops or loses its chapter status, all cash and other assets remaining after the payment of all debts shall be paid to an appropriate private nonprofit organization recommended by the leadership of the FHP and approved by the Board of Directors of the Corporation.

Section 6. Reactivation and Reinstatement of a Chapter. A FHP may be reactivated as a chapter following suspension by three-fourths (3/4) vote of the Board. A FHP which loses its status as a chapter or drops itself from chapter status may be reinstated by meeting any requirements the Board establishes for a newly organizing chapter.

ARTICLE X
MISCELLANEOUS PROVISIONS

Section 1. Fiscal Year. The fiscal year of the Corporation shall be October 1 through September 30.

Section 2. Notice. Whenever under the provisions of these Bylaws notice is required to be given to a director, officer, or committee member, such notice shall be given in writing by first-class mail or overnight delivery service with postage prepaid to such person at his or her address as it appears on the records of the Corporation. Such notice shall be deemed to have been given when deposited in the mail or the delivery service. Notice may also be given by electronic mail, or hand delivery, and will be deemed given when received.

ARTICLE XI
INDEMNIFICATION

Unless otherwise prohibited by law, the Corporation shall indemnify any director or officer or any former director or officer, and may by resolution of the Board of Directors indemnify any employee, against any and all expenses and liabilities incurred by him or her in connection with any claim, action, suit, or proceeding to which he or she is made a party by reason of being a director, officer, or employee. However, there shall be no indemnification in relation to matters as to which he or she shall be adjudged to be guilty of a criminal offense or liable to the Corporation for damages arising out of his or her own gross negligence in the performance of a duty to the Corporation.

Amounts paid in indemnification of expenses and liabilities may include, but shall not be limited to, counsel fees and other fees; costs and disbursements; and judgments, fines, and penalties against, and amounts paid in settlement by, such director, officer, or employee. The Corporation may advance expenses or, where appropriate, may itself undertake the defense of any director, officer, or employee. However, such director, officer, or employee shall repay such expenses if it should be ultimately determined that he or she is not entitled to indemnification under this Article.

The Board of Directors shall authorize the purchase of insurance on behalf of any director, officer, employee, or other agent against any liability incurred by her/her which arises out of such person's status as a director, officer, employee, or agent, whether or not the Corporation would have the power to indemnify the person against that liability under law.

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ARTICLE XII
AMENDMENTS TO BYLAWS

These Bylaws may be amended or new Bylaws adopted upon the affirmative vote of two-thirds of all the directors then in office at any regular or special meeting of the Board. The notice of the meeting shall set forth a summary of the proposed amendments.

ARTICLE XIII
PARLIAMENTARY AUTHORITY

The rules contained in *Roberts' Rules of Order Newly Revised* shall govern all meetings in all cases in which they are not inconsistent or in conflict with these Bylaws.

ARTICLE XIV
DISSOLUTION

Upon the dissolution of the Corporation, the Board of Directors, after paying or making provision for the payment of all of the liabilities of the Corporation, shall dispose of all of the remaining assets of the Corporation exclusively to conserve, protect, and restore fish and aquatic habitat in the United States through the National Fish Habitat Partnership in such manner, or to such organization or organizations as shall at the time qualify as a tax-exempt organization or organizations recognized under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States internal revenue statute, as the board shall determine.

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